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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 13, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Tuesday, November 21, 2000

Presidential Documents

Title 3—

The President

Proclamation 7378 of November 15, 2000

National Great American Smokeout Day, 2000

By the President of the United States of America

A Proclamation

In the 24 years since the American Cancer Society organized the first Great American Smokeout, our country has made encouraging progress in our battle to reduce the devastating human and economic toll that tobacco products take on our society. Today we have a more comprehensive understanding of the dangers of tobacco use and the sophisticated marketing tactics used by tobacco companies, and we have developed more effective methods for helping people break their addiction to tobacco products.

Despite the progress we have made, tobacco remains the leading cause of preventable death in our Nation, with more than 400,000 casualties from tobacco-related illness each year. Since the first report of the Surgeon General on smoking and health was issued in 1964, 10 million Americans have died from causes attributed to smoking. More than 50 million Americans are currently addicted to tobacco. Every day, another 3,000 young Americans become regular smokers; of these, nearly 1,000 will die prematurely.

A recent study funded by the National Institutes of Health has shown that young people become addicted to nicotine much more quickly than we previously thought. Adolescents who smoke as infrequently as once a month still experience symptoms of addiction. That is why my Administration has urged the Congress to raise the tax on cigarettes and grant authority to the Food and Drug Administration to limit tobacco marketing and sales to youth. I have also called on all the States to devote a substantial portion of their tobacco settlement funds to reduce youth smoking. Currently, tobacco companies are spending nearly $7 billion a year to market their products, dramatically more than the Federal Government and all 50 States combined are spending on tobacco prevention and cessation programs.

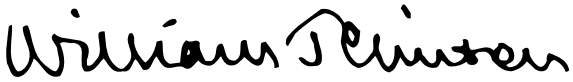
My Administration has also joined with the American Cancer Society and other public health organizations in calling for public and private health plans to provide coverage for and access to proven tobacco cessation methods. We know that helping people quit smoking produces immediate and long-term health benefits—saving money and saving lives.

National Great American Smokeout Day presents all of us with the opportunity to reaffirm our commitment to the health and safety of all Americans. Smokers who quit smoking for the duration of the day can lead by example and take the first crucial step toward better health. Nonsmokers can teach children about the dangers of using tobacco and strengthen our Nation's efforts to eliminate young people's exposure to secondhand smoke.Through efforts like the Great American Smokeout and the implementation of proven tobacco prevention programs, we are moving toward my Administration's goal of cutting smoking rates among teens and adults in half within the decade.

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 November 16, 2000, as national Great American Smokeout Day. I call upon all Americans to join together in an effort to educate our children about the dangers of

tobacco use and to take this opportunity to practice a healthy lifestyle that sets a positive example for young people.

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



[FR Doc. 00–29902
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Billing code 3195–01–P

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV00–905–4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

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 limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (Committee). This rule limits the volume of sizes 48 (at least 3$^{9}/_{16}$ inches in diameter) and 56 (at least 3$^{5}/_{16}$ inches in diameter) red seedless grapefruit handlers can ship during the first 11 weeks of the 2000–2001 season beginning September 18, 2000. This limitation provides a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule should help stabilize the grapefruit market and improve grower returns.

EFFECTIVE DATE: November 22, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3$^{5}/_{16}$ inches in diameter).

This final rule limits the volume of small red seedless grapefruit entering the fresh market. This rule establishes limits on the volume of sizes 48 and 56 red seedless grapefruit handlers can ship during the first 11 weeks of the 2000–2001 season. The limitations began September 18, 2000. This rule supplies enough small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule will help stabilize the grapefruit market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week is established as a percentage of the total shipments of such variety by such handler in a prior period, established by the Committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is

calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule limits the volume of small red seedless grapefruit that can enter the fresh market for the remaining weeks of the 11-week period, which began the week of September 18, 2000. This rule continues in effect the interim final rule which established the weekly percentage for the first three weeks (September 18 through October 8) at 45 percent; for the fourth through seventh weeks (October 9 through November 5) at 40 percent; and for the last four weeks (November 6 through December 3) at 35 percent.

These percentages are different from those originally recommended by the Committee on May 26, 2000. At that time, the Committee unanimously voted to establish a weekly percentage of 25 percent for each of the 11 weeks. The Committee's initial recommendation was issued as a proposed rule published in the **Federal Register** on July 11, 2000 (65 FR 42642). No comments were received during the comment period, which expired August 10, 2000. The Committee subsequently met on August 31, 2000, and unanimously recommended adjusting the proposed percentages. The Committee's recommendation was issued as an interim final rule published on September 15, 2000 (65 FR 55885). Comments on that action were invited until September 25, 2000. No comments were received.

The Committee recognizes the need for and the benefits of the weekly percentage regulation. Members believe that the problems associated with an uncontrolled volume of small sizes entering the market early in the season will recur without such action.

As in the previous three seasons, the Committee initially recommended that the weekly percentage of size regulation be set at 25 percent for each week during the regulatory period. The Committee thought it was best to set regulation at the most restrictive level, 25 percent for each of the 11 weeks in the regulated period, and then relax the percentages as warranted by information available closer to the start of the season.

On August 31, 2000, the Committee revisited the weekly percentage issue and reviewed information it had acquired since its May meeting. It determined that the initial recommendation was too restrictive, and recommended raising the established base percentages from 25 percent for each of the regulation weeks.

In its discussion, the Committee reviewed the initial percentages recommended and the state of the crop. The Committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. The Committee noted that more information helpful in determining the appropriate weekly percentages is available closer to the start of the harvesting season. At the time of the May meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October.

The 2000–2001 season crop is continuing to size well. Current indications are that early-season conditions for this year are similar to those of last season. Due to the anticipated similarities, the Committee considered the percentages established last year as a basis for discussing this year's percentages. Committee members thought that last season's percentages had worked well, providing some restriction while affording volume for those markets that prefer the smaller sizes. In making its recommendation, the Committee considered that there had been a reduction in the overall available weekly industry base due to industry consolidation, a reduction in shipments, and packinghouse closings.

The available weekly industry base is the sum of each individual handler's weekly base. A handler's base is calculated by taking that handler's total red seedless grapefruit shipments during the 33 week season for each of the past five seasons, adding them together and dividing by five to calculate an average season. This number is then divided by 33 to derive the average week. This average week is the base for each handler for each of the 11 weeks of the regulatory period. The overall available industry base per week was 937,257 cartons last season. For the 2000–2001 season, the base calculates to 875,688 cartons.

To recognize this reduction in available base, the Committee recommended establishing the weekly percentages at levels slightly higher than those established for last season. The Committee agreed that the percentage established for the first two weeks of last season of 45 percent was still appropriate, and recommended that the percentages for the first two weeks of the 2000–2001 season be established at 45 percent. The Committee recommended that the third week should also be established at 45 percent, a five percent increase from last season's third week percentage. For the next four weeks the Committee recommended that the weekly percentage be established at 40 percent, an increase from 37 percent for last season. For the last four weeks of regulation, the Committee recommended that the percentage be established at 35 percent, an increase from last season's 32 percent for the final four weeks.

The ongoing problems affecting the European and Asian markets are also a factor. In past seasons, these markets have shown a strong demand for the smaller-sized red seedless grapefruit. The reduction in shipments to these areas experienced during the last few years is expected to continue during the upcoming season. This reduction in demand could result in a greater amount of small sizes for remaining markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets.

Therefore, based on available information and the experiences from past seasons, the Committee recommended changing the initial weekly percentages from their most restrictive level. The Committee could meet again during the regulation period, as needed, when additional information is available, and determine whether the set percentage levels are appropriate. Any changes to the weekly percentages established by this rule would require additional rulemaking and the approval of the Secretary.

During the three seasons prior to implementation of weekly percentage regulations (1994–95, 1995–96, and 1996–97), returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (4/5 bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to $1.41 per carton during the 1996–97 season.

The Committee determined that one problem contributing to the market's condition was the excessive number of small-sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11-week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasted with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season.

While there is a market for early grapefruit, shipping large quantities of

small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes. For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early to get fruit into the market to take advantage of high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower-priced fruit on the market, driving down the price for all sizes.

At the start of the season, larger-sized fruit command a premium price. In some cases, the f.o.b. price is $4 to $10 more a carton than for the smaller sizes. In October, the f.o.b. price for a size 27 averages around $14.00 per carton. This compares to an average f.o.b. price of $6.00 per carton for size 56. In the three years before the issuance of a percentage size regulation, by the end of the 11-week period covered in this rule, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton to an average f.o.b. price of $5.50 per carton during the period covered by this rule. Later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment. However, the price structure in the market had already been negatively affected. The market never recovered, and the f.o.b. price for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes that the over shipment of smaller sized red seedless grapefruit early in the season contributes to poor returns for growers and lower on-tree values. To address this issue, the Committee voted to utilize the provisions of § 905.153, and established a weekly percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, and 1999–2000 seasons. The initial recommendation from the Committee was to set the weekly percentages at 25 percent for each of the 11 weeks. Then, as more information on the crop became available, and as the season progressed, the Committee met again and adjusted its recommendations for the weekly percentages as needed. Actual weekly percentages established during the 11-week period during the 1999–2000 season were 45 percent for the first two weeks, 40 percent for the third week, 37 percent for the fourth through the seventh week, and 32 percent for the last four weeks. The Committee considered information from past seasons, crop estimates, fruit size, and other available information in making its recommendations.

The Committee has used the percentage size regulation to the betterment of the industry. Prices have increased, and movement has been stable. In each of the three seasons following the 1996–97 season, the Committee has recommended utilizing the percentage size rule. During the 11-week period of regulation, the average market price has been higher than for the three years prior to regulation. In late October, the average market price for red seedless grapefruit was $9.31 for the last three years regulation compared to $7.22 for the same period for the three years prior to regulation. Market prices also remained at a higher level, with an average price of $7.31 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons averaging $7.13 compared to $5.83 for the three prior years.

The on-tree earnings per box have also been increasing for the past three years, providing better returns to growers. The on-tree price increased from $3.42 for 1997–98, to $5.04 for 1998–99, to an estimated $6.46 for the 1999–2000 season.

Another benefit of percentage size regulation has been in maintaining higher prices for the larger-sized fruit. Larger fruit commands a premium price early in the season. The f.o.b. price for a larger size can be $4 to $10 more per carton than for smaller sizes. However, the glut of smaller, lower-priced fruit on the early market was driving down the prices for all sizes. In the three years prior to the implementation of the percentage size rule, by the end of the 11-week period covered, the f.o.b. price for the large sizes would drop to within $2 of the f.o.b. price for the smaller sizes. This was not acceptable to the industry.

During the past three years of regulation under the percentage size rule, the average differential between the carton price for a size 27 and the price for a size 56 was $5.65 at the end of October and remained at $3.43 in mid-December. During the three years prior to regulation, the average differential between these two sizes was $3.47 at the end of October, but by mid-December the price for the larger size had dropped to within $1.68 of the price for the smaller-size fruit. In fact, the average prices for each size were higher during the three years with regulation than for the three years prior to regulation. The average prices for size 27, size 32, size 36, and size 40 during the 11-week period for the last three years were $9.07, $7.91, $7.16, and $6.62, respectively. This compares to the average prices for the same sizes during the same period for the three years prior to regulation of $6.48, $5.63, $5.59, and $5.34, respectively.

The percentage size regulation has also been helpful in stabilizing the volume of small sizes entering the fresh market early in the season. During the three years prior to regulation, small sizes accounted for over 34 percent of the total shipments of red seedless grapefruit during the 11-week period covered in the rule. This compares to 31 percent for the same period for the last three years of regulation. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the 11-week regulatory period from 1995–96 to 1999–2000.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998 found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise weekly average f.o.b. prices. It further stated that size 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

During deliberations in past seasons as to weekly percentages, the Committee considered how past shipments had affected the market. Based on available statistical information, the Committee members believed that once shipments of sizes 48 and 56 reach levels above

250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

While the Committee did eventually vote last season to increase the weekly percentages, shipments of sizes 48 and 56 during the 11 weeks regulated remained close to the 250,000-carton mark. This may have contributed to the success of the regulation.

In setting the weekly percentage for each week at 25 percent for the 2000–2001 season, the total available allotment would have approximated 218,922 (25 percent of the total industry base of 875,688 cartons). Consequently, there was room to increase the percentages while holding weekly shipments of sizes 48 and 56 close to the 250,000-carton mark, as was done last season.

In making its recommendation, the Committee reviewed experiences from the past seasons. The Committee examined shipment data covering the 11-week regulatory period for the last three regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week. The Committee believes establishing weekly percentages during the last three seasons was successful. The past regulations helped maintain prices at a higher level than the previous years without regulation, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. The Committee considered the past problems and the success of the percentage rule and decided to recommend using the percentage of size provisions for the 2000–2001 season. The limitations began September 18, 2000.

Therefore, this rule continues in effect the interim final rule which established the weekly percentages at 45 percent for the first three weeks (September 18 through October 8); for the fourth through seventh weeks (October 9 through November 5) at 40 percent; and for the last four weeks (November 6 through December 3) at 35 percent.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week will be calculated using the recommended percentages 45, 40, or 35 percent, depending on the week. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

The Committee calculates an average week for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks to derive the average week. This average week is the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case either 45, 40, or 35 percent, is multiplied by a handler's average week. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week.

Under this rule handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. The Committee staff performs the specified calculations and provides them to each handler.

The average week for handlers with less than five previous seasons of shipments is calculated by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments have no prior period on which to base their average week. Therefore, a new handler can ship small sizes equal to 45, 40, or 35 percent, depending on the week, of their total volume of shipments during their first shipping week (depending on when they begin shipping). Once a new handler has established shipments, their average week is calculated as an average of the weeks they have shipped during the current season.

As mentioned before, the 2000–2001 regulatory period begins the third Monday in September, September 18, 2000. Each regulation week begins Monday at 12:00 a.m. and ends at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the workweek.

The rules and regulations governing percentage size regulation contain a variety of provisions designed to provide handlers with some marketing flexibility. When the Secretary establishes regulation for a given week, the Committee calculates the quantity of small red seedless grapefruit that may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

During any week for which the Secretary has fixed the percentage of sizes 48 and 56 red seedless grapefruit, any handler could handle an amount of sizes 48 or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) is deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there are no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped are not carried forward to the following week. However, a handler to whom an allotment has been issued can lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party, prior to the completion of the loan agreement, notifies the Committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party will promptly notify the Committee so that proper adjustments of the records can be made. In each case, the Committee confirms in writing all such transactions prior to the following week.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

The introductory text of § 905.350 is being modified to reflect a change to § 905.306 establishing the minimum size for red seedless grapefruit at size 56 on a continuous basis. A final rule implementing this change has been

published in the **Federal Register** at 65 FR 66601, November 7, 2000.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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

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

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1999–2000 season was around $7.52 per 4/5 bushel carton, and total fresh shipments for the 1999–2000 season are estimated at 25.6 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 70 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers also may be classified as small entities.

This rule continues to limit the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of the 2000–2001 season, beginning September 18, 2000. The over shipment of smaller-sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. This rule limits the volume of sizes 48 and 56 red seedless grapefruit by setting the weekly percentage for the 11 weeks at 45 percent for the first three weeks (September 18 through October 8); for the fourth through seventh weeks (October 9 through November 5) at 40 percent; and for the last four weeks (November 6 through December 3) at 35 percent. This is a change from the Committee's original recommendation of a 25 percent weekly percentage for the 11 weeks. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage. This rule utilizes the provisions of '' 905.153. Authority for this action is provided in § 905.52 of the order.

While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers. Over the past three seasons, producers have adjusted their harvesting operations to more efficiently conform with the percentage size regulation and to keep their harvesting costs as low as possible.

If a 25 percent restriction on small sizes had been applied during the 11-week period for the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments. Also, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the overshipment is deducted from the following week's shipments. Approximately 120 loans and transfers were utilized last season. Statistics for 1999–2000 show that in none of the regulated weeks was the total available allotment used. Therefore, the overall impact of this regulation on total shipments should be minimal.

Handlers and producers have received higher returns under percentage size regulation. In late October, during the last three years with regulation, the average market price for red seedless grapefruit was $9.31 compared to $7.22 for the same time during the three years prior to regulation. Prices have also remained higher, with an average price of $7.31 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price was also higher, with the past three seasons with regulation averaging $7.13 compared to $5.83 for the three prior seasons.

The on-tree earnings per box have also increased for the past three years, providing better returns to growers. The on-tree price increased from $3.42 for 1997–98, to $5.04 for 1998–99, to an estimated $6.46 for the 1999–2000 season. These increased returns when coupled with the overall volume of red seedless grapefruit more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation.

The Committee considered one alternative to taking this action. The alternative was leaving the weekly percentages at 25 percent. However, the Committee believed that the 25 percent level was too restrictive. Therefore, this option was rejected.

Handlers utilizing the flexibility of the loan and transfer aspects of this action are required to submit a form to the Committee. The rule increases the reporting burden on approximately 75 handlers of red seedless grapefruit who will be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information

requirements and duplication by industry and public sectors.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this interim final rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the May 26, 2000 and the August 31, 2000, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Also, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on September 15, 2000 (65 FR 55885). Copies of the rule were mailed or sent via facsimile to all Committee members and grapefruit growers and handlers. The Office of the Federal Register, the Department, and the Committee also made this rule available through the Internet.

A 10-day comment period was provided to allow interested persons to respond to the proposal. The comment period ended September 25, 2000. No comments were received.

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

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (65 FR 55885, September 15, 2000) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the 2000–2001 season is in full swing and this action should be effective as soon as possible during the 11-week regulatory period. Further, handlers are aware of this rule which was recommended at two public meetings. Also a 30-day comment period was provided in the proposed rule and a 10-day comment period was provided in the interim final rule. No comments were received.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR Part 905 which was published at 65 FR 55885 on September 15, 2000, is adopted as a final rule without change.

Dated: November 14, 2000

James R. Frazier

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–29705 Filed 11–20–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

7 CFR Part 2812

RIN 0599–AA06

Office of Procurement and Property Management; Department of Agriculture Priorities and Administrative Guidelines for Donation of Excess Research Equipment

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: The Office of Procurement and Property Management of the Department of Agriculture (USDA) amends its procedures for the donation of excess research equipment for technical and scientific education and research activities to educational institutions and nonprofit organizations under section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 Act (15 U.S.C. 3710(i)). This amendment expands the list of entities eligible to receive such equipment, establishes a priority list for eligible entities seeking transfer of such equipment, and clarifies administrative rules regarding equipment transfer.

DATES: This final rule is effective December 21, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Fay on 202–720–9779.

SUPPLEMENTARY INFORMATION:

I. Background

USDA regulations for the donation of excess research equipment for technical and scientific educational research activities under section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 Act (15 U.S.C. 3710(i)) were promulgated at 60 FR 34456 on July 3, 1995. USDA determined that the eligibility of organizations to receive excess research equipment under this part is not clear.

The President signed Executive Order (EO) 12999 on April 17, 1996, requiring Federal agencies, when donating educationally useful Federal research equipment under section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 and other laws, to give the highest preference to schools (including pre-kindergarten through twelfth grade) and nonprofit organizations (including community-based educational organizations) with particular preference to such schools and nonprofit organizations located in Federal enterprise communities and empowerment zones designated pursuant to the Omnibus Reconciliation Act of 1993, Public Law 103–66. USDA is taking action in this rule making to implement EO 12999.

Further, consistent with the EO 12999 and other authorities available to USDA for transfer of excess personal property (such as that implemented in 7 CFR part 3200), USDA desires to establish a preference list for those eligible entities seeking to receive property donated under this part.

The substance of this rule was published on July 29, 1999, as a proposed rule. No comments were received. The only change from the proposed rule is the omission of a current requirement (7 CFR 2812.4(e)) that recipients provide a written justification for why the property is needed. Since this change is de minus, and actually reduces administrative burdens on the public, the agency has determined to proceed with a final rule without further comment.

II. Procedural Requirements

A. Executive Order Number 12866

This rule was reviewed under EO 12866, and it has been determined that it is not a significant regulatory action because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or

tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

B. Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility act, 5 U.S.C. 601, *et seq.,* for the reason that this regulation imposes no new requirements on small entities.

C. Paperwork Reduction

The forms necessary to implement these procedures have been cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, 44 U.S.C. 2500, *et seq.*

III. Electronic Access Addresses

You may send electronic mail (E-mail) to kathy.fay@usda.gov or contact us via fax at (202) 720–3339.

List of Subjects in 7 CFR Part 2812

Government property management, excess Government property.

For the reasons set forth in the preamble, 7 CFR part 2812 would be amended as set forth below:

PART 2812—DEPARTMENT OF AGRICULTURE GUIDELINES FOR THE DONATION OF EXCESS RESEARCH EQUIPMENT UNDER 15 U.S.C. 3710(i)

1. The authority citation for part 2812 is revised to read as follows:

Authority: 5 U.S.C. 301; E.O. 12999, 61 FR 17227, 3 CFR, 1997 Comp., p. 180.

2. Amend § 2812.3 by removing paragraph (b), redesignate paragraphs (c), (d), and (e) as (e), (h), and (i), respectively, and add new paragraphs (b), (c), (d), (f) and (g) to read as follows:

§ 2812.3 Definitions.

* * * * *

(b) *Community-based educational organization* means nonprofit organizations that are engaged in collaborative projects with pre-kindergarten through twelfth grade educational institutions or that have education as their primary focus. Such organizations shall qualify as nonprofit educational institutions for purposes of section 203(j) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(j)).

(c) *Educational institution* means a public or private, non-profit educational institution, encompassing pre-kindergarten through twelfth grade and two- and four-year institutions of higher education, as well as public school districts.

(d) *Educationally useful Federal equipment* means computers and related peripheral tools (*e.g.*, printers, modems, routers, and servers), including telecommunications and research equipment, that are appropriate for use in pre-kindergarten, elementary, middle, or secondary school education. It shall also include computer software, where the transfer of licenses is permitted.

(f) *Federal empowerment zone or enterprise community (EZ/EC)* means a rural area designated by the Secretary of Agriculture under 7 CFR part 25.

(g) *Non-profit organization* means any corporation, trust association, cooperative, or other organization which:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, or expand its operations. For the purposes of this part, ''non-profit organizations'' may include utilities affiliated with institutions of higher education, or with state and local governments and federally recognized Indian tribes.

* * * * *

3–4. Amend § 2812.4 by removing and reserving paragraph (a), and revise paragraphs (c), (d) and (e) to read as follows:

§ 2812.4 Procedures.

(a) [Reserved]

* * * * *

(c) After USDA screening has been accomplished, excess personal property targeted for donation under this part will be made available on a first-come, first-served basis. If there are competing requests, donations will be made to eligible recipients in the following priority order:

(1) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations in rural EZ/EC communities;

(2) Educationally useful Federal equipment for pre-kindergarten through twelfth grade educational institutions and community-based educational organizations not in rural EZ/EC areas;

(3) All other eligible organizations.

(d) Upon reporting property for excess screening, if the pertinent USDA agency has an eligible organization in mind for donation under this part, it shall enter ''P.L. 102–245'' in the note field. The property will remain in the excess system approximately 30 days, and if no USDA agency or cooperator requests it during the excess cycle, the Departmental Excess Personal Property Coordinator will send the agency a copy of the excess report stamped, ''DONATION AUTHORITY TO THE HOLDING AGENCY IN ACCORDANCE WITH P.L. 102–245.'' The holding USDA agency may then donate the excess property to the eligible organization.

(e) Donations under this Part will be accomplished by preparing a Standard Form (SF) 122, ''Transfer Order-Excess Personal Property''.

* * * * *

5. Remove Appendix A to part 2812.

Done at Washington, D.C., this 30th day of October, 2000.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 00–29783 Filed 11–20–00; 8:45 am]

BILLING CODE 3410–TX–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1088]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to reflect the annual indexing of the low reserve tranche and the reserve requirement exemption for 2001, and announces the annual indexing of the deposit reporting cutoff level that will be effective beginning in September 2001. The amendments decrease the amount of net transaction accounts subject to a reserve requirement ratio of three percent in 2001, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $44.3 million to $42.8 million of transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $5.0 million to $5.5 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent in 2001. This action is required by section 19(b)(11)(B) of the

Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff level that is used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $95.0 million to $101.0 million for nonexempt depository institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements.) Thus, beginning in September 2001, nonexempt institutions with total deposits of $101.0 million or more will be required to report weekly while nonexempt institutions with total deposits less than $101.0 million may report quarterly, in both cases on form FR 2900. In July 2000, the Board eliminated the exempt deposit cutoff and discontinued the quarterly report associated with that cutoff (form FR 2910q). Exempt institutions with at least $5.5 million in total deposits may report annually on form FR 2910a.

DATES: *Effective date:* December 21, 2000.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, November 28, 2000, and the corresponding reserve maintenance period that begins Thursday, December 28, 2000. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 19, 2000, and the corresponding reserve maintenance period that begins Thursday, January 18, 2001. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 2001 to determine the reporting frequency for the twelve month period that begins in September 2001.

FOR FURTHER INFORMATION CONTACT: Heatherun Allison, Counsel (202/452–3565), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for the hearing impaired only, contact Janice Simms, Telecommunications Device for the Deaf (TDD) (202/872–4984); Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its reservable liabilities,[1] as prescribed by Board regulations. The required reserve ratio applicable to transaction account balances exceeding the low reserve tranche is 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The percentage change in the tranche is required by law to equal 80 percent of the percentage change (increase or decrease) in net transaction accounts at all depository institutions over the one-year period ending on the most recent June 30.

Net transaction accounts of all depository institutions decreased by 4.2 percent (from $645.7 billion to $618.4 billion) from June 30, 1999, to June 30, 2000. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR part 204) to decrease the low reserve tranche for transaction accounts for 2001 by $1.5 million, that is, from $44.3 million to $42.8 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461 (b)(11)(B)) provides that $2 million of reservable liabilities of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. The exemption amount changes only if the total reservable liabilities held at all depository institutions increase from one year to the next. In that case, the exemption amount increases by 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 12.3 percent (from $1,961.1 billion to $2,202.9 billion) from June 30, 1999, to June 30, 2000. Consequently, the reservable liabilities exemption amount for 2001 under section 19(b)(11)(B) will be increased by $0.5 million from $5.0 million to $5.5 million.[2]

For institutions that report weekly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the reserve computation period beginning Tuesday, November 28, 2000, and for the corresponding reserve maintenance period beginning Thursday, December 28, 2000. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the computation period beginning Tuesday, December 19, 2000, and for the corresponding reserve maintenance period beginning Thursday, January 18, 2001. In addition, all institutions currently submitting form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. The cutoff level for nonexempt institutions determines whether they report (on form FR 2900) quarterly or weekly, and the deposit cutoff level for exempt institutions determines whether they report annually (on form FR 2910a) or quarterly (on form FR 2910q). During the July 2000 review of deposit reports, however, the Board eliminated the exempt deposit cutoff and discontinued the quarterly report associated with that cutoff, the form FR 2910q. In addition, the Board raised the nonexempt deposit cutoff to $95.0 million from the 2000 indexed level of $84.5 million, effective for the 2000 deposit report screening process.

From June 30, 1999, to June 30, 2000, total deposits increased 7.9 percent, from $4,836.8 billion to $5,219.8 billion. Accordingly, the nonexempt deposit cutoff level will increase by $6.0 million from $95.0 million in 2000 to $101.0 million in 2001. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $5.0 million to $5.5 million.

Under the deposit reporting system, institutions are screened during each

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

year to determine their reporting category beginning in the September of that year. Thus, effective in September 2001, all U.S. branches and agencies of foreign banks and Edge and agreement corporations, regardless of size, and other institutions with total reservable liabilities exceeding $5.5 million (nonexempt institutions) and with total deposits at or above $101.0 million would be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (form FR 2900). Nonexempt institutions with total deposits below $101.0 million could file the form FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or IBFs would continue to be required to file the Report of Certain Eurocurrency Transactions (forms FR 2950/FR 2951) at the same frequency as they file the form FR 2900. Institutions with reservable liabilities at or below the exemption amount of $5.5 million (exempt institutions and with at least $5.5 million in total deposits would be required to file the Annual Report of Total Deposits and Reservable Liabilities (form FR 2910a). Institutions with total deposits below the exemption level of $5.5 million would be excused from reporting if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice and public participation. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $42.8 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, or contrary to the public interest.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions. See ''Notice and Public Participation'' above.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $42.8 million.	3 percent of amount.
Over $42.8 million.	$1,284,000 plus 10 percent of amount over $42.8 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

[1] Before deducting the adjustment to be made by the paragraph (b) of this section.

(b) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of $5.5 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, November 16, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–29723 Filed 11–20–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–373–AD; Amendment 39–11993; AD 2000–23–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires replacement of certain components. The actions specified by this AD are intended to prevent corrosion of the axle of the main landing gear, which could result in cracking and failure of one or more axles, loss of the wheels on the axle, and loss of controllability of the airplane on the ground. This action is intended to address the identified unsafe condition.

DATES: Effective December 26, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 26, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Boeing Model 777–200 series airplanes was published in the **Federal Register** on July 31, 2000 (65 FR 46666). That action proposed to require replacement of certain components.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter states that the unsafe condition in the Discussion section of the proposed rule is understated. The commenter also states that failure of more than one axle on one main landing gear (MLG) can equal two axles or even all three axles, which would increase the potential hazard. The commenter further states that there is potential for a ''cascade failure scenario.'' From this comment, the FAA infers that the commenter is requesting that the unsafe condition be revised to include the failure scenario suggested by the commenter. The FAA agrees with the commenter that there is always a possibility of additional failures (i.e., ''cascade failure scenario'') resulting from the initial failure.

The FAA has revised the unsafe condition of the final rule to read, ''which could result in cracking and failure of one or more axles, loss of the wheels on the axle, and loss of controllability of the airplane on the ground.''

Conclusion

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

Cost Impact

There are approximately 8 airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD. It will take between 56 and 93 work hours per airplane (depending on which, and how many, of the airplane's MLG axles are affected) to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $3,360 and $5,580 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–20 Boeing: Amendment 39–11993. Docket 99-NM–373-AD.

Applicability: Model 777–200 series airplanes; line numbers 7 through 11 inclusive, 26, 28, and 33; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the axle of the main landing gear, which could result in cracking and failure of one or more axles, loss of the wheels on the axle, and loss of controllability of the airplane on the ground, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace specified axles of the main landing gear with new axles, in accordance with Boeing Alert Service Bulletin 777–32A0024, dated August 12, 1999.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(d) The replacement shall be done in accordance with Boeing Alert Service Bulletin 777–32A0024, dated August 12, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained

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

Effective Date

(e) This amendment becomes effective on December 26, 2000.

Issued in Renton, Washington, on November 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29376 Filed 11–20–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–52–AD; Amendment 39–11991; AD 2000–23–18]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Learjet Model 60 airplanes, that requires inspecting the routing of oxygen tubing to ensure that there is adequate clamping of the tubing and adequate clearance between the tubing and electrical wiring or electrical contacts, and taking corrective action, if necessary. The actions specified by this AD are intended to prevent electrical arcing between the oxygen tubing and an electrical source, which could result in an oxygen fire.

DATES: Effective December 26, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 26, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Learjet Model 60 airplanes was published in the **Federal Register** on August 8, 2000 (65 FR 48399). That action proposed to require inspecting the routing of oxygen tubing to ensure that there is adequate clamping of the tubing and adequate clearance between the tubing and electrical wiring or electrical contacts. That action also proposed to require corrective action, if necessary.

Comments

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

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 58 airplanes of the affected design in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry will be affected by this AD, that it will take 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. There will be no parts required. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $2,400, or $60 per airplane.

Should an operator be required to adjust the clamping or the clearance of the oxygen tubing, the FAA estimates that it will take approximately 3 work hours per airplane and that the average labor rate is $60 per work hour. The cost of required parts, such as clamps, nuts, bolts, and washers, will be negligible. Based on these figures, the cost impact of adjusting the clamping or the clearance of the tubing is estimated to be $7,200, or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–18 Learjet: Amendment 39–11991. Docket 2000–NM–52–AD.

Applicability: Model 60 airplanes, serial numbers 104 through 168 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the oxygen tubing and an electrical source which could result in an oxygen fire, accomplish the following:

Inspection

(a) Within 60 days or 80 flight hours after issuance of this AD, whichever occurs first, perform a detailed visual inspection of the oxygen tubing for adequate clamping and adequate clearance from electrical wiring and electrical contacts, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999. If adequate clamping and adequate clearance, as specified in the service bulletin, are found, no further action is required by this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Adjustment

(b) If clamping or clearance of the oxygen tubing from electrical wiring or contacts is not adequate as specified in Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999, the clamping or the clearance must be adjusted, in accordance with the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Bombardier Alert Service Bulletin (Learjet 60) SB A60–35–2, dated November 4, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 101, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 26, 2000.

Issued in Renton, Washington, on November 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29374 Filed 11–20–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–329–AD; Amendment 39–11988; AD 2000–23–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Powered By Pratt & Whitney JT9D–3 and –7 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This action requires repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and corrective actions, if necessary. This action also provides for optional terminating action for the repetitive inspections and checks. This action is necessary to detect and correct loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, which could result in separation of the engine from the airplane.

DATES: Effective December 6, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 2000.

Comments for inclusion in the Rules Docket must be received on or before January 22, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–329–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–329–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating the detection of loose fasteners of the hanger fittings and strut forward bulkhead of the forward engine mount. In one occurrence, damage to a hanger fitting also was detected. Such damage has been attributed to loose fasteners of the front spar bulkhead of the strut. The fasteners may not have been fully torqued, or the nuts may have bottomed out on the bolt threads prior to full clamp-up during fastener torque.

Certain tolerance build-up conditions also could cause the nuts to shank during installation. These conditions, if not corrected, could result in loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, and consequent separation of the engine from the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, which describes procedures for repetitive detailed visual inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure to detect loose fasteners, cracking, and/or damage; and corrective actions, if necessary. The corrective actions consist of a torque check, before further flight, if any loose fasteners are detected; rework of loose hanger fittings, and damaged or cracked fittings that are within the allowable rework limits; and replacement if damage or cracks are detected that are outside the allowable rework limits.

If certain damage of the strut forward bulkhead; bulkhead chords; lower spar web; or bulkhead channel is detected, the alert service bulletin specifies contacting Boeing for rework/replacement instructions. The alert service bulletin also describes procedures for rework or replacement of the fittings, which eliminates the need for the repetitive inspections and checks. The alert service bulletin references Boeing Service Bulletin 747–54A2159, dated November 3, 1994; Revision 1, dated June 1, 1995; or Revision 2, dated March 14, 1996; and the 747 Structural Repair Manual, Chapter 51–30–02, as additional sources of service information for accomplishment of the terminating action.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, which could result in separation of the engine from the airplane. This AD requires repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure to detect loose fasteners, cracking, and/or damage; and corrective actions, if necessary. This action also provides for optional terminating action for the repetitive inspections and checks. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Interim Action

This is considered to be interim action. At this time the FAA is considering a separate rulemaking action to mandate accomplishment of the terminating action described in Part 6 of the alert service bulletin, which would terminate the repetitive inspections and checks required by this AD action. The FAA also is considering mandating the torque checks described in Part 3 of the alert service bulletin, which would extend the repetitive inspection and check interval, until accomplishment of the terminating action. However, the planned compliance time for these actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Differences Between Alert Service Bulletin and This AD

Operators should note that, although the effectivity section of the alert service bulletin includes Boeing Model 747 series airplanes having serial numbers 21048 and 20887, these airplanes have been modified and are now powered by General Electric CF6–50 series engines, and are not affected by the actions required by this proposed rule.

Operators also should note that, although the alert service bulletin specifies that the manufacturer may be contacted for certain rework and/or replacement instructions, this AD requires such rework and/or replacement to be done in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–329–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to

correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–23–16 Boeing: Amendment 39–11988. Docket 2000-NM–329–AD.

Applicability: Model 747 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000; except Model 747 series airplanes having serial numbers 21048 and 20887.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct loose fasteners and associated damage to the hanger fittings and strut forward bulkhead of the forward engine mount, which could result in separation of the engine from the airplane, accomplish the following:

Repetitive Inspections/Checks

(a) Within 60 days after the effective date of this AD: Perform a detailed visual inspection and torque check as specified in Part 2 of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, to detect loose fasteners and associated damage to the hanger fittings and bulkhead of the forward engine mount, in accordance with Figure 1 of the alert service bulletin. Repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Corrective Actions

(1) If no loose fastener or associated damage is detected, repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (b) of this AD.

Note 3: Where there are differences between the AD and the alert service bulletin, the AD prevails.

(2) If any loose fastener or associated damage is detected, before further flight, perform the applicable corrective actions (torque check, rework or replacement of fittings), as specified in Figure 1 of the alert service bulletin. Repeat the inspections/checks thereafter at the applicable intervals specified in Figure 1 of the alert service bulletin until accomplishment of the terminating action specified in paragraph (b) of this AD. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain corrective actions (rework or replacement of fittings), this AD requires such rework and/or replacement to be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(b) Accomplishment of the terminating action specified in Part 6 of Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, constitutes terminating action for the repetitive inspections/checks required by paragraph (a) of this AD.

Note 4: Installation of two BACW10BP* auxiliary power unit washers on Group A fasteners accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–54A2159, dated November 3, 1994, Revision 1, dated June 1, 1995, or Revision 2, dated March 14, 1996; and pin or bolt protrusion as specified in the 747 Structural Repair Manual, Chapter 51–30–02 (both referenced in Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000); is considered acceptable for compliance with the terminating action specified in paragraph (b) of this AD.

Alternative Methods of Compliance

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

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

Incorporation by Reference

(e) Except as provided by paragraph (a)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on December 6, 2000.

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

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–29215 Filed 11–20–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for Novartis Animal Health US, Inc.

DATES: This rule is effective November 21, 2000.

FOR FURTHER INFORMATION CONTACT: Norman J. Turner, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0214.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., P.O. Box 18300, Greensboro, NC 27419–8300, has informed FDA of a change of sponsor's address to 3200 Northline Ave., suite 300, Greensboro, NC 27408. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor's address.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for ''Novartis Animal Health US, Inc.'' and in the table in paragraph (c)(2) by revising the entry for ''058198'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408	058198
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
058198	Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408
* * * * * * *	

Dated: November 6, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–29764 Filed 11–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Departmental Offices; Privacy Act of 1974; Implementation

AGENCY: Department of the Treasury.

ACTION: Final Rule.

SUMMARY: The Department of the Treasury is amending its Privacy Act exemption rules that were first published on October 2, 1975, to consolidate the regulations issued pursuant to 5 U.S.C. 552a(j) and (k) which exempt one or more systems of records established on behalf of each bureau by the Department.

EFFECTIVE DATE: November 21, 2000.

ADDRESSES: Inquiries may be addressed to Department of the Treasury, Disclosure Services, Washington, DC 22020.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Deputy Assistant Director, Disclosure Services, (202) 622–0930.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended, 5 U.S.C. 552a, authorizes the head of the agency to promulgate rules in accordance with the Administrative Procedure Act to exempt Privacy Act systems of records from certain provisions of the Privacy Act, if the system of records contains records which fall within 5 U.S.C. 552a(j) and/or (k).

The Department is amending this part to consolidate the regulations issued

pursuant to 5 U.S.C. 552a(j)and (k) which exempt one or more systems of records established on behalf of each bureau by the Department. The amendment will revise the format of the regulations; more clearly reflect the organization of the Department; remove redundant language; reduce the length of the regulations; permit readers to use the regulations in an easier manner; change the system number and or title to several systems of records, and references to systems of records which have been deleted are being removed.

The regulations were first published at 40 FR 45692, October 2, 1975, and amended at:

44 FR 7141, February 6, 1979;
44 FR 42189, July 19, 1979;
45 FR 13455, February 29, 1980;
48 FR 21945, May 16, 1983;
48 FR 48460, October 19, 1983;
52 FR 11990, April 14, 1987;
56 FR 12447, March 26, 1991;
59 FR 47538, September 16, 1994;
61 FR 387, January 5, 1996;
62 FR 19505, April 22, 1997;
62 FR 26939, May 16, 1997;
62 FR 58908, October 31, 1997;
62 FR 60782, November 13, 1997;
64 FR 62585, November 17,1999;
64 FR 62586, November 17,1999; and
65 FR 56791, September 20, 2000.

No new systems of records are being exempted pursuant to this rule, nor is an exemption being added to any of the systems of records listed below.

The rule will update the regulations by removing references to the following systems of records which have been deleted from the Department's inventory of systems of records:

(1) Comptroller of the Currency: CC .010—Federal Bureau of Investigation Report Card Index (published March 1, 1988, at 53 FR 6252);

(2) U.S. Customs Service: CS .037—Cargo Security File (published April 17, 1992, at 57 FR 13900);

(3) U.S. Customs Service: CS .287—Customs Automated Licensing Information System (CALIS) (published April 17, 1992, at 57 FR 13900);

(4) Internal Revenue Service: IRS 90.014—Management Files Maintained by Operations Division and the Deputy Chief Counsel Other than the Office of Personnel Management's Official Personnel Files (published April 17, 1992, at 57 FR 13900);

(5) U.S. Mint: Mint .006—Examination Reports of Coins Forwarded to the Mint from the U.S. Secret Service, (published May 11, 1994, at 59 FR 5206);

(6) U.S. Customs Service: CS .182—Penalty Case File (published November 9, 1995, at 60 FR 56648);

(7) U.S. Customs Service: CS .140—Lookout Notice (published March 1, 1998, at 53 FR 6252);

(8) U.S. Customs Service: CS .155—Narcotics Suspect File (Published March 1, 1998, at 53 FR 6252);

(9) Internal Revenue Service: IRS 34.018—Integrated Data Retrieval System (IDRS) Security Files (Published November 17, 1998, at 63 FR 64141);

(10) U.S. Customs Service: CS .014—Advice Requests (Legal) (Pacific Region) (published December 17, 1998, at 63 FR 69716); and

(11) U.S. Customs Service: CS .078—Disclosure of Information File (published December 3, 1999, at 64 FR 67966).

The Department published final rules exempting Treasury/IRS 34.037—IRS Audit Trail and Security Records System on September 20, 2000, at 65 FR 56791, Treasury/IRS 34.020—IRS Audit Trail Lead Analysis System on November 17, 1999, at 64 FR 62586, and Treasury/Customs .213—Seized Asset and Case Tracking System (SEACATS) on November 17, 1999, at 64 FR 62585. The amendments are included as part of the revision.

This rule makes changes to the title of the following systems of records identified in the rule: (1) Departmental Offices—DO .144 from ''Treasury Interagency Automated Litigation System (TRIALS)'' to ''General Counsel Litigation Referral and Reporting System,'' (2) Bureau of Engraving and Printing—BEP .021 from ''Security Investigative Files'' to ''Investigative Files.''

The rule moves the exemption regulation pertaining to ''Bank Secrecy Act Reports File—Treasury/Customs .067,'' from under the heading ''United States Customs Service'' and inserts it under the heading ''Departmental Offices.'' The system of records associated with this activity, ''Bank Secrecy Act Reports System—Treasury/DO .213,'' was transferred to the Financial Crimes Enforcement Network (FinCEN) on January 10, 1997 (62 FR 1489). The exemption regulations for the above system of records is being moved within this section to reflect that the responsibility for the system has been moved within the Department.

The IRS Restructuring and Reform Act of 1998 included specific provisions impacting the Internal Revenue Service by transferring the responsibility to conduct personnel security investigations formerly performed by Office of the Chief Inspector to the Assistant Commissioner (Support Services). A notice was published on June 15, 1999, at 64 FR 32096 to amend Treasury/IRS 60.008—Security, Background, and Character Investigation Files, Inspection, and Treasury/IRS 60.011—Internal Security Management Information System (ISMIS) by renumbering and renaming them to ''Treasury/IRS 34.021—Personnel Security Investigations, National Background Investigations Center,'' and ''Treasury/IRS 34.022—National Background Investigations Center Management Information System (NBICMIS).'' Exemptions have been claimed under 5 U.S.C. 552a(k)(5), and 5 U.S.C. 552a(j)(2) respectively. This rule will make the above changes under the appropriate exemption.

These regulations are being published as a final rule because the amendment does not impose any requirements on any member of the public. This amendment is the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the **Federal Register**.

In accordance with Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' and, therefore, does not require a Regulatory Impact Analysis.

The regulation 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.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department of the Treasury has determined that this rule will not impose new record-keeping, application, reporting, or other types of information collection requirements.

Dated: October 17, 2000.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of subpart C is revised to read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

(a) *In General.* In accordance with 5 U.S.C. 552a(j) and (k) and § 1.23(c), the Department of the Treasury hereby exempts the systems of records identified below from the following provisions of the Privacy Act for the reasons indicated.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(j) and (k) and pursuant to the authority of § 123(c).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of the Department of the Treasury have as their principal function activities pertaining to the enforcement of criminal laws and protective service activities which are necessary to assure the safety of individuals protected by the Department pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Departmental Offices:

Number	System name
DO .190	General Allegations and Investigative Records.
DO .200	FinCEN Database.
DO .212	Bank Secrecy Act Reports System.

(ii) Bureau of Alcohol, Tobacco and Firearms:

Number	System name
ATF .003	Criminal Investigation Report System.

(iii) Comptroller of the Currency:

Number	System name
CC .013	Enforcement and Compliance Information.
CC .500	Chief Counsel's Management Information System.

(iv) U.S. Customs Service:

Number	System name
CS .053	Confidential Source Identification File.
CS .127	Internal Affairs Records System.
CS .129	Investigations Record System.
CS .171	Pacific Basin Reporting Network.
CS .244	Treasury Enforcement Communications System (TECS).
CS .270	Background-Record File of Non-Customs Employees.
CS .285	Automated Index to Central Enforcement Files.

(v) Bureau of Engraving and Printing.

(vi) Federal Law Enforcement Training Center.

(vii) Financial Management Service.

(viii) Internal Revenue Service:

Number	System name
IRS 34.022	National Background Investigations Center Management Information System (NBICMIS).
IRS 46.002	Case Management and Time Reporting System, Criminal Investigation Division.
IRS 46.003	Confidential Informants, Criminal Investigation Division.
IRS 46.005	Electronic Surveillance Files, Criminal Investigation Division.
IRS 46.009	Centralized Evaluation and Processing of Information Items (CEPIIs), Criminal Investigation Division.
IRS 46.015	Relocated Witnesses, Criminal Investigation Division.
IRS 46.016	Secret Service Details, Criminal Investigation Division.
IRS 46.022	Treasury Enforcement Communications System (TECS).
IRS 46.050	Automated Information Analysis System.
IRS 60.001	Assault and Threat Investigation Files.
IRS 60.002	Bribery Investigation Files.
IRS 60.004	Disclosure Investigation Files.
IRS 90.001	Chief Counsel Criminal Tax Case Files.

(ix) U.S. Mint

(x) Bureau of the Public Debt

(xi) U.S. Secret Service:

Number	System name
USSS .003	Criminal Investigation Information System.
USSS .006	Non-Criminal Investigation Information System.
USSS .007	Protection Information System.

(xii) Office of Thrift Supervision:

Number	System name
OTS .001	Confidential Individual Information System.
OTS .004	Criminal Referral Database

(2) The Department hereby exempts the systems of records listed in paragraphs (c)(1)(i) through (xii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

(d) *Reasons for exemptions under 5 U.S.C. 552a(j)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records

would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest; and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (d)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Limitation on access to the material contained in the protective intelligence files is considered necessary to the preservation of the utility of intelligence files and in safeguarding those persons the Department is authorized to protect. Access to the protective intelligence files could adversely affect the quality of information available to the Department; compromise confidential sources, hinder the ability of the Department to keep track of persons of protective interest; and interfere with the Department's protective intelligence activities by individuals gaining access to protective intelligence files.

(vii) Many of the persons on whom records are maintained in the protective intelligence suffer from mental aberrations. Knowledge of their condition and progress comes from authorities, family members and witnesses. Many times this information comes to the Department as a result of two party conversations where it would be impossible to hide the identity of informants. Sources of information must be developed, questions asked and answers recorded. Trust must be extended and guarantees of confidentiality and anonymity must be maintained. Allowing access to information of this kind to individuals who are the subjects of protective interest may well lead to violence directed against an informant by a mentally disturbed individual.

(viii) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (d)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(iii) The release of such information to the subject of a protective intelligence file would provide significant information concerning the nature of an investigation, and could result in impeding or compromising the efforts of Department personnel to detect persons suspected of criminal activities or to collect information necessary for the proper evaluation of persons considered to be of protective interest.

(5) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for

information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the systems of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) At the time that the Department collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Treasury Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of the Department's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(iv) Not all violations of law discovered by the Department fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair the Department's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing the Department's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(vi) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict the Department's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law

enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because the Department may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of the Department's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which the Department is exempted. Exemption from this provision will also protect the Department from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1).* (1) Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph applies to the following system of records maintained by the Department of the Treasury:

Departmental Offices:

Number	System name
DO .200	FinCEN Database.

(2) The Department of the Treasury hereby exempts the system of records listed in paragraph (e)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3) and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material required to be kept secret in the interest of national defense or foreign policy pursuant to Executive Order 12958 (or successor or prior Executive Order).

(g) *Specific exemptions under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes and for the purposes of assuring the safety of individuals protected by the Department pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by the Department of the Treasury:

(i) Departmental Offices:

Number	System name
DO .114	Foreign Assets Control Enforcement Records.
DO .144	General Counsel Litigation Referral and Reporting System.
DO .190	General Allegations and Investigative File.
DO .200	FinCEN Database.
DO .213	Bank Secrecy Act Reports System.

(ii) Bureau of Alcohol, Tobacco and Firearms:

Number	System name
ATF .006	Internal Security Record System.
ATF .008	Regulatory Enforcement Record System.
ATF .009	Technical and Scientific Services Record System.

(iii) Comptroller of the Currency

Number	System name
CC .013	Enforcement and Compliance Information.
CC .500	Chief Counsel's Management Information System.

(iv) U.S. Customs Service:

Number	System name
CS .021	Arrest/Seizure/Search Report and Notice of Penalty File.
CS .022	Attorney Case File.
CS .041	Cartmen or Lightermen.
CS .043	Case Files (Associate Chief Counsel—Gulf Custom Management Center).
CS .046	Claims Case File.
CS .053	Confidential Source Identification File.
CS .057	Container Station Operator Files.
CS .058	Cooperating Individual Files.
CS .061	Court Case File.
CS .069	Customhouse Brokers File (Chief Counsel).
CS .077	Disciplinary Action, Grievances and Appeal Case Files.
CS .098	Fines, Penalties, and Forfeitures Records.
CS .099	Fines, Penalties, and Forfeiture Files (Supplemental Petitions).
CS .100	Fines, Penalties, and Forfeiture Records (Headquarters).
CS .122	Information Received File.
CS .125	Intelligence Log.
CS .127	Internal Affairs Records System.
CS .129	Investigations Record System.
CS .133	Justice Department Case File.
CS .138	Litigation Issue Files.
CS .159	Notification of Personnel Management Division when an employee is placed under investigation by the Office of Internal Affairs.
CS .171	Pacific Basin Reporting Network.
CS .186	Personnel Search.
CS .190	Personnel Case File.
CS .197	Private Aircraft/Vessel Inspection Reporting System.

Number	System name
CS .206	Regulatory Audits of Customhouse Brokers.
CS .212	Search/Arrest/Seizure Report.
CS .214	Seizure File.
CS .224	Suspect Persons Index.
CS .232	Tort Claims Act File.
CS .244	Treasury Enforcement Communications System (TECS).
CS .258	Violator's Case Files.
CS .260	Warehouse Proprietor Files.
CS .270	Background-Record File of Non-Customs Employees.
CS .271	Cargo Security Record System.
CS .285	Automated Index to Central Investigative Files.

(v) Bureau of Engraving and Printing:

Number	System name
BEP .021	Investigative files.

(vi) Federal Law Enforcement Training Center

(vii) Financial Management Service

(viii) Internal Revenue Service:

Number	System name
IRS 00.002	Correspondence File-Inquiries about Enforcement Activities.
IRS 22.061	Wage and Information Returns Processing (IRP).
IRS 26.001	Acquired Property Records.
IRS 26.006	Form 2209, Courtesy Investigations.
IRS 26.008	IRS and Treasury Employee Delinquency.
IRS 26.011	Litigation Case Files.
IRS 26.012	Offer in Compromise (OIC) Files.
IRS 26.013	One-hundred Per Cent Penalty Cases.
IRS 26.016	Returns Compliance Programs (RCP).
IRS 26.019	TDA (Taxpayer Delinquent Accounts).
IRS 26.020	TDI (Taxpayer Delinquency Investigations) Files.
IRS 26.021	Transferee Files.
IRS 26.022	Delinquency Prevention Programs.
IRS 34.020	IRS Audit Trail Lead Analysis System.
IRS 34.037	IRS Audit Trail and Security Records System.
IRS 37.002	Applicant Appeal Files.
IRS 37.003	Closed Files Containing Derogatory Information about individuals' Practice before the IRS and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice.
IRS 37.004	Derogatory Information (No Action).
IRS 37.005	Present Suspensions and Disbarments Resulting from Administrative Proceeding.
IRS 37.007	Inventory.
IRS 37.009	Resigned Enrolled Agents (action pursuant to 31 CFR Section 10.55(b)).
IRS 37.011	Present Suspensions from Practice Before the Internal Revenue Service.
IRS 42.001	Examination Administrative File.
IRS 42.008	Audit Information Management System (AIMS).
IRS 42.012	Combined Case Control Files.
IRS 42.016	Classification and Examination Selection Files.
IRS 42.017	International Enforcement Program Files.
IRS 42.021	Compliance Programs and Projects Files.
IRS 42.029	Audit Underreporter Case Files.
IRS 42.030	Discriminant Function File (DIF) Appeals Case Files.
IRS 44.001	Appeals Case Files.
IRS 46.050	Automated Information Analysis System.
IRS 48.001	Disclosure Records.
IRS 49.001	Collateral and Information Requests System.
IRS 49.002	Component Authority and Index Card Mircofilm Retrieval System.
IRS 49.007	Overseas Compliance Projects System.
IRS 60.003	Conduct Investigation Files.
IRS 60.006	Enrollee Charge Investigation Files.
IRS 60.007	Miscellaneous Information File.
IRS 60.009	Special Inquiry Investigation Files.
IRS 90.002	Chief Counsel Disclosure Litigation Division Case Files.
IRS 90.004	Chief Counsel General Legal Services Case Files.
IRS 90.005	Chief Counsel General Litigation Case Files.
IRS 90.009	Chief Counsel Field Case Service Files.
IRS 90.010	Digest Room Files Containing Briefs, Legal Opinions, Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws.
IRS 90.013	Legal case files of the Chief Counsel, Deputy Chief Counsel, Associate Chief Counsels (Enforcement Litigation) and (technical).
IRS 90.016	Counsel Automated Tracking System (CATS).

(ix) U.S. Mint:

Number	System name
Mint .008	Criminal investigation files (formerly: Investigatory Files on Theft of Mint Property).

(x) Bureau of the Public Debt.

(xi) U.S. Secret Service:.

Number	System name
USSS .003	Criminal Investigation Information System.
USSS .006	Non-Criminal Investigation Information System.
USSS .007	Protection Information System.

(xii) Office of Thrift Supervision:.

Number	System name
OTS .001	Confidential Individual Information System.
OTS .004	Criminal Referral Database.

(2) The Department hereby exempts the systems of records listed in paragraphs (g)(1)(i) through (xii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d) (1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(h) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing

evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (h)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (h)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the system of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) At the time that the Department collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by the Department analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(i) *Specific exemptions under 5 U.S.C. 552a(k)(3).* (1) The head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if it is maintained in connection with providing protective intelligence to the President of the United States or other individuals pursuant to section 3056 of Title 18. This paragraph applies to the following system of records maintained by the Department which contains material relating to criminal investigations concerned with the enforcement of criminal statutes involving the security of persons and property. Further, this system contains records described in 5 U.S.C. 552a(k) including, but not limited to, classified material and investigatory material compiled for law enforcement purposes, for which exemption is claimed under 5 U.S.C. 552a(k)(3):

U.S. Secret Service:

Number	System name
USSS .007	Protection Information System.

(2) The Department hereby exempts the system of records listed in (i)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(3): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3),and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(j) *Reasons for exemptions under 5 U.S.C. 552a(k)(3).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by the Department. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which the investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that the Department has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of the Department's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(iii) The release of such information to the subject of a protective intelligence file would provide significant information concerning the nature and scope of an investigation, and could result in impeding or compromising the efforts of Department personnel to detect persons suspected of criminal activities or to collect information necessary for the proper evaluation of persons considered to be of protective interest.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise the Department's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources, and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the Department's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (j)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with the Department and thus would restrict the Department's access to information necessary to accomplish its mission most effectively.

(vi) Limitation on access to the materials contained in the protective intelligence files is considered necessary to the preservation of the utility of intelligence files and in safeguarding those persons the Department is authorized to protect. Access to the protective intelligence files could adversely affect the quality of information available to the Department; compromise confidential sources; hinder the ability of the Department to keep track of persons of protective interest; and interfere with the Department's protective intelligence activities by individuals gaining access to protective intelligence files.

(vii) Many of the persons on whom records are maintained in the protective intelligence files suffer from mental aberrations. Knowledge of their condition and progress comes from authorities, family members and witnesses. Many times this information comes to the Department as a result of two-party conversations where it would

be impossible to hide the identity of informants. Sources of information must be developed, questions asked and answers recorded. Trust must be extended and guarantees of confidentiality and anonymity must be maintained. Allowing access of information of this kind to individuals who are the subjects of protective interest may well lead to violence directed against an informant by a mentally disturbed individual.

(viii) Finally, the dissemination of certain information that the Department may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (j)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the systems of records could impair the Department's ability to collect and disseminate valuable law enforcement information.

(i) At the time that the Department collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by the Department analysts fall within the scope of the protective intelligence jurisdiction of the Department of the Treasury. To promote effective law enforcement, the Department will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, the Department might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to the Department's attention during the collation and analysis of information in its records.

(5) U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair the Department's ability to carry out its mission to safeguard those persons the Department is authorized to protect, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise the Department's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subject(s) of a protective intelligence file; and

(iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(k) *Specific exemptions under 5 U.S.C. 552a(k)(4).* (1) Under 5 U.S.C. 552a(k)(4), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is required by statute to be maintained and used solely as statistical records. This paragraph applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(4):

Internal Revenue Service:

Number	System name
IRS 70.001	Statistics of Income-Individual Tax Returns.

(2) The Department hereby exempts the system of records listed in paragraph (k)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(4): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(3) The system of records is maintained under section 6108 of the Internal Revenue Code, which provides that ''the Secretary or his delegate shall prepare and publish annually statistics reasonably available with respect to the operation of the income tax laws, including classifications of taxpayers and of income, the amounts allowed as deductions, exemptions, and credits, and any other facts deemed pertinent and valuable.''

(l) *Reasons for exemptions under 5 U.S.C. 552a(k)(4).* The reason for exempting the system of records is that disclosure of statistical records (including release of accounting for disclosures) would in most instances be of no benefit to a particular individual since the records do not have a direct effect on a given individual.

(m) *Specific exemptions under 5 U.S.C. 552a(k)(5).* (1) Under 5 U.S.C. 552a(k)(5), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Thus to the extent that the records in this system can be disclosed without revealing the identity of a confidential source, they are not within the scope of this

exemption and are subject to all the requirements of the Privacy Act. This paragraph applies to the following systems of records maintained by the Department or one of its bureaus:

(i) Departmental Offices:

Number	System name
DO .004	Personnel Security System.

(ii) Bureau of Alcohol, Tobacco and Firearms:

Number	System name
ATF .006	Internal Security Record System.
ATF .007	Personnel Record System.

(iii) Comptroller of the Currency:

(iv) U.S. Customs Service:

Number	System name
CS .127	Internal Affairs Records.

(v) Bureau of Engraving and Printing:

Number	System name
BEP .004	Personnel Security Files and Indices.

(vi) Federal Law Enforcement Training Center

(vii) Financial Management Service

(viii) Internal Revenue Service:

Number	System name
IRS 34.021	Personnel Security Investigations, National Background Investigations Center.
IRS 36.008	Recruiting, Examining and Placement Records.
IRS 90.003	Chief Counsel General Administrative Systems.
IRS 90.011	Attorney Recruiting Files.

(ix) U.S. Mint

(x) Bureau of the Public Debt

(xi) U.S. Secret Service

(xii) Office of Thrift Supervision

(2) The Department hereby exempts the systems of records listed in paragraphs (m)(1)(i) through (xii) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(n) *Reasons for exemptions under 5 U.S.C. 552a(k)(5).* (1) The sections of 5 U.S.C. 552a from which the systems of records are exempt include in general those providing for individuals' access to or amendment of records. When such access or amendment would cause the identity of a confidential source to be revealed, it would impair the future ability of the Department to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. In addition, the systems shall be exempt from 5 U.S.C. 552a(e)(1) which requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The Department believes that to fulfill the requirements of 5 U.S.C. 552a(e)(1) would unduly restrict the agency in its information gathering inasmuch as it is often not until well after the investigation that it is possible to determine the relevance and necessity of particular information.

(2) If any investigatory material contained in the above-named systems becomes involved in criminal or civil matters, exemptions of such material under 5 U.S.C. 552a (j)(2) or (k)(2) is hereby claimed.

(o) *Exemption under 5 U.S.C. 552a(k)(6).* (1) Under 5 U.S.C. 552a(k)(6), the head of any agency may promulgate rules to exempt any system of records that is testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process. This paragraph applies to the following system of records maintained by the Department, for which exemption is claimed under 5 U.S.C. 552a(k)(6):

Internal Revenue Service:

Number	System name
IRS 36.008	Recruiting, Examining and Placement Records.

(2) The Department hereby exempts the system of records listed in paragraph (o)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(6): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(p) *Reasons for exemptions under 5 U.S.C. 552a(k)(6).* The reason for exempting the system of records is that disclosure of the material in the system would compromise the objectivity or fairness of the examination process.

(q) *Exempt information included in another system.* Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

[FR Doc. 00–29673 Filed 11–20–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–245]

Drawbridge Operation Regulations: Rahway River, NJ

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 governing the operation of the Conrail Bridge, at mile 2.0, across the Rahway River at Linden, New Jersey. This deviation allows the bridge owner to keep the bridge in the closed position from 7 a.m. on November 20, 2000, through 7 p.m. on November 21, 2000. This action is necessary to facilitate maintenance at the bridge.

DATES: This deviation is effective from November 20, 2000, to November 21, 2000.

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

SUPPLEMENTARY INFORMATION: The Conrail Bridge, at mile 2.0, across the Rahway River, has a vertical clearance of 6 feet at mean high water, and 11 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.743.

The bridge owner, Consolidated Rail Corporation (Conrail), requested a temporary deviation from the drawbridge operating regulations to facilitate the necessary maintenance for upgrades to the operating system at the bridge. This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 7 a.m. on November 20, 2000, through 7 p.m. on November 21, 2000. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

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: November 8, 2000.

Gerald M. Davis,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–29804 Filed 11–20–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301075; FRL–6752–4]

RIN 2070–AB78

Fenhexamid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of fenhexamid in or on pears. 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 pears. This regulation establishes a maximum permissible level for residues of fenhexamid in this food commodity. The tolerance will expire and is revoked on December 31, 2002.

DATES: This regulation is effective November 21, 2000. Objections and requests for hearings, identified by docket control number OPP–301075, must be received by EPA on or before January 22, 2001.

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 VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301075 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 potentially 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/. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301075. 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, 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, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide fenhexamid, (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide), in or on pears at 15 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

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 FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include

occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Fenhexamid on Pears and FFDCA Tolerances

According to the Applicant, development of thiabenzadole resistance in California Botrytis populations has left packing houses without an effective tool to control the disease. Registered alternatives include thiabenzadole, captan, Bio-Save *Pseudomonas syringae*, Aspire *Candida oleophila*, chlorine and ozone. Testing in the laboratory and in the field suggests that thiabenzadole resistance may be developing above historic levels. Captan is not considered a viable alternative because several countries have banned the import of captan-treated fruit. The Applicant additionally claims that the unpredictable efficacy and results of biological controls have kept the pear industry from adopting this technology, and chlorine and ozone are claimed to burn the fruit. While the Agency does not fully agree with all of the arguments presented by the Applicant, EPA concurs that emergency conditions could exist for some packing houses in this State. On September 21, 2000, the Applicant availed of itself the authority to declare a crisis exemption under section 18 of FIFRA for the postharvest use of fenhexamid on pears to control gray mold.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fenhexamid in or on pears. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 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 pears after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. 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.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether fenhexamid meets EPA's registration requirements for use on pears or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fenhexamid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fenhexamid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fenhexamid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fenhexamid in or on pears at 15 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no observed adverse effect level (NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which lowest observed adverse effect level (LOAEL) of concern are identified is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are

not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fenhexamid used for human risk assessment is shown in the following Table 1:

TABLE 1. — SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FENHEXAMID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years of age	None	None	None
Acute Dietary general population including infants and children	None	None	None
Chronic Dietary all populations	NOAEL = 17 mg/kg/day UF = 100 Chronic RfD = 0.17 mg/kg/day	FQPA SF = 3 cPAD = chronic RfD ÷ FQPA SF = 0.057 mg/kg/day	1–Year Feeding Study in Dogs LOAEL = 124/133 mg/kg/day in males/females, based on decreased RBC counts, hemoglobin and hematocrit and increased Heinz bodies in RBC. Also, in females, increased absolute and relative adrenal weights correlated with histopathological observations of increases in incidence and severity of intracytoplasmic vacuoles in the adrenal cortex.
Short-Term Dermal (1 to 7 days) (Residential)	Dermal NOAEL = 1,000 mg/kg/day (limit dose) (dermal absorption rate = 20%)	LOC for MOE = 300 (Residential)	21–Day Dermal Study - Rabbits No rabbits died during this study. No skin irritation was observed in any treated animals. There were no compound related effects on clinical signs, body weight, food consumption, hematology, clinical chemistry, organ weights, or gross and histologic pathology. Dermal administration of fenhexamid was well tolerated by both sexes for 21–days at the limit dose of 1,000 mg/kg/day.
Intermediate-Term Dermal (1 week to several months) (Residential)	Dermal NOAEL = 1,000 mg/kg/day (limit dose) (dermal absorption rate = 20%	LOC for MOE = 300 (Residential)	21–Day Dermal Study - Rabbits No rabbits died during this study. No skin irritation was observed in any treated animals. There were no compound related effects on clinical signs, body weight, food consumption, hematology, clinical chemistry, organ weights, or gross and histologic pathology. Dermal administration of fenhexamid was well tolerated by both sexes for 21–days at the limit dose of 1,000 mg/kg/day.
Long-Term Dermal (several months to lifetime) (Residential)	None	None	None
Short-Term Inhalation (1 to 7 days) (Residential)	None	None	None
Intermediate-Term Inhalation (1 week to several months) (Residential)	None	None	None
Long-Term Inhalation (several months to lifetime) (Residential)	None	None	None
Cancer (oral, dermal, inhalation)	None	None	The Agency has classified Fenhexamid as a ''not likely'' carcinogen. This classification is based on the lack of evidence of carcinogenicity in male and female rats as well as in male and female mice and on the lack of genotoxicity in an acceptable battery of mutagenicity studies.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.553) for the residues of fenhexamid, in or on a variety of raw agricultural commodities including grapes, raisins and strawberries. Risk assessments were conducted by EPA to assess dietary exposures from fenhexamid in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute dietary endpoint has been identified. Therefore, no assessment was conducted for acute dietary exposures.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: use of tolerance level residues and 100% of the crop was treated.

iii. *Cancer*. The Agency has classified fenhexamid as a ''not likely'' carcinogen. Therefore, no exposure assessment was conducted to assess cancer concerns.

2. *Dietary exposure from drinking water*. The use pattern associated with the emergency exemption (use of fenhexamid as a postharvest treatment on pears) is not expected to impact water resources. However, the Agency is required to perform an aggregate risk assessment which includes all registered uses of fenhexamid that would lead to exposure to humans through drinking water. Therefore, the Agency estimated environmental concentrates in drinking water from the use of fenhexamid on strawberries to determine the aggregate risk assessment.

The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fenhexamid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fenhexamid.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a % RfD or % PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fenhexamid they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of fenhexamid for chronic exposures are estimated to be 4.8 parts per billion (ppb) for surface water and 0.0007 ppb for ground water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fenhexamid is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fenhexamid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *Safety factor for infants and children*—i. *In general*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies*. In a developmental toxicity study in rats, maternal toxicity (marginally decreased body weight gain and decreased food consumption during the treatment period only) was observed at the LOAEL of 1,044 milligrams/kilograms/day (mg/kg/day) (only dose level tested). The NOAEL for maternal toxicity was <1,044 mg/kg/day. At the same dose level of 1,044 mg/kg/day, no treatment-related signs of developmental toxicity were observed in the fetuses. The NOAEL for developmental toxicity was 1,044 mg/

kg/day and the LOAEL was not established (>1,044 mg/kg/day). Although a NOAEL was not determined for maternal toxicity in this study, the study need not be repeated because the effects at the LOAEL were only marginal and of minimal toxicological concern.

In a developmental toxicity study in rabbits, the NOAEL for maternal toxicity was 100 mg/kg/day and the LOAEL was 300 mg/kg/day, based on alterations of excretory products (discolored urine, scant feces, small scybala), decreased body weight gain and decreased food consumption (especially during the first week of dosing) and decreased placental weight. At the next higher dose level of 1,000 mg/kg/day, the maternal effects were increased in severity. A decreased gestation index, based on a slightly increased incidence of abortions and total litter resorptions, was not considered to be treatment-related because the incidences of abortions and resorptions fell within the historical control range submitted with the study. The NOAEL for developmental toxicity was 300 mg/kg/day and the LOAEL was 1,000 mg/kg/day, based on slightly decreased fetal body weights (<5%) in males only and increased delayed ossification in several bones (especially the 5th sternal segments and the 15th caudal vertebrae).

iii. *Reproductive toxicity study*. In a 2–generation (1 litter/generation) reproduction study in rats, there were no treatment-related effects on mortality, clinical signs, behavior or reproductive parameters for adult (parent) animals. The NOAEL for reproductive toxicity was 1,814/2,043 mg/kg/day (M/F) (HDT). The NOAEL for parental toxicity was 38/45 mg/kg/day (M/F) and the LOAEL was 406/477 mg/kg/day (M/F). In males at the LOAEL of 406 mg/kg/day, increased serum creatinine levels and decreased kidney weights indicated mild kidney damage and increased serum alkaline phosphatase levels and decreased liver weights indicated mild liver damage. In females at the LOAEL of 477 mg/kg/day, increased serum alkaline phosphatase levels and very slightly increased serum GGT levels suggested mild liver damage. At the next higher dose level of 1,814/2,043 mg/kg/day (M/F)(HDT), the effects observed at the LOAEL in both males and females were slightly increased in severity. In addition, decreased body weight, increased food consumption, and increased serum GGT levels were observed in males and decreased body weights, increased food consumption, increased serum urea nitrogen levels, increased serum creatinine levels and decreased kidney weights were observed in females. The NOAEL for neonatal toxicity was 38/45 mg/kg/day (M/F) and the LOAEL was 406/477 mg/kg/day (M/F). At the LOAEL of 406/477 mg/kg/day, treatment-related decreased pup body weights were observed in F_1 pups on postnatal days 14 and 21 and in F_2 pups on postnatal days 7, 14 and 21. At the next higher dose level of 1,814/2,043 mg/kg/day (M/F) (HDT), the decreased pup body weights were increased in severity. In addition, an increased mortality was observed among the post weaning F_1 pups selected to be F1 parents (possibly due to the small size of the pups at weaning, which was 30% less than controls).

The results in this reproduction study are equivocal with respect to evaluating the possibility of increased susceptibility of pups, as compared to adults, to fenhexamid. On the basis of NOAELs/LOAELs, no increased susceptibility of pups to fenhexamid was demonstrated in this study. However, the severity of the effects observed in the pups may have been greater than that observed in the adults at the same dose levels. In addition, several other toxicological considerations, including possibly increased intake of test material in pups resulting from intake in both milk and diet during the lactation period and possibly decreased levels of UDP-glucuronyltransferase enzyme in pups (a normally occurring phenomenon in rat pups) resulting in decreased metabolism or ''detoxification'' of test material, contributed to the uncertainty of the determination.

iv. *Prenatal and postnatal sensitivity.* The available Agency Guideline studies indicate no increased susceptibility of rat or rabbit fetuses to *in utero* exposure to fenhexamid. In the prenatal developmental toxicity study in rats, no evidence of developmental toxicity was seen even at the highest dose tested. In the prenatal developmental toxicity study in rabbits, developmental toxicity was seen only in the presence of maternal toxicity.

In the 2–generation reproduction study in rats, quantitatively (i.e., based on NOAELs/LOAELs in parental animals versus offspring), there was no evidence of increased susceptibility of the pups. Qualitatively, however, there was evidence of increased susceptibility based on the comparative severity of effects at the LOAEL (406 mg/kg/day): Parental toxicity was characterized as alterations in clinical chemistry parameters and decreased organ weights without collaborative histopathology; while offspring toxicity was manifested as significantly decreased pup body weights in both generations during the lactation period (on lactation days 7, 14, and 21 in the F_2 generation and lactation days 14 and 21 in the F_1 generation offspring)

v. *Conclusion*. The Agency has determined that a safety factor is required for fenhexamid because qualitatively, there was evidence of increased susceptibility based on the comparative severity of effects in the 2–generation reproduction study in rats. The effects on pups were of concern because:

1. Significant pup body weight decreases were observed in both the F_1 and the F_2 generations.

2. The pup body weight decreases in the F_2 generation were observed during early lactation (lactation day 7 through day 21) when the pups are exposed to the test material primarily through the mother's milk.

3. The pup body weight decreases in the F_1 generation were observed during late lactation (lactation days 14 through 21) when the pups are exposed to the test material through the mother's milk and through the feed.

4. In the metabolism study on fenhexamid, glucuronidation of fenhexamid was clearly demonstrated to be the single major route of metabolism, detoxification and excretion of fenhexamid in adult male and female Wistar rats. The demonstrated poor glucuronidation capacity of rat pups between days 7 and 21 (in a referenced study) indicates a possibly increased sensitivity of pups and serves to support a concern for neonatal toxicity.

However, the Agency has reduced the FQPA safety factor to 3x because:

1. The toxicology data base is complete for the assessment of the effects of fenhexamid following *in utero* and/or postnatal exposure.

2. There is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the prenatal developmental toxicity studies with fenhexamid.

3. The increased susceptibility demonstrated in the 2–generation reproduction study was only qualitative (not quantitative) evidence and was observed only in the presence of parental toxicity.

4. The qualitative offspring effect was limited to decreased body weight and no other adverse effects (e.g., decreased pup survival, behavioral alterations, etc) were observed.

5. Adequate data are available or conservative modeling assumptions are used to assess dietary food and drinking water exposure.

6. There are currently no residential uses for fenhexamid.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [(e.g., allowable chronic water exposure (mg/kg/day) = cPAD − (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the U.S. EPA Office of Water are used to calculate DWLOCs: 2 Liter(L)/70 kilogram (kg) (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to fenhexamid in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of fenhexamid on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. No acute dietary endpoint has been identified. Therefore, no risk assessment was conducted for acute dietary exposures.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fenhexamid from food will utilize 7% of the cPAD for the U.S. population, 65% of the cPAD for all infants, less than 1 year old and 16% of the cPAD for children, 1–6 years old, the subpopulation of children at greatest exposure. There are no residential uses for fenhexamid that result in chronic residential exposure to fenhexamid. In addition, despite the potential for chronic dietary exposure to fenhexamid in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of fenhexamid in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 2:

TABLE 2. — AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FENHEXAMID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.057	7	4.8	0.0007	1,900
Children, 1–6 years	0.057	16	4.8	0.0007	480
All infants, < 1 year	0.057	65	4.8	0.0007	190

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenhexamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Fenhexamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified Fenhexamid as a ''not likely'' carcinogen. Therefore, no risk assessment was conducted to assess cancer concerns.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fenhexamid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Bayer AG Method 00362, a high performance liquid chromatography method with electrochemical detection, is the enforcement method for fenhexamid residues in plant commodities. A copy of the method has been sent to FDA for publication in the Pesticide Analytical Manual (PAM), Volume II, as a Roman numeral method. In the interim, it may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no Codex or Mexican MRL tolerances established for fenhexamid and no Canadian MRL on pears..

VI. Conclusion

Therefore, the tolerance is established for residues of fenhexamid, (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide), in or on pears at 15 ppm.

VII. 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–301075 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 January 22, 2001.

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 VII.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 the docket control number OPP–301075, 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).

VIII. 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 exemption 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).

IX. 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: November 8, 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.

2. Section 180.553 is amended by revising paragraph (b) to read as follows:

§ 180.553 Fenhexamid; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the residues of the fungicide fenhexamid, (N-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide), in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire on the dates specified in the following table:

Commodity	Parts per million	Expiration/ Revocation Date
Pears	15	12/31/02

* * * * *

[FR Doc 00–29770 Filed 11–20–00; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6903–9]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Tenth Street Dump/Junkyard Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the Tenth Street Dump/Junkyard Superfund Site (Site) located in Oklahoma City, Oklahoma from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is codified at Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. The EPA and the State of Oklahoma, through the Oklahoma Department of Environmental Quality (ODEQ), have determined that the Site poses no significant threat to public health or the environment and, therefore, no further response actions are appropriate. (Neither CERCLA-required five-year reviews nor operation and maintenance are considered further response action for the purpose of deletion.)

EFFECTIVE DATE: November 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Camille D. Hueni, Remedial Project Manager, 214–665–2231, United States Environmental Protection Agency, Region 6, 6SF–AP, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202–2733. Information on the Site is available at the local information repository located at the Ralph Ellison Library, 2000 N.E. 23rd Street, Oklahoma City, Oklahoma 73111. Requests for comprehensive copies of documents should be formally directed to Mr. Donn Walters, Regional Superfund Information Management Team, EPA Region 6, SF–PO, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202–2733.

SUPPLEMENTARY INFORMATION: The Site being deleted from the NPL is the Tenth Street Dump/Junkyard Superfund Site located in Oklahoma City, Oklahoma. A Notice of Intent to Delete for the Site was published on May 1, 2000 (65 FR 25292). The closing date for comments on the Notice of Intent to Delete was May 31, 2000. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Deletion of a site from the NPL does not affect responsible party liability or impede EPA efforts to recover costs associated with response actions. Section 300.425(e)(3) of the NCP, 40 CFR 300.425(e)(3), states that Fund-financed actions may be taken at sites deleted from the NPL in the event that future conditions at the site warrant such action. Pursuant to CERCLA Section 105 and 40 CFR 300.425(e), the Site is hereby deleted from the NPL.

List of Subjects in 40 CFR Part 300

Environment protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental regulations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 29, 2000.

Myron Knudson,

Acting Regional Administrator, U.S. EPA Region 6.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site ''Tenth Street Dump/Junkyard, Oklahoma City, Oklahoma.''

[FR Doc. 00–29508 Filed 11–20–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 225

[FRA–98–4898, Notice No. 3]

RIN 2130–AB30

Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents—Calendar Year 2001

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule establishes at $6,600 the monetary threshold for reporting railroad accidents/incidents involving railroad property damage that occur during calendar year 2001. There is no change from the reporting threshold for calendar year 2000. This action is needed to ensure and maintain comparability between different years of data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts. The reporting threshold was last reviewed in 1999.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 17, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Ave., N.W., Washington, D.C. 20590 (telephone 202–493–6280); or Nancy L. Friedman, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 1120 Vermont Ave., N.W., Washington, D.C. 20590 (telephone 202–493–6034).

SUPPLEMENTARY INFORMATION:

Background

Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b), (c). As revised in 1997, paragraphs (c) and (e) of 49 CFR 225.19, provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

New Reporting Threshold

Approximately one year has passed since the rail equipment accident/incident reporting threshold was last reviewed, and approximately three years since it was revised. 64 FR 69193 (Dec. 10, 1999); 63 FR 71790 (Dec. 30, 1998); 62 FR 63675 (Dec. 2, 1997). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on decreased costs for labor and increased costs for equipment. FRA has determined that the current reporting threshold of $6,600, which applies to rail equipment accidents/incidents that occur during calendar year 2000, should remain the same for rail equipment accidents/incidents that occur during calendar year 2001, effective January 1, 2001.

Accordingly, §§ 225.5 and 225.19 and appendix B have been amended to state the reporting threshold for calendar year 2001 and the most recent cost figures and the calculations made to determine that threshold. Finally, the alcohol and drug regulations (49 CFR part 219) have also been amended to reflect that the reporting threshold for calendar year 2001 is $6,600.

Notice and Comment Procedures

In this rule, FRA has recalculated the monetary reporting threshold based on the formula adopted, after notice and comment, in the final rule published June 18, 1996, 61 FR 30959, 30969, and discussed in detail in the final rule published November 29, 1996, 61 FR 30632. FRA has found that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA has found that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA has concluded that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. As a consequence, FRA is proceeding directly to this final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures. 44 FR 11034 (Feb. 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is also considered ''nonsignificant'' under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has published an interim policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. 62 FR 43024 (Aug. 11, 1997). For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. About 645 of the approximately 700 railroads in the United States are considered small businesses by FRA. FRA certifies that this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral because the rule is maintaining, rather than increasing, their reporting burden. The American Shortline and Regional Railroad Association (ASLRRA) represents the interests of most small freight railroads and some excursion railroads operating in the United States. FRA field offices and the ASLRRA engage in various outreach activities with small railroads. For instance, when new regulations are issued that affect small railroads, FRA briefs the ASLRRA, which in turn disseminates the information to its members and

provides training as appropriate. When a new railroad is formed, FRA safety representatives visit the operation and provide information regarding applicable safety regulations. The FRA regularly addresses questions and concerns regarding regulations raised by railroads. Because this rule is not anticipated to affect small railroads, FRA is not providing alternative treatment for small railroads under this rule.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' issued on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.'' This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule 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 the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a Federalism Assessment. Accordingly, a Federalism Assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The final rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

List of Subjects

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends parts 219 and 225, title 49, Code of Federal Regulations as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority citation for part 219 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; and 49 CFR 1.49.

2. By amending § 219.5 by revising the first sentence in the definition of Impact accident and by revising the definitions of Reporting threshold and Train accident to read as follows:

§ 219.5 Definitions.

* * * * *

Impact accident means a train accident (*i.e.,* a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 2001) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. * * *

* * * * *

Reporting threshold means the amount specified in § 225.19(e) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter. The reporting threshold for calendar years 1991 through 1996 is $6,300. The reporting threshold for calendar year 1997 is $6,500. The reporting threshold for calendar years 1998 through 2001 is $6,600.

* * * * *

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a ''rail equipment accident'' involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, $6,600 for calendar years 1998 through 2001), including an accident involving a switching movement.

* * * * *

3. By amending § 219.201 by revising the introductory text of paragraphs (a)(1) and (a)(2), and by revising paragraph (a)(4) to read as follows:

§ 219.201 Events for which testing is required.

(a) * * *

(1) *Major train accident.* Any train accident (*i.e.,* a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, $6,600 for calendar years 1998 through 2001) that involves one or more of the following:

* * * * *

(2) *Impact accident.* An impact accident (*i.e.,* a rail equipment accident defined as an ''impact accident'' in § 219.5 of this part that involves damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 2001) resulting in—

* * * * *

(4) *Passenger train accident.* Reportable injury to any person in a train accident (*i.e.,* a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 2001) involving a passenger train.

* * * * *

PART 225—RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS [AMENDED]

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

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49.

2. By amending § 225.19 by revising the first sentence of paragraph (c) and paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.,* $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 2001) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

* * * * *

(e) The reporting threshold is $6,300 for calendar years 1991 through 1996. The reporting threshold is $6,500 for calendar year 1997 and $6,600 for calendar years 1998 through 2001. The procedure for determining the reporting threshold for calendar year 1997 and later appears as appendix B to part 225.

* * * * *

4. Part 225 is amended by revising paragraphs 8 and 9 of appendix B to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

* * * * *

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{1 + 0.5\,\frac{(\text{Wn} - \text{Wp})}{\text{Wp}} + 0.5\,\frac{(\text{En} - \text{Ep})}{100}\right\}$$

Where:

Prior Threshold = $6,600 (for rail equipment accidents/incidents that occur during calendar year 2000)

Wn = New average hourly wage rate ($) = 17.763333

Wp = Prior average hourly wage rate ($) = 17.888333

En = New equipment average PPI value ($) = 135.63333

Ep = Prior equipment average PPI value ($) = 134.89166

9. The result of these calculations is $6,601.4157. Since the result is rounded to the nearest $100, the new reporting threshold for rail equipment accidents/incidents that occur during calendar year 2001 is $6,600, which is the same as for calendar years 1998 through 2000.

Issued in Washington, DC, on November 9, 2000.

Jolene M. Molitoris,

Administrator, Federal Railroad Administration.

[FR Doc. 00–29574 Filed 11–20–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014-0137-02; I.D. 080700C]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2000 Summer Flounder, Scup and Black Sea Bass Commercial Quotas

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

ACTION: Commercial quota adjustment for 2000; correction.

SUMMARY: NMFS corrects the 2000 commercial summer flounder quota allocated to the State of Maryland. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which specify that summer flounder landings in excess of a given state's individual commercial quota be deducted from that state's quota for the following year. The intent of this action is to correct for the deduction of an overage from the Maryland allocation that was made in error.

DATES: Effective November 20, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fisheries Policy Analyst, (978) 281-9273, fax 978-281-9135, e-mail *paul.h.jones@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2000 (65 FR 50463), NMFS announced preliminary adjustments to the 2000 summer flounder commercial quotas based on updated 1999 landings data. However, after the publication of that adjustment, NMFS discovered that some summer flounder landings reported by the State of Maryland in 1999 were double-counted, meaning that the final 1999 landings did not exceed that state's quota.

Therefore, this document corrects the entries for Maryland specified in Table 1, Summer Flounder Preliminary 1999 Landings and Overages by State; and

Table 2, Summer Flounder Preliminary Adjusted 2000 Quotas by State, as published at 65 FR 50463, August 18, 2000, (FR Doc. 00-21100).

Corrections

Table 1. Summer Flounder Preliminary 1999 Landings and Overages by State, is corrected as follows:

On page 50464, in the fourth column, under the heading ''Preliminary 1999 Landings'', and under the subheading ''Lb'', in the ninth line, ''234,358'' is corrected to read ''200,997''; in the last line, the total ''10,653,199'' is corrected to read ''10,619,838'', and in the fifth column of the table, under the subheading ''Kg'', in the ninth line, ''106,303'' is corrected to read ''91,172''; in the last line, the total ''4,832,209'' is corrected to read ''4,817,159''. In the sixth column of the table, under the heading ''1999 Overage'', and under the subheading ''Lb'', in the ninth line, ''32,004'' is corrected to read ''0''; and in the seventh column of the table, under the subheading ''Kg'', in the ninth line, ''14,517'' is corrected to read ''0''.

Table 2. Summer Flounder Preliminary Adjusted 2000 Quotas by State, is corrected as follows:

On page 50464, in the fourth column, under the heading ''2000 Adjusted Quota'', and under the subheading ''Lb'', in the ninth line, ''194,564'' is corrected to read ''226,568''; in the last line, the total ''10,882,897'' is corrected to read ''10,914,901''; and in the fifth column of the table, under the subheading ''Kg'', in the ninth line, ''88,253'' is corrected to read ''102,771''; in the last line, the total ''4,936,398'' is corrected to read ''4,950,999''.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 15, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–29778 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 225
Tuesday, November 21, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OEI-100004A; FRL-6722-5]

RIN 2070-AC00

Addition of Diisononyl Phthalate Category; Community Right-to-Know Toxic Chemical Release Reporting; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 5, 2000, EPA issued a proposed rule, in response to a petition filed under section 313(e)(1) of the Emergency Planning and Community Right-to-Know Act (EPCRA), to add a diisononyl phthalate (DINP) category to the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA). EPA proposed to add this chemical category to the EPCRA section 313 list pursuant to its authority to add chemicals and chemical categories because EPA believes this category meets the EPCRA section 313(d)(2)(B) toxicity criterion. The purpose of today's action is to inform interested parties that, in an effort to ensure adequate opportunities for input from all affected parties, EPA is extending the comment period by 60 days until February 2, 2001. The comment period for the proposed rule was initially scheduled to close on December 4, 2000.

DATES: Comments, identified by the docket control number OEI-100004, must be received by EPA on or before February 2, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical information on this proposed rule contact: Daniel R. Bushman, Petitions Coordinator, Environmental Protection Agency, Mail Code 2844, 1200 Pennsylvania Ave., Washington, DC 20460; telephone number 202-260-3882, e-mail address: bushman.daniel@epa.gov. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877, or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

You may be affected by this action if you manufacture, process, or otherwise use any of the chemicals included in the proposed DINP category. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Interested Entities
Industry	SIC major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), or 20 through 39; industry codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4931 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. section 6921 et seq.), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis)
Federal Government	Federal facilities

This table 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. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of this Document or Other Support Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this proposal under docket control number OEI-100004. The official record consists of the documents specifically referenced in Unit VIII. of this proposal and other information related to this proposal, 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 is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B-607, Waterside Mall, 401 M St., SW.,

Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number is 202-260-7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number (i.e., ''OEI-100004'') in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is: (202) 260-7093.

3. *Electronically.* Submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov.'' Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OEI-100004. Electronic comments on this proposal may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

You may claim information that you submit in response to this proposal as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background Information

A. What Does this Notice Do and What Action Does this Notice Affect?

This document extends the comment period for EPA's September 5, 2000 proposed rule (65 FR 53681) (FRL-6722-3) to add a DINP category to the list of toxic chemicals subject to the reporting requirements under EPCRA section 313 and section 6607 of the PPA.

B. Why and for How Long is EPA Extending the Comment Period?

EPA has received several requests to extend the comment period for the September 5, 2000 proposed rule. In order to ensure adequate opportunities for input from all affected parties, EPA has determined that extending the comment period is an appropriate action and will not cause significant delay in the evaluation of the proposed rule. Therefore, EPA is extending the comment period on the September 5, 2000 proposed rule by 60 days. All comments must be received by February 2, 2001.

III. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. As indicated previously, this action merely announces the extension of the comment period for the proposed rule. This action does not impose any new requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). Nor does it require prior consultation with State, local, and Tribal government officials as specified by Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under 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 in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). 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). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying proposed rule, is discussed in the preamble to the proposed rule (65 FR 53681).

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund, Toxic chemicals.

Dated: November 7, 2000

Elaine G. Stanley,

Director, Office of Information Analysis and Access.

[FR Doc. 00–29510 Filed 11–20–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50639A; FRL–6756–9]

RIN 2070–AD43

Perfluorooctyl Sulfonates, Proposed Significant New Use Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the existing comment period for the proposed significant new use rule (SNUR) on perfluorooctyl sulfonates published on

October 18, 2000, in the **Federal Register**. In response to several requests, the comment period is being extended by 45 days, until January 1, 2001. The comment period was scheduled to close on November 17, 2000. The proposed SNUR under section 5(a)(2) of the Toxic Substances Control Act (TSCA) applies to the following chemical substances: perfluorooctanesulfonic acid (PFOSA) and certain of its salts (PFOSS), perfluorooctanesulfonyl fluoride (PFOSF), certain higher and lower homologues of PFOSA and PFOSF, and certain other chemical substances, including polymers, that contain PFOSA and its homologues as substructures. All of these chemical substances are referred to collectively in the proposed rule as perfluorooctyl sulfonates, or PFOS. The proposed rule would require manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of these chemical substances for the significant new uses described in this document. EPA believes that this action is necessary because the chemical substances included in this proposed rule may be hazardous to human health and the environment. The required notice would provide EPA with the opportunity to evaluate an intended new use and associated activities and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments, identified by docket control number OPPTS–50639A, must be received on or before January 1, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–50639A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mary Dominiak, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–7768; fax number: (202) 260–1096; e-mail address: dominiak.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in Table 2 or Table 3 of the proposed rule. Persons who intend to import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements, and to the regulations codified at 19 CFR 12.118 through 12.127 and 12.728. Those persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export any of the chemical substances listed in Table 2 or Table 3 of the proposed rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR 721.20 and 40 CFR part 707, subpart D. Entities potentially affected by the SNUR requirements in the proposed rule may include, but are not limited to:

TABLE 1.—ENTITIES POTENTIALLY AFFECTED BY THE SNUR REQUIREMENTS

Categories	NAICS Codes	Examples of potentially affected entities
Chemical Manufacturers or Importers	325	Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances
Chemical Exporters	325	Persons who export, or intend to export, one or more of the subject chemical substances

This listing is not intended to be exhaustive. Instead, it provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in Table 1 of this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist in determinations of whether this action might apply to certain entities. To determine if you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR 721.5 for SNUR-related obligations. Note that because the proposed rule would designate certain manufacturing and importing activities as significant new uses, persons that solely process the chemical substances that would be covered by this action would not be subject to the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. 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/.

B. In person

The Agency has established an official record for this action under docket control number OPPTS–50639A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA

Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

As described in Unit I.C. of the proposed rule published in the **Federal Register** of October 18, 2000 (65 FR 62319) (FRL–6745–5), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the proposed rule. Please follow the instructions in Unit I.D. of the proposed rule to submit any information that you consider to be CBI. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPPTS–50639A in the subject line on the first page of your response.

IV. What Action is EPA Taking?

EPA is extending the comment period for the proposed SNUR on PFOS by 45 days, from November 17, 2000 until January 1, 2001. This proposed rule would require manufacturers and importers to notify EPA at least 90 days before commencing the manufacture or import of 90 PFOS chemical substances for the significant new uses described in the proposed rule.

As stated in Unit VII. of the proposed rule, EPA believes that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR, rather than as of the effective date of the final rule. If uses begun after publication of the proposed SNUR were considered to be ongoing, rather than new, it would be difficult for EPA to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing.

Persons who begin commercial manufacture or import of PFOS for the significant new uses listed in the proposed SNUR after the proposal has been published would be subject to the requirements of the SNUR when and if the rule goes final, and would have to stop that activity unless it meets the requirements of the final SNUR. Persons who ceased those activities will have to meet all SNUR notice requirements and wait until the end of the notice review period, including all extensions, before engaging in any activities designated as significant new uses. If, however, persons who begin commercial manufacture or import of these chemical substances between the proposal and the effective date of the SNUR meet the conditions of advance compliance as codified at 40 CFR 721.45(h), those persons will be considered to have met the final SNUR requirements for those activities.

V. What is the Agency's Authority for Taking this Action?

EPA proposed this SNUR pursuant to its authority under section 5(a)(2) of TSCA.

VI. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments must be submitted to EPA on a proposed rule that previously published in the **Federal Register**. For information about the applicability of the regulatory assessment requirements to the proposed rule, please refer to the discussion in Unit XI. of that document (65 FR 62319, 62330).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements.

Dated: November 15, 2000.

Charles M. Auer,

Director, Chemical Control Division.

[FR Doc. 00–29782 Filed 11–16–00; 3:44 pm]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 00–193; FCC 00–361]

Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this notice of proposed rulemaking (NPRM), we initiate a new proceeding to consider whether the Commission should adopt an ''automatic'' roaming rule that would apply to Commercial Mobile Radio Service (CMRS) systems and whether we should sunset the ''manual'' roaming requirement that currently applies to those systems.

DATES: The agency must receive comments on or before January 5, 2001, and reply comments on or before February 5, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Murray, Wireless Telecommunications Bureau, at (202) 418–7240; additional information concerning the information collections 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 Federal Communications Commission's (the Commission) Notice of Proposed Rulemaking, FCC 00–361, in WT Docket No. 00–193, adopted on October 4, 2000 and released on November 1, 2000. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Synopsis of Memorandum Opinion and Order

I. Introduction

1. In this notice of proposed rulemaking (NPRM), we initiate a new proceeding to consider whether the Commission should adopt an ''automatic'' roaming rule that would apply to Commercial Mobile Radio Service (CMRS) systems and whether we should sunset the ''manual'' roaming requirement that currently applies to those systems. The Commission recently terminated its previous consideration of these roaming issues in Docket No. 94–54. In light of the significant growth and development during the last few years of CMRS services, we believe that a new docket dedicated solely to roaming issues best ensures that we will have up-to-date information on whether roaming services should be regulated.

II. Summary of the Notice of Proposed Rulemaking

A. Current Requirements

2. Prior to 1996, the Commission's rules required only cellular carriers to offer manual roaming. In the Commission's 1996 *Second Report and Order* and accompanying *Third NPRM*, 11 FCC Rcd 9462, published 61 FR 44026 (Aug. 27, 1996), we considered the imposition of manual and automatic roaming obligations on CMRS providers generally. In the *Second Report and Order*, we determined that the availability of roaming was important to

the development of nationwide, competitive wireless voice telecommunications, and that during the period of systems build-out market forces alone might not cause roaming to become widely available. Accordingly, we extended the Commission's then-existing manual roaming rule requiring cellular carriers to serve individual roamers to include both broadband PCS and ''covered'' SMR providers.

3. In the *Third NPRM*, the Commission invited additional comment on both automatic and manual roaming asking whether the Commission should promulgate any rule governing covered providers' obligations to provide automatic roaming service. The *Third NPRM* further posited that the market would likely render any automatic roaming rule unnecessary five years after the last group of initial licenses for broadband PCS spectrum was awarded, and it asked whether any automatic roaming rule, as well as the existing manual roaming rule, should be sunset at that time.

4. In July 2000, the Commission generally affirmed the manual roaming requirement in its *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, CC Docket No. 94–54, FCC 00–251 (rel. Aug. 28, 2000) (*Manual Roaming Order on Reconsideration*), published 65 FR 58477 (Sep. 29, 2000). However, the *Manual Roaming Order on Reconsideration* changed the definition of which CMRS providers were ''covered'' and extended the rule's coverage to certain data providers. Thus the manual roaming requirement, as amended, applies to all cellular, broadband PCS, and SMR providers that offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. The Commission also terminated CC Docket No. 94–54 finding that changes in the market and technology had rendered the record stale.

C. Proposed Rule Changes

5. In this document, we invite comments on: (1) Whether we should adopt an automatic roaming requirement that would apply to certain CMRS providers; and (2) whether we should, either now or in the future, sunset the existing manual roaming requirement placed on those providers. Those wishing to file comments should pay close attention to the specific requests for information made in the NPRM.

Procedural Matters

A. Regulatory Flexibility Act

6. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the potential regulatory actions on which comment is requested in this Notice of Proposed Rulemaking. The IRFA is set forth in the attached Appendix. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this Notice of Proposed Rulemaking, as set forth in Section IV(C), *infra*, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA. In addition, this *Notice of Proposed Rulemaking*, including the IRFA (or summaries thereof), will be published in the **Federal Register**.

B. Ex Parte Rules

7. This document initiates and constitutes a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations relating to the Notice of Proposed Rulemaking are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well. Interested parties are to file with the Secretary, FCC, and serve International Transcription Services (ITS) with copies of any written *ex parte* presentations or summaries of oral *ex parte* presentations in these proceedings in the manner specified below for filing comments.

C. Filing Procedures

8. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 5, 2001, and reply comments on or before February 5, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

10. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W.; TW–A325; Washington, D.C. 20554.

11. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 Twelfth Street, S.W., Room CY–B402, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554.

12. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49, 47 CFR 1.49, and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

Initial Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this

IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this NPRM provided above in Section IV(C), and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for and Objectives of the Proposed Rules

14. This NPRM requests comment on two issues that pertain to the regulation or possible regulation of certain commercial mobile radio service (CMRS) providers' obligations. First, the NPRM requests comment on whether the Commission should, either now or in the future, sunset the existing ''manual'' roaming requirement. The existing manual roaming rule requires that covered cellular, broadband Personal Communications Services (PCS) and Specialized Mobile Radio (SMR) carriers make service available to individual users upon request, so long as the roamer's handset is technically capable of accessing their services. ''Manual'' roaming is the most rudimentary form of roaming; it is the only form of roaming available when there is no pre-existing contractual relationship between a subscriber, or the subscriber's home system, and the system on which the subscriber wants to roam. In order to make or receive a call, the subscriber must establish such a relationship. Typically, the ''manual'' roamer accomplishes this by attempting to originate a call by giving a valid credit card number to the carrier providing roaming service. Specifically, the NPRM requests comment on whether the ''manual'' roaming rule should sunset on five years after the last group of initial licenses are issued for broadband spectrum, that is, November 24, 2002.

15. Second, the NPRM requests comment on whether the Commission should adopt an ''automatic'' roaming requirement that would apply to CMRS providers, and if so, how it should be designed and implemented and for what period of time. ''Automatic'' roaming permits a subscriber to make and receive calls simply by turning on his or her phone, and it requires an agreement between the home and roamed-on systems. Specifically, the NPRM seeks comment on whether it should adopt a rule requiring carriers that enter ''automatic'' roaming agreements with any other carrier to make like agreements available to ''similarly situated'' providers under non-discriminatory rates, terms, and conditions. The Commission also seeks comment on the potential costs of an ''automatic'' roaming rule, including whether it would impede technological progress, whether it would interfere with free and open competition, and whether it would expose providers to the risk of losses due to fraud. The Commission requests comment on what administrative costs would be involved, and how any rule should be drafted so as to minimize such costs.

B. Legal Basis

16. The potential actions on which comment is sought in this NPRM would be authorized under §§ 1, 2(a), 4(i), 4(j), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B).

C. Description and Estimate of the Small Entities Subject to the Rules

17. The RFA requires that an initial regulatory flexibility analysis be prepared 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.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

18. To assist the Commission in its analysis, commenters are requested to provide information regarding which CMRS entities would be affected by the regulations on which the Commission seeks comment in this NPRM. In particular, we seek estimates of how many small entities that might be affected.

19. The possible sunset of the existing ''manual'' roaming rule, if adopted, would eliminate the requirement that covered cellular, broadband PCS and SMR carriers make service available to individual users upon request, so long as the roamer's handset is technically capable of accessing their services. Sunsetting of this rule would be expected to reduce the existing regulatory burden, if any, on small businesses that must comply with the requirements of the ''manual'' roaming rule.

20. The ''automatic'' roaming regulations on which the Commission seeks comment, if adopted, would apply to providers of cellular, broadband PCS, and SMR providers that offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls.

Estimates for Cellular Licensees

21. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of a small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Trends in Telephone Service data, 808 carriers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio Telephone (SMR) service, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by any regulations adopted pursuant to this proceeding.

22. Additionally, any rules adopted pursuant to this rulemaking will apply to cellular licensees only if they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse

frequencies and accomplish seamless hand-offs of subscriber calls. Although the Commission does not have definitive information, we estimate that most or all small business cellular licensees offer services meeting this description.

Estimates for Broadband PCS Licensees

23. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

24. Any rule modifications that will be made pursuant to this proceeding will apply to broadband PCS licensees only if they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Although the Commission does not have definitive information, we estimate that most or all small business broadband PCS licensees offer services meeting this description.

Estimates for SMR Licensees

25. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small business'' for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels as a firm that has had average annual gross revenues of $15 million or less in the three preceding calendar years. This small business size standard for the 800 MHz and 900 MHz auctions has been approved by the SBA. Any rules adopted pursuant to this NPRM will apply to SMR licensees only if they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Although the Commission does not have definitive information, we estimate that very few small business, incumbent site-by-site SMR licensees offer services meeting this description. Geographic licensees are considered more likely to offer such services. In all cases, we provide estimates below that are conservative so as to not underestimate the impact on small entities.

26. Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small businesses under the $15 million size standard. We do not know which of these licensees will offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. We conservatively estimate that the number of small business 900 MHz SMR geographic area licensees that could be affected by rule modifications is 60 or fewer.

27. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten (10) winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. We do not know which of these licensees will offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Therefore, we conservatively estimate that the number of small business 800 MHz SMR geographic area licensees for the upper 200 channels that could be affected by rule modifications is ten or fewer.

28. The Commission anticipates that a total of 3,853 EA licenses will be auctioned in the lower 230 channels of the 800 MHz SMR service. This figure is derived by multiplying the total number of Economic Areas (EAs) (175) by the number of channel blocks (22) in the lower 230 channels. Three additional upper band channels will be licensed as well. No party submitting or commenting on the petitions for reconsideration giving rise to our *Reconsideration* of October 8, 1999, commented on the potential number of small entities that might participate in the auction of the lower 230 channels and no reasonable estimate can be made. Therefore, we conclude that the number of 800 MHz SMR geographic area licensees for the lower 230 channels that may ultimately be affected by this rule modification could be as many as 3,853.

29. With respect to licensees operating under extended implementation authorizations, by November 1997 thirty-three licensees with extended implementation authority in the 800 MHz SMR Service were granted two years two complete the buildout of their systems. At this time, our records indicate that twenty-seven licensees with extended implementation authority still exist, but there may be as few as twenty-two remaining as independent entities. The Commission will soon receive filings that will clarify the situation. Until then, we will assume that there are twenty-seven remaining licensees in this category and that they all qualify as small businesses utilizing the SBA's wireless size standard of $15 million or less. However, we do not know how many of these licensees offer real-time, two-way switched voice or data service that is interconnected with the public switched network and that utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. Therefore, estimating conservatively, we conclude that the number of small business SMR licensees operating in the 800 MHz and 900 MHz bands under extended implementation authorizations that could be affected by a rule modification is up to 27 entities.

30. The Commission does not have an accurate estimate of the number of incumbent site-by-site SMR licensees, and a reliable figure will not be available until the SMR site-by-site licensees migrate to the Universal Licensing System. Making this estimate is complicated by the number of recent transactions that have occurred in the 800 MHz SMR service. However, our task is also greatly simplified for purposes of this regulatory flexibility analysis because we are looking for a very specific type of SMR licensee. That is, the licensee must: first, qualify as a small business (*i.e.,* average annual

gross revenues of $15 million or less in the three preceding calendar years); second, offer real-time, two-way switched voice or data service that is interconnected with the public switched network; and third, use an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These criteria greatly restrict the number of SMR providers who could be affected by this new rule. Although there may be SMR carriers who provide such services it is high unlikely that they will be small entities or small businesses given the nature of the SMR providers and the development of that industry. Consequently, even though there may be no licensees that satisfy these criteria, we err on the sake of caution and conclude that 25 small entities may fall into this category.

D. Reporting, Recordkeeping, and Other Compliance Requirements

31. We anticipate that any rules that may be adopted pursuant to this NPRM will impose no reporting or recordkeeping requirements. The only compliance costs likely to be incurred, as a result, are administrative costs to ensure that an entity's practices are in compliance with the rule. The only compliance requirement of the new rules is that licensees subject to any automatic roaming requirement (*i.e.,* cellular licensees, broadband PCS licensees, and geographic area 800 MHz and 900 MHz SMR licensees that offer real-time, two-way, interconnected switched voice and data service) would have to provide non-discriminatory access to their wireless systems via automatic roaming once they had reached an agreement with any carrier to permit automatic roaming. As noted above in this Initial Regulatory Flexibility Analysis, and in the text of the NPRM, we seek comment on the potential costs of implementing an automatic roaming requirement in this context, including such potential costs on small business.

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

32. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[1]

33. As noted, the possible sunset of the manual roaming rule, if adopted, would be expected to reduce any existing economic impact on small business. Therefore, the only possible negative economic impacts that might arise from this NPRM are those that would be associated with an ''automatic'' roaming rule.

34. As indicated in the NPRM, were the Commission to propose an ''automatic'' roaming rule, the subscribers of any carrier requesting that another carrier enter a nondiscriminatory automatic roaming arrangement would have the burden of ensuring that its subscribers were using equipment that is technically capable of accessing the roamed-on carrier's network. Thus, to the extent the roamed-on carrier's network were that of a smaller carrier, the economic burden of having equipment technically capable of accessing the network would not fall on the smaller carrier. Also, we note that an automatic roaming rule, if adopted, would not require a small business to modify its network to accommodate automatic roaming.

35. In this NPRM, the Commission also specifically has requested comments from small businesses that would provide information on the extent to which such a rule would impose costs and administrative burdens on them. For instance, we inquire whether the costs of such a rule would impact smaller carriers disproportionately, such that we should fashion the rule to reach only the larger providers. The Commission will draw on this information when considering whether a rule should be promulgated, and if so, how it can best be drafted to minimize any costs placed on small businesses. Furthermore, we inquire whether adoption of an ''automatic roaming'' rule would in fact be in the best interests of small businesses. Specifically, in considering whether or not to adopt an ''automatic roaming'' rule, we inquire of smaller carriers whether such a rule would be most beneficial to such carriers to the extent they may have difficulty obtaining agreements from larger carriers absent such a rule.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

[1] 5 U.S.C. 603(c).

Ordering Clauses

36. Pursuant to the authority of Sections 1, 2(a), 4(i), 4(j), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 154(j), 201(b), 251(a), 253, 303(r), and 332(c)(1)(B), and §§ 1.411 and 1.412 of the Commission's rules, 47 CFR 1.411 and 1.412, this Notice of Proposed Rulemaking is *Adopted.*

37. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29773 Filed 11–20–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Profit Policy

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed Defense Federal Acquisition Regulation Supplement (DFARS) rule on changes to profit policy published in the **Federal Register** at 65 FR 45574 on July 24, 2000. The Director of Defense Procurement would like to hear the views of interested parties on what they believe to be the key issues pertaining to the proposed rule and potential alternatives. A listing of some of the possible issues is included on the Internet Home Page of the Office of Cost, Pricing, and Finance at *http://www.acq.osd.mil/dp/cpf.*

Subsequent to the discussions at the public meeting, the Director of Defense Procurement intends to publish a revised proposed rule for additional public comment.

DATES: The public meeting will be conducted at the address shown below on December 12, 2000, from 9 a.m. to 12 p.m., local time.

ADDRESSES: The public meeting will be conducted at Crystal Square 4, Suite

200A, 1745 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Bob Bemben, Office of Cost, Pricing, and Finance, by telephone at (703) 695–9764; by FAX at (703) 693–9616; or by e-mail at *bembenrj@acq.osd.mil.*

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–29776 Filed 11–20–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG27

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Economic Analysis for Proposed Critical Habitat Determination for the Morro Shoulderband Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a draft economic analysis for the proposed designation of critical habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*). We are opening the comment period to allow all interested parties to submit written comments on the draft economic analysis. Comments will be incorporated into the public record as a part of this comment period and will be fully considered in the final rule.

DATES: The comment period is opened and we will accept comments until December 6, 2000. Comments must be received by 5:00 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: All written comments should be sent to the Field Supervisor at the above address. You may also send comments by electronic mail (e-mail) to ''fw1morrosnail@r1.fws.gov.'' Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: RIN 1018–AG27'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805–644–1766. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address. Copies of the draft economic analysis are available on the Internet at ''www.r1.fws.gov'' or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805–644–1766; facsimile 805–644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband snail was first described as *Helix walkeriana* by Hemphill based on collection made ''near Morro, California.'' He also described a subspecies, based on sculptural features of the shell, *Helix walkeriana, Helix* var. *morroensis*, that was collected ''near San Luis Obispo City.'' The Morro shoulderband snail is also commonly known as the banded dune snail and belongs to the Class Gastropoda and Family Helminthoglyptidae.

The shell of the Morro shoulderband snail has 5–6 whorls. Its dimensions are 18 to 29 millimeters (mm) (0.7 to 1.1 inches (in.)) in diameter and 14 to 25 mm (0.6 to 1.0 in.) in height. The Morro shoulderband snail can be distinguished from the Big Sur shoulderband snail (*Helminthoglypta umbilicata*), another native snail in the same area, by its more globose (globe shaped) shell and presence of incised (deeply cut) spiral grooves. The shell of the Big Sur shoulderband snail tends to be flatter and shiner. The brown garden snail (*Helix aspersa*) also occurs in Los Osos with the Morro shoulderband snail and has a marbled pattern on its shell, whereas the Morro shoulderband snail has one narrow dark brown spiral band on the shoulder. The Morro shoulderband's spire is low-domed, and half or more of the umbilicus (the cavity in the center of the base of a spiral shell that is surrounded by the whorls) is covered by the apertural (small opening) lip.

The Morro shoulderband snail is found only in western San Luis Obispo County. At the time of its addition to the List of Endangered and Threatened Wildlife on December 15, 1994 (59 FR 64613), the Morro shoulderband snail was known to be distributed near Morro Bay. Its currently known range includes areas south of Morro Bay, west of Los Osos Creek, and north of Hazard Canyon. Historically, the species has also been reported near the city of San Luis Obispo (type locality for ''*morroensis*'') and south of Cayucos.

The Morro shoulderband snail occurs in coastal dune and scrub communities and maritime chaparral. Through most of its range, the dominant shrub associated with the snail's habitat is mock heather (*Ericameria reicoides*). Other prominent shrub and succulent species are buckwheat (*Eriogonum parvifolium*), eriastrum (*Eriastrum densifolium*), chamisso lupine (*Lupinus chamissonis*), dudleya (*Dudleya sp.*) and in more inland locations, California sagebrush (*Artemisia californica*) and black sage (*Salvia mellifera*).

Away from the immediate coast, immature scrub in earlier successional stages may offer more favorable shelter sites than mature stands of coastal dune scrub. The immature shrubs provide canopy shelter for the snail, whereas the lower limbs of larger older shrubs may be too far off the ground to offer good shelter. In addition, mature stands produce twiggy litter that is low in food value. The Morro shoulderband snail is not a garden pest and is essentially harmless to gardens.

The Morro shoulderband snail is threatened by destruction of its habitat due to increasing development and by degradation of its habitat due to invasion of nonnative plant species (e.g., veldt grass (*Ehrharta calycino*)), structural changes to its habitat due to maturing of dune vegetation, and recreational use (e.g., heavy off-highway vehicle activity). In addition to the known threats, possible threats to the snail include competition for resources with the nonnative brown garden snail (although no assessment has been made of possible dietary overlap between the species); the isolated nature of the remaining populations; the use of pesticides (including snail and slug baits); and the introduction of nonnative predatory snails.

Pursuant to the Endangered Species Act of 1973, as amended (Act), the species was federally listed as endangered on December 15, 1994 (59 FR 64613). On July 12, 2000, we published in the **Federal Register** (65 FR 42962) a determination proposing critical habitat for the Morro shoulderband snail. Approximately 1,040 hectares (2,565 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in the community of Los Osos, San Luis Obispo County, California, as described in the proposed determination.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Morro shoulderband snail and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address. We will accept written comments during this reopened comment period. The current comment period on this proposal closes on December 6, 2000. Written comments may be submitted to the Ventura Fish and Wildlife Office in the **ADDRESSES** section.

Author

The primary author of this notice is Ron Popowski, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 15, 2000.

Cynthia U. Barry,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 00–29721 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 110900B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to consider an application for an EFP that would allow up to four vessels to conduct fishing operations otherwise restricted by regulations governing the fisheries of the Northeastern United States. The Rutgers University Haskin Shellfish Research Laboratory has submitted an application for an EFP that warrants further consideration. The experimental fishery to be conducted under the EFP would investigate selectivity of various trawl mesh sizes in the Mid-Atlantic region. The research would target small-mesh species (Atlantic mackerel, *Loligo* squid, silver hake (whiting), black sea bass, and scup), with the goal of developing fishing gear and/or methods that would significantly reduce the discard mortality of scup. This notice is intended to provide interested parties the opportunity to comment on the proposed experimental fishery.

DATES: Comments must be received by December 6, 2000.

ADDRESSES: Comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope ''Comments on Proposed Experimental Fishery.''

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, 978-281-9347.

SUPPLEMENTARY INFORMATION: The regulations that govern exempted experimental fishing, at 50 CFR 600.745, allow the Regional Administrator to authorize for certain purposes the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, and the conservation goals and objectives of the Fishery Management Plan are not compromised.

The Rutgers University Haskin Shellfish Research Laboratory of Port Norris, NJ, submitted to NMFS on October 9, 2000, an application for an EFP to conduct gear research in the small-mesh fisheries of the Mid-Atlantic region; in particular, gear selectivity experiments that investigate the retention of scup. The research would target several small-mesh species (Atlantic mackerel, *Loligo* squid, whiting, black sea bass, and scup), with the goal of developing fishing gear and/or methods that would significantly reduce the discard mortality of sub-legal and legal-sized scup. Scup are overfished and discard mortality has been identified as a problem that needs to be addressed to allow the stock to rebuild. The experimental design seeks to increase the number of observed tows in the directed scup fishery and to compare the catch selectivity of codends with mesh sizes ranging from 1 and 7/8 to 5.0 inches (47 to 125-mm). A composite codend constructed of 4.5 and 4.0-inch (113 and 100-mm) codend mesh may also be tested.

Up to four vessels with the appropriate Federal permits would be authorized to target Atlantic mackerel, *Loligo* squid, whiting, black sea bass, scup and to retain other incidental catch species using trawls with various codend mesh sizes beginning on or after January 1, 2001. The experiment would be authorized through December 31, 2001, but may be completed as soon as February 28, 2001. Tows would be up to 1 hour in duration and, when possible, consistent with procedures used during the course of normal fishing activities. Researchers would identify, count, and measure the target and incidental species retained by the trawls; commercial species would be retained and sold. The applicants anticipate a total number of 32 trips would be taken within the duration of this proposal.

Participating vessels would have trained observers or researchers on board, and make tows in Mid-Atlantic waters east and southeast of New Jersey in NMFS statistical areas 613, 615, 616, 622, and 623 (approximately between 38° 00' N. and 42° 00' N. lat.). Landings of species other than scup would be subject to all applicable fishery regulations, including all applicable state or Federal limits in effect at the time of the research. It is anticipated that incidental species will include, but not be limited to, summer flounder. Vessels may be allowed to retain and land up to 3,000 lb (1,361 kg) of scup per trip in excess of the trip limit in effect at the time of the experiment. The increased trip limit would be used to obtain more sample tows per trip and to defray costs of the research. All landings of scup would be counted towards the period and the annual scup quota and the fishery will be closed when the quotas are reached, consistent with the provisions of § 648.120. Issuance of the EFPs would not authorize landing of scup in excess of established quotas. EFPs would be required to exempt vessels from certain management measures of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, including gear restrictions, mesh-size requirements, possession restrictions on undersized species for data collection purposes only, and trip limits. Due to the distribution of target species, it may be necessary for the experimental vessels to fish in gear restricted areas (GRAs). If GRAs are in effect at the time of, and in the location of, the experimental fishing,

exemptions from pertinent GRA regulations would be required. There will be an opportunity for public discussion of this proposal at the December 12-14, 2000, meeting of the Mid-Atlantic Fishery Management Council in Atlantic City, NJ. An agenda and other details of that meeting will be published in the **Federal Register** in advance of the meeting.

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

Dated: November 15, 2000.

Bruce C. Morehead,

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

[FR Doc. 00–29779 Filed 11–20–00; 8:45 am]

BILLING CODE: 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 110800C]

Atlantic Highly Migratory Species Fisheries; Technical Gear Workshop

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

ACTION: Notification of public meeting.

SUMMARY: NMFS announces a public workshop to discuss potential gear modifications for the Atlantic pelagic longline fishery aimed at reducing the incidental take and mortality of threatened and endangered sea turtles. The workshop is intended to synthesize available information and discuss research objectives. A report of the workshop will be made available to interested parties.

DATES: The workshop will take place December 12, 2000, from 1 p.m. to 6 p.m. and December 13, 2000, from 8:30 a.m. to 3:30 p.m. Notice of attending the meeting should be provided by December 5, 2000.

ADDRESSES: The location for the workshop is: National Marine Fisheries Service, Building 4 - Science Center, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Tyson Kade at (301) 713-2347. Also, if you are planning to attend the workshop, please contact the above named individuals by December 5, 2000. Attendees will be provided briefing materials prior to the meeting.

SUPPLEMENTARY INFORMATION: A Biological Opinion (BO) issued on June 30, 2000, by NMFS' Office of Protected Resources found that the continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of loggerhead and leatherback sea turtles. Since the BO was issued, NMFS has concluded that further analyses of observer data and additional population modeling of loggerhead sea turtles are needed to determine more precisely the impact of the pelagic longline fishery on turtles. NMFS reinitiated consultation to consider these factors, and anticipates issuance of a new BO in March 2001. This workshop will allow fishermen, gear experts, sea turtle experts, and fishery managers to discuss possible measures, including gear and fishing method modifications, to reduce the incidental take and mortality of sea turtles in the Atlantic pelagic longline fishery in the future. Information developed at the workshop will be incorporated into a workshop report that will be considered in the ongoing fishery consultation. The report will also be made available to the public.

Special Accommodations

The public workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Margo Schulze-Haugen or Tyson Kade (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

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

Dated: November 14, 2000.

Bruce C. Morehead,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 001030303–0303–01; I.D. 091900E]

RIN 0648—AO41

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 13

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement portions of Amendment 13 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 13 is intended to make the FMP consistent with the bycatch provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 13 would also increase flexibility in the groundfish annual specifications and management measures process to allow the Council to more easily craft measures that protect overfished and depleted species, and would amend the limited entry permit provisions to remove unused and outdated limited entry permit endorsements. This proposed rule would introduce an increased utilization program for the at-sea whiting fisheries, revise the regulatory provisions for the routine management measures process, and remove regulatory references to limited entry permit endorsements other than the ''A'' endorsement.

DATES: Comments must be submitted in writing by January 5, 2001.

ADDRESSES: Send comments to Donna Darm, Acting Administrator, Northwest Region, (Regional Administrator) NMFS, 7600 Sand Point Way NE., Seattle, WA 98115; or Rebecca Lent, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Copies of Amendment 13 to the Pacific Coast Groundfish FMP and the environmental assessment/ regulatory impact review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to the NMFS address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 00503 (Attn: NOAA Desk Officer). Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to Donna Darm or Rebecca Lent.

FOR FURTHER INFORMATION CONTACT: William Robinson at: phone, 206-526-6140; fax, 206-526-6736; and email, bill.robinson@noaa.gov. Svein Fougner at: phone, 562–980–4000; fax, 562–980–4047; and email, svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION: Electronic Access: This **Federal Register** document is also accessible via the internet at the website of the Office of the Federal Register: http://www.access.gpo.gov/su-docs/aces/aces140.html.

On October 11, 1996, the Sustainable Fisheries Act went into effect, significantly amending the Magnuson-Stevens Act. Fishery management councils were required by the newly amended Magnuson-Stevens Act to revise their fishery management plans to address several large areas of concern in fishery management, including overfishing and the rebuilding of overfished stocks; bycatch and bycatch mortality; essential fish habitat (EFH); and the effects of fishery management actions on fishing communities.

The Pacific Fishery Management Council (Council) prepared Amendment 13 to the FMP and submitted it on September 11, 2000, for Secretarial review. NMFS published a notice of availability for Amendment 13 in the **Federal Register** on September 22, 2000 (65 FR 57308), announcing a 60-day public comment period, which ends on November 21, 2000.

The Council amended its groundfish FMP with Amendment 11 to bring the FMP into compliance with the Magnuson-Stevens Act. Amendment 11 includes provisions amending the FMP framework that define ''optimum yield'' for setting annual groundfish harvest limits; defining rates of ''overfishing'' and levels at which managed stocks are considered ''overfished;'' defining Pacific Coast groundfish EFH; setting a bycatch management objective and a framework for bycatch reduction measures; establishing a management objective to take the importance of fisheries to fishing communities into account when setting groundfish management measures; providing authority within the FMP for the Council to require groundfish use permits for all groundfish users; authorizing the use of fish for compensation for private vessels conducting NMFS-approved research; and, making other, lesser updates to the FMP. NMFS approved all of the FMP amendment except for those provisions addressing bycatch. The bycatch provisions of Amendment 11 were sent back to the Council for further development. Amendment 13 is the result of the Council's efforts and would make the FMP consistent with the bycatch provisions of the Magnuson-Stevens Act.

When, on March 3, 1999, NMFS notified the Council that it had approved most of Amendment 11 to the FMP, it also notified the Council that three species (lingcod, bocaccio, and Pacific ocean perch (POP)) managed under the FMP were considered overfished, according to the definition of an overfished species given in Amendment 11. The Council was then required by the Magnuson-Stevens Act to provide rebuilding plans for the three overfished species within one year of that NMFS notification. The Council developed draft rebuilding plans for lingcod, bocaccio, and POP, during its September and November 1999 meetings, and adopted rebuilding plans for all three species at the November 1999 meeting. Measures necessary to implement the Council-adopted rebuilding plans were incorporated into the 2000 annual specifications and management measures for Pacific Coast groundfish (65 FR 221, January 4, 2000). Council staff submitted finalized rebuilding plans to NMFS, and NMFS notification of rebuilding plan approval was published on September 5, 2000 (65 FR 53646). At its April 2000 meeting, the Council approved Amendment 12 to the FMP, which provides a framework process for developing future rebuilding plans.

In January 2000, NMFS notified the Council that two additional species, canary rockfish and cowcod, were also considered overfished. While protective measures for these two species were incorporated into the 2000 management measures, the formal rebuilding plans will be developed over the coming year and completed for the 2001 annual specifications.

To incorporate effective rebuilding measures for the five overfished species into the 2000 annual specifications and management measures, the Council had to create management measures that were consistent with, but outside of the scope of the FMP. The Council asked NMFS to make emergency regulatory changes concurrent with the publication of the 2000 annual specifications so that the rebuilding measures could begin in the 2000 fishing season. NMFS incorporated the emergency regulatory changes into the 2000 annual specifications and management measures. However, emergency regulations are temporary, and the Council needs to incorporate flexibility for managing both overfished and healthy groundfish stocks in 2001 and beyond into the FMP. Amendment 13 broadens the scope of the FMP's framework management measures to better equip the Council to meet some of the overfishing and bycatch requirements of its FMP during the annual specifications and management measures process.

In addition to amending the FMP for consistency with the Magnuson-Stevens Act bycatch provisions and updating the framework language of the FMP to allow more flexibility in meeting rebuilding goals for overfished stocks, Amendment 13 updates the FMP to remove provisions for limited entry permits with provisional ''A'' endorsements, ''B'' endorsements, and ''designated species B'' endorsements. These endorsements were used to smooth the transition from an open access system to the limited entry program, but all current limited entry permit holders now have ''A'' endorsements, and the three lesser endorsements have either expired or are no longer useful. Removing these endorsements from the FMP's limited entry provisions and from the groundfish regulations is essentially a ''housekeeping'' measure.

NMFS is proposing this rule to implement sections of Amendment 13 that would establish an increased utilization program for the at-sea whiting fisheries designed to reduce bycatch, revise the regulatory provisions for the routine management measures process, and remove regulatory references to limited entry permit endorsements other than the ''A'' endorsement. This proposed rule is based on recommendations of the Council made under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR prepared by the Council for Amendment 13.

Background

Standardized Reporting Methodologies

At 16 U.S.C. 1853(a)(11), the Magnuson-Stevens Act requires that fishery management plans ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority -- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.''

There are several standardized reporting methodologies in place in the groundfish fishery, including a voluntary observer program and a voluntary logbook in the at-sea whiting fisheries, incidental groundfish landings reported in a marine mammal directed observer program for the California halibut setnet fishery, and dockside observer coverage in the shoreside whiting fishery as associated with experimental fishing permits (EFPs).

The Council has recommended making observer coverage mandatory in the at-sea whiting fisheries to ensure consistent inseason catch monitoring and the fishery's compliance with the Endangered Species Act (ESA). The terms and conditions of the section 7 ESA consultation on the Pacific Coast groundfish fishery require 100 percent observer coverage to account for incidental take of ESA listed salmon in the at-sea whiting fisheries.

In addition to the programs described above, the Council has approved a regulatory framework for an on-board observer program for all limited entry and open access catcher vessels that take and retain or land groundfish at processors in the groundfish fishery off Washington, Oregon, and California. If funding for an observer program becomes available, the proposed regulations would (1) require vessels in the groundfish fishery to carry observers when notified by NMFS or its agent, (2) establish notification requirements, and (3) define responsibilities for vessels, including provisions to safeguard the observers' well-being and provide sampling conditions necessary for an observer to follow scientific sampling protocols at sea. These regulations were developed just ahead of the Amendment 13 timeline and thus, allowed to proceed outside the Amendment 13 process. A proposed rule to implement these regulatory changes was published on September 14, 2000 (65 FR 55495). Amendment 13 would facilitate those proposed changes by revising the sections of the FMP that address observer coverage to provide observer coverage plan guidelines. No further regulatory changes beyond those proposed in the rule published on September 14, 2000, would be needed to implement the standardized reporting methodologies section of Amendment 13. An observer program for the shorebased groundfish fisheries will be implemented as soon as funding becomes available or through vessels paying for observers.

Bycatch Reduction Provisions

Magnuson-Stevens Act National Standard 9 for fishery conservation and management, at 16 U.S.C. 1851(a)(9), states that, ''Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.'' According to the Magnuson-Stevens Act, ''The term 'bycatch' means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.''

The EA for Amendment 13 details the Council's past efforts to account for and reduce bycatch in the groundfish fisheries. Bycatch accounting and reduction measures have included: setting cumulative landings limit periods, rather than per-trip limits; reducing optimum yield (OY) from acceptable biological catch (ABC) by estimated discard rates both pre-season and inseason; reducing harvest available to directed non-whiting groundfish fisheries by the observed amounts of those stocks taken incidentally in the at-sea whiting fisheries; time/area closures to protect ESA-listed salmon from interception by the whiting fisheries; gear requirements such as mesh size restrictions and codend specifications to reduce juvenile groundfish bycatch; and setting cumulative landings limits for species complexes to account for catch ratios between co-occurring species.

For 2000, the Council moved beyond its historical practice of merely lowering harvest limits for overfished and depleted species (65 FR 221, January 4, 2000) and introduced new ways of reducing the interception of overfished species, Those measures include closed periods for lingcod to discourage directed lingcod harvest and requiring release of incidentally caught lingcod during closed periods. When lingcod are caught by hook-and-line methods, they can often be released alive. For the mixed-stock rockfish complexes, the Council recommended a landings limit scheme that encourages harvest of healthier stocks with higher limits, yet discourages directed and incidental harvest of overfished and depleted stocks through lower landings limits. In particular, cumulative rockfish landings limits for species concentrated on the continental shelf were lowered to move fishing effort away from that area, which is the primary habitat of several of the overfished rockfish species. The Council also introduced further rockfish protection measures, such as differential trip limits by gear type, season closures, and the structuring of the season to allow targeting of healthy stocks when depleted stock interception is less likely.

All of the new measures taken in 2000 and measures taken in prior years to manage for multi-species interactions illustrate that regulatory efforts to reduce bycatch tend to have multiple management goals — from protecting overfished and depleted species, to preventing overharvest of species of unknown abundance, to acknowledging that vessels using different gear types require different harvest strategies, and to matching within-year harvest rates to within-year abundance and congregation habits of managed species. For a multi-species fishery, the catching of species other than the targeted species is not necessarily a problem. However, the discard of non-targeted species, whether for economic or regulatory reasons, is a problem that the Council has worked to reduce in its ongoing efforts to address a wide range of management issues.

Amendment 13 Revisions to FMP, Including Increased Utilization for the At-Sea Whiting Fisheries

Amendment 13 revises the FMP to authorize several measures that are expected to reduce bycatch. Amendment 13 provides for increased utilization programs for appropriately monitored fisheries, shorter fishing seasons with higher cumulative landings limits, permit stacking (combining) in the limited entry fleet, catch allocation to or gear flexibility for gear types with lower bycatch rates, re-examining/improving species-to-species landings limit ratios, and time/area closures. Several of these measures would require further development before implementation. For example, the Council plans to develop and analyze a fixed gear permit stacking program this autumn, which could be implemented in spring 2001. A management measure that will be implemented by Amendment 13 would be the introduction of an increased utilization program for the at-sea whiting fisheries.

The at-sea processing component of the Pacific whiting fishery consists of catcher/processors, motherships (vessels that receive and process fish at sea but do not catch fish), and catcher vessels that deliver the catch to motherships. Each at-sea processing vessel in the whiting fishery has carried at least one NMFS-trained observer since the beginning of operations in the whiting fishery in the early 1990's. In recent years, the catcher/processors and one of the motherships have carried two observers. Catcher/processors and catcher vessels delivering to motherships are subject to the same groundfish landings limits as the rest of the limited entry fleet. For species with landings limits, motherships are allowed to retain no more than the landings limit amount from each delivering catcher vessel.

Incidental catch rates in the offshore whiting fishery are generally low (less than 5 percent of total catch of groundfish), but the magnitude of the whiting fishery is so large that the

tonnage of incidental catch (particularly of yellowtail and widow rockfish) may be considerable. In order to comply with landings limit regulations, at-sea processors may need to discard substantial amounts of incidental species after a landing limit amount is reached.

At-sea whiting processors do not offload their catch as frequently as shore-based vessels. A catcher/processor or mothership may operate during a period that spans several cumulative landings limit periods without offloading. These at-sea processors are not allowed to exceed the cumulative limit that applies for the period in which offloading occurs, which means that the vessel may not combine the cumulative landings limit amounts for more than one period. This puts the at-sea processors and catcher vessels delivering to motherships at greater risk of exceeding the cumulative limits and can result in greater discards at sea than a shore-based vessel subject to the same limits. The offshore whiting fishery is not prohibited from retaining incidentally caught species within landings limit levels, but they generally neither target nor desire these species. Rockfish are spiny, get tangled in the nets, and damage the whiting. The offshore whiting fleet does not routinely process or sell incidentally caught species, and those that are retained are generally made into fish meal. These conditions and the desire of industry to minimize regulatory discards, along with food bank interest in collecting bycatch for use in hunger programs, make the at-sea whiting fleet a viable candidate for a full-retention management option.

Under the proposed increased-utilization program, if a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for 90 percent of the days on the fishing grounds during a cumulative trip limit period, then groundfish trip limits could be exceeded without penalty for that cumulative trip limit period. Because catcher/processors and motherships operate 24 hours a day, a single observer generally cannot monitor all of a ship's catching or processing activities.

In this program, all species would be made available for sampling by the observers before sorting. Any trip limit overage could not enter or otherwise compete in normal markets for that species, and overages would either be (1) converted to meal, mince, or oil products, which could then be sold or (2) donated to an approved food bank distributor. This option would not apply to prohibited species (i.e., salmon, Pacific halibut, Dungeness crab). If a vessel were to choose to deliver to a food bank distributor, provisions would be made such that state or Federal enforcement representatives would have the opportunity to monitor any such offloading. The vessel could not receive compensation or otherwise benefit from any overage amounts unless the overage were converted to meal, mince or oil products.

The number of observers required for a vessel to participate in the overage program would be evaluated periodically, and changes would generally be announced concurrent with the annual specifications and management measures and, at least, prior to the start of the fishery. In its first year, this provision would apply to an at-sea processor that carries at least two observers. In the future, a higher level of observer coverage might be needed on some high-capacity vessels. The number of days on the fishing grounds would be determined from information routinely submitted by the observer aboard the vessel. A vessel would not be obliged to operate under this program. Some at-sea processing vessels could choose to continue to carry only one observer, the minimum amount recommended by the Council, in which case current trip limits would continue to apply for the rest of the limited entry fleet.

To the extent that vessels choose to participate in this program, this full-retention option would eliminate regulatory discards in the offshore whiting fishery, give offshore fishery participants an incentive to carry more than one observer (if they are not already required to do so), and improve catch data. Further, this program could provide fish for food banks, and the processed incidental catch would not compete in or affect pricing in traditional markets for food fish.

Revisions to Annual Management Measures Framework to Allow Flexibility for Protecting Overfished and Depleted Species

In the FMP, administrative processes for groundfish management are tiered, with some regulatory changes requiring at least two Council meetings and a regulatory amendment and other regulatory changes requiring discussion at a single meeting followed by publication in the **Federal Register.** Some changes may also be made through an abbreviated rulemaking process, which allows the Council to take certain actions needing swift implementation by discussing those actions with the public and with its advisory entities over two Council meetings, with the results recommended for publication by NMFS in the **Federal Register**.

Each year at its September and November meetings, the Council uses the abbreviated rulemaking process to develop its recommendations for groundfish specifications and management measures for the following year. NMFS evaluates and publishes the Council's recommendations as the ''annual specifications and management measures'' in a **Federal Register** document each January. Annual specifications establish ABCs, OYs, and harvest guidelines for managed species. Management measures are the specific landings limits, size limits, and time/area closures that are set in place for one calendar year. As the fishing year progresses, the Council tracks harvest rates for each sector of the commercial fishery, and may recommend adjusting management measures to either allow more access to, or to restrict harvest of, a particular species or species group. For the recreational fisheries, the Council sets aside a portion of the available harvest of recreationally targeted species and sets recreational fishery management provisions in place at the beginning of the year. Recreational fishery management measures may also be adjusted inseason.

While existing procedures allow the Council to publish annual specifications and management measures through a two-meeting process and a single **Federal Register** document, adding to the list of measures that are considered ''routine'' requires a longer process of consideration and development for each new management measure. Management measures are designated as routine through the Federal rulemaking process, which requires two or more Council meetings to develop and analyze proposed routine management measures.

As stated in the summary section, there were several groundfish management measures introduced in 2000 that had not previously been designated as ''routine,'' but that were specifically crafted to provide protection for overfished and depleted stocks while still allowing the harvest of healthy stocks. Also, proposed new recreational measures, particularly for California fisheries, were outside the routine management measures. The Council also wished to prohibit commercial lingcod landings during the lingcod spawning and nesting season, as well as to provide differential trip limits for different commercial gear types, additional proposals that were outside the routine management measures. NMFS implemented the new measures

for the 2000 fishing season via a Magnuson-Stevens Act emergency rule to ensure protection for overfished and depleted stocks, while allowing access to healthy stocks.

For 2001 and beyond, the Council wanted to have the flexibility to craft new measures through a two-meeting process to protect overfished and depleted species without having to implement those measures via a Magnuson-Stevens Act emergency rule. Amendment 13 would revise the FMP to allow increased flexibility for stock protection, and this proposed rule would amend the groundfish regulatory framework for routine management measures to reflect that flexibility. For commercial fisheries, the list of routine management measures would be amended to include, in cases where protection of an overfished or depleted stock is required, cumulative landings limits that may be different based on type of gear used and closed seasons for any groundfish species. For recreational fisheries, the list of routine management measures would be amended to include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements.

Under Amendment 13, the first time any new measure is used (e.g., first time for a size limit, first time for limits on a particular species, first time for a closed season,), the Council's two-meeting process will be used. Once adopted as ''routine,'' the new measure could be adjusted during the year. Each year, the Council would publish in its Stock Assessment and Fishery Evaluation document an updated list of management measures that have been designated as routine through the two-meeting process; the list of routine measures will no longer be included in the groundfish regulations.

Eliminating Limited Entry Permit Endorsements Other Than The ''A'' Endorsement

In 1991, the Council adopted Amendment 6 to the FMP to establish a limited entry permit program for the Pacific coast groundfish fishery. In order to smooth the transition from an entirely open access fishery to the restrictions of limited entry, the Council recommended the creation of four different permit endorsements to provide different levels of fishery access. Only the ''A'' endorsement is in use today, All 499 current limited entry permits have ''A'' endorsements. ''A'' endorsements were originally intended for those vessel owners with a significant level of historical participation in, and dependence on, the fishery during a ''window period'' from 1984 through 1988. With Amendment 13, the Council has recommended removing the other three endorsements, as they are outdated and/or unused. In addition to the ''A'' endorsement, limited entry permit endorsements include the provisional ''A'' endorsement, the ''B'' endorsement, and the ''designated species B'' endorsement.

Provisional ''A'' endorsements were initially developed for vessel owners who had purchased a vessel part way through the window period or who had a vessel under construction or conversion during the window period. The provisional ''A'' endorsement requires that, for the first three years after the new vessel purchase or after completion of the vessel upgrade, vessel owners meet minimum groundfish landings requirements. If the landings requirements were met for all three years, the provisional ''A'' endorsement could be converted to an ''A'' endorsement. When the limited entry program went into effect, three vessels qualified for and were issued provisional ''A'' endorsements. All three vessels met the annualized landing requirements and were issued ''A'' endorsements by 1997. NMFS has received no further applications for provisional ''A'' endorsed limited entry permits.

Provisional ''A'' endorsements have also been available to owners of vessels that landed sufficient groundfish during the window period, but that used a gear type that has been subsequently prohibited by a state (Washington, Oregon, or California) or the Secretary of Commerce. Under Amendment 13, if a state or the Secretary of Commerce bans a particular gear at some future time, provisional ''A'' endorsements would no longer be available to the affected vessels. NMFS expects that removing this opportunity will have little or no effect on current fishery participants because the limited entry window period is 13 to 17 years old and the character of the fishery and its participants have changed significantly since that period.

''B'' endorsements were developed to allow vessel owners who had participated in the fishery at a low level during the window period to continue in the fishery for a three-year adjustment period before being required to have an ''A'' endorsed limited entry permit for participation in the limited entry fishery. Vessels qualified for ''B'' endorsements with historic landings levels much lower than the minimum landing requirements for ''A'' endorsements. Unlike provisional ''A'' endorsements, ''B'' endorsements could not be upgraded to ''A'' endorsements. Twenty vessels initially qualified for and received ''B'' endorsed limited entry permits. In accordance with the FMP, those permits and the ''B'' endorsement opportunity expired on December 31, 1996. Of those vessels initially issued ''B'' endorsements, two are now participating in the fishery with ''A'' endorsement permits. The ''B'' endorsement is now obsolete.

''Designated species B'' endorsements were developed to allow domestic harvesters to target species that were considered underutilized and harvestable without significant bycatch of other species. At the time that the Amendment 6 ''designated species B ''permit provision was implemented in 1994, three species in the groundfish fishery were designated as underutilized (Pacific whiting, shortbelly rockfish, and jack mackerel). Under the''designated species B'' program, any Pacific whiting, shortbelly rockfish, and jack mackerel that would not be used by the limited entry fleet could be made available to domestic vessels outside the limited entry fleet by providing those vessels with ''designated species B'' endorsed permits.

Although the ''designated species B'' endorsement program was created to allow domestic vessels outside the limited entry fleet to participate in underutilized groundfish fisheries, it never benefitted the domestic fleet in a manner originally envisioned by the Council. First, The three groundfish species that the ''designated species B'' permit program was designed to target became either fully utilized (Pacific whiting), removed from the list of groundfish species managed under the groundfish FMP (jack mackerel), or found to co-occur with overfished and depleted rockfish species under the protection of rebuilding measures (shortbelly rockfish). Second, NMFS never received any requests or applications for ''designated species B'' permits, and thus, never issued any such permits.

Amendment 13 would remove the three outdated and/or unused limited entry permit endorsements as essentially a housekeeping measure. This proposed rule would revise the groundfish regulations to remove specifications for, and references to, these obsolete endorsements. Because these endorsements are not longer in use, removing them would have neither biological nor socio-economic effects on the environment.

Biological Impacts

The biological effects of implementing the Amendment 13 increased utilization

program in the at-sea whiting fishery are expected to be positive. This program would encourage at-sea whiting vessels to carry more than one observer, which would result in improved catch and discard accounting in the whiting fisheries. Observer data in the whiting fisheries will also be used for a variety of groundfish stock assessments. Increased observer coverage would improve both the quality and quantity of data derived from the whiting observer program. Over the long-term, these data improvement will lead to more informed stock assessments, which should result in better fisheries management and a lower chance of unforeseen overfishing.

This proposed rule to implement Amendment 13 would also introduce new flexibility into the annual specifications and management measures process. This increased flexibility would allow the Council to craft new management measures without a regulatory amendment, in cases where those measures were needed to protect overfished and depleted stocks while allowing access to healthy stocks. Providing new management flexibility for protecting overfished and depleted stocks is expected to have positive biological effects.

Socio-economic Impacts

The at-sea whiting increased utilization program would be a voluntary program, providing an incentive in the form of modest revenue from fish meal, to those vessels that choose to carry more than one observer. The revenue generated from selling fish meal from non-whiting incidental catch is expected to offset the cost of additional observers, making this program essentially revenue neutral for vessels that make meal.

Catcher-processors now voluntarily carry two observers per vessel, while motherships generally carry one observer. The cost to at-sea processors of carrying an additional observer, at $250 per day for a 17-day season as occurred in 1999, would be $4,250 per vessel. Training and debriefing costs would require approximately $1,250 per vessel for the additional individual, bringing the per vessel total to approximately $5,500.

In 1999, the total of retained and discarded non-whiting groundfish taken in both the catcher-processor and mothership sectors was 1142 mt, 94 percent of which was discarded. At this incidental catch level and at a product recovery ratio of 0.17 (standard for fish meal from groundfish, 50 CFR part 679), approximately 194 mt of fish meal could have been produced for sale. Fish meal is usually exported for foreign markets, with prices per metric ton varying by importing country. Based on total exports, fish meal prices in 1999 averaged about $590 per metric ton. Depending on where the fish meal generated by this program is sold, 194 mt of fish meal could be expected to generate about $114,460 for the fleet. Six catcher-processors and six motherships participated in the 1999 whiting fisheries, setting the expected per vessel revenue from this program at about $9,540. While observer costs per vessel are relatively fixed, revenue generated by this program would vary between vessels according to the rates at which they intercept non-whiting groundfish. On the whole, however, it appears that this program would offset the per vessel cost of carrying an additional observer without generating revenues high enough to give at-sea fleet participants an incentive to target non-whiting groundfish.

Vessels participating in this program would also have the option of donating non-whiting incidental catch to charitable organizations. If a vessel were to donate its non-whiting trip limit overages to food banks under this program, it would not recover the cost of the additional observer needed to participate. Some at-sea processing vessels also may not be equipped to process non-whiting groundfish into fillets and other useable forms, and food banks may be reluctant to accept donations of whole fish. In 1999, 99 percent (by volume) of the total groundfish catch of non-tribal motherships and catcher-processors was whiting. It may not be efficient for an at-sea processor to reserve on-board space and time to process 1 percent of its catch. However, vessels that participate in a food bank donation program likely have reasons other than efficiency for their participation.

Increased flexibility in the annual management measures process will have some economic effect on the fisheries. That effect, however, is not measurable until specific management measures are taken. Amendment 13 specifies that, any time the Council creates a new management measure under the more flexible framework, it will provide an assessment of the biological and socio-economic effects of that measure. Nonetheless, some qualitative conclusions may be made about how this increased flexibility will affect the fisheries.

For the 2000 fisheries, the Council asked NMFS to take some emergency regulatory actions under the Magnuson-Stevens Act in order to allow more flexibility in the annual management measures process. In general, those emergency measures were needed because the status quo framework was not flexible enough for the Council to provide adequate protection for overfished and depleted species while also allowing fisheries access to healthy stocks. Even with greater flexibility, some amounts of healthy stocks cannot be fully harvested because their harvest will be constrained by regulations designed to protect co-occurring overfished species. For example, management measures to protect overfished and depleted species were drastic enough in 2000 to induce the governors of California, Oregon, and Washington to ask the Secretary of Commerce to declare the West Coast groundfish fishery a Federal disaster.

Amendment 13 would build annual management measures flexibility into the FMP for the purpose of providing protection to overfished and depleted species. This increased flexibility will allow the Council to craft management measures that protect stocks through fishery and gear-specific regulations for both protected species and species that associate with protected species. Increased flexibility will also help to allow sustainable harvest of healthy stocks. In general, a future of more flexible management is expected to be more economically positive than under status quo.

Classification

At this time, NMFS has not determined that Amendment 13, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 13.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The primary regulatory change introduced by Amendment 13 would be an increased utilization program for the at-sea whiting fishery that affects catcher/processors and motherships, which are considered small businesses. This would be a voluntary program, providing an incentive to vessels that carry more than one observer in the form of modest revenue from fish meal. The revenue generated from selling fish meal

made from non-whiting incidental catch would be expected to offset the cost of additional observers, making this program essentially revenue neutral for vessels that make meal. Because the whiting resource has been allocated between three different non-tribal sectors (catcher/processors, motherships receiving catcher boat deliveries, shorebased processing plants,) providing increased flexibility for these large businesses would not be expected to place small businesses in the whiting fishery (most catcher boats, some shoreside processing plants) at a disadvantage relative to the larger businesses.

The economic effects of increasing flexibility in the annual management measures process cannot be quantified until specific measures are implemented. However, it is generally expected that increasing management flexibility to allow access to healthy fish stocks while protecting overfished and depleted stocks would compare favorably over the status quo. The status quo alternative would be greater reduction in harvest of healthy stocks. When new management measures are proposed, these measures would be analyzed pursuant to the requirements of the RFA. The Council provides economic analysis during its development of annual management measures, and an EA/RIR for implementation of those measures. Setting annual management measures is a balancing exercise in which the Council meets its requirements to protect overfished and depleted species, yet allows fishery access to healthy stocks. In general, increasing the flexibility in this framework process allows the Council to craft management measures that protect fish stocks while mitigating the economic effects of that protection.

Removing specifications for unused limited entry permit endorsements from the regulations would have no economic or other effect on small businesses. Eliminating these endorsements would relieve a minor reporting requirement for limited entry vessels that annually reply to the NMFS survey on underutilized species.

Accordingly, a regulatory flexibility analysis was not prepared.

This proposed rule clarifies entries for a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The Product Transfer/Offloading Log has been approved under OMB control number 0648-0271 with an estimated response time of 20 minutes. Furthermore, this rule would reduce a collection-of-information requirement (approved under OMB control number 0648-0203) associated with the ''designated species B'' permit endorsement program.

This proposed rule also contains new collection-of-information requirements subject to review and approval by OMB under the PRA. This requirement would be for vessels participating in the voluntary increased utilization program to notify authorized officers of their intent to offload retained overages as a donation to a tax-exempt hunger relief agency. This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 5 minutes to make a telephone call to NMFS enforcement to indicate an intent to offload fish in excess of cumulative limits for the purpose of donating that fish to a hunger relief organization. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**)and to OMB at the Office Information and Regulatory Affairs, OMB, Washington, D.C. (Attn: NOAA Desk Officer).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: November 9, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

l. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, new definitions for ''Overage'' and ''Tax-exempt organization'' are added in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Overage refers to the amount of fish harvested by a vessel in excess of the applicable trip limit.

* * * * *

Tax-exempt organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1(§§ 1.501 to 1.640).

* * * * *

3. In § 660.321, paragraph (b) is revised to read as follows:

§ 660.321 Specifications and management measures.

* * * * *

(b) *Annual actions.* The Pacific Coast Groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations.

* * * * *

4. In § 660.323, paragraph (a)(3)(vi) is added and paragraph (b) is revised to read as follows:

§ 660.323 Catch restrictions.

(a) * * *

(3) * * *

(vi) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (a)(3)(vi)(A) of this section are met. For purposes of this program, ''fishing day'' means a 24—hour period, from 0001 hours through 2400 hours, local time, in which fishing

gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to participate in the program will be announced prior to the start of the fishery, generally concurrent with the annual specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report.

Note: For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.

(A) *Conditions.* Conditions for participating in the voluntary full utilization program are as follows.

(*1*) All catch must be made available to the observers for sampling before it is sorted by the crew.

(*2*) Any retained catch in excess of cumulative trip limits must either be:

(*i*) Converted to meal, mince, or oil products, which may then be sold; or

(*ii*) Donated to a bona fide tax-exempt hunger relief agency (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief agency immediately upon the request of an authorized officer.

(*3*) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(*4*) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at http://www.nwr.noaa.gov.

(*5*) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief agency.

(*6*) Prohibited species may not be retained.

(*7*) Donation of fish to a hunger relief agency must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of ''0'' or ''donation,'' followed by the name of the hunger relief agency receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief agency or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(B) [Reserved]

* * * * *

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on an annual or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if they have been designated as routine through the two-meeting process described in PCGFMP. Management measures that have been designated as routine will be listed annually in the Council's Stock Assessment and Fishery Evaluation (SAFE) document.

(1) *Commercial limited entry and open access fisheries—* (i) *Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on an annual or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes set forth below.

(A) *Trip landing and frequency limits.* To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984—88 window period.

(B) *Size limits.* To protect juvenile fish; to extend the fishing season.

(ii) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on an annual or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

(2) *Recreational fisheries— all gear types.* Routine management measures for all groundfish species, separately or in any combination, include bag limits, size limits, time/area closures, boat limits, hook limits, and dressing requirements. All routine management measures on recreational fisheries are intended to keep landings within the harvest levels announced by NMFS, to rebuild and protect overfished or depleted species, and to maintain consistency with state regulations, and for the other purposes set forth in this section.

(i) *Bag limits.* To spread the available catch over a large number of anglers; to avoid waste.

(ii) *Size limits.* To protect juvenile fish; to enhance the quality of the recreational fishing experience.

* * * * *

5. In § 660.333, paragraph (a) is revised, and paragraphs (h)(1)(i) and (ii) are removed, and paragraphs (h)(1)(iii) and (iv) are redesignated as paragraphs (h)(1)(i) and (ii), respectively, to read as follows:

§ 660.333 Limited entry fishery—general.

(a) *General.* Participation in the limited entry fishery requires that the owner of a vessel hold (by ownership or otherwise) a limited entry permit affixed with a gear endorsement registered for use with that vessel for the gear being fished. A sablefish endorsement is also required for a vessel to participate in the regular and/or mop-up seasons for the nontrawl, limited entry sablefish fishery, north of 36° N. lat. There are three types of gear endorsements: trawl, longline, and pot (or trap.) More than one type of gear endorsement may be affixed to a limited entry permit. While the limited entry fishery is open, vessels fishing under limited entry permits may also fish with open access gear; except that during a period when the limited entry fixed gear sablefish fishery is limited to those vessels with sablefish endorsements, a longline or pot (or trap) limited entry permit holder without a sablefish endorsement may not fish for sablefish with open access gear.

* * * * *

§§ 660.335 and 660.337 [Amended]

6. Sections 660.335 and 660.337 are removed and reserved.

§ 660.338 [Amended]

7. In § 660.338, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

[FR Doc. 00–29781 Filed 11–20–00; 8:45 am]

BILLING CODE: 3510–22–S

Notices

Federal Register
Vol. 65, No. 225
Tuesday, November 21, 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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Joint Institute for Food Safety Research; Public Meeting

AGENCIES: United States Department of Agriculture (USDA), Department of Health and Human Services (DHHS).

ACTION: Notice; public meeting; establishment of public docket.

SUMMARY: On July 8, 1998, President Clinton directed the Secretaries of Agriculture and Health and Human Services to develop a plan to create the Joint Institute for Food Safety Research (JIFSR). On July 3, 1999, following extensive public consultations, DHHS and USDA submitted the requested plan to the President. The report can be obtained at *http://www.Foodsafety.gov/*.

USDA and DHHS are now soliciting public comments on food research needs via a public meeting. The purposes of the meeting are to listen to the overall food safety research priorities and agenda from the JIFSR Policy and Budget Committee members and have an opportunity to ask questions and/or make comments on their views on priorities and important priorities for food safety research.

The meeting is open to the public. Written comments and suggestions on issues that may be considered in the meeting may be submitted to the CSREES Docket Clerk at the address below.

DATES: The meeting will be held on December 1, 2000, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in Room 107A, Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–0110.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Wood, (202) 720–5887 or by e-mail to maureen.wood@usda.gov.

SUPPLEMENTARY INFORMATION: Persons wishing to present comments orally at this meeting are requested to pre-register by contacting Ms. Maureen Wood at (202) 720–5887, by fax at (202) 690–2842, or by e-mail to maureen.wood@usda.gov. Participants may reserve a 5-minute comment period when they register. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following the presentations. Reservations will be confirmed on a first-come, first-serve basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting or may be mailed to Ms. Maureen Wood, USDA/REE, Room 217W, Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW., Washington, DC 20250–0110. Please provide five copies of the comments. Written comments must be postmarked by December 18, 2000 to be considered. All comments and the official transcript of the meeting when it becomes available, will be available for review for six months at the address listed above from 8:30 a.m. to 4:30 p.m., Monday through Friday.

Participants who require a sign language interpreter or other special accommodations should contact Ms. Wood by Friday, November 24, 2000 as directed above.

Done in Washington, DC, on this 13th day of November, 2000.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics Department of Agriculture.

William Raub,

Deputy Assistant Secretary for Science Policy, Department of Health and Human Services.

[FR Doc. 00–29750 Filed 11–20–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Portion of Guarantee Authority Available for Fiscal Year 2001

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR part 4279, subpart B, each fiscal year the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious, such as projects in rural communities that remain persistently poor, experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster or are experiencing fundamental structural changes in the economic base.

Not more than 12 percent of the Agency quarterly apportioned guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the above quarterly limits have been reached, all additional loans guaranteed during the remainder of that quarter will require a 2 percent guarantee fee and not exceed an 80 percent guarantee limit. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBANK) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. CAIP loans are subject to a 50 percent limit of the overall CAIP loan program.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent

guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: November 21, 2000.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Hennings, Senior Loan Specialist, Business Programs Processing Division, Rural Business-Cooperative Service, USDA, Stop 3221, 1400 Independence Avenue, SW., Washington, DC 20250–3221, telephone (202) 690–3809.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866.

Dated: November 13, 2000.

Judith A. Canales,

Acting Associate Administrator.

[FR Doc. 00–29704 Filed 11–20–00; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Income and Program Participation (SIPP) Wave 2 of the 2001 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 22, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on taxes, the ownership and contributions made to an Individual Retirement Account, Keogh, and 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 persons, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Two waves of interviewing will occur in the 2001 SIPP Panel during FY 2001. The total annual burden for 2001 Panel SIPP interviews would be 78,750 hours in FY 2001.

The topical modules for the 2001 Panel Wave 2 collect the following information about:

- Work Disability History
- Education and Training History
- Marital History
- Fertility History
- Migration History
- Household Relationships

Wave 2 interviews will be conducted from June 2001 through September 2001.

A 10-minute reinterview of 2,500 persons is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 835 burden hours in FY 2001.

An additional 1,050 burden hours is requested in order to continue the SIPP Methods Panel testing which will be conducted during the period of Wave 2 interviewing. The test targets SIPP Wave 1 items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875
Form Number: SIPP/CAPI Automated Instrument
Type of Review: Regular
Affected Public: Individuals or Households
Estimated Number of Respondents: 78,750 persons per wave
Estimated Time Per Response: 30 minutes per person on average
Estimated Total Annual Burden Hours: 80,635
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary
Legal Authority: Title 13, United States Code, Section 182

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: November 16, 2000.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–29745 Filed 11–21–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–822–804, A–560–811, A–449–804, A–841–804, A–570–860, A–455–803, A–580–844, A–823–809]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Postponement of Preliminary Antidumping Duty Determinations.

EFFECTIVE DATE: November 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ronald Trentham or Michele Mire, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6320 or (202) 482–4711, respectively.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of steel concrete reinforcing bars from Belarus, Indonesia, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea and Ukraine. The deadline for issuing the preliminary determinations in these investigations is now January 16, 2001.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (2000).

Background

On July 25, 2000, the Department initiated antidumping duty investigations of steel concrete reinforcing bars from Austria, Belarus, Indonesia, Japan, Latvia, Moldova, the People's Republic of China, Poland, the Republic of Korea, the Russian Federation, Ukraine and Venezuela for the period October 1, 1999 through March 31, 2000 (65 FR 45754). The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation.

Postponement of Preliminary Determinations

On November 9, 2000, the Department received a request for postponement of the preliminary determinations from the Rebar Trade Action Coalition (hereinafter, the petitioner), in accordance with 19 CFR 351.205(e). There are no compelling reasons for the Department to deny the petitioner's request. Therefore, pursuant to section 733(c) of the Act, the Department is postponing the deadline for issuing these determinations until January 16, 2001.

This notice of postponement is in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(e).

Dated: November 15, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–29794 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Monday, December 4, 2000, and Tuesday, December 5, 2000, from 9 a.m. until 5 p.m. and Wednesday, December 6, 2000, from 9 a.m. until 12 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Public Law 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/*.

DATES: The meeting will be held on December 4 and 5, 2000, from 9 a.m. until 5 p.m. and on December 6, 2000, from 9 a.m. until 12 p.m.

ADDRESSES: The meeting will take place at the Microsoft Corporation, Olympic Room 27/1810, Building 27, 1 Microsoft Way, Redmond, WA.

Agenda:

- Welcome and Overview
- Legislative Updates
- Review of NIST Computer Security Program Activities
- Security Metrics Issues and Recommendations
- Privacy Awareness Plan of Action Discussion
- Security Governance Discussion
- Board Work Plan Follow-On
- Internet Security Briefing
- Public Participation
- Agenda Development for March 2000 meeting
- Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than December 1, 2000. Approximately 15

seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3696.

Dated: November 15, 2000.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 00–29753 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige in National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Monday, December 4, 2000. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Overview of the 2000 Baldrige Cycle, Report from the Judges' Panel, Program Status and Plans for 2001, Discussion of International Quality Award Meeting, Discussion of Plans/Issues and Development of Recommendations.

DATES: The meeting will convene December 4, 2000, at 8:30 a.m. and adjourn at 3:30 p.m. on December 4, 2000.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Chemistry Building, Red Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: November 15, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–29666 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

November 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bangladesh and exported during the period January 1, 2001 through December 31, 2001 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2001 period. The 2001 limits have been reduced for carryforward applied to the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	613,318 dozen.
331	1,553,816 dozen pairs.
334	187,110 dozen.
335	335,956 dozen.
336/636	601,200 dozen.
338/339	1,741,614 dozen.
340/640	3,937,027 dozen.
341	3,261,471 dozen.
342/642	564,285 dozen.
347/348	2,935,322 dozen.
351/651	896,202 dozen.
352/652	13,370,404 dozen.
363	33,405,188 numbers.
369–S [1]	2,239,174 kilograms.
634	654,609 dozen.
635	424,110 dozen.
638/639	2,208,685 dozen.
641	1,365,669 dozen.
645/646	518,685 dozen.
647/648	1,846,116 dozen.
847	980,219 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 1, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29740 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

November 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limit for textile products, produced or manufactured in Fiji and exported during the period January 1, 2001 through December 31, 2001 is based on a limit notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit for the 2001 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338/339/638/639, produced or manufactured in Fiji and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of 1,681,605 dozen of which not more than 1,401,340 dozen shall be in Categories 338–S/339–S/638–S/639–S.[1]

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limit for that year (see directive dated December 10, 1999) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29741 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers in Category 638 except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers in Category 639 except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), a Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. Certain limits have been reduced for carryforward that was applied to the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001

CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998, you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	1,079,015 kilograms.
219	11,986,133 square meters.
225	8,393,402 square meters.
300/301	4,846,176 kilograms.
313–O [1]	21,748,710 square meters.
314–O [2]	75,941,057 square meters.
315–O [3]	34,506,203 square meters.
317–O [4]/326–O [5]/617	33,328,017 square meters of which not more than 4,924,577 square meters shall be in Category 326–O.
331/631	2,891,603 dozen pairs.
334/335	280,458 dozen.
336/636	740,147 dozen.
338/339	1,430,944 dozen.
340/640	1,762,244 dozen.
341	1,059,905 dozen.
342/642	440,561 dozen.
345	512,453 dozen.
347/348	1,938,470 dozen.
350/650	215,434 dozen.
351/651	572,729 dozen.
359–C/659–C [6]	1,771,940 kilograms.
359–S/659–S [7]	1,865,199 kilograms.
360	1,568,392 numbers.
361	1,568,392 numbers.
369–S [8]	1,144,941 kilograms.
433	11,293 dozen.
443	83,781 numbers.
445/446	59,670 dozen.
447	17,811 dozen.
448	20,634 dozen.
604–A [9]	890,504 kilograms.
611–O [10]	5,584,421 square meters.
613/614/615	31,615,143 square meters.
618–O [11]	7,460,802 square meters.
619/620	10,925,921 square meters.
625/626/627/628/629–O [12].	35,285,143 square meters.
634/635	352,449 dozen.
638/639	1,832,737 dozen.
641	2,843,876 dozen.
643	392,100 numbers.
644	548,937 numbers.
645/646	981,600 dozen.
647/648	3,842,163 dozen.
847	513,809 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [13], 332, 333, 352, 359–O [14], 362, 363, 369–O [15], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [16], 464, 469pt. [17], 603, 604–O [18], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [19], 666, 669–O [20], 670–O [21], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [22], as a group.	128,605,725 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	2,957,255 square meters equivalent.
In Group II subgroup	
435	46,426 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[8] Category 369–S: only HTS number 6307.10.2005.

[9] Category 604–A: only HTS number 5509.32.0000.

[10] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[11] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[12] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[13] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[14] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[15] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[16] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[17] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[18] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[19] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[20] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[21] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[22] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated October 4, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29742 Filed 11–20–00; 8:45 am]
BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

November 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. The 2001 limits for certain categories have been reduced for carryforward applied to the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	3,554,096 square meters.
225	12,439,335 square meters.
313	8,885,239 square meters.
314	1,480,873 square meters.
315	4,442,620 square meters.
317	8,885,239 square meters.
326	3,554,096 square meters.
333/334/335/833/834/835.	385,944 dozen of which not more than 203,302 dozen shall be in Categories 333/335/833/835.
336/836	86,484 dozen.
338	469,724 dozen.
339	1,967,501 dozen.
340	444,592 dozen.
341	286,753 dozen.
342	129,724 dozen.
345	79,324 dozen.
347/348/847	1,111,821 dozen.
350/850	89,137 dozen.
351/851	103,783 dozen.
359–C/659–C [1]	546,145 kilograms.
359–V [2]	182,956 kilograms.
611	3,554,096 square meters.
625/626/627/628/629	8,885,239 square meters.
633/634/635	817,270 dozen.
638/639/838	2,406,083 dozen.
640	180,952 dozen.
641/840	311,009 dozen.
642/842	171,306 dozen.
645/646	424,169 dozen.
647/648	808,970 dozen.
659–S [3]	182,956 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [4], 464 and 469pt. [5], as a group.	1,506,199 square meters equivalent.
Sublevel in Group II	
445/446	81,201 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see directive dated December 10, 1999) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29743 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

November 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Malaysia and exported during the period January 1, 2001 through December 31, 2001 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC). In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2001 limits. Some limits are being reduced for carryforward applied to 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Information regarding the 2001 CORRELATION will be published in the **Federal Register** at a later date.

Richard B. Steinkamp,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2001, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 2001 and extending through December 31, 2001, in excess of the following limits:

Category	Twelve-month restraint limit
Fabric Group	
218–220, 225–227, 313–326, 611–O [1], 613/614/615/617, 619 and 620, as a group.	158,920,221 square meters equivalent.
Sublevels within the group	
218	9,118,061 square meters.
219	44,171,941 square meters.
220	44,171,941 square meters.
225	44,171,941 square meters.
226	44,171,941 square meters.
227	44,171,941 square meters.
313	52,682,131 square meters.
314	63,380,587 square meters.
315	44,171,941 square meters.
317	44,171,941 square meters.
326	8,541,858 square meters.
611–O	5,125,115 square meters.
613/614/615/617	50,704,472 square meters.
619	6,833,487 square meters.
620	8,070,366 square meters.
Other specific limits	
200	363,279 kilograms.
237	517,348 dozen.
300/301	3,852,993 kilograms.
331/631	2,645,408 dozen pairs.
333/334/335/835	321,098 dozen of which not more than 192,659 dozen shall be in Category 333 and not more than 192,659 dozen shall be in Category 835.
336/636	623,415 dozen.
338/339	1,460,280 dozen.
340/640	1,800,315 dozen.
341/641	2,333,276 dozen of which not more than 832,397 dozen shall be in Category 341.
342/642/842	558,870 dozen.
345	214,309 dozen.
347/348	618,869 dozen.
350/650	201,550 dozen.
351/651	327,639 dozen.
363	5,432,621 numbers.
435	16,121 dozen.
438–W [2]	13,193 dozen.
442	19,646 dozen.
445/446	31,184 dozen.
604	1,689,451 kilograms.
634/635	1,089,009 dozen.
638/639	606,097 dozen.
645/646	490,663 dozen.
647/648	2,241,004 dozen of which not more than 1,616,304 dozen shall be in Category 647–K [3] and not more than 1,616,304 dozen shall be in Category 648–K [4].

Category	Twelve-month restraint limit
Group II	
201, 222–224, 239pt.[5], 332, 352, 359pt.[6], 360–362, 369pt.[7], 400–431, 433, 434, 436, 438–O[8], 440, 443, 444, 447, 448, 459pt.[9], 464, 469pt.[10], 600–603, 606, 607, 618, 621, 622, 624–629, 633, 643, 644, 649, 652, 659pt.[11], 666, 669pt.[12], 670, 831, 833, 834, 836, 838, 840, 843–858 and 859pt.[13], as a group.	49,251,041 square meters equivalent.

[1]Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085

[2]Category 438–W: only HTS numbers 6104.21.0060, 6104.23.0020, 6104.29.2051, 6106.20.1010, 6106.20.1020, 6106.90.1010, 6106.90.1020, 6106.90.2520, 6106.90.3020, 6109.90.1540, 6109.90.8020, 6110.10.2080, 6110.30.1560, 6110.90.9074 and 6114.10.0040.

[3]Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20,.1060 and 6113.00.9044.

[4]Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

[5]Category 239pt.: only HTS number 6209.20.5040 (diapers).

[6]Category 359pt.: all HTS numbers except 6406.99.1550.

[7]Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[8]Category 438–O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.8020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.9072, 6114.10.0020 and 6117.90.9025.

[9]Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[10]Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[11]Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[12]Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[13]Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2000 shall be charged to the applicable category limits for that year (see the November 8, 1999 directive) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Richard B. Steinkamp,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–29744 Filed 11–20–00; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY DIVISION

Sunshine Meeting Notice

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, November 29, 2000.

LOCATION: Room 410, East-West Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Closed to the Public—Pursuant to 5 U.S.C. 552b(f) (1) and 16 CFR 1013.4(b) (3), (7), (9) and (10) and submitted to the Federal Register pursuant to 5 U.S.C. 552b(e)(3).

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 17, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–29885 Filed 11–17–00; 2:09 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Advisory Board Meeting

AGENCY: Corporation for National and Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service gives notice under Public Law 92–463 (Federal Advisory Committee Act), that it will hold a meeting of the Civilian Community Corps (CCC) Advisory Board. The Board advises the Director of CCC concerning the administration of the program and assists in the development and administration of the Corps. At this meeting, the Board will discuss the general status of the program and its overall sustainability. The meeting will be open to the public.

TIME AND DATE: Tuesday, December 5, 2000, 8:30 a.m. to 4:00 p.m.

PLACE: The meeting will be held at Corporation Headquarters, 1201 New York Avenue, N.W., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Ms. Merlene Mazyck, 1201 New York Avenue N.W., 9th Floor, Washington, D.C. 20525. Telephone (202) 606–5000, ext. 137 (T.D.D. (202) 565–2799).

Special Needs: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Individuals who have a disability and who need an accommodation to attend the meeting may notify Ms. Mazyck.

Dated: November 15, 2000.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 00–29703 Filed 11–20–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Army

Committee Meeting Notice

AGENCY: United States Army School of the Americas (USARSA), Training and Doctrine Command (TRADOC), U.S. Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

Name of Committee: USARSA Subcommittee of the Army Education Advisory Committee.

Dates of Meeting: 14–15 December 2000.

Place of Meeting: USARSA, Building 35, Fort Benning, Georgia.

Time of Meeting: 0830–1630, 14 December and 0830–1000, 15 December 2000.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to LTC Bruce T. Gridley, U.S. Army School of the Americas, ATTN: ATZB–SAZ–CS, Ft. Benning, Georgia 31905–6245.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Presentation by the Commanding General, TRADOC, DUSA–IA, USSOUTHCOM and USARSA's transformation.

1. Purpose of Meeting: This is the eighth USARSA Subcommittee meeting. The Subcommittee will receive a report from the Commander, TRADOC, and discuss the transformation of USARSA.

2. Meeting of the Advisory Committee is open to the public. Due to space limitations, attendance may be limited to those persons who have notified the Committee Management Office in writing at least 5 days prior to the meeting date of their intent to attend.

3. Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the subcommittee chairman may allow public presentations of oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–29759 Filed 11–20–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Quick, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the U.S. Army Corps of Engineers 2000 Senior Executive Service Performance Review Board are:

1. Maj. Gen. Milton Hunter, (Chair), Deputy Commander, U.S. Army Corps of Engineers (USACE);

2. Mr. William Dawson, (Alternate Chair), Director of Programs Management, Southwest Division, USACE;

3. Brig. Gen. Edwin Arnold, Jr., Commander, Mississippi Valley Division, USACE;

4. Mr. Louis Carr, Director of Engineering and Technical Services, Mississippi Valley Division, USACE;

5. Mr. Fred Caver, Chief, Programs Management Division, Office of the Deputy Commanding General for Civil Works, HQUSACE;

6. Mr. Stephen Coakley, Deputy Chief of Staff for Resource Management, HQUSACE;

7. Brig. Gen. Robert Griffin, Commander, Great Lakes and Ohio River Division, USACE;

8. Ms. Patricia Rivers, Chief, Environmental Division, Office of the Deputy Commanding General for Military Programs, HQUSACE; and

9. Dr. Barbara Sotirin, Director, Cold Regions Research and Engineering Laboratory, Engineer Research and Development Center, USACE.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–29758 Filed 11–20–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability (NOA) of Draft Environmental Impact Report/ Environmental Impact Statement for the Proposed Guadalupe Creek Restoration Project, San Jose, CA

AGENCY: U.S. Army Corps of Engineers, Sacramento District, DOD.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers (Corps) and the Santa Clara Valley Water District (District) have prepared a Draft Environmental Impact Report /Environmental Impact Statement (EIR/EIS) for the proposed Guadalupe Creek Restoration Project in San Jose, California. This Draft EIR/EIS is being made available for a 45-day public comment period.

DATES: Comments on the Draft EIR/EIS should be submitted on or before January 8, 2001.

ADDRESSES: Comments on the Draft EIR/EIS should be submitted to the Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118–3686 (Attention: Al Gurevich). Printed copies of the Draft EIR/EIS are available for public inspection and review at the locations listed below in Supplementary Information.

FOR FURTHER INFORMATION CONTACT: 1. Al Gurevich, Project Manager, Santa Clara Valley Water District, (408) 265–2607, extension 2018, or electronic mail: *AlGurevi@scvwd.dst.ca.us.*

2. Mr. Brad Hubbard, U.S. Army Corps of Engineers, Sacramento District, (916) 557–7054, or electronic mail: *bhubbard@spk.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Report Availability

The Draft EIR/EIS will be available for public inspection and review at the following locations:

Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118

U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922

Almaden Library, 6455 Camden Avenue, San Jose, CA 95120–2823

Alviso Library, 5050 North First Street, Alviso, CA 95002

Biblioteca Latino America, 921 South First Street, San Jose, CA 95110

Cambrian Library, 1780 Hillsdale Avenue, San Jose, CA 95124

Pearl Avenue Library, 4270 Pearl Avenue, San Jose, CA 95136

Rosegarden Library, 1580 Naglee Avenue, San Jose, CA 95126

Willow Glen Library, 1157 Minnesota Avenue, San Jose, CA 95125

2. Report Background and Scope

This EIR/EIS addresses the impacts of the proposed Guadalupe Creek Restoration Project, which involves riparian vegetation and fish habitat restoration along a 1.7-mile segment of Guadalupe Creek (City of San Jose, Santa Clara County, California) designated as critical habitat for steelhead by the National Marine Fisheries Service. The Guadalupe Creek Restoration Project comprises two phases. Phase 1 restoration plantings were completed in 1998. Phase 2, if

implemented, will result in the installation of approximately 6 acres of riparian vegetation, approximately 13,000 linear feet (lf) of shaded riverine aquatic (SRA) cover vegetation, and various aquatic habitat features. This EIR/EIS specifically addresses the environmental impacts of Phase 2 of the Guadalupe Creek Restoration Project and will support decision making by the U.S. Army Corps of Engineers, Santa Clara Valley Water District, and other responsible agencies to implement Phase 2 and to ensure compliance with NEPA, the California Environmental Quality Act (CEQA), and other pertinent laws and regulations. This document analyzes potential direct, indirect, and cumulative environmental, social, and economic effects of a range of action alternatives for implementing Phase 2.

The primary objective of the Guadalupe Creek Restoration Project is to restore shaded riverine aquatic (SRA) cover vegetation and improve aquatic habitat for anadromous fish (steelhead and Chinook salmon) in lower Guadalupe Creek between Almaden Expressway and Masson Dam. Additional secondary objectives are detailed in the Draft EIR/EIS. Action alternatives were developed to meet the Guadalupe Creek Restoration Project's primary objective while avoiding or minimizing adverse environmental effects to the maximum extent practicable. Alternatives were further screened based on their expected success in achieving the Guadalupe Creek Restoration Project's secondary objectives. Alternatives considered in detail in the Draft EIR/EIS include: channel and floodplain modification (proposed action/preferred alternative); reduced channel and floodplain modification; minimal channel and floodplain modification; and the No-Action (No-Project) Alternative. The proposed action/preferred alternative, described in greater detail below, would fulfill all primary and secondary objectives of the Guadalupe Creek Restoration Project.

3. Project Site

The project site encompasses approximately 1.7 miles of lower Guadalupe Creek (including the active channel and adjacent floodplain areas) between Almaden Expressway and Masson Dam in the southwestern portion of the City of San Jose, Santa Clara County, California. The study area addressed in this Draft EIR/EIS includes the project site and surrounding portions of the City of San Jose. For some resource areas (e.g., biological resources, hydrology and water quality), the Draft EIR/EIS also discusses conditions in the larger Guadalupe Creek watershed and/or Guadalupe River system.

4. Proposed Action

The proposed action (channel and floodplain modification alternative) includes channel relocation, floodplain development, and bank stabilization to enhance instream habitat and support the establishment of SRA vegetation. Implementation of the proposed action/preferred alternative would involve shifting approximately 2,500 lf of existing stream channel, excavating and removing approximately 42,000 cubic yards of material, and importing 13,000 cubic yards of material to create planting sites. In addition, under the proposed action/preferred alternative, approximately 725 lf of bank protection features would be installed and approximately 6 acres of riparian vegetation and 13,000 lf of SRA cover vegetation would be established.

5. Commenting

Comments received in response to this Draft EIR/EIS, including names and addresses of those who comment, will be considered part of the public record on the proposed action. Comments submitted anonymously will also be accepted and considered. Pursuant to 7 Code of Federal Regulations (CFR) 1.27(d), any person may request that the lead agency withhold a submission from the public record if he or she can demonstrate that the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and if the request is denied, the Corps will return the submission with notification that the comments may be resubmitted either with or without the commentor's name and address.

Dated: November 14, 2000.

Robert A. O'Brien III,

Lieutenant Colonel, Corps of Engineers, Acting Commander.

[FR Doc. 00–29760 Filed 11–20–00; 8:45 am]

BILLING CODE 3710–EZ–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 21, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 15, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information, Officer.

Office of Vocational and Adult Education

Type of Review: New Collection.

Title: Perkins Annual Levels of Performance (SC).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden: Responses: 56.—Burden Hours: 2800.

Abstract: This collection solicits proposed annual levels of performance from States and outlying areas in accordance with section 113(b)(3)(A)(v) of the Carl D. Perkins Vocational and Technical Education Act (PL 105–332).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to CAREY at (202) 708–6287. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–29714 Filed 11–20–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency information collection activities: submission for OMB review; comment request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed on or before December 21, 2000. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711, FAX at (202) 287–1705, or e-mail at Herbert.Miller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form FE–781R, Report of International Electricity Import/Export Data

2. Fossil Energy, Office of Coal and Power Import and Export Activities

3. OMB Number 1901–0296

4. Revision—Reports submitted pursuant to conditions in electricity export authorizations must be submitted either quarterly within 30 days following each calendar quarter, or annually by February 15 of each year, as required by the terms and conditions in a respondent's particular export authorization.

5. Mandatory

6. FE–781R collects electrical import/export data from entities authorized to export electric energy, to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are also used by EIA for publications. Holders of Presidential Permits are required to report.

7. Business or other for-profit

8. 1,650 hours (Reporting quarterly = 125 respondents × 4 responses per year × 2.5 hours per response; Reporting annually = 40 × 1 response × 10 hours).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, November 15, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–29736 Filed 11–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, December 6, 2000: 6:00 p.m.–9:00 p.m.

ADDRESSES: Great Basin Room, DOE Nevada Support Facility, 232 Energy Way, North Las Vegas.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Video entitled ''The Atomic Filmmakers,'' a look at ''Yesterday'' presented by the Nevada Test Site Historical Society
2. A perspective on ''Today'' by CAB members
3. Discussion of existing underground contamination
4. A glimpse at ''Tomorrow'' with priorities for future long-term monitoring
5. Update on groundwater issues

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals

who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on November 15, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–29733 Filed 11–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, December 13, 2000, 6:00 p.m.–9:30 p.m.

ADDRESSES: Comfort Inn, 433 South Rutgers Avenue, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–9121 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: 1. An overview of the current and planned activities for cleanup of the East Tennessee Technology Park will be provided by representatives from the Department of Energy/Oak Ridge Operations.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on November 16, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–29734 Filed 11–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces the eighth and final in a series of meetings of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board—Panel on Emerging Technological Alternatives to Incineration.

DATES: December 5, 2000, 8 am–9 pm MST; December 6, 2000, 8: am–11:30 am MST.

ADDRESSES: Snow King Resort—400 East Snow King Ave. Jackson, Wyoming 83001. Phone: 307–733–5200, Fax: 307–734–3093.

FOR FURTHER INFORMATION CONTACT: Mary Louise Wagner, Executive Director, or Francesca McCann, Staff Director, Office of the Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Secretary of Energy Advisory Board's Panel on Emerging Technological Alternatives to Incineration is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on emerging technological alternatives to incineration for the treatment of mixed waste which the Department of Energy should pursue. The Panel will focus on the evaluation of emerging non-incineration technologies for the treatment of low-level, alpha low-level and transuranic wastes containing polychlorinated biphenyls (PCBs) and other hazardous constituents. Waste categories to be addressed include inorganic homogeneous solids, organic homogeneous solids, and soils. The Panel will also evaluate whether the emerging non-incineration technologies could be implemented in a manner that would allow the Department of Energy to comply with all legal requirements, including those contained in the Settlement Agreement and Consent Order signed by the State of Idaho, Department of Energy, and the U.S. Navy in October 1995.

Tentative Agenda

The agenda for the December 5–6, 2000 meeting has not been finalized. However, the meeting will include panel discussion, amendments to the draft report and public comment periods. Members of the public wishing to comment on issues before the Panel on Emerging Technological Alternatives to Incineration will have an opportunity to address the Panel during the scheduled public comment period. The final agenda will be available at the meeting.

Tentative Agenda

December 5th

8 am–8:15 am—Opening Remarks.
8:15 am–8:20 am—Approval of minutes from Nov 6, 20 and 27 Teleconference Meetings.
8:20 am–9:45 am—Report edits.
9:45 am–10 am—Break.
10 am–12 noon Report edits.
12 noon–1 pm—Lunch.
1 pm–2 pm—Public Comment.

2 pm–3 pm—Report edits.

3 pm–3:15 pm—Break.

3:15 pm–4:30 pm—Report edits.

4:30 pm–5:30 pm—Public Comment.

5:30 pm–7 pm—Dinner.

7 pm–9 pm—Public Comment.

December 6th

8 am–10 am—Report edits.

10 am–10:15 am—Break.

10:15 am–11:30 am—Report edits.

11:15 am–11:30 am—Closing remarks and approval of final text to be transmitted to SEAB.

11:30 am—Adjourn Meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Panel on Emerging Technological Alternatives to Incineration and submit written comments or comment during the scheduled public comment period. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During the meeting, the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. You may submit written comments to Mary Louise Wagner, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 15, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–29735 Filed 11–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–14–000]

California Independent System Operator Corp.; Notice of Filing

November 15, 2000.

Take notice that on November 1, 2000, the California Independent System Operator Corporation (ISO) tendered for filing an application seeking authorization for the transfer of Operational Control from the City of Vernon, California (Vernon), to the ISO of Vernon's interests in certain transmission facilities pursuant to Section 203 of the Federal Power Act.

The ISO states that this filing has been served upon Vernon, the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 22, 2000. Pprotest will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29688 Filed 11–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–88–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

November 15, 2000.

Take notice that on November 9, 2000, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Sheet No. 10 and Thirtieth Revised Sheet No. 11, to be effective January 1, 2001.

CIG states the purpose of this filing is to permit CIG to collect Gas Research Institute (GRI) charges associated with its transportation pursuant to the Commission's order issued September 19, 2000 in Docket No. RP00–313–000.

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, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http.//www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29683 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–012]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

November 15, 2000.

Take notice that on November 8, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction: ITS–2 Service Agreement No. 69715 between Columbia Gulf Transmission Company and Linder Oil Company, dated October 20, 2000.

Transportation service which is scheduled to commence upon Commission authorization.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

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). 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.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29700 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–86–000]

Destin Pipeline Company L.L.C.; Notice of Compliance Filing

November 15, 2000.

Take notice that on November 9, 2000, Destin Pipeline Company, L.L.C. (Destin) tendered for filing its Statement of Compliance with the Commission in response to Order No. 587–L informing the Commission that Destin's currently effective gas tariff contains provisions permitting imbalance netting and trading by shippers.

Destin states that copies of this filing have been sent to Destin's shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 22, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29681 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–18–000]

El Paso Energy Corporation; Notice of Filing

November 15, 2000.

Take notice that on November 3, 2000, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b (1998) and Part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 33, El Paso Energy Corporation filed an Application for Commission approval of a proposed internal corporate reorganization.

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 November 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29690 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–91–000]

El Paso Natural Gas Co.; Notice of Tariff Filing

November 15, 2000.

Take notice that on November 9, 2000, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, in compliance with the Commission's order issued September 19, 2000 at Docket No. RP00–313–000, with an effective date of January 1, 2001:

Second Revised Volume No. 1–A

Eighteenth Revised Sheet No. 20
Twelfth Revised Sheet No. 22
Eighteenth Revised Sheet No. 23
Twenty-Second Revised Sheet No. 24
Eighteenth Revised Sheet No. 26
Eighteenth Revised Sheet No. 27

Fourteenth Revised Sheet No. 28
Fifth Revised Sheet No. 37
Fifth Revised Sheet No. 38
Seventh Revised Sheet No. 256
Seventh Revised Sheet No. 257

Third Revised Volume No. 2

Forty-Seventh Revised Sheet No. 1–D.2
Forty-First Revised Sheet No. 1–D.3.

El Paso states that the tariff sheets are being filed to revise the Gas Research Institute surcharges and to update the identification of low and high load factor shippers.

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). 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.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29686 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–4–000]

El Paso Natural Gas Company; Notice of Filing

November 15, 2000.

Take notice that on October 20, 2000, El Paso Natural Gas Company filed revised standards of conduct under Order Nos. 497 *et seq.,*[1] Order Nos. 566 *et seq.,*[2] Order No. 599,[3] and Order No. 637.[4]

El Paso states that it served copies of the filing on all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the 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 be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29692 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–507–004]

El Paso Natural Gas Company; Notice of Compliance Filing

November 15, 2000.

Take notice that on November 9, 2000, El Paso Natural Gas Company (El Paso) tendered its filing in compliance with ordering paragraphs (B) and (C) of the Commission's order issued October 25, 2000 at Docket No. RP99–507–000, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29697 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61–139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31,064 (1998).

[4] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 63 Fed. Reg. 10156 (February 25, 2000), FERC Statutes and Regulations 31,091 (February 9, 2000) (Order No. 637) and Order No. 637–A, FERC Statutes and Regulations 31,099 (May 19, 2000.)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–87–000]

Fitchburg Gas and Electric Light Company v. Tennessee Gas Pipeline Company; Notice of Complaint

November 15, 2000.

Take notice that on November 13, 2000, Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing a Complaint against Tennessee Gas Pipeline Company (Tennessee). The Fitchburg complaint asserts that Tennessee has unreasonably refused to waive certain restriction contained in Section 3.4(c) of its FS Rate Schedule and that Tennessee's failure to grant a waiver will interfere with Fitchburg's implementation of its state unbundling program. Fitchburg requests that the Commission order Tennessee to waive or modify its tariff to remove the limitation on a customer's right to release its capacity when the release is required by a state imposed mandatory capacity assignment program.

Any person desiring to be heard or to protest this 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 must be filed on or before November 24, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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 also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before November 24, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29682 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–374–000]

Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company; Notice of Filing

November 13, 2000.

Take notice that on November 7, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Koch Energy Trading, Inc. (KOCH), dated November 6, 2000. This Service Agreement specifies that KOCH has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and KOCH to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 6, 2000, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 28, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(9a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29737 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–6–001]

Kansas Pipeline Company; Notice of Revised Tariff Filing

November 15, 2000.

Take notice that on November 8, 2000, Kansas Pipeline Company (KPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective November 1, 2000. The revised tariff sheets, listed below, include provisions for imbalance trading and netting services:

Second Revised Sheet No. 239
Original Sheet No. 239A
First Revised Sheet No. 240
Original Sheet No. 240A
Second Revised Sheet No. 242
Second Revised Sheet No. 250
Original Sheet No. 250A
Original Sheet No. 250B
Original Sheet No. 250C

KPC states that copies of this filing have been served on all Kansas Pipeline Company customers and state commissions involved in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29678 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–90–000]

Mojave Pipeline Company; Notice of Tariff Filing

November 15, 2000.

Take notice that on November 9, 2000, Mojave Pipeline Company (Mojave), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 11, with an effective date of January 1, 2001, in compliance with the Commission's order issued September 19, 2000 at Docket No. RP00–313–000.

Mojave states that the tariff sheet is being filed to revise the gas Research Institute surcharges.

Mojave states that a copy of the filing has been served upon all shippers on Mojave's system and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http.//www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). 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*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29685 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–010]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

November 15, 2000.

Take notice that on November 9, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective December 1, 2000.

Natural states that these tariff sheets are being filed in compliance with the Commission's ''Order Accepting Contested Settlement with Modifications'' issued October 26, 2000 in Docket No. RP97–431–009, which approved, subject to several modifications, a Stipulation and Agreement (Settlement) filed by Natural in this docket on June 16, 2000. Natural states that the Settlement relates to Natural's procedures for the posting and awarding of firm capacity.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective December 1, 2000.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–431.

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 202–208–222 for assistance).

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.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29702 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–85–000]

Northern Border Pipeline Company; Notice of Compliance Filing

November 15, 2000.

Take notice that on November 9, 2000, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective December 1, 2000:

Third Revised Sheet Number 213
Fourth Revised Sheet Number 213A
Fourth Revised Sheet Number 215
Second Revised Sheet Number 217
Second Revised Sheet Number 268D
Original Sheet Number 268D.01
Original Sheet Number 268D.02
Original Sheet Number 268D.03
Second Revised Sheet Number 268E

Northern Border states that the purpose of this filing is to comply with the Commission's Order Nos. 587–G and 587–L and the Commission's Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L issued October 27, 2000 in Docket No. RM96–1–014 et al.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Rules and 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). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29680 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–84–000]

Petal Gas Storage, L.L.C.; Notice of Request for Exemption

November 15, 2000.

Take notice that on November 9, 2000, Petal Gas Storage L.L.C. (Petal) tendered for filing, in accordance with the Commission's Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L, in Docket No. RM96–1–014 issued October 27, 2000, 93 FERC ¶ 61,093 (2000), a request for an exemption from the requirement to implement imbalance netting and trading on its system in conformance with Section 284.12(c)(2)(ii) of the Commission's Regulations. Petal's shippers do not incur imbalances and are not subject to imbalance penalties. Accordingly, there are no imbalances to net or trade on Petal's system.

Petal states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 22, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29679 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–970–001; ER00–38–001; ER97–4586–004; ER97–1431–011; and ER99–972–004]

RockGen Energy LLC; Broad River Energy LLC; DePere Energy LLC; PEC Energy Marketing, Inc.; SkyGen Energy Marketing LLC; Notice of Filing

November 15, 2000.

Take notice that on November 2, 2000, RockGen Energy LLC, Broad River Energy LLC, DePere Energy LLC, PEC Energy Marketing, Inc., and SkyGen Energy Marketing LLC (collectively, the SkyGen Marketers), tendered for filing a Notification of Change in Status. The Notification of Change in Status is intended to inform the Commission that pursuant to Calpine Corporation's (Calpine) purchase of 100 percent of the outstanding shares of Polsky Energy Corporation, the ultimate owner of the SkyGen Marketers, the SkyGen Marketers have completed their change in ownership and are now affiliated with Calpine.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 395.211 and 385.214). All such motions and protests should be filed on or before November 23, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29687 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–16–000]

Ridge Generating Station Limited Partnership, and BTA Holdings, Inc.; Notice of Filing

November 15, 2000.

Take notice that on November 1, 2000, Ridge Generating Station Limited Partnership (Ridge) and BTA Holdings, Inc. (BTA Holdings) tendered for filing pursuant to section 203 of the Federal Power Act, and Part 33 of the Commission's Regulations, 18 CFR Part 33, an application requesting Commission authorization for the proposed acquisition of all of the outstanding capital stock of Wheelabrator Polk, Inc., which owns a 1.78% general partnership interest in Ridge, and Wheelabrator Ridge Energy, Inc., which owns an 87.22% limited partnership interest in Ridge, by BTA Holdings, Inc., which is indirectly 50% owned by each of Duke Energy Corporation and an individual.

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 and protests should be filed on or before November 22, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29689 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–016]

Sabine River Authority of TX & LA; Notice of Public Meeting

November 15, 2000.

a. Date and Time of Meeting: December 5, 2000; Session I 8:30 am to 12 pm; Session II 1:30 pm to 5 pm.

b. Place: Landmark Hotel, 3080 Colony Blvd., Leesville, LA 71446, 1–800–246–6926 or (337) 239–7571.

c. FERC Contacts: Frank Calcagno (Session I) (202) 219–2741; e-mail address *Frank.Calcagno@ferc.fed.us,* Jon Cofrancesco (Session II) (202) 219–0079; e-mail address *Jon.Cofrancesco@ferc.fed.us.*

d. Purpose of the Meeting: The Federal Energy Regulatory Commission, will hold a public meeting on the above date to discuss: (1) Session I—the coordination of the Toledo Bend Project's (FERC No. P–2305) Emergency Action Plan (EAP); and (2) Session II—the possible options for the resolution of a request filed with the FERC to raise the required minimum reservoir level for the Toledo Bend Project.

e. Proposed Agenda:

Session I

A. Opening Remarks—FERC
B. Description of proposed Project Facilities and Flood Notification Flow Chart—Sabine River Authority
C. Emergency Management Agency Role in Flood Flow Notification:
  1. State of Texas Emergency Management
  2. State of Louisiana Emergency Management
  3. Comments from other state and local emergency response agencies
D. Public Questions and Comments

Session II

A. Introduction
  1. Discuss meeting purpose and format
  2. Background of Issue
B. Roles of FERC and Sabine River Authority in the Toledo Bend Project
C. Discuss collaborative and license reopener processes
D. Comments from meeting participants
E. Discuss follow-up actions

f. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29698 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–26–000]

Tennessee Gas Pipeline Co.; National Fuel Gas Supply Corp.; Notice of Application

November 15, 2000.

Take notice that on November 1, 2000, Tennessee Gas Pipeline Company (Tennessee) and National Fuel Gas Supply Corporation (National Fuel), collectively Applicants, filed an abbreviated application in Docket No. CP01–26–000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act, as amended, and sections 157.7 and 157.14 of the Regulations of the Federal Energy Regulatory Commission (Commission), requesting a certificate of public convenience and necessity granting the Applicants authorization to amend the Hebron Storage Agreement in certain respects. The application is on file with the Commission and open to public inspection. This filing may be viewed via the internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Any questions regarding the application should be directed to Christopher D. Young, Senior Counsel, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 at (713) 420–7239 or David W. Reitz, National Fuel Gas Supply Corp., 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949.

The Applicants request that the Commission issue an order authorizing the reallocation of the Applicants' certified entitlements to storage capacity and delivery capacity at the Hebron Storage Field pursuant to an amendment to the Hebron Storage Agreement. Applicants indicate that upon receiving appropriate certificate authority, Tennessee's Assigned Storage Capacity will be reduced by 1.0 Bcf and National Fuel's will be increased by an equivalent amount, with a corresponding change to the Assigned Delivery Capacity of each party. Applicants summarize the change in storage capacity as follows:

ASSIGNED STORAGE CAPACITY

	Current assignment		Proposed assignment	
	Percent	Mcf	Percent	Mcf
Tennessee	86.1	14,870,000	80.31	13,870,000
National Fuel	13.9	2,400,000	19.69	3,400,000
Rated Storage Capacity	100	17,270,000	100	17,270,000

Applicants state that, under the Hebron Storage Agreement, the Assigned Storage Capacity of a party is that portion of the Rated Storage Capacity that the Assigned Delivery Capacity of such party bears to the Rated Delivery Capacity of the storage field. The Applicants propose that the Assigned Delivery Capacity be fixed portions of the Rated Delivery Capacity: Tennessee's portion would be 80.31% and National Fuel's would be 19.69%, subject to change in the event that a future development program is implemented.

Applicants also request that the Commission approve an option for a limited term lease arrangement between Tennessee and National Fuel to provide a measure of flexibility to Tennessee for an interim period while Tennessee adjusts its arrangements for meeting its service obligations. Applicants propose that Tennessee have the option to lease from National Fuel storage capacity in the Hebron Field up to the amount transferred to National Fuel (1 Bcf). Applicants also propose that such lease provide for a delivery capacity up to the amount transferred to National Fuel.

The rates for the optioned capacity would be equal to Tennessee's maximum tariff rate for firm storage service. Such lease would terminate at Tennessee's option on either the first or second March 31st after acceptance of Commission authorization by both Tennessee and National Fuel. Applicants claim that a lease of capacity is justified since National Fuel could not provide capacity to Tennessee on a field-specific basis under its Part 284 firm storage services.

Applicants also propose that Tennessee have the option to become the operator of the storage facilities at the Hebron Storage Field in place of National Fuel. Under the current storage agreement National Fuel operates the storage properties and Tennessee operates the station facilities. Additionally, subject to a mutual agreement between the parties, National Fuel will continue to perform certain day to day operation and maintenance responsibilities under a contract with Tennessee. National Fuel would also retain certain administrative responsibilities relating to leases, royalties and other payments.

Applicants also propose to modify the termination and assignment provisions of the Hebron Storage Agreement and to extend the term of the Hebron Storage Agreement for a period of ten (10) years.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 2000, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding must file a petition to intervene in accordance with the Commission's rules. 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29691 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–71–024]

Transcontinental Gas Pipe Line Corporation; Notice of PBS Revenue Sharing Refund Report

November 15, 2000.

Take notice that on November 9, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a refund report showing that on October 25, 2000, Transco submitted PBS revenue sharing refunds (total principal and interest amount of $299,275.79) to all affected shippers in Docket Nos. RP97–71 and RP97–312.

Transco states that Section 3.4 of Transco's Rate Schedule PBS1 provides that during the effectiveness of the Docket No. RP97–71 rate period, which began on May 1, 1997, Transco shall refund annually 75% of the fixed cost component of all revenues collected associated with Rate Schedule PBS parking/borrowing charges to maximum rate firm transportation, maximum rate interruptible transportation and maximum rate firm storage Buyers (collectively, Eligible Shippers). Transco has calculated that the refund amount for the annual period from May 1, 1999 through April 30, 2000 equals $299,275.79. Pursuant to Section 3.4 of Rate Schedule PBS, Transco refunded that amount to Eligible Shippers based on each Eligible Shipper's actual fixed cost contribution as a percentage of the total fixed cost contribution of all such Eligible Shippers (exclusive of the fixed cost contribution pertaining to service purchased by Seller from third parties).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 22, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* (call 202—208–2222 for assistance). 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.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29701 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–425–002]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 15, 2000.

Take notice that on November 9, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective September 1, 2000:

Second Substitute Original Sheet No. 300

Williams states that this filing is being made pursuant to Section 4 of the Natural Gas Act and in compliance with Commission Order issued on October 27, 2000 in Docket No. RP00–425–001 [93 FERC ¶ 61,094 (2000)]. That Order approved tariff sheets filed on September 29, 2000 that were filed to comply with ordering Paragraph (B) of the Commission's August 31, 2000 Order [92 FERC ¶ 61,190 (2000)] in this proceeding, which approved Williams' negotiated rates program. The instant filing revises tariff language to make it clear that the applicable recourse rate, in Section 31.9 of the General Terms and Conditions, including surcharges, is the cap for bid matching under the ROFR process, as requested by the Missouri Public Service Commission

(MPSC) and directed by the Commission.

Williams states that copies of the revised tariff sheets are being mailed to Williams's jurisdictional customers, all parties appearing on the official service list, and interested state commissions.

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). 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29677 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–89–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

November 15, 2000.

Take notice that on November 9, 2000, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, Fifth Revised Sheet No. 4C to be effective January 1, 2001.

WIC states the purpose of this filing is to permit WIC to collect Gas Research Institute (GRI) charges associated with its transportation pursuant to the Commission's order issued September 19, 2000 in Docket No. RP00–313–000.

WIC further states that copies of this filing have been served on WIC'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). 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*.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29684 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–26–000, et al.]

Calumet Energy Team, LLC, et al.; Electric Rate and Corporate Regulation Filings

November 14, 2000.

Take notice that the following filings have been made with the Commission:

1. Calumet Energy Team, LLC

[Docket No. EG01–26–000]

Take notice that on November 7, 2000, Calumet Energy Team, LLC, c/o Wisvest Corporation, N16 W23217 Stone Ridge Drive, Suite 100, Waukesha, WI 53188, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant is a limited liability company organized under the laws of the State of Delaware that is engaged directly and exclusively in developing, owning, and operating a gas-fired, nominally 300 MW simple-cycle peaking power plant in Chicago, Illinois. The applicant's power plant will be an eligible facility.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Chandler Wind Partners, LLC

[Docket No. EG01–27–000]

Take notice that on November 8, 2000, Chandler Wind Partners, LLC, of 63–655 19th Avenue, P.O. Box 1043, North Palm Springs, California 92258, 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.

Chandler Wind Partners, LLC, is a Delaware limited liability company that owns and operates an approximately 1.98 megawatt (nameplate capacity) wind generation facility, comprised of three (3) Vestas V47–660kw wind turbine generators (the Facility). The Facility is located in Murray County, Minnesota. Chandler Wind Partners, LLC is engaged directly and exclusively in the business of owning and operating all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: December 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Wheelabrator Lassen Inc.

[Docket No. QF81–21–003]

Take notice that on November 1, 2000, Wheelabrator Lassen Inc. (Lassen) filed a request for recertification that, subsequent to a change in upstream ownership, a 42-megawatt power generation facility that is owned and operated by Lassen and is located in Anderson, Shasta County, California, is a qualifying cogeneration facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Wheelabrator Hudson Energy Company Inc.

[Docket No. QF81–35–002]

Take notice that on November 1, 2000, Wheelabrator Hudson Energy Company Inc. (Hudson) filed a request for recertification that, subsequent to a change in upstream ownership, a six-megawatt qualifying cogeneration facility that is owned and operated by Hudson and is located in Anderson, California, is a qualifying cogeneration facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Martell Cogeneration Limited Partnership

[Docket No. QF85–20–001]

Take notice that on November 1, 2000, Wheelabrator Martell Inc. (Martel), successor in interest to Martell Cogeneration Limited Partnership, filed a request for recertification that, subsequent to a change in upstream ownership, an 18-megawatt qualifying cogeneration facility that is owned and operated by Martell and is located in Martell, California, is a qualifying cogeneration facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Wheelabrator Frackville Energy Company Inc.

[Docket No. QF85–204–003]

Take notice that on November 1, 2000, Wheelabrator Frackville Energy Company Inc. (Frackville) filed a request for recertification that, subsequent to a change in upstream ownership, a 42-megawatt qualifying cogeneration facility that is owned and operated by Frackville and is located in Frackville, Pennsylvania, is a qualifying cogeneration facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Wheelabrator Sherman Energy Company

[Docket No. QF85–698–001]

Take notice that on November 1, 2000, Wheelabrator Sherman Energy Company (Sherman) filed a request for recertification that, subsequent to a change in upstream ownership, an 18-megawatt qualifying small power production facility that is leased and operated by Sherman and is located in Penobscot County, Maine, is a qualifying small power production facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Ridge Generating Station Limited Partnership

[Docket No. QF92–158–001]

Take notice that on November 1, 2000, Ridge Generating Station Limited Partnership (Ridge) filed a request for recertification that, subsequent to a change in upstream ownership, a qualifying small power production facility with a net capacity of 39.6 megawatts that is owned and operated by Ridge and is located in Polk County, Florida, is a qualifying small power production facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Wheelabrator Norwalk Energy Company Inc.

[Docket No. QF01–15–001]

Take notice that on November 1, 2000, Wheelabrator Norwalk Energy Company Inc. (Norwalk) filed a request for recertification that, subsequent to a change in upstream ownership, a 27.9-megawatt qualifying cogeneration facility that is leased and operated by Norwalk and is located in Norwalk, California, is a qualifying cogeneration facility.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Western Michigan University

[Docket No. QF01–31–000]

Take notice that on November 1, 2000, Western Michigan University, 1201 Stadium Drive, Kalamazoo, Michigan, 49008, filed with the Federal Energy Regulatory Commission an application to be certified as a qualifying facility pursuant to section 292.207 of the Commission's rules.

The facility under consideration provides essential steam and electric services to the University campus. Two (2) gas turbine machines have been installed, the head output of which would be used to produce steam for the back-pressure steam turbine as well as the steam needs of the campus and electrical power for the purposes of supplying the electrical needs of the campus. It is the intent of the facility to operate in parallel with the local utility (Consumer Energy Company) as a paralleling source and sink for any excess electrical power produced as a result of this operation. The primary fuel for this facility is natural gas. The peak power production at this facility will be 10,583 kW.

Comment date: December 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29739 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. E01–367–000, et al.]

New York State Electric & Gas Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 13, 2000.

Take notice that the following filings have been made with the Commission:

1. New York State Electric & Gas Corporation

[Docket No. ER01–367–000]

Take notice that on November 6, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 117 filed with FERC corresponding to an Agreement with the Delaware County Electric Cooperative (the Cooperative). The proposed supplement would decrease revenues by $648.27 based on the twelve month period ending December 31, 2001.

This rate filing is made pursuant to Section 1 (c) and Section 3 (a) through (c) of Article IV of the June 1, 1977 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month ended December 31, 1999. The revised facilities charge is levied on the cost of the 34.5 kV tie line from Taylor Road to the Jefferson Substation, constructed by NYSEG for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2001.

Copies of the filing were served upon the Delaware County Electric Cooperative , Inc. and the Public Service Commission of the State of New York.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER01–370–000]

Take notice that on November 6, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a supplement to Rate Schedule 194 filed with FERC corresponding to an Agreement with the Steuben Rural Electric Cooperative (the Cooperative). The proposed supplement would decrease revenues by $2,171.37 based on the twelve month period ending December 31, 2001.

This rate filing is made pursuant to Article IV, Section B of the February 26, 1999 Facilities Agreement between NYSEG and the Cooperative, filed with FERC. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve month ended December 31, 1999. The revised facilities charge is levied on the cost of the tap of NYSEG's South Addison to Presho 34.5 kV transmission line. Such tap of NYSEG's transmission line connects to the Cooperative's Sullivan Road Substation and is for the sole use of the Cooperative.

NYSEG requests an effective date of January 1, 2001.

Copies of the filing were served upon the Steuben Rural Electric Cooperative , Inc. and the Public Service Commission of the State of New York.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of New Mexico

[Docket No. ER01–371–000]

Take notice that on November 6, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement for short term firm point to point transmission service under the terms of PNM's Open Access Transmission Tariff (OATT) with Southwestern Public Service Company (SPS), dated July 19, 2000. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to SPS and to the New Mexico Public Regulation Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER01–372–000]

Take notice that on November 6, 2000, New England Power Company (NEP), tendered for filing a proposed amendment (Amendment) to the Service Agreement for Firm Local Generation Delivery Service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 9, between NEP and ANP Bellingham Energy Company. NEP states that the Amendment was filed to correct a typographical error contained on Sheet No. 187A–1 of the Service Agreement.

NEP states that this filing has been served upon ANP Bellingham Energy Company and regulators in the Commonwealth of Massachusetts.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Tiger Natural Gas, Inc.

[Docket No. ER01–373–000]

Take notice that on November 6, 2000, Tiger Natural Gas, Inc. (Tiger) petitioned the Commission for acceptance of Tiger Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Tiger intends to engage in wholesale electric power and energy purchases and sales, and retail sales as a marketer. Tiger is not in the business of generating or transmitting electric power. Tiger is a minority owned and operated business with SBA 8(a) certification that focuses its knowledge and expertise primarily on the end use customer.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Western Resources, Inc.

[Docket No. ER01–375–000]

Take notice that on November 6, 2000, Western Resources, Inc.(WR), tendered for filing a Service Agreement between WR and Allegheny Energy Service Corporation (Allegheny). WR states that the purpose of this agreement is to permit Allegheny to take service under WR' Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective October 31, 2000.

Copies of the filing were served upon Allegheny and the Kansas Corporation Commission.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER01–376–000]

Take notice that on November 6, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Split Rock Energy LLC Wisconsin Electric respectfully requests an effective date of November 1, 2000 to allow for economic transactions.

Copies of the filing have been served on Split Rock Energy LLC, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Energy.com Corporation

[Docket No. ER01–377–000]

Take notice that on November 6, 2000, Energy.com Corporation (Energy.com) petitioned the Commission for acceptance of Energy.com Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Energy.com intends to engage in wholesale electric power and energy transactions as a marketer and a broker. Energy.com is not in the business of generating or transmitting electric power. Energy.com is a wholly-owned subsidiary of eVulkan, Inc., d/b/a beMANY. In transactions where Energy.com sells electric power it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. The Detroit Edison Company

[Docket No. ER01–378–000]

Take notice that on November 6, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement (Service Agreement) for Firm Point-to-Point Transmission Service under the Joint Open Access

Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1. This Service Agreement is between Detroit Edison and Quest Energy, L.L.C., dated as of September 20, 2000. The parties have not engaged in any transactions under the Service Agreement prior to thirty days to this filing.

Detroit Edison requests that the Service Agreement be made effective as rate schedules as of October 23, 2000.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. American Transmission Company LLC

[Docket No. ER01–381–000]

Take notice that on November 6, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Network Integration Transmission Service and a Distribution-Transmission Interconnection Agreement between ATCLLC and Madison Gas and Electric Company.

ATCLLC requests an effective date of January 1, 2001.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Alliant Energy Corporate Services, Inc.

[Docket No. ER01–379–000]

Take notice that on November 6, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Minnesota Municipal Power Agency as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of June 6, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: November 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. American Transmission Systems, Inc.

[Docket No. ER01–382–000]

Take notice that on November 7, 2000, American Transmission Systems, Inc. filed Service Agreements to provide Firm Point-to-Point Transmission Service for Wolverine Power Supply Cooperative, Inc., NRG Power Marketing, Inc., and Powerex Corp., the Transmission Customers. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000.

The proposed effective date under the Service Agreements is October 31, 2000 for the above mentioned Service Agreements in this filing.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER01–383–000]

Take notice that on November 7, 2000, Virginia Electric and Power Company (Dominion Virginia Power or the Company), tendered for filing the following:

Retail Network Integration Transmission Service and Network Operating Agreement (Service Agreement) by Virginia Electric and Power Company to Old Dominion Electric Cooperative designated as Service Agreement No. 307 under the Company's Retail Access Pilot Program, pursuant to Attachment L of the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers effective June 7, 2000.

Dominion Virginia Power requests an effective date of November 7, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon Old Dominion Electric Cooperative, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER01–384–000]

Take notice that on November 7, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Standby Service Facilities Agreement with the city of New London Utilities (New London), and revisions to its Revised Power Sales Agreement (PSA) with Wisconsin Public Power Inc. (WPPI) to update Exhibit B on delivery points.

Wisconsin Electric respectfully requests an effective date of October 11, 2000.

Copies of the filing have been served on New London, WPPI, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER01–385–000]

Take notice that on November 7, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and AEP Retail Energy LLC. Under the Service Agreement, Dominion Virginia Power will provide services to AEP Retail Energy LLC under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Third Revised Volume No. 4), which was accepted by order of the Commission dated August 30, 2000 in Docket No. ER00–1737–001.

Dominion Virginia Power requests an effective date of January 15, 2001, the date service is first requested by the customer.

Copies of the filing were served upon AEP Retail Energy LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. American Transmission Systems, Inc.

[Docket No. ER01–386–000]

Take notice that on November 7, 2000, American Transmission Systems, Inc., tendered for filing Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Wolverine Power Supply Cooperative, Inc., NRG Power Marketing, Inc., and Powerex Corp., the Transmission Customers. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000.

The proposed effective date under the Service Agreements is October 31, 2000 for the above mentioned Service Agreements in this filing.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER01–387–000]

Take notice that on November 7, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 98 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 6, 2000 to Powerex Corp.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Calumet Energy Team, LLC

[Docket No. ER01–389–000]

Take notice that on November 7, 2000, Calumet Energy Team, LLC (Seller), a limited liability company organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) accepting Seller's proposed FERC Electric Tariff (Market-Based Rate Tariff); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is developing a nominally 300 MW generating facility in Chicago, Illinois.

Comment date: November 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29738 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11685–001 Ohio]

The Stockport Mill Country Inn; Notice of Availability of Final Environmental Assessment

November 15, 2000.

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the proposed Stockport Mill Country Inn Water Power Project, located on the Muskingum River, near the town of Stockport, Morgan County, Ohio, and has prepared a Final Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance. For further information about the EA, contact Tom Dean at (202) 219–2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29699 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 15, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Proposed Recreation and Land Management Plan.

b. *Project No.:* 400–033.

c. *Date Filed:* October 16, 2000.

d. *Applicant:* Public Service Company of Colorado.

e. *Name of Project:* Tacoma-Ames Hydroelectric Project.

f. *Location:* The Tacoma-Ames Hydroelectric Project is on the Animas River in LaPlata and San Juan Counties, Colorado. Land within the San Juan and Uncompahgre National Forests and under the jurisdiction of the Bureau of Land Management are located within the project boundary. No Indian Tribal lands are located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Randy Rhodes, Public Service Company of Colorado, 550 15th Street, Suite 900, Denver, CO 80202–4256; (303) 571–7211.

i. *FERC Contact:* Jon Cofrancesco at (202) 219–0079 or *jon.cofrancesco@ferc.fed.us.*

j. *Deadline for filing comments, terms and conditions, motions to intervene, and protests:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 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.*

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Public Service Company of Colorado (licensee) filed a proposed recreation and land management plan for the Tacomo Development of the Tacoma-Ames Hydroelectric Project. The Tacoma Development includes Electra Lake (a project reservoir) and the surrounding lands within the project boundary. Under a long-standing lease agreement with the licensee, the Electra Sporting Club (ESC) occupies portions of project lands at Electra Lake and, pursuant to the project's existing recreation plan, is responsible for the management of public recreation use and development at Electra Lake. The licensee filed the proposed plan in response to a condition of a previously executed land acquisition agreement involving a portion of project lands.

The proposed plan establishes the licensee's future management practices and guidelines for public recreation and private development at Electra Lake and the adjoining project lands. The proposed plan is intended to ensure that recreation use and private development at Electra Lake is consistent with hydroelectric operations, the terms and conditions of the project license, including the project's existing recreation plan, the lease agreement between the licensee and the ESC, and all other applicable Federal, state, and local laws and regulations. The proposed plan contains provisions addressing existing and future private development, public recreation use and opportunities, and the preservation of natural resources, including scenic and environmental values, at Electra Lake and the adjoining project lands.

l. A copy of the proposed plan is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commissions will consider all protects or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motion to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the proposed play may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29693 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

November 15, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 719–007.

c. *Date Filed:* October 31, 2000.

d. *Applicant:* Trinity Conservancy, Inc.

e. *Name of Project:* Trinity Power Project.

f. *Location:* On Phelps Creek and James Creek in the Columbia River Basin in Chelan County, near Leavenworth, Washington. The project occupies 47.9 acres of federal lands in Wenatchee National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Reid L. Brown, President, Trinity Conservancy, Inc., 3139 E. Lake Sammamish SE, Sammamish, WA 98075–9608, (425) 392–9214.

i. *FERC Contact:* Charles Hall, (202) 219–2853 or *Charles.Hall@FERC.fed.us.*

j. *Deadline for filing additional study requests:* January 2, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. 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.*

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *The existing Trinity Project consists of:* (1) A deteriorated wooden diversion dam, 70-foot-long flume and settling tank on James Creek, and a 3,350-foot-long, partially destroyed steel penstock, all of which is proposed for decommissioning with this license application; (2) a 45-foot-long, 10-foot-high timber crib diversion dam and screened intake on Phelps Creek; (3) a 24-inch-diameter, 6,000-foot-long, gravity-flow, steel pipe aqueduct; (4) a 20-foot-long, 14-foot-wide, 9-foot-deep, reinforced concrete settling tank; (5) a 42-inch- to 12-inch-diameter, 2,750-foot-long, riveted spiral-wound penstock; (6) a 145-foot-long, 34-foot-wide, wood-frame powerhouse building containing a single Pelton impulse turbine and 240-kilowatt synchronous generator; (7) a tailrace; and (8) appurtenant facilities. The generator supplies the electricity needs of four residences, a cabin and shed; the project is not connected to the electric transmission grid. The licensee proposes to decommission the inoperable James Creek diversion facilities and adjust the project boundary accordingly.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for

assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the Washington State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing
Notice of NEPA Scoping
Notice of application is ready for environmental analysis
Notice of the availability of the draft NEPA document
Notice of the availability of the final NEPA document
Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29694 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 19, 2000.

Take notice that the following hydrolectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major New License.

b. *Project No.:* 1927–008.

c. *Date filed:* January 30, 1995 (most recently amended by PacifiCorp on February 22, 2000).

d. *Applicant:* PacificCorp.

e. *Name of Project:* North Umpqua Hydroelectric Project.

f. *Location:* On the North Umpqua River, in Douglas County, Oregon. The project occupies about 2,725 acres of land within the Umpqua National Forest, and about 117 acres of land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Timothy C. O'Connor, Director, Hydro Operations, PacifiCorp 825 Multnomah, Suite 1500, Portland, OR 97232, (503) 813–6660, and Thomas H. Nelson, Stoel Rives Boley Jones & Grey, 900 S.W. Fifth Avenue, Portland, OR 97204, (503) 294–9281.

i. *FERC Contact:* John Smith, 202–219–2460, john.smith@ferc.fed.us.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* March 1, 2001.

The comment due date has been set to coincide with the conclusion of settlement negotiations.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 384.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

1. (1) The project consists of a series of mainstem reservoirs, diversion canals and penstocks, and powerhouses on the North Umpqua River and two major tributaries—the Clearwater River and Fish Creek. The project's 8 developments include:

Lemolo No. 1: (1) a 120-foot-high diversion dam on the North Umpqua River, about 1 mile downstream of its confluence with Lake Creek, impounding the 11,752-acre-foot Lemolo Lake; (2) 16,310 feet of canal and flumes; (3) a forebay at the intake of a 7,338-foot-long steel penstock; (4) a 4.5-mile-long bypassed reach, (5) a powerhouse on the North Umpqua River at the mouth of Warm Springs Creek containing a 29,000-kilowatt (kW) turbine-generator unit; and (6) a 12-mile-long transmission line connecting the powerhouse to the Clearwater switching station.

Lemolo No. 2: (1) a 25-foot-high diversion dam on the North Umpqua River, immediately downstream of the Lemolo No. 1 powerhouse, with a 1.4-acre impoundment having no active storage; (2) 69,503 feet of canal and flumes; (3) a 159-acre-foot forebay at the intake of a 3,975-foot-long penstock; (5) an 11-mile-long bypassed reach; (6) a 71-foot-high surge tank; (7) a powerhouse on the North Umpqua River, approximately 3,500 feet upstream of Tiketee Lake, containing a 33,000-kW turbine-generator unit; and (8) a 1.4-mile-long transmission line to the Clearwater switching station.

Clearwater No. 1: (1) a 17-foot-high diversion dam on the Clearwater River, about 9 miles upstream of Toketee Lake, impounding the 30-acre-foot Stump Lake; (2) 13,037 feet of canals and flumes; (3) a 121-acre-foot forebay at the intake of a 4,863 foot-long penstock; (4) a 3-mile-long bypassed reach; (5) a powerhouse discharging directly into the Clearwater No. 2 diversion with a 15,000-kW turbine-generator unit; and (6) a 5.1-mile-long transmission line to the Clearwater switching station.

Clearwater No. 2: (1) and 18-foot-high diversion dam on the Clearwater River, immediately downstream of the Clearwater No. 1 powerhouse, with a small impoundment about 1.2 acres in surface area; (2) 31,235 feet of canal and flumes; (3) a 71-acre-foot forebay at the intake of a 1.168-foot-long penstock; (4) a 5-mile-long bypassed reach; (5) a powerhouse with a 26,000-kW turbine-generator on the North Umpqua River at Toketee Lake; and (6) a 0.3-mile-long transmission line to the Clearwater switching station.

Toketee: (1) a 58-foot-high dam at the confluence of the Clearwater and North Umpqua Rivers, impounding the 1,051-acre-foot Toketee Lake; (2) 6,994 feet of wook stave pipe and tunnel; (3) 1,067 feet of single penstock that splits into three 158-foot-long pentocks; (4) a 128-foot-high surge tank; (5) a 2-mile-long bypassed reach; and (6) a powerhouse about 2 miles downstream of Toketee Lake containing 3 turbine-generator units with a combined rated capacity of 42,500 kW. Power is delivered to the Toketee switching station, adjacent to the Toketee powerhouse.

Fish Creek: (1) a 6.5-foot-high diversion dam on Fish Creek, about 6 miles upstream from its confluence with the North Umpqua River, with a small impoundment about 3 acres in surface area; (2) 25,662 feet of canal and flumes; (3) a 110-acre-foot forebay at the intake of a 2,358-foot-long penstock; (4) a 6.6-mile-long bypassed reach; and (5) a powerhouse containing an 11,000-kW turbine-generator unit. Power is

delivered to a collector transmission line between the Soda Springs powerhouse substation and the Toketee switching station.

Slide Creek: (1) a 30-foot-high diversion dam on the North Umpqua River, about 900 feet downstream of the Toketee powerhouse and impounding a 43-acre-foot reservoir with no active storage; (2) 9,653 feet of canal and flumes; (3) a forebay with no storage capacity at the intake of a 374-foot-long penstock; (4) a 2-mile-long bypassed reach; and (5) a powerhouse containing an 18,000-kW turbine generator unit on the North Umpqua River at the mouth of Slide Creek, approximately 1.3 miles above the Soda Springs dam. Power is delivered to a collector transmission line running between the Soda Springs powerhouse substation and the Toketee switching station.

Soda Springs: (1) a 77-foot-high diversion dam on the North Umpqua River downstream of the Slide Creek powerhouse, impounding a 412-acre-foot reservoir; (2) 2,112 feet of steel pipe; (4) a surge tank; (5) a 168-foot-long penstock; (6) a 0.5-mile-long bypassed reach; and (7) a powerhouse with a 11,000-kW turbine generator unit located on the North Umpqua River about 1.5 miles downstream of Medicine Creek. Power is delivered to the Soda Springs substation, adjacent to the Soda Springs powerhouse.

(2) The licensee proposes to make the following facility modifications:

A new enlarged forebay would be added to Lemolo No. 1 to virtually eliminate the risk of spill events. Instream flow outlet and measurement facilities would be modified or added in the bypassed reaches of all project developments. A new instream release structure would be constructed at the extreme lower end of the Clearwater bypassed reach to provide flows to the historic river channel and provide aquatic connectivity between the Clearwater and North Umpqua Rivers. Canal flow gages would be installed on Lemolo No. 1, Lemolo No. 2, Clearwater No. 1, Clearwater No. 2, Fish Creek, and Slide Creek conveyance systems. A penstock flow meter would be installed on the Toketee development to measure flows through the powerhouse. These facilities would measure conveyance system flows for both water rights compliance and conveyance system monitoring. In addition, the following enhancement measures would be implemented to improve aquatic and terrestrial connectivity: (a) reconnect Bear Creek, currently diverted into Stump Lake, by rerouting it through its historic channel to the mainstream Clearwater River; (b) reconnect 27 small tributaries that are currently intercepted by project canals by constructing artificial channels for water to cross the canal and providing pre-cast concrete canal covers; (c) reconnect 36 small tributaries that are currently intercepted by flumes or flow under flumes through culverts too small to allow passage of small wildlife by installing 10-foot-wide culverts in a shallow excavation under each flume; (d) reconnect 8 tributary streams that are currently diverted into Lemolo No. 1 and Lemolo No. 2 waterways by removing diversion structures, except for Deer Creek, and allowing the streams to flow down their natural channels; (e) reconfigure the historic stream channels for Potter and White Mule Creeks that have been disturbed by activities in the vicinity of project waterways to provide riparian function; (f) create 4 ponds or similar stillwater habitat areas to provide stable, predator-free environments for breeding amphibians; and (g) provide 26 new 12-foot-wide wildlife bridges, install up to 175 new 2-foot-wide wildlife bridges, and expand 29 existing wildlife bridges across water conveyance systems.

(3) The licensee proposes to operate the project as follows:

The functional relationship of the 8 projects would remain relatively unchanged from the existing operations. Generally, the project developments above the Soda Springs development would continue to operate to meet daily high energy demands during most of the year. The Soea Springs development would be operated continuously to provide uniform flows in the North Umpqua River below the project. Proposed increases in instream flow in the bypassed reaches to more closely resemble a natural hydrograph, meet water quality standards, and improve resident and anadromous fish habitat would result in a decrease in gross project generation.

m. Copies of the application and the February 22, 2000, amendments are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2–A Washington, DC 20426, or by calling (202) 208–1371. The application and amendments may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the address in item h above.

n. The Commission directs that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission by March 1, 2001. All reply comments must be filed with the Commission by April 16, 2001.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29695 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Extension of Time for Notice of Transfer of Licenses, Substitution of Relicense Applicant, and Soliciting Comments, Motions To Intervene, and Protests

November 15, 2000.

In light of requests in recent filings for an extension of time to comment regarding this proceeding, the Commission hereby extends the comment date 45 days.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Types:* (1) Transfer of Licenses and (2) Request for Substitution of Applicant for New License (in Project No. 2064–004).

b. *Project Nos:* 2064–005, 2684–005, and 2064–004.

c. *Date Filed:* August 16, 2000.

d. *Applicants:* North Central Power Co., Inc. (tranferor) and Flambeau Hydro, LLC (transferee).

e. *Name and Location of Project:* The Winter and Arpin Dam Hydroelectric Projects are on the East Fork of the Chippewa River and on the Chippewa River, respectively, in Sawyer County, Wisconsin. The Winter Project occupies federal lands within the Chequamegon-Nicolet National Forest, but no tribal lands. The Arpin Project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. Frank F. Dahlberg, North Central Power Co., Inc., P.O. Box 167, Grantsburg, WI 54840, (715) 463–5371 and Mr. Donald H. Clarke, Wilkinson Barker Knauer, LLP, 2300 N Street NW., No. 700, Washington, DC 20037, (202) 783–4141.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839.

i. *Deadline for filing comments and or motions:* December 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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.

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* The applicants state that the transfer will assure the continued operation of these renewable energy projects and will effect the desired change of ownership of the generating facilities consistent with the restructuring plans of these members of the electric industry.

The transfer application was filed within five years of the expiration of the license for Project No. 2064, which is the subject of a pending relicense application. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23, 756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

The transfer application also contains a separate request for approval of the substitution of the transferee for the transferor as the applicant in the pending relicensing application, filed by the transferor on November 26, 1999, in Project No. 2064–004.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsible Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–29696 Filed 11–20–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6904–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Soil Ingestion Research Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Soil Ingestion Research Study (EPA ICR Number 1965.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 22, 2001.

ADDRESSES: Comments submitted by regular U.S. Postal Service mail should be sent to: Docket Coordinator, Superfund Docket Office, Mail Code 5201G, U.S. Environmental Protection Agency Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. To ensure proper receipt by EPA, it is imperative that you identify docket control number SOIL–INGEST in the subject line on the first page of your comment. Comments may also be submitted electronically or in person. Please follow the detailed instructions for these submission methods as provided in unit III of the **SUPPLEMENTARY INFORMATION** section. Copies of the ICR may be obtained from this office (contact Larry Zaragoza 703–603–8867), or the Office of Environmental Information's ICR website at http://www.epa.gov/icr/.

FOR FURTHER INFORMATION CONTACT: Larry Zaragoza, Office of Emergency and Remedial Response, at 703–603–8867/ 703–603–9133 (fax), email: Zaragoza.Larry@EPA.Gov.

SUPPLEMENTARY INFORMATION:

Affected Entities: Entities potentially affected by this action are those which

agree to participate in a research study on soil ingestion.

Title: Soil Ingestion Research, (EPA ICR No. 1965.01).

Abstract: This ICR supports research to examine the amount of soil ingested. Soil is ingested in two ways, incidental ingestion from everyday hand to mouth activity and ingestion resulting from inhaled particles of soil that are deposited in upper and middle respiratory tract and swallowed. The ingestion of soil is important because contaminated soils from a hazardous waste site poses risks to individuals exposed to contaminated soil. This research should help any environmental program concerned with contaminated soils but is specifically being sponsored by Superfund. This research will evaluate ingestion by comparing the amount of trace metals that are ingested in food with the amount of metals that are excreted, any amount in excess of the ingested trace metals is attributed to incidental soil ingestion. Because of the possibility of trace metal ingestion from a variety of sources (like food and toothpaste), a questionnaire to identify and characterize sources of trace metals that can affect daily variation in trace metals is an important part of the experimental design of these studies. About 20 study volunteers are paid and are expected to participate in this study for about two weeks. Each night the study participants would participate in a questionnaire that will later be used to help interpret daily variations in trace metals. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: During the study, paid research subjects would fill out a questionnaire on a daily basis. Questions could take 5 minutes. This reporting burden would involve approximately 20 research subjects who are expected to participate in a study for 2 weeks. This information would be collected by the researchers at the research institution conducting the study and the data would be maintained by this group, not the Federal government. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 24, 2000.

Elaine F. Davies,

Acting Director, Office of Emergency and Remedial Response.

[FR Doc. 00–29769 Filed 11–20–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00687A; FRL–6755–2]

FIFRA Scientific Advisory Panel; Announcement of change of Public Meeting Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing a change in the dates of a public meeting of the FIFRA Scientific Advisory Panel which was originally published in the **Federal Register** of November 3, 2000. Meetings were scheduled to be held on December 6, 7, and 8, 2000. The December 6 meeting has been dropped, therefore, meetings will only be held on December 7 and 8, 2000.

DATES: Meetings of the FIFRA Scientific Advisory Panel will be held on December 7 and 8, 2000, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton Hotel is (703) 486–1111. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the originally published notice of November 3, 2000.

FOR FURTHER INFORMATION CONTACT: Olga Odiott, Designated Federal Official, Office of Science Coordination and Policy, (7101C), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: *odiott.olga@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. Purpose of this Notice

EPA is announcing a change in dates of a public meeting of the FIFRA Scientific Advisory Panel which was published in the **Federal Register** of November 3, 2000 (65 FR 66245) (FRL–6753–4). Meetings had been scheduled to be held on December 6, 7, and 8, 2000, but because the session on the LifeLine™ Model Review will not be taking place at this time, the meetings will be held only on December 7 and 8, 2000.

List of Subjects

Environmental protection.

Dated: November 16, 2000.

Steven K. Galson,

Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–29868 Filed 11–17–00; 2:15 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6904–8]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Cedar Service site located at U.S. Highway 71 and Beltrami County Road 404, Bemidji, Beltrami County, Minnesota, which was signed by the EPA Director, Superfund Division, Region 5, on September 27, 2000. The settlement resolves an EPA claim under section 107(a) of CERCLA against R.G. Haley & Company, Inc., Cedar Service, Inc., Marilyn H. Antle, John B. ''Jack'' White and William I. Barkan. The settlement requires the settling parties to pay $150,000.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois.

DATES: Comments must be submitted on or before December 21, 2000.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. A copy of the proposed settlement may be obtained from the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. Comments should reference the Cedar Service Site, Bemidji, Minnesota, and EPA Docket No. V–W–00–C–614 and should be addressed to Thomas Krueger, Associate Regional Counsel, 77 West Jackson Boulevard, (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Thomas Krueger, Associate Regional Counsel, 77 West Jackson Boulevard, (C–14J), Chicago, Illinois 60604.

Dated: September 27, 2000.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 00–29768 Filed 11–20–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 7, 2000.

SUMMARY: The Federal Communications Commissions, 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 21, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, or TV Booster Station.

Form Number: FCC 346.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; and State, local, or tribal government.

Number of Respondents: 1,200.

Estimate Time Per Response: 7 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 6,400.

Total Annual Costs: $3,597,600.

Needs and Uses: Licensees/permittees/applicants use FCC Form 346 when applying for authority to construct or make changes in a Low Power Television, TV Translator, or TV Booster broadcast station. Applicants are subject to the third party disclosure requirement of 47 CFR Section 73.3580. Within 30 days of tendering of the application, applicants are required to publish a notice in a newspaper of general circulation when filing all applications for new or major changes in facilities—the notice to appear at least twice weekly for two consecutive weeks in a three week period. In addition, a copy of the notice must be maintained along with the application. The Commission uses FCC Form 346 to determine if an applicant is qualified, meets basic statutory and treaty requirements, and will not cause interference to other authorized broadcast services.

OMB Control Number: 3060–0934.

Title: Application for Equipment Authorization, 47 CFR Sections 2.960, 2.962, 68.160, and 68.162.

Form Number: FCC 731 TC.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 25.

Estimate Time Per Response: 4 hours (multiple responses/annum).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 6,400.

Total Annual Costs: $175,000.

Needs and Uses: Commission rules that require approval prior to marketing

of equipment FCC rules under 47 CFR Part 15 and Part 18 require a ''showing of compliance'' with technical standards before certain equipment can be marketed. A showing of compliance aids in controlling potential radio communication interference and in investigating interference complaints. Equipment that operates in the licensed service also requires authorization under 47 CFR Part 2 and Part 68. In a 1998 Report and Order, Gen. Doc. 98–68, the FCC adopted rules to permit private sector firms, known as Telecommunications Certification Body(s) (TCB), to approve equipment for marketing. The rule changes also established guidelines for Mutual Recognition Agreements with foreign trade partners. Once approved by the accrediting body, and ''designated'' by the Commission, the TCBs may accept Form 731 filings from the public and evaluate the compliance of the equipment with the Commission's Rules and technical standards. Upon the determination that the equipment complies and should receive a grant, the TCB is required to electronically submit the Form 731 information and the information required for grant to the Commission via the Internet.

OMB Control Number: 3060–XXXX.

Title: Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite-Service Use.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Estimate Time Per Response: 1 to 4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 553 hours.

Total Annual Costs: None.

Needs and Uses: Information collection requirements contained in this collection will serve to enable the efficient use of spectrum for existing and future users. The information requirements will also help facilitate the negotiation process among entities for transition of the 18.58–19.3 GHz band from terrestrial fixed services to fixed-satellite service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29771 Filed 11–20–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 15, 2000.

SUMMARY: The Federal Communications Commissions, 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 21, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0783.

Title: 47 CFR Section 90.176, Coordination Notification Requirements on Frequencies below 512 MHz.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 15.

Estimate Time Per Response: 0.5 hours (multiple responses/annum).

Frequency of Response: On occasion reporting requirements; Third party collection.

Total Annual Burden: 1,950 hours.

Total Annual Costs: None.

Needs and Uses: The revision to the reporting requirement in 47 CFR Section 90.176 resulted from the decisions in the Second MO&O in PR Docket No. 96–86 that add the frequency bands 764–776/794–806 MHz. The rule requires each Private Land Mobile frequency coordinator to provide, within one business day, a list of their frequency recommendations to all other frequency coordinators in their respective pool, and if requested, an engineering analysis. This requirement is necessary to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

OMB Control Number: 3060–0895.

Title: Numbering Resource Optimization, CC Docket No. 99–200.

Form Number: FCC 502.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local, or tribal government.

Number of Respondents: 2,780.

Estimate Time Per Response: 1 to 44.4 hours.

Frequency of Response: Recordkeeping; On occasion, semi-annual, and one-time reporting requirements; Third party disclosure.

Total Annual Burden: 181,890 hours.

Total Annual Costs: $7,858,650.

Needs and Uses: Carriers that receive numbering resources from the North American Numbering Plan Administrator (NANPA) or that receive other numbering resources from a Pooling Administrator in thousands-blocks must report forecast and utilization data semi-annually. These carriers are also required to maintain detailed internal records of their numbering usage. Carriers must file applications for initial and growth numbering resources. The FCC, state regulatory commissions, and NANPA will use this information to monitor numbering resource utilization and to project the dates when area codes and NANP will be exhausted.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–29772 Filed 11–20–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, November 21, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider supervisory, resolution, corporate, and personnel matters.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 16, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–29826 Filed 11–16–00; 4:58 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS).

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: December 7, 2000.

Place: Room 4236, United States Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC 20590.

Time: 10:30 a.m.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; reports of other Interested parties; discussion on Federal programs and policies regarding Public Access Defibrillation.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447–1231, on or before Tuesday, December 5, 2000.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 1, 2001. Copies of the latest approved FICEMS Committee Meeting Minutes are also available for viewing and download from the following site on the World Wide Web; *http://www.usfa.fema.gov/ems/ficems.htm.*

Kenneth O. Burris, Jr.,

Chief Operating Officer, United States Fire Administration.

[FR Doc. 00–29777 Filed 11–20–00; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting, Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Thursday, November 30, 2000.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Proposed Rule: ''Enforcement Powers: Implementation of Gramm-Leach-Bliley Act Amendments to the Federal Home Loan Bank Act''.
- Office of Finance Issues—(1)Waiver of Finance Board Regulation; and (2) Finance Board Resolution—Authority to Reopen Consolidated Obligation's issued by the Finance Board.
- Report on FHLBanks' Implementation of New Collateral Authority.
- Report on Acquired Member Assets/Mortgage Partnership Finance Products and Volumes.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 00–29926 Filed 11–17–00; 3:34 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 19817(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)(17)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office 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 December 6, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Angelo DeCaro, Sands Point, New York; to acquire additional voting shares of Patriot National Bancorp, Inc., Stamford, Connecticut, and thereby indirectly acquire Patriot National Bank, Stamford, Connecticut.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. LeVaughn Amerson and Linda Amerson, both of Plant City, Florida; to retain voting shares of Valrico Bancorp, Inc., Valrico, Florida, and thereby indirectly retain voting shares of Valrico State Bank, Valrico, Florida.

2. C. Dennis Carlton, Valrico, Florida; to retain voting shares of Valrico Bancorp, Inc., Valrico, Florida, and thereby indirectly retain voting shares of Valrico State Bank, Valrico, Florida.

3. Douglas A. Holmberg and Sherrill Holmberg, both of Valrico, Florida; to retain voting shares of Valrico Bancorp, Inc., Valrico, Florida, and thereby indirectly retain voting shares of Valrico State Bank, Valrico, Florida.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. The Paul Family Limited Partnership, Bixby, Oklahoma; to acquire additional voting shares of CSB Inc., Bixby, Oklahoma, and thereby indirectly acquire additional voting shares of Citizens Security Bancshares, Inc., Bixby, Oklahoma, and Citizens Security Bank and Trust Company, Bixby, Oklahoma.

Board of Governors of the Federal Reserve System, November 16, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29806 Filed 11–20–00; 8:45 am]

BILLING CODE 6210–01–M

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 December 15, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Bank of America Corporation and NB Holdings Corporation, both of Charlotte, North Carolina; to acquire 100 percent of the voting shares of Bank of America Georgia, N.A., Atlanta, Georgia.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Goering Management Company, LLC, Moundridge, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Goering Financial Holding Company Partnership, L.P., Moundridge, Kansas, and thereby indirectly acquire voting shares of Bon, Inc., Moundridge, Kansas, and Citizens State Bank, Moundridge, Kansas. Goering Management Company LLC also proposed to acquire directly 20.1 percent of the voting shares of Bon, Inc.

In connection with this application, Goering Financial Holding Company Partnership, L.P., Moundridge, Kansas; has applied to become a bank holding company by acquiring 42.49 percent of the voting shares of Bon, Inc., Moundridge, Kansas, and thereby indirectly acquire Citizens State Bank, Moundridge, Kansas.

Board of Governors of the Federal Reserve System, November 16, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–29805 Filed 11–20–00; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 4, 2000, 10 a.m. to 6 p.m., and December 5, 2000, 8 a.m. to 2 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Megan Moynahan, Center for Devices and Radiological Health (HFZ 450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext. 171, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 4, 2000, the committee will discuss and make recommendations on a reclassification petition proposing to down-classify percutaneous transluminal coronary angioplasty (PTCA) catheters from class III to class II. The petition is available for public review and comment on the FDA Dockets Management Branch website at www.fda.gov/ohrms/dockets and is listed as docket number 00P–1533. In the context of the reclassification petition, the committee will be asked to consider possible modifications to the draft guidance document entitled ''Guidance for the Submission of Research and Marketing Applications for Interventional Cardiology Devices: PTCA Catheters, Atherectomy Catheters, Lasers, Intravascular Stents'' (May 1995). The guidance document can be viewed on the FDA website at www.fda.gov/cdrh/ode/846.pdf. Questions for the committee regarding the December 4, 2000, session can be found on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

On December 5, 2000, the committee will discuss, make recommendations, and vote on a premarket approval application for an implantable cardioverter defibrillator used in the treatment of atrial fibrillation.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 27, 2000. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:30 a.m., and near the end of the committee deliberations on December 4, 2000; and between approximately 8 a.m. and 8:30 a.m., and near the end of the committee deliberations on December 5, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 27, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–29668 Filed 11–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10004]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New; *Title of Information Collection:* Restraints/Seclusion Death Reporting for Hospitals; *Form No.:* HCFA–10004 (OMB# 0938–XXXX); *Use:* This collection requires hospitals to report deaths of patients while in restraints or seclusion; *Frequency:* On occasion; *Affected Public:* Businesses and other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,072; *Total Annual Responses: Total Annual Hours:* 3.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed on or before January 22, 2001 directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 9, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–29784 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10012]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* Healthy Aging Smoking Cessation Demonstration; *Form No.:* HCFA–10012 (OMB# 0938–NEW); *Use:* The goals of the Healthy Aging Project are to test the effectiveness of three possible Medicare smoking cessation benefits and to make inferences that are generalizable to the Medicare program. Using a comparison trial with restricted randomization of study locales, this study will compare three variations in a potential Medicare smoking cessation benefit on smoking cessation and abstinence rates; *Frequency:* Semi-annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 43,500; *Total Annual Responses:* 130,500; *Total Annual Hours:* 58,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm,* or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed on or before January 22, 2001 directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 9, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Sandards.

[FR Doc. 00–29785 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10022]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality,

utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New; *Title of Information Collection:* Medicare Beneficiary Customer Service Survey; *Form No.:* HCFA–10022 (OMB# 0938–XXXX); *Use:* The survey will attempt to obtain information regarding beneficiary expectations of customer service from Medicare; *Frequency:* Other: Once; *Affected Public:* Individuals or households; *Number of Respondents:* 1,500; *Total Annual Responses:* 1,500; *Total Annual Hours:* 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 9, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–29786 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–53]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Imposition of Cost Sharing Charges Under Medicaid and Supporting Regulations contained in 42 CFR 447.53; *Form No.:* HCFA–R–53 (OMB# 0938–0429); *Use:* The information collection requirements contained in 42 CFR 447.53 require the States to include in their Medicaid State Plan their cost sharing provisions for the medically and categorically needy. The State Plan is the method in which States inform staff of State policies, standards, procedures and instructions; *Frequency:* On occasion; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 2,700.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 9, 2000.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–29787 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0255]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Suggestion Program on Methods to Improve Medicare Efficiency and Supporting Regulations in 42 CFR 420.410; *Form No.:* HCFA–R–0255 (OMB# 0938–new); *Use:* HCFA is implementing regulations as a means of (1) encouraging the submission of suggestions for improving the Medicare program and (2) rewarding those who make suggestions when HCFA deems that it is appropriate and when a reward is not otherwise prohibited by law; *Frequency:* On occasion; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 150; *Total Annual Responses:* 150; *Total Annual Hours:* 50.

To obtain copies of the supporting statement and any related forms for the

proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 9, 2000.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–29788 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0215]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Referenced in 42 CFR 424.57; Additional DMEPOS Supplier Standards; *Form No.:* HCFA–R–215 (OMB# 0938–0717); *Use:* Suppliers of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) must furnish HCFA with current copy of its surety bond and, upon request, documentation that the supplier has both advised beneficiaries that they may either rent or purchase inexpensive or routinely purchased equipment and discussed the purchase option for capped rental equipment; *Frequency:* Annually and On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 65,400; *Total Annual Responses:* 21,800; *Total Annual Hours:* 272,863.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 9, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–29789 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–P–15A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey (MCBS): Rounds 29–37; *Form No.:* HCFA–P–15A (OMB# 0938–0568); *Use:* The MCBS is a continuous, multipurpose survey of a nationally representative sample of aged and disabled persons enrolled in Medicare. The survey provides a comprehensive source of information on beneficiary characteristics, needs, utilization, and satisfaction with Medicare-related activities; *Frequency:* Other: 3 times a year; *Affected Public:* Business or other for-profit, and not-for-profit institutions; *Number of Respondents:* 16,500; *Total Annual Responses:* 49,500; *Total Annual Hours:* 50,490.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 9, 2000.

John P. Burke, III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–29790 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1151–N]

Medicare Program; Ambulance Services Demonstration

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the Ambulance Services demonstration, which will determine the quality and cost effectiveness of reimbursing ambulance services paid for by Medicare under Part B through a monthly capitated payment arrangement. The Secretary of Health and Human Services is required under the Balanced Budget Act of 1997 to establish up to three demonstration projects by entering into contracts with units of local governments that furnish or arrange for furnishing ambulance services in their jurisdictions. The demonstration will determine whether providing a capitated payment and flexibility to participating units of local governments will enable them to meet local needs more effectively while reducing Medicare expenditures for ambulance services.

DATES: Proposals will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 21, 2001.

ADDRESSES: Mail written proposals (1 unbound original and 10 copies) to the following address: Department of Health and Human Services, Health Care Financing Administration, Attention: Kathy Headen, Room C4–17–27, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Applications must be typed for clarity and should not exceed 40 double-spaced pages, exclusive of the executive summary, resumes, forms, and documentation supporting the cost proposal. Please refer to file code HCFA–1151–N on the proposal.

FOR FURTHER INFORMATION CONTACT: Kathy Headen, (410) 786–6865 (kheaden@hcfa.gov.).

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

The Secretary of Health and Human Services is required under section 4532 of the Balanced Budget Act of 1997 (BBA) to establish up to three demonstration projects by entering into contracts with units of local governments that furnish or arrange for furnishing ambulance services in their jurisdictions. The contract must cover at least 80 percent of the persons residing within the unit of local governments who are enrolled in Medicare Part B (excluding persons enrolled in a Medicare+Choice plan). Payment under a contract to a local government will replace the amount that would otherwise be paid for ambulance services for individuals residing in the area. The Secretary and the unit of local government may include in the contract those other terms the parties consider appropriate, including: (1) Covering individuals residing in additional units of local government, (under arrangements entered into between these units and the unit of local government involved); (2) permitting the unit of local government to transport individuals to non-hospital providers if the providers are able to furnish quality services at a lower cost than hospital providers; or (3) implementing these other innovations as the unit of local government may propose to improve the quality of ambulance services and control the costs of the services.

The BBA amended the Act to require that we pay the unit of local government a monthly capitation rate for the ambulance services, instead of the amount that (in the absence of the contract) would otherwise be payable under Part B of Title XVIII of the Social Security Act (Act) for the services covered under the contract. Section 4532(e) of the BBA also requires a formal evaluation of the projects, to include recommendations to modify the payment methodology and whether to extend or expand the demonstration projects.

Section 225 of the Balanced Budget Refinement Act (BBRA) of 1999 amended section 4532(b)(2) of the BBA, the demonstration payment formula, by authorizing the Secretary to establish a budget-neutral first-year capitated payment based on the most current available data, with payment in subsequent years adjusted for inflation.

The BBA contemplates that successful applicants have a comprehensive administrative structure and will be able to demonstrate that they have the capability to contract with vendors, if necessary, to furnish the services. They will also be expected to have the capability to process and adjudicate claims, establish a monitoring and performance system to ensure quality of services, and possess data capabilities to exchange information with vendors and us.

II. Current and Proposed Regulations

We published a final rule on January 25, 1999 (64 FR 3637) establishing new regulation requirements for Medicare Part B ambulance services that were effective February 24, 1999. These regulations revised the vehicle, staffing, level of service, and billing requirements for ambulance services. The regulations also revised the medical necessity requirements to include a national definition of the term bed-confined, established a new requirement that the beneficiary's attending physician furnish a written order certifying the medical necessity of non-emergency ambulance transports, and implemented section 4531(c) of the BBA concerning Medicare coverage for paramedic intercept services in rural communities.

Section 4531 of the BBA requires the Secretary to set interim payment reductions for ambulance services for fiscal years 1998 and 1999, as well as the portion of fiscal year 2000 that precedes January 1, 2000. The BBA also requires the Secretary to establish a fee schedule for ambulance services through negotiated rulemaking. We published a proposed rule for the new fee schedule in the **Federal Register** on September 12, 2000 (65 FR 55100). Applicants should be familiar with the proposed changes as they formulate their proposal.

III. Purpose of Demonstration

We want to determine whether providing a capitated payment and flexibility to participating units of local government will enable them to meet local needs more effectively while reducing Medicare expenditures for ambulance services. In particular, this demonstration will test whether freedom to select and monitor suppliers and establish prices will help control Medicare costs. Section 4532 of the BBA authorizes demonstrations to change the way in which the Medicare program purchases ambulance services in a geographic area. Instead of paying individual suppliers directly on a fee-for-service basis, the statute permits a local government entity to receive capitated payments from us and to establish an ambulance system designed for the local area. Under the demonstration, the applicant could operate the entire system itself, contract with suppliers to furnish services, or use a combination of the two means to deliver care. The local unit of government could establish its own fee schedule rather than using the Medicare fee schedule, request that potential suppliers bid on the service, or pay

suppliers on a capitated basis. The local unit of government could select all willing suppliers or use a limited number of suppliers and use savings from efficiencies to provide added services.

The demonstration offers the selected units of government a great deal of flexibility, as long as the government entity establishes a delivery system that ensures access to care and quality services under a budget neutral capitated payment rate.

We will select up to three units of local government, using a competitive application process. A qualifying unit of local government is defined as a city, county, or incorporated town. A demonstration project can only exclude beneficiaries enrolled in Medicare Part B who reside within the unit if geographic features make coverage impractical for a specified area. In such case, up to 20 percent of the unit's Part B enrollees may be excluded.

An independent panel will review proposals. Areas that will be examined include: Statement of the Problem; Organizational Capability; Service Delivery, Operations, and Quality Assurance; Payment Methodology and Implementation.

IV. Final Selection

The final selection of up to three demonstration projects will be made by our Administrator from among the most highly qualified applicants. The Administrator will make the selection giving greater emphasis to proposals that have strong evidence of service delivery, operations, and quality assurance; the implementation plan; organizational capability; and payment methodology. The operational protocols for the payment system, coverage process, eligibility determination, and claims payment must be approved by us prior to implementation. We reserve the right to conduct site visits to the awardees' location prior to making awards. An independent contractor, selected and funded by us, will design and conduct an evaluation of the demonstration after its conclusion. The awardee will be required to cooperate with the contractor conducting the evaluation.

Authority: Section 4532 of the Balanced Budget Act of 1997, (Pub. L. 105–33); and Section 225 of the Balanced Budget Refinement Act of 1999, (Pub. L. 106–113). (Catalog of Federal Domestic Assistance Program No. 93.779, Health Care Financing Research, Demonstrations and Evaluations)

Dated: October 17, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 00–29755 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1157–N]

Medicare Program; December 12, 2000, Meeting of the Competitive Pricing Advisory Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee (the CPAC) on December 12, 2000. The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to create the CPAC to make recommendations on demonstration area designation and appropriate research designs for the project. The CPAC meetings are open to the public.

DATES: The meeting is scheduled for December 12, 2000, from 9 a.m. until 12 noon, e.s.t.

ADDRESSES: The meeting will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road N.W., Washington, D.C. 20008.

FOR FURTHER INFORMATION CONTACT: Sharon Arnold, Ph.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard C4–14–17, Baltimore, Maryland 21244–1850, (410) 786–6451. Please refer to the HCFA Advisory Committees Information Line (1–877–449–5659 toll free) /(410–786–9379 local) or the Internet (http://www/hcfa.gov/fac) for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to meet periodically and make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research design for implementing the project. The CPAC has previously met on May 7, 1998, June 24 and 25, 1998, September 23 and 24, 1998, October 28, 1998, January 6, 1999, May 13, 1999, July 22, 1999, September 16, 1999, October 29, 1999, January 12, 2000, and May 23, 2000.

The CPAC consists of 15 individuals who are independent actuaries; experts in competitive pricing and the administration of the Federal Employees Health Benefit Program; and representatives of health plans, insurers, employers, unions, and beneficiaries. The CPAC members are: James Cubbin, Executive Director, General Motors Health Care Initiative; Robert Berenson, M.D., Director, Center for Health Plans and Providers, HCFA; John Bertko, Actuary Principal, Humana Inc.; David Durenberger, Vice President, Public Policy Partners; Gary Goldstein, M.D., Chief Medical Officer-Health Plans, Humana Inc.; Samuel Havens, Healthcare Consultant; Margaret Jordan, Executive Vice President, Texas Health Resources; Chip Kahn, President, The Health Insurance Association of America; Cleve Killingsworth, President and CEO, Health Alliance Plan; Nancy Kichak, Director, Office of Actuaries, Office of Personnel Management; Len Nichols, Principal Research Associate, The Urban Institute; Robert Reischauer, President, The Urban Institute; John Rother, Director, Legislation and Public Policy, American Association of Retired Persons; Andrew Stern, President, Service Employees International Union, AFL–CIO; and Jay Wolfson, Director, The Florida Information Center, University of South Florida. The Chairperson is James Cubbin and the Co-Chairperson is Robert Berenson, M.D. In accordance with section 4012(a)(5)of the BBA, the CPAC will terminate on December 31, 2004.

The agenda for the December 12, 2000, meeting will include a continuing discussion on the components of a Report to Congress being prepared by the CPAC. Section 533 of the Medicare, Medicaid, and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999, Public Law 106–113, revised section 4011 of

the BBA to require the CPAC to submit a report on the following topics:

- Incorporation of original Medicare fee-for-service into the demonstration.
- Requirements of quality activities under the demonstration.
- Inclusion of a rural area in the demonstration.
- Requirements of a benefit structure under the demonstration.

The CPAC will also develop recommendations for how it should proceed in the future to carry out its responsibilities under the BBA.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Executive Director, by 12 noon, December 7, 2000, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director, no later than 12 noon, December 11, 2000. Anyone who is not scheduled to speak, may submit written comments to the Executive Director, by 12 noon, December 11, 2000.

The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact the Executive Director at least 10 days before the meeting.

(Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 6, 2000.

Michael M. Hash,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 00–29754 Filed 11–20–00; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) Collaboration in the Identification, Characterization and Development of Inhibitors of the Smad3 Signaling Protein for Use in the Treatment of Wounds and Fibrotic Diseases Characterized by Chronic Inflammation

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

The National Cancer Institute's Laboratory of Cell Regulation and Carcinogenesis (LCRC) has characterized the role of the Smad3 signaling molecule in wound healing and has developed several mouse models of fibrosis. NCI would like to use its expertise of Smad3 biology in a collaboration with an outside party to identify and characterize inhibitors of Smad3 activity.

SUMMARY: The National Cancer Institute (NCI) seeks a Cooperative Research and Development Agreement (CRADA) Collaborator to aid NCI in the identification and development of inhibitors of the function of the Smad3 signaling protein. Smad3 and a closely related gene, Smad2, act as nuclear transcriptional activators in response to intracellular signals from the transforming growth factor betas (TGF-betas) and activin molecules (1,2). The existence of these genes was first proposed after a screen for developmental mutations in the nematode led to the identification of three genes, sma-2, sma-3, and sma-4, that were homologs of *Drosophila* MAD, a protein with a role in the signaling of a TGF-beta superfamily ligand (3). The Smad2 and Smad3 signaling pathways play important roles in the cellular proliferation, differentiation and migration crucial to cutaneous wound healing and the induction of fibrosis in diseases characterized by chronic inflammation (4).

NCI has generated a line of mice that are homozygously deleted in the Smad3 gene ($Smad3^{ex8/ex8}$ mice). These mice have made it possible for NCI to examine the contribution of Smad3 in cutaneous wound healing. $Smad3^{ex8/ex8}$ mice survive into adulthood and show accelerated cutaneous wound healing characterized by an increased rate of re-epithelialization and a reduced local inflammatory infiltrate of monocytes and neutrophils. Thus, Smad3 appears to mediate in vivo signaling pathways that mediate key aspects of wound healing including influx of inflammatory cells and control of epithelial cell proliferation and migration. NCI's studies indicate that inhibitors of Smad3 function, such as specific, small molecule or antisense-related compounds, may accelerate cutaneous wound healing and may even be beneficial to other processes such as the treatment of extensive burns, the suppression of radiation-induced scarring, the growth of autologous skin grafts and the treatment of fibrotic diseases characterized by chronic inflammation.

NCI is looking for a CRADA Collaborator with a demonstrated record of success in the isolation and characterization of small molecule protein inhibitors. The proposed term of the CRADA can be up to five (5) years.

DATES: Interested parties should notify this office in writing of their interest in filing a formal proposal no later than January 22, 2001. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly Symonds Clark, Ph.D., Technology Development Specialist (Tel. #301–496–0477, FAX #301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) for the technology NIH reference No. E–070–00/0, filed May 19, 2000 for ''Inhibition of Smad3 to Prevent Fibrosis and to Improve Wound Healing'' (Roberts and Ashcroft), should be addressed to Marlene Shinn M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056, ext. 285; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. NCI is looking for a CRADA partner to aide NCI in the characterization and development of inhibitors of the function of the Smad3 signaling protein. The expected duration of the CRADA would be from one (1) to five (5) years.

The members of the transforming growth factor-beta (TGF-beta) superfamily are multi-functional growth factors that are responsible for a variety of biological processes in tissue homeostasis, differentiation, morphogenesis and development of multicellular animals (for reviews see 5, 6). They transduce their signals from the plasma membrane to nuclei of target cells through distinct combinations of a family of serine/threonine kinase receptors. Once activated by specific phosphorylation events, these receptors

transduce their signals through intercellular effectors known as the Smad proteins. In response to TGF-beta, specific Smad proteins become inducibly phosphorylated, form heteromers with a common partner, Smad4, and undergo nuclear accumulation where the complexes function as transcription factors (for reviews, see 7, 8, 9, 10). Two of the Smad proteins, Smad3 and its closely related homologue, Smad2, are downstream mediators of signals from TGF-betas 1, 2, 3 and activin, each of which has been implicated as an important factor in the cellular proliferation, differentiation and migration critical for cutaneous wound healing (11, 12).

Recently, animal models for a loss of Smad function have provided insight into the role of specific Smads in a variety of physiologic systems. NCI has created a line of mice null for Smad3 ($Smad3^{ex8/ex8}$). These mice survive into adulthood and show an accelerated rate of wound healing and an impaired local inflammatory response (13). Following full-thickness incisional wounds, the rate of wound healing was markedly accelerated in healthy $Smad3^{ex8/ex8}$ mice with complete re-epithelialization occurring by day 2 post-wounding in the $Smad3^{ex8/ex8}$ mice versus day 5 in wild-type mice, and with significantly reduced wound areas and wound widths. Total cell numbers of fibroblasts and inflammatory cells were markedly reduced in the wounds of the $Smad3^{ex8/ex8}$ mice, with intermediate numbers present in the heterozygous mice, compared with wild-type controls (13). The results from the characterization of the $Smad3^{ex8/ex8}$ mice implicate Smad3 in vivo both in the inhibition of re-epithelialization, with specific effects on keratinocyte proliferation, and in TGF-beta-mediated chemotaxis of monocytes and of neutrophils (14). NCI's results indicate that Smad3 may mediate in vivo signaling pathways that are inhibitory to wound healing, as its deletion leads to enhanced re-epithelialization and contracted wound areas. Thus, 'normal' wound healing may involve the suppression of endogenous Smad3 levels, but complete loss of this signaling intermediate, as in the $Smad3^{ex8/ex8}$ mice, further accelerates the wound-healing process. Through an extensive characterization of the $Smad3^{ex8/ex8}$ mice, NCI has shown that Smad3 is not necessary for production of fibronectin by fibroblasts, but likely does play a role in the elaboration of collagens (14). Furthermore, the improved wound healing observed in the null mice suggests that the inflammatory response is not critical for re-epithelization and wound closure but instead serves to clean wounds of infection as well as other auxiliary functions to the wound healing. Thus, through the creation and characterization of Smad3 null mice, NCI has shown that disruption of Smad3 in a clinical setting may be of therapeutic benefit in accelerating all aspects of impaired wound healing.

Preliminary studies with the Smad3 null mice indicate that they may be resistant to the induction of fibrosis in response to high dose radiation. According to these results, inhibitors of Smad3 could have clinical application in the prevention of fibrosis, including radiation-induced fibrosis, and scarring as in severe trauma and burn patients.

NCI plans to explore several types of Smad3 inhibitors including antisense oligonucleotides to the Smad3 sequence; mutated Smad3 polypeptides and peptide fragments; truncated or deleted forms of Smad3; and existing natural products or pharmaceutical chemical compounds—all of which could act to inhibit some aspect of Smad3 function. NCI is looking for a commercial partner to collaborate with the laboratory in the identification of novel Smad3 inhibitors and in the analysis of existing Smad3 inhibitors for clinical use in wound healing and in the prevention of fibrosis and scarring.

The described methods are the subject of a U.S. Provisional Patent Application, filed on May 19, 2000 by the Public Health Service on behalf of the Federal Government. Furthermore, the initial report and characterization of the invention is described in two published journal articles: Nature Cell Biology (1999) vol. 1:260–266 and Cytokine Growth Factor Rev. (2000) vol. 11(1–2):125–131.

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12. O'Kane, S. and Ferguson, M.W.J., 1997, Int. J. Biochem. Cell Biol., vol. 29:63–78.
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Under the present proposal, the overall goal of the CRADA will be to identify and characterize potential inhibitors of Smad3 function using in vitro assay systems and NCI's $Smad3^{ex8/ex8}$ null mice as a preclinical animal model. NCI speculates that the CRADA research will have two main phases including:

1. Identification and characterization of inhibitors of Smad3 function, and
2. Examination of the efficacy of the inhibitors for the treatment of various ailments and diseases.

NCI believes that this technology may have many applications including the treatment of cutaneous wounds and extensive burns and the prevention of fibrosis and scarring in diseases characterized by chronic inflammation.

Party Contributions

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the CRADA Collaborator with information and data relating to the role of the Smad3 signaling protein in wound healing and in the development of radiation-induced fibrosis as determined through the NCI's analysis of the Smad3 null mice.
3. Providing the CRADA Collaborator with the necessary materials to collaborate in the identification and characterization of the Smad3 inhibitors.
4. Planning research studies and interpreting research results.
5. Carrying out research to analyze potential Smad3 inhibitors.
6. Publishing research results.
7. Developing additional potential applications of the identified Smad3 inhibitors.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. A demonstrated record of success in some or all of the following areas: molecular biology, the development of small molecule therapeutics, and high throughput screening of compounds.

2. A demonstrated background and expertise in growth factor and cytokine research.

3. The ability to collaborate with NCI on further research and development of this technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

4. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

5. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

6. The demonstration of expertise in the commercial development and production of products related to this area of technology.

7. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated:November 12, 2000.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–29718 Filed 11–20–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Enhanced Homologous Recombination Mediated by Lambda Recombination Proteins

Donald L. Court, Daiguan Yu, E-Chaing Lee, Hilary Ellis, Nancy A. Jenkins, Neal G. Copeland (NCI), DHHS Reference No. E–177–00/0 filed 14 Aug 2000, Licensing Contact: Dennis Penn; 301/496–7056 ext. 211; e-mail: *pennd@od.nih.gov*.

The present invention concerns methods to enhance homologous recombination in bacteria and eukaryotic cells using recombination proteins derived from bacteriophage lambda. It also concerns methods for promoting homologous recombination using other recombination proteins.

Concerted use of restriction endonucleases and DNA ligases allows in vitro recombination of DNA sequences. The recombinant DNA generated by restriction and ligation may be amplified in an appropriate microorganism such as E. coli, and used for diverse purposes including gene therapy. However, the restriction-ligation approach has two practical limitations: first, DNA molecules can be precisely combined only if convenient restriction sites are available; second, because useful restriction sites often repeat in a long stretch of DNA, the size of DNA fragments that can be manipulated are limited, usually to less than about 20 kilobases.

Homologous recombination, generally defined as an exchange of homologous segments anywhere along a length of two DNA molecules, provides an alternative method for engineering DNA. In generating recombinant DNA with homologous recombination, a microorganism such as E. coli, or a eukaryotic cell such as a yeast or vertebrate cell, is transformed with an exogenous strand of DNA. The center of the exogenous DNA contains the desired transgene, whereas each flank contains a segment of homology with the cell's DNA. The exogenous DNA is introduced into the cell with standard techniques such as electroporation or calcium phosphate-mediated transfection, and recombines into the cell's DNA, for example with the assistance of recombination-promoting proteins in the cell.

In generating recombinant DNA by homologous recombination, it is often advantageous to work with short linear segments of DNA. For example, a mutation may be introduced into a linear segment of DNA using polymerase chain reaction (PCR) techniques. Under proper circumstances, the mutation may then be introduced into cellular DNA by homologous recombination. Such short linear DNA segments can transform yeast, but subsequent manipulation of recombinant DNA in yeast is laborious. It is generally easier to work in bacteria, but linear DNA fragments do not readily transform bacteria (due in part to degradation by bacterial exonucleases). Accordingly, recombinants are rare, require special poorly-growing strains (such as RecBCD-strains) and generally require thousands of base pairs of homology. This invention teaches an improved method of promoting homologous recombination in bacteria.

In eukaryotic cells, targeted homologous recombination provides a basis for targeting and altering essentially any desired sequence in a duplex DNA molecule, such as targeting a DNA sequence in a chromosome for replacement by another sequence. This invention teaches methods useful for treating human genetic diseases, the creation of transgenic animals, or modifying the germline of other organisms.

Amelogenin Knockout Mice and Use as Models for Tooth Disease

Dr. Ashok Kulkarni et al. (NIDCR), DHHS Reference No. E–167–00/0, Licensing Contact: John Rambosek; 301/

496–7056 ext. 270; e-mail: *rambosej@od.nih.gov.*

This technology relates to transgenic knockout mice that may serve as an animal model for dental disease. Using gene-targeting techniques, mice have been created which are disrupted for the amelogenin gene. These mice lack the amelogenin protein, which is normally expressed only in the teeth. Since these mice lack this protein, they are expected to mimic an inherited tooth disorder called ''amelogenesis imperfecta (AI)''. AI is an inherited condition that is transmitted as a dominant trait and causes the enamel of the tooth to be soft and thin resulting in discoloration, disintegration and disfigurement of the teeth. The damaged teeth are also susceptible to decay. The amelogenin knockout mice display an interesting tooth phenotype. Their maxillary incisors are chalky white in color and opaque in appearance.

These changes are associated with mild attrition of incisor tips and molar cusps. Detailed analysis of this phenotype is in progress. The amelogenin knockout mice may be used as an animal model to develop therapeutic approaches to AI.

Transgenic Mouse Model for Tooth Disorders Such as Dentin Dysplasia and Dentinogenesis Imperfecta

Drs. Thyagarajan, Sreenath, and Kulkarni (NIDCR), DHHS Reference No. E–150–00/0, Licensing Contact: John Rambosek, Ph.D.; 301/496–7056; e-mail: *rambosej@od.nih.gov.*

This technology describes transgenic mice that selectively overexpress transforming growth factor beta-1 (TGF-beta1) in odontoblast and ameloblast cells of teeth. Ameloblasts mainly make enamel, whereas odontoblasts make dentin. These transgenic mice mimic dental symptoms similar to those seen in common tooth disorders such as dentin dysplasia and dentinogenesis imperfecta. Both of these human dentin defects are inherited in an autosomal dominant manner and appear to be caused by abnormal dentin production by odontoblasts and associated poor mineralization of the dentin matrix. In both diseases, teeth are discolored and fractured, causing difficulties in eating food. Experimentally, these mice display discolored and fractured teeth with defective dentin. This transgenic mice model will be valuable to advance our understanding of the molecular pathogenesis underlying dentin dysplasia and dentinogenesis imperfecta and also for developing therapeutic strategies.

This material is available for licensing through a PHS Biological Materials License.

Dated: November 13, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–29716 Filed 11–20–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability For Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Dale Berkley, Ph.D., J.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext. 223; fax: 301/402–0220; e-mail: berkleyd@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Automated Core Biopsy Instrument

Erik Kass, Carter Vanwaes (NIDCD), DHHS Reference No. E–269–00/0 filed 20 Sep 2000.

The invention is an automated core biopsy instrument that may be operated with one hand. The instrument has a single activation element that causes a stylet to advance into the tissue of interest as a cutting cannula disposed around the stylet is fired to shear off the tissue into specimen notches disposed in the stylet. The invention is constructed so that the stylet and cutting cannula may be separately driven and biased. The cocking mechanism of the automated core biopsy instrument is used to cock both the stylet assembly and cutting cannula assemblies against separate biasing springs. Manipulation of the cocking mechanism permits the exposure of tissue in the specimen notches when desired. The instrument has a locking mechanism that is used to prevent inadvertent firing of the automated core biopsy instrument.

EZ Navigator and EZ Forms Software

Andrew Schwartz, William K. Jones, Michelle R. Ugas, Ta-Jen Hu (CIT), DHHS Reference No. E–236–00/0.

The EZStart invention is a method of accessing a database management system that can be used to convert non-relational data to relational data and create and manage relational data over a network such as the Internet. The invention provides user-friendly access to data stored in a database management system, allowing users with little or no knowledge of database management systems to access, store and manage data using only a web browser. EZStart provides a generic platform from which any user can select, insert, update and delete data without creating a custom software application for each user. The invention automatically generates navigation and data forms, allowing access to a Relational Database Management System (RDBMS) while masking the complexity of the RDBMS. Using a function of EZStart coined EZNavigator, users can easily maneuver through the RDBMS, view lists of objects, drill-down into column, view and index definitions, and manage object privileges. A separate function of EZStart, known as EZForms, allows a user to select, insert, update and delete rows in tables. No Structured Query Language (SQL) knowledge is required to perform these functions, but advanced users can use EZForms to generate SQL into a text area for modification and execution of the SQL. The SQL can be saved into and retrieved from a repository.

Integrated Low Field MRI/RF EPRI for Co-Registering Imaging of In Vivo Physiology and Anatomy in Living Objects

Murali K. Cherukuri et al. (NCI), DHHS Reference No. E–120–99/0 filed 01 Nov 1999.

Obtaining physiological information in a non-invasive manner from living tissue will provide valuable information, rather than invasive methods that are sometimes not available and also may damage living tissue. EPRI (Electron Paramagnetic Resonance Imaging) is the technique to investigate physiological information such as oxygen imaging and

pharmacokinetic imaging in a non-invasive manner after non-toxic infusion of the spin probe.

However, the disadvantage of EPRI is the lack of proper orientation of the physiological image with respect to anatomy. On the contrary, Magnetic Resonance Imaging (MRI) methods are excellent for providing images with fine anatomical detail, but are often not possible methods that provide physiological information co-registered with anatomy with clinically relevant resolution.

The current invention complements a MRI with EPRI methods to solve each method's problem described above. A low-field MRI(5–30 mT) module is integrated into an EPRI(5—20 mT) system to provide an MRI scout image to properly orient the EPRI physiological information with respect to anatomy (A common magnet/gradient coil assembly is used for both MRI and EPRI scans).

Therefore, the EPR images contain spectral information regarding the local physiological conditions such as oxygen status. This data, when overlaid with anatomical images of MRI (Magnetic Resonance Imaging), co-register anatomical MR images and EPR physiological images.

Dated: November 13, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–29717 Filed 11–20–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells; Correction

ACTION: Notice; correction.

SUMMARY: The National Institutes of Health published in the **Federal Register** on August 25, 2000, the final National Institutes of Health Guidelines for Research Using Human Pluripotent Stem Cells (65 FR 51976). The final Guidelines contained incorrect citations and other errors. The final Guidelines, with the corrections made in this notice, are available on the NIH stem cell information web site at:(*http://www.nih.gov/news/stemcell/index.htm*). For additional information on human pluripotent stem cells, refer to this web site.

FOR FURTHER INFORMATION CONTACT: NIH Office of Science Policy, Attention: HPSCRG, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, (301) 594–7741 or e-mail *stemcell@mail.nih.gov.*

Corrections

1. In Section II.A.2.d of the Guidelines (65 FR 51980, first column), change ''human pluripotent stem cells,'' at the end of the section, to ''embryo.''

2. In Section II.B.1.a. of the Guidelines (65 FR 51980, second column), change ''Section II.A.2'' to ''Section II.B.2.''

3. In Section II.B.2.a. of the Guidelines (65 FR 51980, third column), add the following at the end of the section: ''and with 42 U.S.C. § 289g–2(b).''

4. In Section IV.B. of the Guidelines (65 FR 51981, first column), change ''applications shall'' in the first sentence to ''documentation of compliance with the Guidelines will'' and insert after ''by HPSCRG and'' the words, ''all applications will be reviewed''.

Dated: November 15, 2000.

Ruth L. Kirschstein,

Principal Deputy Director, NIH.

[FR Doc. 00–29791 Filed 11–20–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–31]

Notice of Proposed Information Collection: Comment Request; Section 203(k) Rehabilitation Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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:* January 22, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 203(k) Rehabilitation Mortgage Insurance.

OMB Control Number, if applicable: 2502–0527.

Description of the need for the information and proposed use: This request for OMB review involves a reinstatement of a previously approved information collection for 203(k) Rehabilitation Mortgage insurance (OMB control number 2502–0527) that expired on October 31, 2000. The information collection implements recommendations to mitigate program abuses that were cited in an Audit Report of HUD's Office of Inspector General. The information collection focuses on the loan origination process and requires (1) certifications and disclosures concerning identity–of–interest borrowers and program participants, and (2) proficiency testing of home inspectors/consultants. Periodic reporting of the collected information is not required.

Agency form numbers, if applicable: HUD–92700 & HUD–9746–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and

hours of response: The estimated number of respondents is 20,500 which will generate 259,200 responses, frequency of response is on occasion, the estimated time per response varies, and the total annual burden requested is 319,450 hours.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Date: November 14, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commission.

[FR Doc. 00–29828 Filed 11–20–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4497–N–10]

Public Housing Assessment System (PHAS): Notice of Extended Submission Period for PHAS Management Operations Certification and Audited Financial Statement for Certain PHAs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This document follows HUD's announcement on August 9, 2000, that provided to those public housing agencies (PHAs), with fiscal year ends of September 30, 1999 and December 31, 1999, which did not fully meet the submission requirements for their PHAS management operations certification, additional time to submit or resubmit the certification. The August 9, 2000, notice also provided PHAs with a fiscal year ended September 30, 1999, with additional time to submit audited financial statements. The majority of PHAs covered by the August 9, 2000, notice successfully completed submission or resubmission of the management operations certification or audited financial statement. However, several PHAs continued to experience submission difficulties. This document provides notice that HUD is providing PHAs with fiscal years ended September 30, 1999, December 31, 1999, and March 31, 2000, with additional time to make their PHAS management operations certification submissions. This document also provides notice that HUD is providing PHAs with fiscal years ended September 30, 1999, and December 31, 1999, with additional time to make their audited financial statement submissions.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington DC, 20024; telephone Technical Assistance Center at (888) 245–4860 (this is 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. Additional information is available from the REAC Internet Site, *http://www.hud.gov/reac.*

SUPPLEMENTARY INFORMATION:

Background

HUD's Public Housing Assessment System (PHAS) provides for the assessment of the physical condition, financial condition, management operations and resident services and satisfaction of public housing. HUD's regulations implementing the PHAS and codified in 24 CFR part 902 provide for this assessment to be made through physical inspection of public housing properties, survey of public housing residents, and a PHA's submission of audited financial statements and its certification to certain management data as required by the regulations. HUD's PHAS regulations were amended by a final rule published on January 11, 2000 (65 FR 1712) and a technical correction was published on June 6, 2000 (65 FR 36042).

In a notice published on August 9, 2000 (65 FR 48730), HUD advised that due to errors or difficulties in submission of their management operations certifications, certain PHAs with fiscal years ended September 30, 1999, and December 31, 1999, did not fully meet the requirements under the PHAS Management Operations Indicator. HUD therefore advised these PHAs that they could submit or resubmit the management operations certification, as applicable, without penalty during the time periods outlined in Table 1 of the August 9, 2000, notice.

Additionally, in the August 9, 2000 notice, HUD advised that the audited financial statements of certain PHAs with a fiscal year ended September 30, 1999, were not all properly received and processed. The August 9, 2000, notice therefore provided these PHAs with additional time to submit their audited financial statements.

The majority of PHAs covered by the August 9, 2000, notice successfully completed submission or resubmission of their management operations certification or audited financial statement. However, several PHAs continued to experience difficulties.

This document provides notice that HUD is providing the PHAs with fiscal years ended September 30, 1999, and December 31, 1999, as well as PHAs with a fiscal year ending March 31, 2000, with additional time to make their PHAS management operations certification submissions. This document also provides notice that HUD is providing PHAs with fiscal years ending September 30, 1999, and December 31, 1999, with additional time to make their audited financial statement submissions.

Management operations certifications must be submitted to REAC no later than December 21, 2000.

Audited financial statements must be submitted to REAC no later than December 6, 2000.

Dated: November 14, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Director, Real Estate Assessment Center.

[FR Doc. 00–29674 Filed 11–20–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 007350–5

Applicant: The Nature Conservancy, Michigan Chapter, East Lansing, Michigan.

The applicant requests an amendment for their permit to take Mitchell's satyr (Neonympha mitchellii mitchelli). The applicant requests changes in TE 007350–4 to allow use of prescribed burning for habitat management and expand their range of activities (surveys, monitoring, and management) into additional areas of Michigan. Activities

are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292), or email *peter__fasbender@fws.gov.*

Lynn Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–29795 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–41566–35]

Notice of Realty Action: Segregation Terminated, Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation Terminated, Recreation and Public Purpose Lease/ Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada was segregated for exchange purposes on October 19, 1995 under serial number N–60073; on July 23, 1997 under serial number N–61855; and on July 23, 1997 under serial number N–66364. These exchange segregations will be terminated upon publication of this notice in the **Federal Register**. The land has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County School District proposes to use the land for a middle school.

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 11, W½NW¼SE¼.

Containing 20.0 acres, more or less, located at Torrey Pines Drive and W. Robindale Road.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan.

2. Those rights for sewer pipeline purposes which have been granted to Clark County Sanitation District by Permit No. N–62347 under the Act of October 21, 1976 (43 USC 1761).

3. Those rights for roadway purposes which have been granted to Clark County by Permit N–62893 under the Act of October 21, 1976 (43 USC 1761).

4. Those rights for water pipeline purposes which have been granted to Las Vegas Valley Water District by Permit No. N–63109 under the Act of October 21, 1976 (43 USC 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws, and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/ conveyance for classification of the lands to the Las Vegas Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a middle school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a middle school. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/ conveyance until after the classification becomes effective.

Dated: November 14, 2000.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–29796 Filed 11–20–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–1430–ES; N–66487, N–73703]

Notice of Realty Action: Direct Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Direct Sales.

SUMMARY: The Las Vegas Valley Water District and the Clark County Sanitation District have requested direct sales for the following described public lands in Las Vegas, Clark County, Nevada. The two parcels will be used in conjunction with the development of the Desert Breeze Water Resource Center and, once patented, will house sodium hypochlorite used in the treatment of sewage water for distribution to large turf irrigators. The lands have been examined and found suitable for sale under the provisions of the Federal Land Policy and Management Act (43 CFR 2711.3–3) and the Southern Nevada Public Land Management Act of 1998 (P.L. 105–263).

N–66487 Direct Sale to Las Vegas Valley Water District

T. 21 S., R. 60 E., M.D.M.
Sec. 16, SE¼NW¼SW¼SE¼SW¼.

Containing approximately 0.625 acres, more or less.

N–73703 Direct Sale to Clark County Sanitation District

T. 21 S., R. 60 E., M.D.M.
Sec. 16, E½ NE¼SW¼SW¼ SE¼SW¼,W½NW ¼SE¼SW¼SE¼SW¼.

Containing approximately 0.625 acres, more or less. Both parcels are located near the corner of Flamingo Road and Durango Drive.

The land is not required for any federal purpose. The direct sales are consistent with current Bureau planning for this area and would be in the public interest. The patents will be subject to the provisions of the Federal Land Policy and Management Act and applicable regulations of the Secretary of the Interior, and the land will be subject to the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391, 43 U.S.C. 945).

2. All the mineral deposits in the lands patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law; and will be subject to:

1. Easements in accordance with the Clark County Transportation Plan. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

The lands have been segregated from all forms of appropriation under the Southern Nevada Public Lands Management Act (P.L. 105–263).

Comments: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments as to whether the BLM followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for direct sales. Comments should be mailed to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The lands will not be offered for conveyance until 60 days after publication of this notice in the **Federal Register**.

Dated: November 15, 2000.

Rex Wells,

Assistant Field Office Manager, Las Vegas, NV.

[FR Doc. 00–29798 Filed 11–20–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY070–1310–EJ]

Notice of Intent To Invite Public Participation in the Amendment of the Buffalo and Platte River Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent To Amend the Buffalo and Platte River Resource Management Plans.

SUMMARY: The Buffalo and Casper Field Offices of the Bureau of Land Management (BLM) in Wyoming are preparing an Environmental Impact Statement (EIS) for oil and gas development, including coalbed methane, in the Powder River Basin of Wyoming. A Notice of Intent to prepare the EIS was published in the **Federal Register** on June 21, 2000, pages 38571–38572. The scoping period was open from May 22, 2000 through July 31, 2000. Scoping meetings were held in Sheridan, Gillette, Buffalo, and Douglas, Wyoming, in June, 2000. This EIS will provide additional analysis under the National Environmental Policy Act for decisions in the Buffalo and Platte River Resource Management Plans (RMPs) related to oil and gas development. A reasonably foreseeable oil and gas development scenario will be included to aid in analyzing impacts. Land use plan decisions that will be evaluated and may be amended include the following:

—Areas open (or closed) to oil and gas development.
—Lease stipulations or mitigation measures necessary for coalbed methane development.
—Other decisions as appropriate.

This Notice satisfies the requirements in the regulations at 43 CFR 1610.2(c) for amending an RMP.

DATES: Meeting dates and other public participation activities will be announced in public notices, the local media, or in letters sent to interested and potentially affected parties. Persons wishing to participate in this amendment process and wishing to be placed on mailing lists must notify the Buffalo Field Office at the address and phone number below. If you wish to comment on the proposed planning criteria please submit your comments by January 10, 2001. The public may review the Buffalo and Platte River Resource Management Plans at the address below.

ADDRESSES: Please submit comments to: Buffalo Field Office, Bureau of Land Management, Attn: Paul Beels, 1425 Fort Street, Buffalo, WY 82834.

FOR FURTHER INFORMATION CONTACT: Paul Beels, Powder River Oil and Gas EIS Project Leader, BLM Buffalo Field Office, at the above address or at (307) 684–1100.

Freedom of Information Act Considerations: Public comments submitted for this planning amendment, including names and street addresses of respondents, will be available for public review and disclosure at the Buffalo Field Office during regular business hours (8:00 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The area analyzed is the Powder River Basin of Wyoming. The Buffalo Field Office area encompasses all of Campbell, Sheridan and Johnson Counties. The 1985 Buffalo Resource Management Plan (RMP) was revisited and evaluated from 1992 through 1997. This process included public participation. The evaluation resulted in determining that the RMP planning and management decisions were still valid. Environmental analyses were conducted and documented on a variety of coalbed methane (CBM) project proposals through the 1990s. These include the Pistol Point, Marquiss, Lighthouse, Gillette North, Gillette South, and Wyodak CBM project proposals. Each of these environmental analyses covered the effects of the proposed actions and alternatives, including the cumulative effects of the projects combined with other development and actions within the area. Based on the evaluation of these project proposals in regard to the scope and meaning of the Buffalo RMP decisions, it was determined that amendments to the RMP (i.e., changing, adding or deleting RMP decisions) were not necessary. Although specific amendments to the RMP decisions were not needed, each of the analyses for these project proposals served to supplement and update the analysis in the EIS for the Buffalo RMP.

The portion of the Platte River Field Office area included in the analysis encompasses the northern portion of Converse County including Township 40 north through Township 35 north, approximately 1,279,450 acres. The Platte RMP was approved in July 1985.

An interdisciplinary team including disciplines and staff expertise appropriate to the issues identified will be utilized in the analysis. The State of Wyoming and the U.S. Forest Service are cooperating agencies in the EIS.

Issues raised during preliminary scoping meetings that need to be addressed include:

—Aquifers: the quantity, quality, and distribution of surface water and the potential to affect current uses of water; and the potential to affect soils, geologic hazards, and the extraction of mineral resources other than conventional oil and gas and coalbed methane.
—Air quality and visibility.
—Wildlife and their habitats.
—Fisheries and aquatic habitats.
—Ecological integrity, public land health, and biological diversity.
—Species of special concern, particularly threatened, endangered and candidate, or sensitive species of plants and animals.
—Rangeland resources and grazing.
—Cultural resources, paleontological, natural history, and Native American concerns.
—Recreational opportunities and the recreational experiences.
—Aesthetics.
—Local economy.
—Human health and safety.

The public is invited to identify other issues and concerns that should be addressed in the planning process and to comment on those identified above. These issues will be refined based on public comments and used in the development of the Powder River Basin Oil and Gas environmental impact statement (EIS), and any necessary amendments to the Buffalo and Platte River Resource Management Plans (RMPs).

The following proposed ''Planning Criteria'' have been developed to assist in preparing the Powder River Basin Oil and Gas EIS and to comply with the Bureau of Land Management (BLM) planning regulations in addressing any needed amendments to the Buffalo and Platte River RMPs. Those RMPs provide the general management direction for the BLM-administered public lands and Federal mineral estate in the portions of Wyoming to be addressed in the Powder River Basin Oil and Gas EIS.

The establishment of planning criteria (43CFR 1610.4–2) guides development of the RMP amendment to ensure that it is tailored to issues previously identified and to avoid unnecessary data collection and analyses. Planning criteria are based on applicable laws, regulations, and Director and State Director guidance, as well as the results of public participation and coordination with other State and local governments, Federal agencies, and Indian tribes. Planning criteria may be changed as the planning process proceeds, based on public input and the results of studies and assessments.

BLM is proposing the following planning criteria for consideration in one or more of the alternatives:

1. The plan amendment will set forth a framework for managing the drilling of coalbed methane wells in an environmentally responsible manner consistent with applicable laws and regulations.

2. Management of coalbed methane produced water will be recognized in the plan.

Criteria for Analyzing Environmental Consequences

The following potential environmental consequences will be addressed.

—The effects of oil and gas development and other uses of groundwater on aquifers.
—The effects of oil and gas development and other activities on the quality of surface water, and the potential to affect the current uses of those surface waters.
—The effects of oil and gas development and other activities on the quantity and distribution of surface water.
—The effects of oil and gas development and other activities on the areas geology, geologic hazards, and the extraction of other mineral resources.
—The effects of oil and gas development and other activities on air quality and visibility.
—The effects of oil and gas development and other activities on vegetative communities, including wetlands and riparian areas.
—The effects of oil and gas development and other surface-disturbing and disruptive activities on wildlife and their habitats, particularly key species and habitats.
—The effects of oil and gas development and other surface-disturbing and disruptive activities on fisheries and aquatic habitats.
—The effects of oil and gas development and other surface-disturbing and disruptive activities on species of special concern, particularly threatened, endangered, candidate, or sensitive species of plants and animals.
—The effects of oil and gas development and other activities on the areas ecological integrity and biological diversity.
—The effects of oil and gas development and other surface-disturbing activities on rangeland resources and grazing operations.
—The effects of oil and gas development and other surface-disturbing and disruptive activities on cultural, historic, and paleontological resources, and Native Americans.
—The effects of oil and gas development and other surface-disturbing activities on recreational opportunities and experiences.
—The effects of oil and gas development and other surface-disturbing and disruptive activities on scenic values and aesthetics.
—The effects of oil and gas development on the local economy.
—The effects of oil and gas development on human health and safety.

Criteria for Selecting the Preferred Alternative

The following considerations will guide selection of the preferred alternative.

—The level of land use restrictions needed to protect resources and keep the public lands and resources available for public use.
—The potential for the occurrence and development of mineral resources, including conventional oil and gas and coalbed methane production, and coal mining.
—Consistency with the land use plans, programs, and policies of other Federal agencies, State and local governments, and Native American tribes.
—Compliance with the Standards for Healthy Rangelands and Guidelines for Livestock Grazing Management for the Public Lands Administered by the Bureau of Land Management in the State of Wyoming (August 12, 1997).

This notice also serves as a request for coal resource information, Pursuant to 43 CFR 3420.1–2, and a request to identify any substantiated interest in future leasing and development of Federal coal in the area to be addressed by the Powder River Basin Oil and Gas EIS. Specifically, information is requested on the location, quality and quantity of Federal coal with development potential, and on surface resource values related to the twenty coal unsuitability criteria described in 43 CFR 3481.1. This information will be used for any necessary update of the coal screening determinations (43 CFR

3420.1–4) in the area, for purposes of the environmental analysis for the Powder River Basin EIS, and for any necessary update or amendment of the Buffalo and Platte River RMPs. Information concerning areas of coal leasing interest, coal resource data, and other resource information related to the coal unsuitability criteria must be submitted to the Buffalo Field Office at the address above.

Dated: November 14, 2000.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 00–29722 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

RIN 1010–AB57

Major Portion Prices and Due Dates for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Major Portion Prices.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published on August 10, 1999, require MMS to determine major portion values and notify industry by publishing the values in the **Federal Register** regulations also require MMS to publish a due date for industry to pay additional royalty based on the major portion value. This notice provides the major portion values and due dates for May and June 2000 production months.

EFFECTIVE DATE: January 1, 2000.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: John Barder, Indian Oil and Gas Compliance Asset Management, MMS; telephone, (303) 275–7234; FAX, (303) 275–7470; E-mail, John.Barder@mms.gov; mailing address, Minerals Management Service, Minerals Revenue Management, Indian Oil and Gas Compliance Asset Management, P.O. Box 25165, MS 396G3, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, MMS published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases,'' (64 FR 43506) with an effective date of January 1, 2000. The gas regulations apply to all gas production from Indian (tribal or allotted) oil and gas leases (except leases on the Osage Indian Reservation).

The rule requires that MMS publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000 along with a due date for additional royalty payments. See 30 CFR 206.174(a)(4)(ii)(64 FR 43520, August 10, 1999). If additional royalties are due based on a published major portion price, the lessee must submit an amended Form MMS–2014, Report of Sales and Royalty Remittance, to MMS by the due date. If additional royalties are not paid by the due date, late payment interest under 30 CFR 218.54 (1999) will accrue from the due date until payment is made and an amended Form MMS–2014 is received. The table below lists the major portion prices for all designated areas not associated with an Index Zone and the due date for payment of additional royalties.

GAS MAJOR PORTION PRICES AND DUE DATES FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

MMS-Designated areas	May 2000	June 2000	Due date
Alabama-Coushatta	$3.13/MMBtu	$4.52/MMBtu	01/02/2001
Blackfeet Reservation	2.29/MMBtu	2.79/MMBtu	01/02/2001
Fort Belknap	3.92/MMBtu	4.14/MMBtu	01/02/2001
Fort Berthold	1.25/MMBtu	2.03/MMBtu	01/02/2001
Fort Peck Reservation	1.95/MMBtu	2.72/MMBtu	01/02/2001
Navajo Allotted Leases in the Navajo Reservation	2.78/MMBtu	3.87/MMBtu	01/02/2001
Rocky Boys Reservation	2.04/MMBtu	3.09/MMBtu	01/02/2001
Turtle Mountain Reservation	1.18/MMBtu	1.18/MMBtu	01/02/2001
Ute Allotted Leases in the Uintah and Ouray Reservation	2.80/MMBtu	3.76/MMBtu	01/02/2001
Ute Tribal Leases in the Uintah and Ouray Reservation	2.80/MMBtu	3.76/MMBtu	01/02/2001

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999.

Dated: November 15, 2000.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 00–29829 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Supplemental Environmental Impact Statement for Yosemite Valley Plan, Yosemite National Park Madera, Mono, Tuolumne, and Mariposa Counties, California; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub L.91–190, as amended), and the Council on Environmental Quality regulations (40 CFR Part 1500–1508), the National Park Service, Department of the Interior, has prepared a Final Supplemental Environmental Impact Statement identifying and evaluating five alternatives for a Yosemite Valley Plan within Yosemite National Park. The foreseeable potential for environmental impacts, and appropriate mitigation, are identified and assessed for each alternative. When approved, the plan is intended to guide management actions during the next 15–20 years.

Proposal

The proposed Yosemite Valley Plan (*Alternative 2—Preferred*) would restore approximately 176 disturbed or developed acres in Yosemite Valley to natural conditions. In addition, 173 acres of developed land would be redeveloped and 73 acres of undeveloped land would be developed to accommodate visitor and employee services, such as campgrounds, day-visitor parking, and employee housing. The net effect of this proposal would be to reduce development in Yosemite Valley by approximately 71 acres. This

proposal would locate a new Valley Visitor Center and consolidate parking for day-visitors at Yosemite Village, and also consolidate parking in three areas outside Yosemite Valley. There would be more campsites and fewer lodging units than there are now. Vehicle travel in the eastern portion of Yosemite Valley during summer months would be greatly reduced. The area of the former Upper and Lower River Campgrounds would be restored to a mosaic of meadow, riparian, and oak woodland communities, roads would be removed from Ahwahnee and Stoneman Meadows, and much of Curry Orchard would be restored to natural conditions. Southside Drive would be converted to two-way traffic from El Capitan crossover to Curry Village, and Northside Drive would be converted to a paved bicycle and pedestrian trail from El Capitan crossover to Yosemite Lodge. There would be minimal new development west of Yosemite Lodge.

Alternatives

Alternative 1 maintains the status quo in Yosemite Valley, as described in Chapter 3, Affected Environment. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to measure the environmental effects of those changes. This ''no new actions'' concept follows the guidance of the Council on Environmental Quality, which defines such base-line alternatives as no change from the current management direction or level of management intensity.

Alternative 3 would restore approximately 209 disturbed or developed acres in Yosemite Valley to natural conditions; and 148 acres of developed land would be redeveloped and 99 acres of undeveloped land would be developed to accommodate visitor and employee services. The net effect would be to reduce development in Yosemite Valley by approximately 72 acres. This alternative consolidates parking for day-visitors in the Taft Toe area; a Valley Visitor Center would also be constructed there. There would be fewer campsites and lodging units than there are now. The area of the former Upper and Lower River Campgrounds and the Camp 6 parking area near Yosemite Village would be restored to riparian habitat, roads would be removed from Ahwahnee and Stoneman Meadows, and parking and the historic fruit trees would be removed from Curry Orchard. Northside Drive would be converted to a trail for pedestrians and bicyclists from Yosemite Lodge to El Capitan Crossover, and Southside Drive would be converted to two-way traffic from Taft Toe to Curry Village.

Alternative 4 would restore approximately 194 disturbed or developed acres in Yosemite Valley to natural conditions. In addition, 154 acres of developed land would be redeveloped and 99 acres of undeveloped land would be developed to accommodate visitor and employee services. The net effect would be to reduce development in Yosemite Valley by approximately 66 acres. This alternative would consolidate parking for day-visitors in the Taft Toe area in mid Yosemite Valley and in three parking areas outside the Valley. A Valley Visitor Center would be constructed at Taft Toe. There would be fewer campsites and lodging units than there are now. The area of former Upper and Lower River Campgrounds and the Camp 6 parking area near Yosemite Village would be restored to riparian communities; roads would be removed from Ahwahnee and Stoneman Meadows; and parking would be removed from Curry Orchard. Northside Drive would be converted to a multi-use-paved trail for hikers and bicyclists, from Yosemite Lodge to El Capitan crossover. Southside Drive would be converted to two-way traffic from Taft Toe to Curry Village.

Alternative 5 would restore approximately 157 disturbed or developed acres in Yosemite Valley to natural conditions. In addition, 181 acres of developed land would be redeveloped and 54 acres of undeveloped land would be developed to accommodate employee and visitor services. The net effect would be to reduce development in Yosemite Valley by approximately 63 acres. This alternative consolidates parking for day-visitors at Yosemite Village and selected areas outside of Yosemite Valley. A new transit center would be located at Yosemite Village. Traffic circulation would remain similar to the present; however, one lane of Northside and Southside Drives would be converted to multi-use paved trails between El Capitan Crossover and Yosemite Lodge. There would be more campsites and fewer lodging units than now, and area of the former Lower and Upper River Campgrounds would be restored to a mosaic of riparian and oak woodland communities. There would be minimal new development in mid and west Yosemite Valley.

Planning Background

The draft Yosemite Valley Plan and Supplemental Environmental Impact Statement (SEIS) were prepared by the National Park Service (NPS) pursuant to the National Environmental Policy Act. A Scoping Notice was published in the **Federal Register** on December 16, 1998. General issues and specific concerns already raised during previous relevant planning processes were provided to the public. Scoping comments were received through February 1, 1999. During this scoping period, the NPS facilitated over 100 discussions and briefings to interested members of the public, congressional delegations, Indian Tribes, elected officials, other agencies, public service organizations, educational institutions, and other entities. Nearly 600 letters were received concerning the announced conservation planning and environmental impact analysis process.

The draft Yosemite Valley Plan\SEIS—formally announced for public review per Notice of Availability published in the **Federal Register** on April 13, 2000—was sent directly to all individuals, organizations, and agencies which had previously contacted the park; copies could also be obtained in the park, by mail, at public meetings, and were available for review at local and regional libraries (i.e., San Francisco and Los Angeles). Finally, the complete document was posted on the Yosemite National Park WebPage (http://www.nps.gov/yose/planning). Written comments were accepted through July 14, 2000. Approximately 10,200 responses were received; all were duly considered and adjustments were made to the draft plan. All written comments have been archived and are available for public review in the park's research library.

In order to further foster public review and comment, 14 public meetings were held throughout California—half of these were conducted in major metropolitan areas of the State, and half in cities and towns neighboring Yosemite National Park. All meetings consisted of a combined open house (where participants could view displays and talk with park management and planning staff) and formal hearings where oral testimony before park officials was documented by a court reporter. Approximately 1,500 persons attended these meetings, and 365 individuals and organization representatives testified during the hearings. In addition, public meetings were conducted in Seattle, Washington, Denver, Colorado, Chicago, Illinois, and Washington D.C. Over 100 individuals attended these out-of-state meetings.

Decision Process

Subsequent to release of the final Yosemite Valley Plan\SEIS, notice of an approved Record of Decision shall be

published in the **Federal Register** not sooner than thirty (30) days after the final document has been distributed. This is expected to occur by the end of December 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: November 13, 2000.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–29670 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting.

AGENCY: National Park Service.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.

(2) SRC Roll Call and Confirmation of Quorum.

(3) Welcome and Introductions.

(4) Review and Adopt Agenda.

(5) Review and adopt minutes from the April 4, 2000 meeting.

(6) Commission Purpose.

(7) Status of Membership.

(8) Public and Agency Comments.

(9) Old Business:

a.Status of SRC Support Letters.

(1) Roster Regulation Proposed Rule Publication.

(2) Customary Trade within Aniakchak National Monument and Preserve.

(3) (3) Trapping Furbearers with Firearm within Aniakchak National Monument and Preserve.

(4) SRC Chairs Workshop 1999 Recommendations.

(5) Status of Geographic Place Names Request.

b. Aniakchak National Monument and Preserve Commercial Visitor Services Report.

c. Status of SRC Hunting Program Recommendations.

(1) 97–1, Establish One-Year Minimum Residency Requirement for Resident Zone Communities.

(2) 97–2, Establish a Registration Permit Requirement within Aniakchak National Preserve for Non-subsistence Fish and Wildlife Harvest Activities.

(3) Draft Hunting Plan Recommendation 2000–1: Between September 10–20, Establish a Corridor in Aniakchak National Preserve Where NPS Would Limit Commercial Guide Party Size, Access and drop-off Locations.

(10) New Business:

a. October 2000 SRC Chairs Workshop Report.

b. Federal Subsistence Board Update.

(1) Review Unit 9E Board Actions Taken during May 2000.

(2) Bristol Bay Regional Council Report.

(3) Review Wildlife Proposals for 2001.

(4) Review Fish Proposals for 2001

(11) Status of Draft Aniakchak National Monument and Preserve SubsistenceManagement Plan.

(12) Election of SRC Chair and Vice Chair.

(13) Public and Agency Comments.

(14) SRC work session (draft proposals, letters, and recommendations).

(15) Set time and place of next SRC meeting.

(16) Adjournment.

DATES: The meeting will begin at 10 a.m. on Tuesday, November 28, 2000 and conclude at approximately 6 p.m. The meeting will reconvene at 9 a.m. on Wednesday, November 29 and adjourn at approximately 1 p.m.

LOCATION: Community Subsistence Building, Chignik Lake, Alaska

FOR FURTHER INFORMATION CONTACT: Mary McBurney at Phone (907) 257–2633, or Tom O'Hara, Subsistence Manager, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–2101.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Thomas J. Ferranti,

Acting Regional Director.

[FR Doc. 00–29672 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF INTERIOR

National Park Service

Agenda for the January 17th 2001 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park

Public Meeting, Firehouse Building F, Lower Fort Mason Center, 10:00 a.m.–12:15 p.m.

10:00 a.m.: Welcome Neil Chaitin, Chairman

Opening Remarks—Neil Chaitin, Chairman

Approval of Minutes from Previous Meeting

10:15 a.m.: William Thomas, Superintendent

10:30 a.m.: WAPAMA Relocation to Richmond—James White, Moorings & Warehouse Foreman

10:40 a.m.: Ship Preservation Update—Wayne Boykin, Ships Manager

10:50 a.m.: BALCLUTHA 'Tween Decks, Haslett Visitor Center—Marc Hayman, C, Interpretation & Resource Management

11:30 a.m.: San Francisco Maritime National Park Association—Kathy Lohan, Executive Director

11: 45 a.m.: Public Comments and Questions

12:00 p.m.: Agenda items/Date for next meeting

William G. Thomas,

Superintendent.

[FR Doc. 00–29671 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 10, 2000. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written

comments should be submitted by December 6, 2000.

Patrick W. Andrus,

Acting Keeper of the National Register.

CONNECTICUT

Litchfield County

Plymouth Center Historic District (Boundary Increase), 50 North St., 16 and 20 South St., Plymouth, 00001474

GEORGIA

De Kalb County

Stone Mountain Historic District, Roughly bounded by Stone Mountain Cemetery, Stone Mountain Memorial Park, Lucie St. CSX RR, VFW Dr., and Stone Mtn City, Stone Mountain, 00001476

Polk County

Cedartown Waterworks—Woman's Building—Big Spring Park Historic District, Jct. of Wissahickon Ave. and Bradford St., Cedartown, 00001475

Pulaski County

St. Thomas African Methodist Episcopal Church, 401 N. Dooly St., Hawkinsville, 00001477

IOWA

Guthrie County

All Saints Catholic Church, 420 N. Fremont, Stuart, 00001478

Woodbury County

Sioux City Public Library—North Side Branch, 810 29th St., Sioux City, 00001479

MARYLAND

Cecil County

Haviland, Edward W., House, 2464 Frenchtown Rd., Port Deposit, 00001480

MASSACHUSETTS

Hampden County

White Diner, The, (Diners of Massachusetts MPS) 14 Yelle St., Chicopee, 00001482

Hampshire County

Elm Street Historic District, Elm, Sunset, and Scotland Sts., Little Neponset Rd., Hatfield, 00001481

MICHIGAN

Emmet County

Grand Rapids and Indiana Railroad Harbor Springs Depot, 111 W. Bay St., Harbor Springs, 00001487

Grand Traverse County

Pulcipher, John, House, 7710 US 31 N., Acme Township, 00001484

Kent County

Berkey and Gay Furniture Company Factory, 940 Monroe Ave., NW.,

Peck Block, 34–50 Monroe Center NW., Grand Rapids, 00001483

Muskegon County

Union Depot, 610 Western Ave., Muskegon, 00001489

Ottawa County

Pere Marquette Railway Locomotive #1223, Chinook Pier Park, Jackson Ave., Grand Haven, 00001490

Saginaw County

Roethke, Theodore, Childhood Mome Complex, 1759 and 1805 Gratiot Ave., Saginaw, 00001485

Wayne County

Grand Circus Park Historic District (Boundary Increase), 25 W. Elizabeth St., Detroit, 00001488

MONTANA

Broadwater County

Crow Creek Water Ditch, 5 mi. W. of Townsend, Townsend, 00001492

Deer Lodge County

Morel Bridge, 25200 East Side Rd., Anaconda, 00001491

NEW JERSEY

Cape May County

Marine National Bank, 3301 Pacific Ave., Wildwood, 00001494

Middlesex County King's Highway Historic District, NJ 27, US 206, S. Brunswick Township, 00001493

NORTH CAROLINA

Mecklenburg County

Dilworth Historic District (Boundary Increase), E. side 2000 Blk. Euclid Ave., both sides 2000 blk. of Lyndhurst Ave., Charlotte, 00001495

TEXAS

Harris County

Minchen, Simon and Mamie, House, 1753 North Blvd., Houston, 00001496

VIRGINIA

Buckingham County

Guerrant House, Rte. 1, Arvonia, 00001497

WISCONSIN

Monroe County

Tomah Post Office, 903 Superior Ave., Tomah, 00001498

[FR Doc. 00–29667 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Approval

SUMMARY: The Secretary of the Interior hereby announces approval of an application by the Governor of Ohio to include additional segments of the Big and Little Darby Creeks, Ohio, as state administered components of the National Wild and Scenic Rivers System.

FOR FURTHER INFORMATION CONTACT: Angie Tornes, Rivers, Trails and Conservation Assistance Program, National Park Service, Midwest Regional Office, 310 West Wisconsin Street, Suite 100E, Milwaukee, Wisconsin 53202; or telephone 414–297–3605.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted the Secretary of the Interior by section 2 of the Wild and Scenic Rivers Act (Public Law 90–542, as amended; 16 U.S.C. 1273, *et seq.*) and upon proper application of the Governor of the State of Ohio, an additional 3.4 miles of the Big and Little Darby Creeks are hereby designated and are added to the existing segments of the Big and Little Darby Creeks, a state-administered component of the National Wild and Scenic Rivers System.

On March 25, 1996, the Governor of Ohio petitioned the Secretary of the Interior to add an additional 3.4 miles to the 85.9 miles of the Big and Little Darby Creeks, designated as components of the National Wild and Scenic Rivers System March 10, 1996.

The evaluation report for that designation, prepared by the National Park Service in September 1993, states that the additional segments now under consideration were eligible and would be suitable for national wild and scenic river designation once they were added to the State Scenic River System. The evaluation also concluded that these segments of the Big and Little Darby Creeks meet the criteria for scenic classification under the Act.

These additional segments were added to the Ohio Scenic River System October 3, 1994. Public comment regarding national designation of the additional segments was solicited in Ohio and the required 90-day review for Federal Agencies was provided. Public and Federal Agency comments support national designation of the additional Big and Little Darby Creek segments. The State of Ohio has fulfilled the requirements of the Act by including these additional segments in the Ohio Scenic River System. The State's program to permanently protect the river is adequate. Current State and local management of the river is proceeding according to the Big and Little Darby Creek Plan and Environmental Assessment submitted with the original application.

As a result, the Secretary has determined that the additional 3.4 miles of the Big and Little Darby Creeks should be added to the existing designation of Big and Little Darby Creeks as a state-administered component of the National Wild and

Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

Accordingly, the following additional river segments are classified as scenic pursuant to section 2(b) of the Act to be administered by State and local government:

Big Darby Creek: Scenic—From its confluence with Little Darby Creek (RM 34.1) upstream to the northern boundary of Battelle-Darby Creek Metro Park (RM 35.9) (1.8 miles).

Big Darby Creek: Scenic—From the U.S. Route 40 bridge (RM 38.9) upstream to the Conrail Railroad trestle crossing (RM 39.7) (0.8 miles).

Little Darby Creek: Scenic—From its confluence with Big Darby Creek (RM 0.0) to a point eight-tenths of a mile upstream (RM 0.8) (0.8 miles).

This action is taken following public involvement and consultation with the Departments of Agriculture, Army, Energy, and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the Wild and Scenic Rivers Act. All comments received have been supportive.

Notice is hereby given that effective upon this date, the above-described additional river segments are approved for inclusion in the National Wild and Scenic Rivers System to be administered by the State of Ohio.

Dated: November 9, 2000.

William W. Schenk,

Regional Director.

[FR Doc. 00–29669 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Lost City Museum, Overton, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Lost City Museum, Overton, NV.

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 Lost City Museum professional staff in consultation with Nevada State Museum staff, representatives of the Moapa Band of the Southern Paiute Tribe, and representatives of the Hopi Tribe of Arizona, in coordination with the Southern Paiute Consortium.

At an unknown date before 1970, human remains representing two individuals were removed from an unknown location in the vicinity of Overton, NV, by an unknown person. These remains were donated to the Lost City Museum at an unknown time after 1970 by an unknown person. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing six individuals were removed from an unknown location in the vicinity of Overton, NV, by an unknown person. At an unknown time, these remains were donated to the Lost City Museum by an unknown person. No known individuals were identified. No associated funerary objects are present.

In the 1980's, human remains representing one individual and two associated funerary objects were removed from the Lewis Site (26CK2036), Sand Beach, Overton, NV, by Lost City Museum staff. The landowner donated the remains and objects to the Lost City Museum at the time of excavation. No known individual was identified. The two associated funerary objects are a pot and a projectile point.

Archeological investigations have identified the Lewis Site (also known as Anasazi number 1) as a known Anasazi site. The remains were found in a room in a house.

In 1987, human remains representing 4 individuals and 32 associated funerary objects were removed during salvage excavations during construction at the Bunker Hill Site (26CK020), Sand Beach, Overton, NV, by Lost City Museum staff. The remains were donated to the Lost City Museum by the landowner. No known individuals were identified. The associated funerary objects are shell pendant beads, a stone drill, a projectile point, Puebloan pottery, and turquoise beads.

Archeological investigations have identified the Bunker Hill Site as a known Anasazi site.

In 1992, human remains representing one individual were removed from the Park-Perkins number 9 Site (26CK029), Overton, NV, by the landowner during trenching activity on his land. In 1995, the landowner donated these remains to the Lost City Museum. No known individual was identified. No associated funerary objects are present.

Archeological investigations have identified the Park-Perkins number 9 Site as a known Anasazi site.

In 1992, human remains representing one individual and three associated funerary objects were removed during salvage excavations by Lost City Museum staff at a quarry on private property at the Mill Point number 1 Site (26CK2003), Sand Beach, Overton, NV. No known individual was identified. The associated funerary objects are a ceramic vessel, a bead, and a stone.

Stylistic attributes of the associated ceramic vessel identify the burial as characteristic of the Anasazi culture.

In 1982, human remains representing one individual were removed during salvage excavations at the Adam 2 Site (26CK2059), Overton, NV, by University of Nevada, Las Vegas staff. The remains were returned to the Lost City Museum, which owns the property on which the site is located, in 2000. No known individual was identified. No associated funerary objects are present.

Archeological investigations have identified the Adam 2 Site as affiliated with the Anasazi culture.

On the basis of archeological context, the human remains listed above are determined to be Native American. Based on the geographical locality and probable age of the burials, the remains are determined to be affiliated with the archeologically-defined Virgin Branch Anasazi Culture, dated to circa 300 B.C.–A.D. 1300. Although the locations from which these remains were removed are within the historic territory of the Moapa Band of the Southern Paiute Tribe, joint consultations with representatives of the Moapa Band of the Southern Paiute Tribe and with representatives of the Hopi Tribe of Arizona produced evidence agreed to by both parties that the Anasazi remains from this area are ancestral to the modern Hopi Tribe of Arizona. Archaeological evidence supports this conclusion.

Based on the above-mentioned information, officials of the Lost City Museum have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 16 individuals of Native American ancestry. Officials of the Lost City Museum also have determined that, pursuant to 43 CFR

10.2(d)(2), the 37 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Lost City Museum have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona.

This notice has been sent to officials of the the Moapa Band of the Southern Paiute Tribe and the Hopi Tribe of Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Kathryne Olson, Curator, Lost City Museum, P.O. Box 807, 721 South Moapa Valley Boulevard, Overton, NV 89040, telephone (702) 397–2193, before December 21, 2000. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona may begin after that date if no additional claimants come forward.

Dated: November 14, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–29807 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Palmer Foundation for Chiropractic History, Palmer College of Chiropractic, Davenport, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Palmer Foundation for Chiropractic History, Davenport, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2(c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Palmer Foundation for Chiropractic History professional staff in consultation with representatives of the Seneca-Cayuga Tribe of Oklahoma, the Tonawanda Band of Seneca Indians of New York, the Haudenosaunee Standing Committee on Burials and Regulations, and the Seneca Nation of New York.

At an unknown time prior to 1960, human remains representing one individual were removed from an unknown location in Baldwinsville, NY, by unknown persons. They were donated to the Palmer School of Chiropractic prior to 1960 by an unknown person. No known individual was identified. No associated funerary objects are present.

Museum records and osteological characteristics identify these human remains as Native American. The degree of preservation of these remains indicates a date of burial within the last millennium. Consultation with representatives of the Seneca Nation of New York indicates that Baldwinsville, NY, is located within the traditional territory of the Seneca people, and indicates that a relationship exists between these human remains and the Seneca people. Officials of the Palmer Foundation for Chiropractic History have found it reasonable to affiliate these remains, based on consultation results, with the Seneca-Cayuga Tribe of Oklahoma, the Tonawanda Band of Seneca Indians of New York, and the Seneca Nation of New York.

Based on the above-mentioned information, officials of the Palmer Foundation for Chiropractic History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Palmer Foundation for Chiropractic History 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 Seneca-Cayuga Tribe of Oklahoma, the Tonawanda Band of Seneca Indians of New York, and the Seneca Nation of New York.

This notice has been sent to officials of the Seneca-Cayuga Tribe of Oklahoma, the Tonawanda Band of Seneca Indians of New York, the Haudenosaunee Standing Committee on Burials and Regulations, and the Seneca Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Alana Callender, Palmer Foundation for Chiropractic History, Palmer College of Chiropractic, 1000 Brady Street, Davenport, IA 52803, telephone (319) 884–5404, before December 21, 2000. Repatriation of the human remains to the Seneca-Cayuga Tribe of Oklahoma, the Tonawanda Band of Seneca Indians of New York, and the Seneca Nation of New York may begin after that date if no additional claimants come forward.

Dated: November 16, 2000.

John Robbins,

Assistant Director, Cultural Resources, Stewardship, and Partnerships.

[FR Doc. 00–29813 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Rochester Museum and Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Rochester Museum and Science Center, Rochester, NY.

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 and associated funerary objects was made by Rochester Museum and Science Center professional staff in consultation with representatives of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of

Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York.

In 1929, partial human remains representing 19 individuals were recovered from the Great Gully site (Young Farm, Aub 003) in Ledyard, Cayuga County, NY, by Harrison Follett during an expedition conducted by the Rochester Municipal Museum (now the Rochester Museum and Science Center). No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and the condition of the human remains, the Great Gully site has been identified as a Cayuga occupation, and possibly the site of the Jesuit mission of St. Joseph to the Cayugas, dating to circa A.D. 1650–1687.

In 1935, human remains representing 13 individuals were recovered from the Elmer Rogers site (Wpt 001) in Savannah, Wayne County, NY, by Dr. William A. Ritchie during a field expedition conducted by the Rochester Museum of Arts and Sciences (now Rochester Museum and Science Center). No known individuals were identified. The 61 associated funerary objects are 1 ceramic pipe bowl, 1 sword blade, 1 iron fishhook, 1 antler powder measure, 1 iron knife, 1 sharpening stone, 4 animal ribs, 1 iron dirk, 1 saw, 2 iron scrapers, 5 iron spear points, 4 curved iron knives, 3 iron knife blades, 1 hickory nut, 4 wooden ladle fragments, 2 brass kettles, 1 bone-handled iron knife, 1 iron drill, 2 brass and wood fragments, 19 worked pieces of shell, 1 iron axe, 1 bear canine, and 3 spherical glass beads.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location, the condition of the human remains, and continuities of material culture, the Elmer Rogers site has been identified as a Cayuga occupation, and possibly the site of the Jesuit mission of St. Rene to the Cayugas, dating to circa A.D. 1668–1684.

Based on the above-mentioned information, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 32 individuals of Native American ancestry. Officials of the Rochester Museum and Science Center also have determined that, pursuant to 43 CFR 10.2(d)(2), the 61 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma.

This notice has been sent to officials of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Connie Bodner, NAGPRA Liaison, Rochester Museum and Science Center, 657 East Avenue, Rochester, NY 14607–2177, telephone (716) 271–4552, extension 345, before December 21, 2000. Repatriation of the human remains and associated funerary objects to the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 14, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–29808 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Rochester Museum and Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Rochester Museum and Science Center, Rochester, NY.

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 Rochester Museum and Science Center professional staff in consultation with representatives of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York.

In 1960, partial human remains representing 43 individuals were recovered from the Sand Hill site (Cnj 009) in Minden, Montgomery County, NY, by Peter Pratt and other unnamed individuals. Gilbert Hagerty donated the remains to the Rochester Museum and Science Center in 1979. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and the condition of the human remains, the Sand Hill site has been identified as a Mohawk occupation, dating to circa A.D. 1635–1645.

Based on the above-mentioned information, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 43 individuals of Native American ancestry. Officials of the Rochester Museum and Science Center 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 St. Regis Band of Mohawk Indians of New York.

This notice has been sent to officials of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of

Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Connie Bodner, NAGPRA Liaison, Rochester Museum and Science Center, 657 East Avenue, Rochester, NY 14607–2177, telephone (716) 271–4552, extension 345, before December 21, 2000. Repatriation of the human remains to the St. Regis Band of Mohawk Indians of New York may begin after that date if no additional claimants come forward.

Dated: November 14, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–29809 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Rochester Museum and Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Rochester Museum and Science Center, Rochester, NY.

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 Rochester Museum and Science Center professional staff in consultation with representatives of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York.

In 1961–1962, partial human remains representing 25 individuals were recovered from the Pen site (Tly 003) in Lafayette, Onondaga County, NY, by Peter Pratt and other unnamed individuals. These were donated to the Rochester Museum and Science Center in 1979. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and the condition of the human remains, the Pen site has been identified as an Onondaga occupation, dating to circa A.D. 1682–1696.

Based on the above-mentioned information, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 25 individuals of Native American ancestry. Officials of the Rochester Museum and Science Center 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 Onondaga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Connie Bodner, NAGPRA Liaison, Rochester Museum and Science Center, 657 East Avenue, Rochester, NY 14607–2177, telephone (716) 271–4552, extension 345, before December 21, 2000. Repatriation of the human remains and associated funerary objects to the Onondaga Nation of New York may begin after that date if no additional claimants come forward.

Dated: November 14, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–29810 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Rochester Museum and Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Rochester Museum and Science Center, Rochester, NY.

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 and associated funerary objects was made by Rochester Museum and Science Center professional staff in consultation with representatives of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York.

In 1951, partial human remains representing one individual were recovered at the Marsh site (Can 007), East Bloomfield, Ontario County, NY, and were donated in 1953 to the Rochester Museum and Science Center by Albert Hoffman. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native

American. Based on site location and continuities of material culture as represented in other collections from the site, the Marsh site has been identified as a Seneca occupation, dating to A.D. 1655–1675.

In 1960, partial human remains representing 13 individuals were recovered from an historic cemetery at the Morrow site (Hne 033), Richmond, Ontario County, NY, and were donated to the Rochester Museum and Science Center by Albert Hoffman. No known individuals were identified. The 14 associated funerary objects are 1 nail fragment, 1 metal fragment, 6 textile fragments, 5 brass kettle fragments, and 1 shell bead.

In 1964, partial human remains representing four individuals were recovered from an historic cemetery at the Morrow site (Hne 033) and were donated to the Rochester Museum and Science Center by Albert Hoffman. No known individuals were identified. No associated funerary objects are present.

In 1963, partial human remains representing two individuals were recovered from an historic cemetery at the Morrow site (Hne 033) and were donated to the Rochester Museum and Science Center by William Cornwell. No known individuals were identified. No associated funerary objects are present.

In 1963, partial human remains representing one individual were recovered from an historic cemetery at the Morrow site (Hne 033) and were donated to the Rochester Museum and Science Center by H. Marr. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological excavations at the Morrow site have documented occupations during the Middle and Late Woodland periods as well as the post-European contact period. These human remains and associated funerary objects are associated with the post-contact period cemetery. Based on excavation reports, site location, condition of the human remains, and continuities of material culture, this part of the Morrow site has been identified as a Seneca occupation, dating to A.D. 1750–1780.

At an unknown date, partial human remains representing eight individuals were recovered from the Rochester Junction site (Hne 011) in Mendon, Monroe County, NY, by person(s) unknown. In 1928–1929, these human remains were purchased by the Rochester Museum and Science Center as part of the collection of Alvin H. Dewey. No known individuals were identified. The four associated funerary objects are one piece of charcoal, two brass kettles, and one glazed ceramic fragment.

Based on skeletal morphology and the associated funerary objects, these individuals have been identified as Native American. Based on site location and continuities of material culture, the Rochester Junction site has been identified as a Seneca occupation, dating to circa A.D. 1670–1690.

At an unknown date, partial human remains representing one individual were recovered from the Snyder McClure site (Plp 006) in Hopewell, Ontario County, NY, by person(s) unknown. In 1928–29, these human remains were purchased by the Rochester Museum and Science Center as part of the collection of Alvin H. Dewey. No known individual was identified. No associated funerary objects are present.

At an unknown date, partial human remains representing one individual were recovered from the Snyder McClure site (Plp 006) by person(s) unknown. In 1968, these human remains were purchased at auction by the Rochester Museum and Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Snyder McClure site has been identified as a Seneca occupation, dating to circa A.D. 1710–1740.

At an unknown date, partial human remains representing one individual were recovered from the Warren site (Hne 010), East Bloomfield, Ontario County, NY, by F. Keith Pierce, who donated them to the Rochester Museum and Science Center in 1935. No known individual was identified. No associated funerary objects are present.

In 1927, partial human remains representing one individual were recovered from the Warren site (Hne 010) during a Rochester Museum and Science Center field expedition led by William A. Ritchie. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Warren site has been identified as a Seneca occupation, dating to circa A.D. 1625–1645.

In 1936, partial human remains representing three individuals were recovered from the Geneseo Mound site (Cda 007) in Avon, Livingston County, NY, during a Rochester Museum and Science Center field expedition led by William A. Ritchie. No known individuals were identified. The 1,066 associated funerary objects are 1 ring fitted with glass stones, 70 brass and shell beads, 966 glass and shell beads, 1 iron axe, 9 pieces of a thimble rattle, 8 brass bracelets, 6 brass bangles, 4 hawk bells with bangles, and 1 lead brooch.

Based on skeletal morphology, these individuals have been identified as Native American. Archeological evidence has documented the Geneseo Mound site as dating to the Middle Woodland period and the three burials as intrusive into the older deposits. Based on the site location, the excavation reports, the condition of the human remains, and continuities of material culture, these human remains and associated funerary objects have been identified as Seneca, dating to circa A.D. 1770.

In 1940, partial human remains representing five individuals were recovered from the Kirkwood site (Hne 031) in Avon, Livingston County, NY, during a Rochester Museum and Science Center field expedition led by William A. Ritchie. No known individuals were identified. The 154 associated funerary objects are 1 stone muller, 1 brass needle, 3 containers of glass and shell beads, 1 container of chestnuts, 2 iron axes, 1 iron knife, 3 containers of squash seeds, 5 wooden ladle fragments, 8 blanket fragments, 4 containers of wampum beads, 30 wood fragments, 2 ceramic pipe fragments, 76 wampum and glass beads, 1 knife handle, 1 container of shell beads, 1 tubular shell bead, 1 shell pendant, 1 piece of red ocher, 9 shell runtees, 1 container of wampum/glass/shell beads, and 2 combs.

Based on skeletal morphology and the associated funerary objects, these individuals have been identified as Native American. Based on excavation reports, site location, and continuities of material culture, the Kirkwood site has been identified as a Seneca occupation, dating to circa A.D. 1670–1687.

In 1936, partial human remains representing three individuals were recovered from the Lower Fall Brook site (Cda 004) in Genesee, Livingston County, NY, during a Rochester Museum and Science Center field expedition led by William A. Ritchie. No known individuals were identified. The 175 associated funerary objects are 1 stone pipe, 1 fire steel, 1 brass kettle, 2 pieces of a wooden ladle, and 170 glass and shell beads.

Based on skeletal morphology and the associated funerary objects, these individuals have been identified as Native American. Based on excavation reports, site location, and continuities of material culture, the Lower Fall Brook site has been identified as a Seneca occupation, dating to circa A.D. 1750–1775.

In 1966, partial human remains representing three individuals were recovered from the Lima site (Hne 041) in Lima, Livingston County, NY. The remains were first encountered by construction workers during excavation for a sewer line and were subsequently recovered in a salvage effort by the Rochester Museum and Science Center. The human remains were transferred from the town of Lima to the Rochester Museum and Science Center as authorized by H.A. Hennessey. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Lima site has been identified as a Seneca occupation, dating to circa A.D. 1625–1640.

In 1955, partial human remains representing four individuals were recovered from the MacEwan site (Aga 004) in Hume, Allegany County, NY, during the removal of gravel for road repairs by the town of Hume highway department. The remains were transferred to the Rochester Museum and Science Center on the authority of Clifford Watson. No known individuals were identified. The three associated funerary objects are one knife blade and two iron nails.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site locations and continuities of material culture, the MacEwan site has been identified as a Seneca occupation, dating to sometime after A.D. 1700.

In 1964, partial human remains representing one individual were recovered from the Cornish site (Hne 009) in West Bloomfield, Ontario County, NY, during a Rochester Museum and Science Center field expedition. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Cornish site has been identified as a Seneca occupation, dating to circa A.D. 1625–1645.

In 1986, partial human remains representing two individuals were recovered from the Creek site (Mda 007) on the Tonawanda Reservation near Genesee County, NY, by Stanley Vanderlaan, who donated them to the Rochester Museum and Science Center in 1987. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on the site location, the Creek site has been identified as a Seneca occupation, dating to circa A.D. 1780–1820.

At an unknown date, partial human remains representing two individuals were recovered from the Dann site (Hne 003) in Mendon, Monroe County, NY, by J.G. D'Olier. In 1928–1929, these human remains were purchased by the Rochester Museum and Science Center as part of the collection of Alvin H. Dewey. No known individuals were identified. No associated funerary objects are present.

In 1955, partial human remains representing one individual were recovered from the Dann site (Hne 003) in Mendon, Monroe County, NY, and were donated to the Rochester Museum and Science Center by Albert Hoffman. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Dann site has been identified as a Seneca occupation, dating to circa A.D. 1655–1675.

In 1934, partial human remains representing 37 individuals were recovered from the Dutch Hollow site (Hne 001) in Avon, Livingston County, NY, during a field expedition led by William A. Ritchie of the Rochester Museum and Science Center. No known individuals were identified. The 3,292 associated funerary objects are 2 wooden bowl fragments, 1 wooden awl handle, 4 iron knives, 2 pieces of an iron knife, 1 iron knife fragment, 2 iron axes, 1 iron axe head, 1 iron axe blade, 1 iron awl, 1 iron bracelet, 1 iron celt, 24 projectile points, 6 flint projectile points, 1 graphite paint stone, 3 pieces of hematite, 1 flint scraper, 1 faceted graphite paint stone, 13 whetstones, 1 worked stone tool (chisel), 1 quartz spall, 3 flint spalls, 1 stone pipe bowl, 2 ceramic smoking pipes, 1,200 blue glass beads, 900 glass beads, 603 shell and glass beads, 33 shell beads, 30 glass and slate beads, 8 ceramic vessels, 1 bird effigy ceramic pipe, 3 cylindrical brass beads, 5 sheet brass beads, 6 brass beads, 2 brass gaming discs, 1 perforated brass rectangle, 1 twisted brass/copper strip, 1 brass hawk bell fragment, 2 brass bracelets, 6 brass bracelet fragments, 1 cut brass rectangle, 1 brass pipe bowl liner, 1 wolf effigy comb, 2 antler figurines, 1 antler figurine in process, 1 antler effigy comb, 1 antler human face effigy, 12 antler gaming discs, 15 antler gaming balls, 1 antler projectile point, 1 antler punch, 1 antler harpoon, 1 worked antler, 25 fragments from an antler double-tooth comb, 17 (unidentified) animal bones, 2 pieces of weasel skull, 150 bones from a dog skeleton, 1 dog canine tooth, 2 bones from a dog skull, 1 bone from a dog skull, 1 bone from a dog jaw, 27 bones from a duck skeleton, 12 bear claw cores, 9 turkey bones, 16 bear claws/dog teeth/shell beads, 1 eagle beak, 17 owl claw cores, 1 owl beak, 18 turkey bones/bear claw cores, 15 fragments of a turtle shell rattle, 25 fragments of a turtle shell rattle, 1 bear canine, 1 raccoon splanchnic bone, and 35 deer bones.

Based on skeletal morphology, these individuals have been identified as Native American. Based on excavation reports, site location, condition of the human remains, and continuities of material culture, the Dutch Hollow site has been identified as a Seneca occupation, dating to circa A.D. 1605–1620.

In 1934, partial human remains representing three individuals were recovered from the Boughton Hill site (Can 002) in Victor, Ontario County, NY, during a field expedition led by William A. Ritchie of the Rochester Museum and Science Center. No known individuals were identified. The 16 associated funerary objects are 1 gun flint, 2 brass projectile points, 1 container of fabric fragments, 1 kettle handle, 1 deer vertebra associated with a textile fragment, 2 wooden bowl fragments, 4 pistol parts, 2 projectile points, and 2 pieces of animal skin associated with bark fragments.

In 1999, partial human remains representing one individual recovered from the Boughton Hill site (Can 002) were found in the Rochester Museum and Science Center collection. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on excavation reports, site location, condition of the human remains, and continuities of material culture, the Boughton Hill site has been identified as a Seneca occupation, dating to circa A.D. 1670–1687.

In 1950, partial human remains representing one individual were

recovered from the Adams site (Hne 080) in Livonia, Livingston County, NY, by Charles F. Wray and were donated to the Rochester Museum and Science Center. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American. Based on reports of other excavations, site location, and condition of the human remains, the Adams site has been identified as a Seneca occupation, dating to circa A.D. 1575–1590.

In 1934, partial human remains representing two individuals were recovered from the Avon Bridge site (Cda 006) in Avon, Livingston County, NY, during a Rochester Museum and Science Center field expedition led by William A. Ritchie. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on reports of other excavations, site location, and condition of the human remains, the Avon Bridge site has been identified as a Seneca occupation, dating circa A.D. 1750–1779.

In 1942, partial human remains representing one individual were recovered from the Barnard Street Cemetery site in Buffalo, Erie County, NY, by W.L. Bryant, who gave them to the Rochester Museum and Science Center. No known individuals were identified. No associated funerary objects are present.

Based on skeletal morphology, this individual has been identified as Native American. Frederick Houghton associated the site with a Seneca village visited by Father Picquet prior to A.D. 1750. Based on site location and the condition of the human remains, the Barnard Street Cemetery site has been identified as a Seneca occupation, dating to before A.D. 1750.

In 1912, partial human remains representing three individuals were recovered from the Beal site (Can 010) in East Bloomfield, Ontario County, NY, by Frederick Houghton, who donated them to the Rochester Museum and Science Center in 1942. No known individuals were identified. No associated funerary objects are present.

At an unknown date, partial human remains representing one individual were recovered from the Beal site by Albert Hoffman, who donated them to the Rochester Museum and Science Center in 1955. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. Based on site location and the condition of the human remains, the Beal site has been identified as a Seneca occupation, dating circa A.D. 1670–1687.

In the late 19th century, partial human remains representing 23 individuals were recovered from the Buffam Street site (Buf 003) in the city of Buffalo, Erie County, NY, by A.D. Strickler and E. Wende. At an unknown date, partial human remains representing one individual were recovered from the Buffam Street site by Frederick Houghton. In 1942, these remains of 24 individuals were donated to the Rochester Museum and Science Center by the Buffalo Museum of Science. No known individuals were identified. No associated funerary objects are present.

At an unknown date, partial human remains representing one individual were recovered from the Buffam Street site by person(s) unknown and were incorporated into the collection of Alvin H. Dewey. In 1928–1929, these human remains were purchased by the Rochester Museum and Science Center as part of the Dewey Collection. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology, these individuals have been identified as Native American. The site location is documented as that of the Indian Mission Cemetery. Based on the site location and the condition of the human remains, the Buffam Street site has been identified as a Seneca occupation, dating to sometime after A.D. 1700.

In 1936, partial human remains representing seven individuals were recovered from the Canawaugus site (Cda 002) in Caledonia, Livingston County, NY, during a Rochester Museum and Science Center field expedition led by William A. Ritchie. No known individuals were identified. The 4,152 associated funerary objects are 1 brass kettle, 1 brass kettle fragment, 4 pieces of a brass kettle containing cloth and wood fragments, 1 bone comb, 1 wooden ladle, 6 wooden ladle fragments, 1 round glass mirror, 3 glass mirror fragments, 2,386 glass beads, 1 iron awl, 1 berry cake, 1 group of gourd fragments, 2 pieces of an iron clasp knife, 1670 tubular glass beads, 1 package of vermilion, 1 shell bead, 2 pieces of a clasp knife, 1 iron vanity box, 1 pair of scissors, 16 iron nails, 2 bark fragments, and 5 fabric fragments.

Based on skeletal morphology, these individuals have been identified as Native American. Based on the site location, historic records linking this site with the historic Canawaugus Reservation, the condition of the human remains, and continuities in material culture, the Canawaugus site has been identified as a Seneca occupation, dating to the late 1700's.

In 1993, partial human remains representing three individuals were recovered from the surface of the Power House site (Hne 002) in Lima, Livingston County, NY, during a Rochester Museum and Science Center field school excavation led by Lorraine Saunders. No known individuals were identified. No associated funerary objects are present.

Based on the skeletal morphology, these individuals have been identified as Native American. Based on site location and continuities of material culture as represented in other collections from the site, the Power House site has been identified as a Seneca occupation, dating to circa A.D. 1640–1660.

Based on the above-mentioned information, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 141 individuals of Native American ancestry. Officials of the Rochester Museum and Science Center also have determined that, pursuant to 43 CFR 10.2(d)(2), the 8,876 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Rochester Museum and Science Center have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Seneca Nation of New York, the Tonawanda Band of Seneca Indians of New York, and the Seneca-Cayuga Tribe of Oklahoma.

This notice has been sent to officials of the Cayuga Nation of New York, the Oneida Nation of New York, the Oneida Tribe of Wisconsin, the Onondaga Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Stockbridge-Munsee Community of Mohican Indians of Wisconsin, the Tonawanda Band of Seneca Indians of New York, and the Tuscarora Nation of New York. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Connie Bodner, NAGPRA Liaison, Rochester Museum

and Science Center, 657 East Avenue, Rochester, NY 14607–2177, telephone (716) 271–4552, extension 345, before December 21, 2000. Repatriation of the human remains and associated funerary objects to the Seneca Nation of New York, the Tonawanda Band of Seneca Indians of New York, and the Seneca-Cayuga Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 14, 2000.

John Robbins,

Assistant Director, Cultural Resources Stewardship and Partnerships.

[FR Doc. 00–29811 Filed 11–20–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting December 5, 2000.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on December 5, 2000 from 9 a.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue NW., N 3437–D, Washington, DC 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4327, Washington, DC 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC on November 15, 2000.

Lewis Karesh,

Acting Secretary, U.S. National Administrative Office.

[FR Doc. 00–29748 Filed 11–20–00; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 25-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a voluntary national system of skills standards and certification through voluntary partnerships which have the full and balanced participation of business, labor, education, civil rights organizations and other key groups.

Time & Place: The meeting will be held from 8:30 a.m. to approximately 12 p.m. on Friday, December 8, 2000, at The Holiday Inn Select Hotel, 480 King St., Alexandria, VA 22314, in the Carlyle Ballroom. (703) 549–6080.

Agenda: The agenda for the Board Meeting will include: An update from the Board's committees; presentations from representatives of the Education and Training Voluntary Partnership (E&TVP), Hospitality and Tourism Skill Standards Council (HTSSC), Manufacturing Skill Standards Council (MSSC) and Sales & Service Voluntary Partnership (S&SVP).

Public Participation: The meeting, from 8:30 a.m. to 12 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Leslie Donaldson at (202) 254–8628 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Dave Wilcox, Executive Deputy Director at (202) 254–8628.

Signed at Washington, DC, 15th day of November, 2000.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 00–29749 Filed 11–20–00; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, November 28, 2000.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first two items are Open to the Public. The last item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

7309 Factual Report and Brief of Accident: Learjet Model 35, N47BA, near Aberdeen, South Dakota, October 25, 1999, operated by Sunjet Aviation; and Safety Recommendation to the Federal Aviation Administration (FAA) regarding methods to ensure an effective response to a cabin depressurization event, including training and education, procedures and checklists, and aircraft systems.

7308 Pipeline Accident Report: Natural Gas Service Line Rupture and Subsequent Explosion and Fire in Bridgeport, Alabama on January 22, 1999.

7280 Opinion and Order: Administrator v. Morris and Wallace, Dockets SE–15135 and SE–15136; disposition of respondent's appeal.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, November 24, 2000.

FOR MORE INFORMATION CONTACT: Rhonda Underwood (202) 314–6065.

Dated: November 17, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–29927 Filed 11–17–00; 3:35 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[IA–00–016]

In the Matter of Gail C. VanCleave; Order Prohibiting Involvement in NRC-Licensed Activities

I

Gail C. VanCleave was employed by Sun Technical, a contractor of the American Electric Power Company

(Licensee or AEP) from at least September 16, 1999 and November 18, 1999. Licensee is the holder of Licenses No. DPR–58 and DPR–74, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on October 25, 1974, and December 23, 1977, respectively. The license authorizes the operation of D. C. Cook Nuclear Power Plant (Cook Plant or facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site near Bridgeman, MI.

II

An investigation was conducted between November 22, 1999, and March 23, 2000, by the NRC Office of Investigations (OI) as a result of information provided to the NRC by the Licensee on November 18, 1999. The Licensee reported that Gail C. VanCleave, a clerical employee of Sun Technical at the Cook Plant, had been granted temporary unescorted access to the Cook Plant based on incomplete and inaccurate information she provided in her access authorization application on September 6 and 8, 1999. On November 18, 1999, the security department at the Cook Plant received the criminal history information for Gail C. VanCleave, which indicated a social security account number different from the one she provided on September 6 and 8, 1999, which was in fact the social security account number of her deceased mother. Ms. VanCleave also failed to provide complete information about previous employment on September 6 and 8, 1999, in that she failed to identify a previous employer, a contractor of the United States Department of Energy (DOE). The incomplete and inaccurate information was material. Ms. Van Cleave provided an inaccurate social security number in an attempt to conceal the fact that she had previously been denied unescorted access authorization by the Cook Plant on January 20, 1999, and that she had previously been denied unescorted access to the Tennessee Valley Authority's Watts Bar facility on November 4, 1998, because of a misdemeanor conviction for theft from the DOE contractor. As a result of the discovery of Ms. VanCleave's provision of incomplete and inaccurate information in her application for unescorted access authorization, the security department terminated her temporary unescorted access to the Cook Plant on November 18, 1999.[1]

[1] She entered the protected area of the Cook Plant five times from September 17, 1999, to November 18, 1999.

Based on the OI investigation, we conclude that Gail C. VanCleave deliberately provided materially inaccurate and incomplete information to the Cook Plant in order to gain employment at, and unescorted access to, the facility. Furthermore, Ms. Van Cleave told the OI investigator that she would do the same thing again if she were to find herself in the same financial situation.

III

Based on the above, it appears that Gail C. VanCleave, an employee of a Licensee contractor, engaged in deliberate misconduct in violation of 10 CFR 50.5 by deliberately providing materially incomplete and inaccurate information to the Licensee. The NRC must be able to rely on the Licensee, its employees and the employees of its contractors to comply with NRC requirements, including the requirement to provide complete and accurate information and maintain records that are complete and accurate in all material respects. The actions of Gail C. VanCleave including both deliberately providing materially incomplete and inaccurate information to the Licensee and communicating to an NRC investigator that she would repeat the act have raised serious doubt as to whether she can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees and to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Gail C. VanCleave was permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Gail C. VanCleave be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Gail C. VanCleave, for a period of three years following the prohibition period, is required to notify the NRC of her employment in NRC-licensed activities.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *It Is Hereby Ordered That:*

1. Gail C. VanCleave is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Gail C. VanCleave is currently involved with another licensee in NRC-licensed activities, she must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of three years after the three year period of prohibition has expired, Gail C. VanCleave shall, within 20 days of her acceptance of each employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in the NRC-licensed activities. In the first notification, Gail C. VanCleave shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, NRC Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Gail C. VanCleave of good cause.

V

In accordance with 10 CFR 2.202, Gail C. VanCleave must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Gail C. VanCleave or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing

shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351 and to Gail C. VanCleave if the answer or hearing request is by a person other than Gail C. VanCleave. If a person other than Gail C. VanCleave requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Gail C. VanCleave or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 6th day of November 2000.

For The Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

Deputy Executive Director for Reactor Programs.

[FR Doc. 00–29724 Filed 11–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7005]

Consideration of an Exemption From Requirements of 10 CFR Part 70 for Waste Control Specialist LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Consideration of an exemption.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an Order pursuant to section 274f of the Atomic Energy Act that would exempt Waste Control Specialist LLC (WCS) from certain NRC regulations. WCS requested this exemption in a letter dated September 25, 2000. The proposed exemption would allow WCS, under specified conditions, to possess waste containing special nuclear material (SNM), in greater mass quantities than specified in 10 CFR part 150, at WCS's facility located in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70. NRC issued a similar Order to Envirocare of Utah, Inc. in May of 1999. During the issuance of that Order, the Commission indicated that staff should consider similar requests from others prior to exploring rulemaking in this area (SRM–SECY–98–226).

SUPPLEMENTARY INFORMATION: The WCS facility is approximately 1200 acres in size and is located in western Texas, approximately 32 miles west of Andrews, Texas. WCS is licensed by the State of Texas Department of Health to treat and temporarily store low-level radioactive waste. WCS is also licensed by the Texas Natural Resource Conservation Commission and the U.S. Environmental Protection Agency to dispose of hazardous waste. The hazardous waste activities at the site are not subject to the Order currently under consideration.

Prior to the issuance of the Order, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Timothy E. Harris, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6613. Fax.: (301) 415–5397.

Dated at Rockville, Maryland, this 7th day of November 2000.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–29725 Filed 11–20–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24741; 813–232]

ML Taurus, Inc.; Notice of Application

November 15, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') exempting the applicant from all provisions of the Act, except section 9, section 17 (other than certain provisions of sections 17(a), (d), (e), (f), (g), and (j)), section 30 (except for certain provisions of sections 30(a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

Summary of Application: Applicant requests an order to exempt certain limited partnerships and other entities (''Partnerships'') formed for the benefit of key employees of Merrill Lynch & Co., Inc. (''ML & Co.'') and its affiliates from certain provisions of the Act. Each Partnership will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act.

Applicant: ML Taurus, Inc. (''ML Taurus'').

Filing Dates: The application was filed on February 8, 2000, and amended on November 9, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 11, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Leonard B. Mackey, Jr., Esquire, Clifford Chance Rogers & Wells LLP, 200 Park Avenue, New York, New York 10166–0153.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or Janet M. Grossnickle, Branch Chief, at (202) 942–0526 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. ML & Co. is a diversified financial services holding company which provides investment, financing, insurance and related services through subsidiaries. Its principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated, is a broker-dealer registered under the Securities Exchange Act of 1934 (the ''Exchange Act''). ML & Co. and its affiliates as defined in rule 12b–2 of the Exchange Act are referred to collectively as the ''Merrill Lynch Group.''

2. ML Taurus, an indirect wholly-owned subsidiary of ML & Co., intends to establish Partnerships from time to time. Each Partnership will be organized as either a Delaware limited partnership, a Delaware limited liability company or another appropriate entity, will be an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and each will operate as a closed-end, management investment company which may be diversified or non-diversified. The Partnerships will be established for the benefit of highly compensated employees, officers, directors and current Consultants [1] of ML & Co. and its affiliates, primarily to create capital building opportunities that are competitive with those at other financial services firms and to facilitate the recruitment and retention of high caliber professionals. The investment objectives and policies for each Partnership may vary from Partnership to Partnership. Participation in a Partnership will be voluntary.

3. ML Taurus, another direct or indirect wholly-owned subsidiary of ML & Co. or an entity within the Merrill Lynch Group may serve as general partner to one or more of the Partnerships (''General Partner''). The General Partner will manage, operate and control each Partnership. The executive offices and directors of the General Partner or of any entity controlling the General Partner will be employees of the Merrill Lynch Group who are eligible to invest in the Partnership. The General Partner may delegate certain management responsibilities to a manager (''Manager''), which will be either ML & Co., a person controlling, controlled by or under common control with ML & Co. or an investment committee composed of ''Eligible Employees'' as defined below. The General Partner or Manager will act as the investment adviser to a Partnership and will register as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), if required under applicable law.

4. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), or Regulation D under the Securities Act, and will be sold only to ''Eligible Employees,'' and other ''Qualified Participants,'' each as defined below, or members of the Merrill Lynch Group (collectively, the ''Limited Partners''). Prior to offering Interests to an Eligible Employee or ''Qualified Family Member,'' as defined below, the General Partner must reasonably believe that such individual has such knowledge, sophistication and experience in business and financial matters to be capable of evaluating the merits and risks of participating in the Partnership, is able to bear the economic risk of such investment and is able to afford a complete loss of such investment. An Eligible Employee is an individual who is former or current employee, officer, director or current Consultant of the Merrill Lynch Group who meets the standards of an ''accredited investor'' as defined in rule 501(a)(5) or 501(a)(6) of Regulation D under the Securities Act (an ''Accredited Investor'') or one of 35 or fewer employees of the Merrill Lynch Group who meets certain salary and other requirements (''Other Investors'').

5. Each Other Investor will be an employee of the Merrill Lynch Group who (a) is a ''knowledgeable employee,'' as defined in rule 3c-5 under the Act, of such Partnership (with the Partnership treated as though it were a ''Covered Company'' for purposes of the rule), or (b) has a graduate degree in business, law or accounting, has a minimum of five years of consulting, investment banking or similar business experience, and has a reportable income from all sources in the two calendar years immediately preceding the Other Investor's participation in the Partnership of at least $100,000 and has a reasonable expectation of reportable income of at least $140,000 per year in each year in which the Other Investor invests in a Partnership. In addition, an Other Investor qualifying under (b) above will not be permitted to invest in any year more than 10% of such person's income from all sources for the immediately preceding year in aggregate in a Partnership and in all other Partnerships in which that Other Investor has previously invested.

6. A Qualified Participant is an Eligible Employee, Qualified Family Member (as defined below) or Qualified Investment Vehicle (as defined below). A ''Qualified Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee, and must be an Accredited Investor. A ''Qualified Investment Vehicle'' is a trust or other investment vehicle established solely for the benefit of an Eligible Employee or Qualified Family Members. A Qualified Investment Vehicle must be either (a) an Accredited Investor or (b) an entity for which an Eligible Employee or Qualified Family Member is a settlor and principal investment decision-maker.

7. The terms of investment in a Partnership will be fully disclosed to each prospective Limited Partner at the time the Limited Partner is invited to participate in the Partnership. Each Partnership will send annual reports, which will contain audited financial statements, as soon as practicable after the end of each of its fiscal year to Limited Partners. In addition, as soon as practicable after the end of each tax year of a Partnership, each Limited Partner will receive a report setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his or her federal tax returns.

8. The specific investment objectives and strategies for a particular Partnership will be set forth in a private placement memorandum relating to the Interests offered by the Partnership and each Qualified Participant will receive a copy of the private placement memorandum and the limited partnership agreement (or other constitutive document) of the Partnership.

9. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is a Qualified Participant or member of the Merrill Lynch Group. No fee of any kind will be charged in connection with the sale of Interests.

10. The General Partner may have the right, but not the obligation, to repurchase or cancel the Interest of an Eligible Employee who ceases to be an employee, officer, director or current Consultant of any member of the Merrill

[1] A ''Consultant'' is a person or entity whom a Merrill Lynch Group member has engaged on a retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with the Merrill Lynch Group and its employees.

Lynch Group for any reason. Upon repurchase or cancellation, such Limited Partner's Interest will be purchased by the General Partner for cash in an amount at least equal to the lessor of (a) the amount of such Partner's capital contributions less prior distributions from the Partnership together (plus interest, as determined by the General Partner) or (b) the value of the Interest, as determined by the General Partner in good faith as of the date of termination.

11. Subject to the terms of the applicable limited partnership agreement (or other constitutive documents), a Partnership will be permitted to enter into transactions involving (a) a Merrill Lynch Group entity, (b) a Client Fund (as defined below) or other portfolio company, (c) a Limited Partner or any person or entity affiliated with a Limited Partner, or (d) any partner or other investor in any entity in which a Partnership invests. These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any Merrill Lynch Group entity or Client Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Limited Partners.

12. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies except for temporary investments in money market funds. A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company. The Partnership may also invest in Client Funds that are not registered under the Act by virtue of section 3(c)(1) or section 3(c)(7) of the Act.

13. The General Partner or Manager of a Partnership may charge the Partnership an annual management fee, a flat administrative charge or a ''carried interest.'' [2] A General Partner or Manager may receive reimbursement of its out-of-pocket expenses, including the allocable portion of the salaries of Merrill Lynch Group employees who work on the Partnerships' affairs. Directors or officers of the General Partner or Manager, or of any entity controlling the General Partner or Manager, may also be compensated for their services to the General Partner or Manager, including reimbursement for out-of-pocket expenses, and may be allocated a portion of any carried interest paid by such Partnership.

14. If a Partnership becomes a limited partner or otherwise holds an interest in an investment fund organized or managed by the Merrill Lynch Group in which unaffiliated third parties also are limited partners or otherwise hold interests (a ''Client Fund''), the Partnership may be obligated to pay a pro rata share of any fees (including carried interest) charged to the unaffiliated limited partners or interest holders of such Client Fund. A Partnership may also invest in funds managed or advised by persons not affiliated with ML & Co. in which case such unaffiliated persons may also be entitled to fees (including carried interest) from the Partnership. In all such cases, the Partnerships will enter into commercially reasonable arm's length arrangements with respect to the payment of the fees and the potential for payment of any such management fees or carried interest will be fully described in the applicable offering documents.

15. Members of the Merrill Lynch Group and/or unaffiliated third parties may make loans to the Partnerships and/or to Limited Partners in connection with their purchase of Partnership Interests, provided that a Partnership will not borrow from any person if the borrowing would cause any person not named in section 2(a)(13) of the Act to own outstanding securities of the Partnership (other than short-term paper). In connection with any leverage of the Partnership or preferred contributions, Eligible Employees will not have any personal liability in excess of the amounts payable under their respective subscription agreements for the repayment of the preferred capital contribution, including in the event that, upon liquidation of the Partnership, the assets of the Partnership are insufficient to permit the Partnership to repay such preferred capital contribution in full. Members of the Merrill Lynch Group may also make preferred capital contributions to the Partnerships either through the General Partner or as Limited Partners. Any leverage or preferred capital contributions will bear interest at a rate no less favorable to a Partnership or its Limited Partners than that could be obtained on an arm's length basis.

16. Eligible Employees may be able to defer compensation under a deferred compensation plan established in connection with the Partnerships and receive a return on such deferred compensation determined by reference to the performance of a Partnership. Such employees also may be able to leverage their deferred compensation through ''borrowings'' from members of the Merrill Lynch Group structured in a manner similar to direct loads to Limited Partners. The deferred compensation plans/or an Eligible Employee's interest in such plans: (a) Will be subject to the applicable terms and conditions of this application; [3] (b) will only be offered to Eligible Employees who are current employees, officers, directors or consultants of the Merrill Lynch Group; (c) will have restrictions on transferability, including prohibitions on assignment or transfer except in the event of the Eligible Employee's death or as otherwise required by law; and (d) will provide information to participants equivalent to that provided to investors and prospective investors in the corresponding Partnership, including, without limitation, disclosure documents and audited financial information.

Applicant's Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities

[2] A ''carried interest'' is an allocation to the General Partner or Manager based on the net gains in addition to the amount allocable to the General Partner or Manager that is in proportion to its capital contributions. Depending on whether the General Partner or Manager is registered as an investment adviser under the Advisers Act, any ''carried interest'' will be charged only if permitted by rule 205–3 under the Advisers Act (in the case of a General Partner or Manager registered under the Advisers Act) or will comply with section 205(b)(3) of the Advisers Act (with the Partnership treated as though it were a ''business development company'' solely for the purpose of that section) in the case of a General Partner or Manager not registered under the Advisers Act.

[3] For purposes of this application, a Partnership will be deemed to be formed with respect to each deferred compensation plan and each reference to ''Partnership,'' ''capital contribution,'' ''General Partner,'' ''Limited Partner,'' ''loans'' or ''leverage'' and ''Interest'' in this application will be deemed to refer to the deferred compensation plan, the notional capital contribution to the deferred compensation plan, the Merrill Lynch Group, a participant of the deferred compensation plan, notional loans or leverage and participation rights in the deferred compensation plan, respectively.

company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one of more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicant requests an order under sections 6(b) and 69e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act and approving transactions pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicant requests an exemption from section 17(a) to permit: (a) A member of the Merrill Lynch Group or a Client Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any entity controlled by such Partnership; (b) a Partnership to invest in or engage in any transaction with any entity, acting as principal (i) in which such Partnership, and company controlled by such Partnership, or any entity within the Merrill Lynch Group or a Client Fund has invested or will invest or (ii) with which such Partnership, any company controlled by such Partnership or any Merrill Lynch Group entity or a Client Fund is or will otherwise become affiliated; and (c) a partner or other investor in any entity in which a Partnership invests, acting as principal, to engage in transactions directly or indirectly with the related Partnership or any company controlled by such Partnership.

4. Applicant states that an exemption from section 17(a) is consistent with the protection of investors and the purposes of the Partnerships. Applicant states that the Limited Partners in each Partnership will be informed of the possible extent of the Partnership's dealings with the Merrill Lynch Group and of the potential conflicts of interest that may exist. Applicant also asserts that the community of interest among the Limited Partners and Merrill Lynch Group will serve to reduce any risk of abuse in transactions involving a Partnership and the Merrill Lynch Group.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from participating in any joint enterprise, or other joint arrangement, unless approved by the Commission. Applicant requests approval to permit affiliated persons of each Partnership, or affiliated persons of such persons, to participate in any joint arrangement in which the Partnership or an entity controlled by the Partnership is a participant.

6. Applicant submits that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with the Merrill Lynch Group, the Merrill Lynch Group's large capital resources, and its experience in structuring complex transactions. Applicant also submits that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicant contends that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicant notes that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with the Merrill Lynch Group and for the generation and maintenance of goodwill. Applicant believes that, if co-investments with the Merrill Lynch Group are prohibited, the appeal of the Partnerships would be significantly diminished.

7. Applicant states that the possibility that permitting co-investments by an affiliated person or an affiliated person of an affiliated person might lead to less advantageous treatment of the Partnership is mimimal in light of (a) the Merrill Lynch Group's intention in establishing a Partnership so as to reward Eligible Employees and to attract and retain highly qualified personnel, (b) the Merrill Lynch Group's capital contributions to the Partnerships, (c) the liability of the General Partner to the extent that a Partnership's losses exceed its assets and (d) the fact that executive officers and directors of the General Partners or of the entity controlling the General Partner may themselves invest in the Partnership. In addition, applicant asserts that strict compliance with section 17(d) could cause a Partnership to forgo attractive investment opportunities simply because an affiliated person of the Partnership has made, or may make, the same investment.

8. Applicant believes that the interests of the Eligible Employees participating in a Partnership will be adequately protected in situations where condition 3 in the application does not apply. A Partnership may also co-invest with an investment fund or separate account, organized for the benefit of investors who are not affiliated with the Merrill Lynch Group, over which a member of the Merrill Lynch Group exercises investment discretion (a ''Third-Party Fund''). Applicant states that in structuring a Third-Party Fund, it is common for unaffiliated investors of such fund to require that the Merrill Lynch Group invest its own capital in fund investments, either through the fund or on a side-by-side basis, and that such Merrill Lynch Group investment be subject to substantially the same terms as those applicable to the fund's investment. Applicant states that it is important to the Merrill Lynch Group that the interests of the Third-Party Fund take priority over the interests of the Partnerships, and that the activities of the Third-Party Fund not be burdened or otherwise affected by the activities of the Partnerships. In addition, the relationship of a Partnership to a Third-Party Fund, in the context of this application, is fundamentally different from such Partnership's relationship to the Merrill Lynch Group. The focus of, and the rationale for, the protections contained in this application are to protect the Partnerships from any overreaching by the Merrill Lynch Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships *vis-a-vis* the investors of a Third-Party Fund.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicant requests an exemption from section 17(e) to permit a Merrill Lynch Group member (including the General Partner) acting as agent or broker, to receive placement fees, financial

advisory fees or other compensation in connection with the purchase or sale by a Partnership of securities, subject to the requirement that placement fees, financial advisory fees or other compensation is deemed ''usual and customary.'' Applicant states that for the purposes of the application, fees and other compensation that is being charged or received by the Merrill Lynch Group will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50 percent of the total amount of securities being purchased or sold by the Partnership and unaffiliated third parties. Applicant asserts that compliance with section 17(e) would prevent a Partnership from participating in a transaction in which a member of the Merrill Lynch Group does not, for other business reasons, wish a Partnership to be treated in a more favorable manner (in terms of lower fees) than unaffiliated third parties. Applicant asserts that fees or other compensation paid by a Partnership to a Merrill Lynch Group entity will be the same as those negotiated at arm's length with unaffiliated third parties and the unaffiliated third parties will have as great or greater interest as the Partnership in the transaction as a whole.

10. Rule 17e–1(b) requires that a majority of directors who are not ''interested persons'' (as defined by section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants requests an exemption from rule 17e–1 to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicant states that because all of the directors of a General Partner will be affiliated persons, without such relief requested, a Partnership could not comply with rule 17e–1. Applicant states that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the Partnership take actions and make approvals as set forth in rule 17e–1. Applicants states that each Partnership will otherwise comply with the requirements of rule 17e–1.

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicant requests an exemption from section 17(f) and rule 17f–1(a) to the extent necessary to permit a member of the Merrill Lynch Group to act as custodian without a written contract. Applicant also requests an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicant further requests an exemption from rule 17f–1(c)'s requirement of transmitting to the Commission a copy of any contract executed pursuant to rule 17f–1. Applicant believes that because of the community of interest of all of the parties involved, compliance with these requirements would be unnecessary. Applicant states that it will comply with rule 17f–1(d), provided that ratification by the General Partner of any Partnership will be deemed to be ratification by a majority of a board of directors. Applicant states that it will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicant requests relief from rule 17g–1(d), (e) and (g) of the extent necessary to permit the General Partner's officers and directors, who may be deemed to be interested persons, to take the actions and make the determinations set forth in the rule. Applicant states that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Applicant also states that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (b) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicant requests an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome because of the community of interest among the Limited Partners.

14. Applicant requests an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicant contends that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that ourweigh any benefit to the Limited Partners. Applicant requests exemptive relief to the extent necessary to permit each Partnership to report annually to its Limited Partners. Applicant also requests also an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other person who may be deemed to be a member of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in a Partnership. Applicant asserts that, because there will be no trading markets and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction involving a Partnership otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 thereunder (the ''Section 17 Transactions'') will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Limited Partners and do not involve overreaching of the Partnership or its Limited Partners on the part of any reason concerned; and (b) the transaction is consistent with the interests of the Limited Partners, the Partnership's organizational documents and the Partnership's reports to its Limited Partners. In addition, the General Partner of each Partnership will record and preserve a description of all Section 17 Transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to

examination by the Commission and its staff. [4]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, before the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which an ''Affiliated Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Affiliated Co-Investor. The term ''Affiliated Co-Investor'' with respect to Partnership means (a) an ''affiliated person,'' as such term is defined in the Act, of the Partnership (other than a Third-Party Fund or a person that is an affiliated person of the Partnership solely because of section 2(a)(3)(B) of the Act); (b) the Merrill Lynch Group; (c) an officer or director of the Merrill Lynch Group; or (d) an entity (other than a Third-Party Fund) in which a member of the Merrill Lynch Group acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; or (c) when the investment is comprised of securities that are (i) listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (ii) national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder, or (iii) government securities as defined in section 2(a)(16) of the Act.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Limited Partners, and each annual report of the Partnership required to be sent to the Limited Partners, and agree that all such records will be subject to examination by the Commission and its staff.[5]

5. The General Partner of each Partnership will send to each Limited Partner who had an Interest in a Partnership, at any time during the fiscal year then ended, Partnership financial statements that have been audited by independent accountants. At the end of each fiscal year, the General Partners will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partner of each Partnership shall send a report to each person who was a Limited Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Limited Partner of his or her federal and state income tax returns and a report of the investment activities of the Partnership during that year.

6. Whenever a Partnership makes a purchase from or sale to an entity affiliated with the Partnership by reason of a 5% or more investment in such entity by a Merrill Lynch Group director, officer, or employee, such individual will not participate in the General Partner's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Nexen Inc. (Formerly Canadian Occidental Petroleum Ltd.), Common Shares, No Par Value) File No. 1–06702

November 15, 2000.

Nexen Inc. (formerly Canadian Occidental Petroleum Ltd.), which is organized under the laws of Canada (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Shares, no par value (''Security''), from listing and registration on the American Stock Exchange (''Amex'').

The Company has obtained a new listing for its Security on the New York Stock Exchange (''NYSE''). Trading in the Security commenced on the NYSE, and was concurrently suspended on the Amex, at the opening of business on November 14, 2000. Having obtained the new NYSE listing, the Company has determined to withdraw the Security from listing and registration on the Amex for the following reasons: (i) To avoid the additional direct and indirect costs of maintaining such listing; (ii) to prevent potential fragmentation of the market for its Security; and (iii) the Company no longer feels that the continued listing of its Security on the Amex is in its best interests.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon either the Security's continued listing and registration on the NYSE or the Company's continuing obligation under Sections 12(b) and 13 of the Act [3] to file certain reports with the Commission.

Any interested person may, on or before December 7, 2000, submit by letter to the Secretary of the Securities

[1] 15 U.S.C. 781(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b); 15 U.S.C. 78m.

and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43554; File No. SR–Amex–00–22]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC Amending Article V, Section 1 of the Exchange Constitution and Exchange Rule 345

November 14, 2000.

I. Introduction

On April 13, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to grant the Exchange's Enforcement Department the right to appeal a decision of a Disciplinary Panel and to grant the Amex Adjudicatory Council (''AAC'') and the Amex Board of Governors the authority to increase a penalty imposed by a Disciplinary Panel.

The proposed rule change was published for comment in the **Federal Register** on August 2, 2000.[3] The Commission received one comment on the proposal.[4] This order approves the proposal.

II. Description of Proposal

The Amex is proposing to amend its Constitution and Rules to allow Exchange staff to appeal decisions of the AAC, and to allow the AAC to increase penalties imposed by a Disciplinary Panel. Further, the Exchange seeking to expand the scope of the Board of Governor's authority to review proposed decisions of the AAC so that the Board may also sustain, increase, or eliminate any penalty imposed, or impose a lesser penalty.

a. Article V, Section 1(c) and Rule 345

Currently, under Article V, Section 1(c) of the Exchange Constitution and Rule 345, only Exchange members may appeal a determination and/or penalty imposed by a Disciplinary Panel to the AAC.[5] The Exchange's Enforcement Department does not have the right to appeal a Disciplinary Panel's determination under the Constitution or Rule 345. Because only members have the right to appeal a decision to the AAC, currently the AAC may only affirm the determination and penalty imposed, modify or reverse the determination, decrease or eleminate the penalty imposed, impose any lesser penalty permitted, or remand the matter to the Disciplinary Panel for further consideration. The AAC may not impose a greater penalty on appeal.

The Exchange proposes to grant the Enforcement Department the right of appeal, and to give the AAC the authority to increase a penalty imposed by the Disciplinary Panel if it deems it appropriate. The Exchange contends that this authority would give the reviewing body the full range of alternatives that it needs to deal effectively with appeals.

b. Constitution Article V, Section 1(d) and Rule 345(g)

Pursuant to Exchange Constitution Article V, Section 1(d) and Rule 345(g), as the next level of review, any four members of the Board of Governors may call a proposed decision of the AAC in a contested disciplinary matter for review by the entire Board. In reviewing a decision by the AAC, the Board may affirm, modify or reverse the decision of the AAC or remand the matter for further consideration. The Exchange has proposed to expand the scope of the Board's authority to review proposed decisions of the AAC so that the Board may also sustain, increase or eliminate any penalty imposed, or imposed a lesser penalty.[6]

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.[7] In their letter, the commenters expressed their opinion that the proposed rule change violates the general principles of peer review and double jeopardy. The commenters argued that the peer review provided by the current Amex review process ''prevents the imposition penalties by higher authorities that may act in certain circumstances for the political needs of the institution rather than for the justified position of an individual.'' The commenters believed that the purpose of the AAC is to ''ensure that sterile rules that exist in the virtual world of the Enforcement Department are applied in a real world environment with the benefit of the experience of real world participants,'' and that the proposed rule change hampers this purpose.

The comments also stated that the proposed rule change would violate citizens' rights against double jeopardy. The commenters asserted that it is contrary to democratic principles to allow a separate entity to increase a penalty determined to be fair by a peer group embodied to determine the final outcome of a proceeding.

The Amex responded to the commenters by noting that guarantees regarding peer review and double jeopardy apply to governmental proceedings, not proceedings brought by a self-regulatory organization (''SRO'').[8] The Amex noted that Section 6(b)(7) of the Act requires the rules of an exchange to ''provide a fair procedure for the disciplining of members and persons associated with members.''[9]

In response to the commenters' opinion that the proposed rule change would undermine the peer review provided for under the current disciplinary structure, the Exchange noted that the AAC (which the commenters regarded as their ''peer group'') is composed of six Board members (three Floor Governors, all of whom are members, and three Public

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Release No. 43065 (July 21, 2000), 65 FR 47528.

[4] *See* Letter from George Reichhelm, General Partner, and Andrew Schwarz, General Partner, AGS Specialist Partners, to Secretary, Commission, dated August 9, 2000.

[5] Additionally, any member of the AAC has the authority to request a review of an Exchange Disciplinary Panel decision, *sua sponte.*

[6] Pursuant to New York Stock Exchange (''NYSE'') Rule 476(f), NYSE enforcement personnel have the authority to appeal adverse determinations by disciplinary panels and the review boards have the authority to increase penalties imposed by disciplinary panels. Further, National Association of Securities Dealers, Inc. (''NASD'') Rule 9311 provides for similar authority.

[7] *See* note 4, *supra.*

[8] *See* Jones v. SEC, 115 F.3d 1173, 1183 (4th Cir. 1997); *see also,* Hudson v. United States, 522 U.S. 93 (1997).

[9] 15 U.S.C. 78f(b)(7).

Governors). Therefore, the Exchange explained, when the Board exercises its discretionary right to review a decision of the AAC, all of the members of the AAC who participated in the initial decision will also participate in the Board's consideration of the matter, thus providing member representation. Further, the Exchange pointed out that one-third of the Board's governors are Exchange members. Therefore, the Exchange believes that at both the AAC level of review and at the Board level of review, member participation is more than adequate to satisfy any peer review requirement that might be implicit in Section 6(b)(7) of the Act.[10]

With regard to the commenters' opinion that the proposed rule change would expose members to double jeopardy because a separate entity could increase a penalty determined to be fair by a peer group, the Exchange noted that the proposed rule does not provide that a member or member organization may be charged twice for the same conduct.

IV. Discussion

For the reasons discussed below, the Commission finds that the proposed changes to the Amex Constitution and Rules governing the procedures for review of disciplinary decisions are consistent with the Act in that they will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange consistent with the requirement of Section 6(b)(1) of the Act; [11] they will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange consistent with Section 6(b)(6) of the Act; [12] and they will provide a fair procedure for the disciplining of members and persons associated with members consistent with Section 6(b)(7) of the Act.[13]

The Commission finds that it is fair and appropriate to grant the division or department of the Exchange which brought the charges (''Enforcement Department'') the same right to appeal decisions of the Disciplinary Panel to the AAC as is granted to members. The Commission believes that allowing the Enforcement Department to appeal these decisions will provide an additional check on the disciplinary process to ensure that all parties are treated fairly. While the Commission recognizes the importance of Exchange rules designed to protect members accused of violating Exchange rules from unfair treatment, it is also important to have procedures in place that allow the Enforcement Department to seek review of decisions that it believes are improper or unfair. The Commission does not believe that the rights and protections granted to members under the Rules will be impinged upon by virtue of the fact the Enforcement Department also has the right of appeal. All final disciplinary actions of SROs can be appealed to the Commission. In addition, the Commission has the ability to review on its own motion any final disciplinary action of an SRO.

Further, the Commission believes that it is appropriate to grant the AAC the authority to increase penalties imposed by the Disciplinary Panel upon appeal.[14] The Enforcement Department's right to appeal is limited under the current rule because the AAC may not impose a penalty harsher than that originally imposed by the Disciplinary Panel. The Commission believes that as part of the Enforcement Division's right to appeal, it should be permitted to request an increased penalty if it believes that the penalty imposed by the Disciplinary Panel is inadequate.[15]

Finally, the Commission believes that it is also appropriate to allow the Board of Governors additional discretion to review penalties imposed as proposed by the Exchange. Currently, the Board may only affirm, modify or reverse the decision of the AAC, or remand the matter for further consideration. The Commission believes that by granting the Board the authority to sustain, increase or eliminate any penalty imposed, or impose a lesser penalty, the disciplinary process will be more streamlined. This change will permit the Board to review not only decisions of the AAC regarding whether it is appropriate to sanction a member, but also whether the sanction ultimately imposed is appropriate. For example, if the Board fees AAC's decision to impose a penalty is correct, but disagrees with the penalty imposed, instead of remanding the matter to the AAC for additional consideration with instructions, the Board may impose a penalty that it believes is just. The Commission finds that it is appropriate for the Board to have the authority to make these decisions.

V. Conclusion

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16]

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–AMEX–00–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29709 Filed 11–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43559; File No. SR–Amex–00–43]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Amending Its Rules To Require Companies To Publicly Disclose Receipt of a Delisting Notice

November 14, 2000.

I. Introduction

On August 16, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to require companies to publicly disclose receipt of a written delisting notice from the Exchange. On September 26, 2000, the Amex submitted Amendment No. 1 to the proposal to make certain technical modifications.[3]

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[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(6).

[13] 15 U.S.C. 78f(b)(7).

[14] Currently, the AAC is only permitted to affirm the determination and penalty imposed, modify or reverse the determination, decrease or eliminate the penalty imposed, impose any lesser penalty permitted, or remand the matter to the Disciplinary Panel for further consideration. *See* Exchange Rule 345.

[15] The Commission notes that both parties in a civil proceeding have the right to appeal the decision of the court.

[16] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3(f) of the Act. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Ryan, Senior Vice President, Chief of Staff, and Senior Legal Officer, Amex, to Alton Harvey, Office Chief, Division of Market Regulation, Commission, dated September 20, 2000.

The proposed rule change was published for comment in the **Federal Register** on October 5, 2000.[4] No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has had a policy of requiring a company whose securities are listed on the Exchange (or trade on the Exchange pursuant to unlisted trading privileges) to publicly disclose receipt from the Exchange of a written delisting notice for failure to comply with the Exchange's continued listing guidelines. The purpose of the proposed rule change is to codify this policy in order to protect present and potential investors in the securities of a company in receipt of such notice.

In order to provide investors with the greatest protection possible, the Exchange believes that a company's public announcement of its pending delisting should disclose not only the fact of the company's having received a written notice from the Exchange, but also indicate on which of the Amex continued listing guidelines the determination to delist has been based. The Exchange believes that requiring companies to disclose to investors which specific listing guideline(s) a company has failed to meet will better enable investors to make informed decisions about whether to make or maintain investments in the securities of such company.

The Exchange has proposed that a company make public its announcement regarding its pending delisting as promptly as possible, but not more than seven calendar days following its receipt of the written delisting notice from the Exchange. The Amex believes that the proposed seven-day time frame is consistent with its current policy and that such time frame would provide the subject company with sufficient opportunity to prepare its public announcement and also ensure that investors receive the information in a timely manner. If a company should fail to disclose the receipt of a written delisting notice under the Exchange's proposal, trading of its securities would be halted until the announcement has been made, even if the company elects to appeal the underlying delisting determination as provided for under Section 1010 of the Exchange's Listing Standards, Policies and Requirements.

The Exchange has also proposed that, where a company has elected to appeal the Exchange's delisting determination but fails to make the required announcement before the Adjudicatory Council issues its decision with regard to the company's appeal, such decision by the Adjudicatory Council whether or not to delist the company's securities may also be based on the company's failure to make the required public announcement.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder governing national securities exchanges.[5] In particular, the Commission finds that the proposal is consistent with the provisions of Section 6(b)(5) of the Act[6] which requires, among other things, that an exchange have rules that are, in general, designed to protect investors and the public interest. The Commission finds that it is appropriate for the Amex to codify in its rules its current policy requiring a listed company (or a company whose securities trade on the Exchange pursuant to unlisted trading privileges) to promptly disclose to the public that it has received a written delisting notice from the Exchange, and to set forth in its public disclosure the continued listing guidelines cited by the Exchange in making its delisting determination. The proposed rule change will better enable the Exchange to ensure that investors in the securities traded on the Exchange have as much information as possible about the issuers of such securities.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–00–43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29710 Filed 11–20–00; 8:45 am]

BILLING CODE 8010–01–M

[4] Securities Exchange Act Release No. 43371 (Sept. 27, 2000), 65 FR 59476.

[5] In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43537; File No. SR–CBOE–00–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Participation Rights in Crossing Transactions

November 9, 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 August 29, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 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 CBOE is proposing certain changes to provisions of its rule that governs the participation rights of firms crossing orders. The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

* * * * *

Chicago Board Options Exchange, Inc., Rules, Chapter VII, Section D: Floor Brokers, ''Crossing'' Orders, Rule 6.74

(a)–(c) No change.

(d) Notwithstanding the provisions of paragraphs (a) and (b) of this Rule, when a Floor Broker holds an equity option order of the eligible order size or greater (''original order''), the Floor Broker is entitled to cross a certain percentage of the order with other [customer] orders [from the same firm from which the original order originated (''originating firm] that he is holding or in the case of a public customer order with a facilitation order of the originating firm *(i.e., the firm from which the original customer order originated).* The appropriate Floor Procedure Committee may determine, on a class by class basis the eligible size for an order that may be transacted pursuant to this paragraph (d), however, the eligible order size may not be less than 50 contracts. In accordance with his responsibilities for due diligence, a Floor Broker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

representing an order of the eligible order size or greater which he wishes to cross shall request bids and offer for such option series and make all persons in the trading crowd, including the Order Book Official, aware of his request.

(i)–(vii) No change.

* * * Interpretations and Policies:

No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose 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

a. *Background.* The Commission recently approved a change to Exchange Rule 6.74 to provide a participation right that entitles member firms to cross a certain percentage of each order they send to the floor.[3]

Specifically, the rule change provided that after the Floor Broker representing an order (''original order'') has requested and received a market from the trading crowd, if the trade takes place at that market, the Floor Broker is entitled to cross 20% of the contracts remaining in the original order with another order from the same firm from which the original order originated.[4] The participation right applies only after all public customer orders in the book and represented in the crowd at the time the market was established have been satisfied.

If the trade takes place at a price between the best bid and offer provided by the crowd then, after public customer orders are satisfied, the Floor Broker will be entitled to cross 40% of the contracts remaining in the original order.

b. *Proposed Changes.* The Exchange is proposing to make two changes to Rule 6.74(d). The first change would make clear that the rule includes the situation where a Floor Broker is seeking to cross a *solicited* order against the original customer order. The second change would allow the Floor Broker representing the original customer order to solicit the order to trade against it even if that Floor Broker is not a nominee of the originating firm.

(i) *Application of the rule to solicited orders.* The Exchange states that its recently approved rule governing participation rights in cross trades was clearly intended to allow the member firm to receive its participation right when seeking to cross either a solicited order or a facilitation order against the original customer order.

The Exchange states that this is indicted by the rule language itself, which refers to ''other customer orders'' that a Floor Broker may be seeking to cross against the original order, in addition to—and as distinct from—''facilitation orders.'' [5] The Exchange states that there would have been no reason to distinguish between these types of orders if the rule was intended to allow the member firm to receive its participation right only when facilitating a customer order. The Exchange additionally points out that paragraph (d)(vi) of the rule specifically indicates that a Floor Broker might be holding either a solicited or facilitation order.[6]

Finally, the CBOE notes that in letter that amended the original proposal of Rule 6.74(d), in response to questions from the Commission's staff about what type of entity might be solicited to trade against the original order pursuant to the rule, the Exchange stated that the ''member firm may solicit a broker-dealer, a public customer, or any other source from which the firm expects to be able to find additional liquidity and a better price.'' [7]

Nonetheless, the CBOE states, a few members of the Exchange have questioned whether the rule was in fact intended to allow the member firm to receive a participation right by trading a solicited order against the original customer order. These members have based their uncertainty on the text of Rule 6.74(d), which states that ''the Floor Broker is entitled to cross a certain percentage of the order with other *customer* orders from the same firm from which the original order originated ('originating firm') that he is holding.'' (emphasis added)

These members believe that the term ''customer'' could be read to mean either a public customer (*i.e.,* a non-broker-dealer) or a client with which the firm has had a longstanding relationship. According to the Exchange, however, the aforementioned amendment letter demonstrates that the term ''customer'' was not intended to be read so restrictively. Consequently, the Exchange is now proposing to delete the term ''customer'' from this portion of the rule to make clear that the solicited order may come from any source.[8]

(ii) *The Floor Broker may solicit the order.* As currently written, the cross participation rule provides that the Floor Broker may cross the original customer order with other ''orders from the same firm from which the original order originated (originating firm).'' As such, if the Floor Broker who is representing the order is not a nominee of the originating firm but works for a firm that has been given the order to execute (''executing firm''), the Floor Broker or the executing firm would not be entitled to obtain the cross participation entitlement with respect to any order that the Floor Broker or executing firm had solicited.

After considering the implications of this restriction, the Exchange has determined to amend the rule so that the Floor Broker's participation entitlement is not limited to orders from the originating firm only. The proposed rule change would permit the Floor Broker who is not a nominee of the originating firm to himself solicit orders, with the aim of expanding the pool of potential liquidity providers who will be able to participate in the price

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[3] *See* Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (File No. SR–CBOE–99–10).

[4] The rule applies equally to a case where the second order is provided by the firm from its own proprietary account, in which case the second order is referred to as a ''facilitation order.'' *See id.*

[5] Paragraph (d) of Rule 6.74 states that ''the Floor Broker is entitled to cross a certain percentage of the order with other customer orders from the same firm from which the original order originated ('originating firm') that he is holding or in the case of a public customer order with a facilitation order of the originating firm.''

[6] Paragraph (d)(vi) states: ''A Floor Broker who is holding a customer order and either a facilitation or solicited order and who makes a request for a market will be deemed to be representing both the customer order and either the facilitation order or solicited order, so that the customer order and the other order will also have priority over all other orders that were not being represented in the trading crowd at the time the market was established.''

[7] Letter from Timothy Thompson, Director-Regulatory Affairs, Legal Department, CBOE, to Nancy Sanow, Division of Market Regulation (''Division''), the Commission, dated April 10, 2000 (Amendment No. 2 to File No. SR–CBOE–99–10) (''amendment letter'').

[8] For instance, as clarified by the proposed rule change, the participation right would apply equally when the Floor Broker seeks to cross the original order with an order solicited from a market maker. Telephone conversation between Timothy Thompson, Director-Regulatory Affairs, Legal Department, CBOE, and Ira L. Brandriss, Attorney, Division, the Commission, on September 21, 2000.

improvement process that the Exchange believes is encouraged by this rule.

To permit the Floor Broker who is not a nominee of the originating firm to solicit orders that will receive the benefit of the cross participation entitlement, the Exchange is proposing to delete the phrase that states that the order must be ''from the same firm from which the original order originated ('originating firm').''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) [9] of the Act in that it is designed to remove impediments to a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to 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 CBOE 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 the filing will also be available for inspection and copying at the principal offices of the CBOE. All submissions should refer to File No. SR–CBOE–00–43 and should be submitted by December 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29707 Filed 11–20–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43550; File No. SR–PCX–00–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Pacific Exchange, Inc. To Require Immediate Display of Options Limit Orders in the Option Limit Order Book

November 13, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2000, the Pacific Exchange, Inc. (''PCX'' 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 PCX filed Amendment Nos. 1 [3] and 2 [4] to the proposed rule change on August 1, 2000 and October 17, 2000, respectively. The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 31, 2000 (''Amendment No. 1''). Amendment No. 1 deletes the language of PCX Rule 6.55 and Commentary .01 thereunder, that sets forth special reporting requirements for highest bids and lowest offers comprised of more than 25 options contracts.

[4] Letter from Hassan Abedi, Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division, Commission, dated September 29, 2000 (''Amendment No. 2''). Amendment No. 2 revises Rule 6.55 to clarify that ''immediately'' means as soon as practicable after receipt, which under normal market conditions means no later than 30 seconds.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend PCX Rule 6.55 to require Order Book Officials to immediately display options limit orders in the Options Limit Order Book. As amended, the PCX proposal requires Order Book Officials to immediately display the highest bid and lowest offers, along with the corresponding number of options contracts bid or offered in the book for which that official acts as the Order Book Official. Additionally, the proposed rule change would delete the special requirements contained in PCX Rule 6.55 and Commentary .01 thereunder, that apply to highest bids and lowest offers of more than 25 options contracts.[5]

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 PCX 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 PCX 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 amend Exchange Rule 6.55 (''Displaying Bids and Offers in the Book'') to require the immediate display of options limit orders by Order Book Officials. Currently, PCX Rule 6.55 requires an Order Book Official to continuously display, in a visible manner, the highest bid and lowest offer, along with the corresponding number of options contracts bid or offered, in his book in each option contract for which he is the Order Book Official.

The Exchange represents that limit orders are routed to an Order Book Official either manually or electronically. A manual order is sent to an Order Book Officials by a floor

[5] *See* Amendment No. 1, *supra* note 3.

broker, who places a written, time-stamped order ticket into the proper receptacle at the trading post.[6] An electronic order is routed to the Order Book Official when a member firm places an order through the Exchange's Member Firm Interface to the Pacific Options Exchange Trading System (''POETS''). The order is then electronically entered into the Order Book Official's book through the Auto-Book function of POETS. Orders entered electronically into the book that improve the disseminated quote are immediately displayed on the overhead screens on the trading floor and are disseminated to the public through the Options Price Reporting Authority (''OPRA'').[7] However, orders entered manually must be entered into the POETS system before they can be displayed on the floor or disseminated through OPRA.[8]

PCX Rule 6.55 currently requires the Order Book Official to continuously display the best bid and offer ''so far as practicable.'' [9] The Exchange believes that the practicality requirement is no longer appropriate. PCX Rule 6.55 was codified before orders could be entered electronically through POETS. Today, only a small percentage of options orders are routed to the Order Book Officials manually. Accordingly, the Exchange proposes to amend PCX Rule 6.55 to eliminate the practicability requirement for the display of options transactions and replace it with a requirement that all orders must be displayed ''immediately.'' The proposed rule change defines the term ''immediately'' to mean as soon as practicable after receipt, which under normal market conditions means no later than 30 seconds.[10]

In modifying this rule, the Exchange is mindful of the importance of immediately displaying limit orders that represent the best bid and offer on the Exchange. Indeed, the Exchange notes that the Commission has recently emphasized the critical importance of improving industry practices relating to the display of limit orders.[11] In that regard, the Exchange is modifying PCX Rule 6.55 to help further this important objective.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of section 6 of the Act,[13] in general, and further the objectives of section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants, or Others

The Exchange 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 the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–00–15 and should be submitted by December 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29708 Filed 11–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43547; File No. SR–Phlx–00–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration Fees for Registered Representatives

November 13, 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 25, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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. On November 2, 2000, the Phlx filed

[6] *See* PCX Rule 6.52, Commentary .04. Prior to placing an order into the Order Book Official's custody, a Floor Broker must use due diligence in handling that order. *See generally,* PCX Rule 6.46.

[7] OPRA disseminates the options exchanges' best bid and offering prices, but does not disseminate the corresponding size of those markets. However, the sizes of the best bid and offer in the book are displayed on the overhead screens on the PCX floor, subject to certain conditions. *See* PCX Rule 6.55.

[8] This process requires a member of the Order Book Official's staff to enter the order into the system.

[9] *See* PCX Rule 6.55.

[10] *See* Amendment No. 2, supra note 4.

[11] *See generally,* Report Concerning Display of Limit Orders, Office of Compliance, Inspections and Examinations and Office of Economic Analysis, Commission (May 4, 2000).

[12] The Exchange represents that, currently, no PCX members operate any of the limit order books on the PCX Options Floor. Therefore, initially, the proposed change to PCX Rule 6.55 will apply only to PCX staff. However, the Exchange anticipates that in the future, PCX members may begin to operate limit order books on the options floor, and accordingly, the rule, as modified, will apply to members. *See* Securities Exchange Act Release No. 41595 (July 2, 1999), 64 FR 38064 (July 14, 1999) (order approving a PCX proposed rule change to permit PCX members to operate limit order books) (File No. SR–PCX–98–02).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Amendment No. 1 to the proposed rule change.[3] 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, pursuant to Rule 19b–4 under the Act, proposes to amend its fee schedule for Registered Representative registration. Specifically, the initial, maintenance, and transfer registration fees pertaining to Registered Representative registration will each be increased from $25.00 to $45.00. The proposed effective date of the increase is January 1, 2001. Below is the text of the rule change. Additions are italicized and deletions are in brackets.

Fee Schedule

* * * * *

Registered Representative Registration:

Initial	[$25.00]	*$45.00*
Maintenance	[$25.00 annual]	*$45.00 annual*
Transfer	[$25.00]	*$45.00*

II. Self-Regulatory Organization's Statements 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 Exchange proposes to increase its fees for the initial registration, maintenance, and transfer of Registered Representative registrations with the Exchange from $25.00 to $45.00. These fees, which were adopted in 1993,[4] and subsequently adjusted in 1995,[5] 1997 [6] and 1999,[7] are payable by member organizations that apply for, maintain, and transfer Registered Representative registrations. The proposed fee increase would become effective on January 1, 2001. The $45.00 fees apply to year 2001 registrations. Any initial registration in 2000 would continue to be subject to the $25.00 initial registration fee. Similarly, any maintenance and transfer fees incurred for calendar year 2000 would continue to be subject to the $25.00 maintenance or transfer fee. The National Association of Securities Dealers, Inc. (''NASD'') will bill for the year 2001 fees in November 2000, and will thereafter collect the fees for the Exchange.[8]

The purpose of the proposed rule change is to address the increased costs associated with maintaining surveillance and regulatory programs in an increasingly sophisticated trading environment. The Exchange continues to believe that strong surveillance and regulatory programs are essential to the ability of the Exchange to maintain a fair and orderly market for the investment community.

According to the Exchange, the general costs associated with the Exchange's surveillance and regulatory programs have continued to rise. Since the last Registered Representative fee increase in 1999,[9] costs associated with the Exchange's surveillance and regulatory programs have increased dramatically. This increase in costs is attributable to, among other things, inflationary and competitive pressures upon the cost of staffing, equipment, computer technology as well as expansion of the Exchange's surveillance and regulatory programs. Moreover, the Exchange has listed, and will likely continue to list, new issues and products, which trigger significant additional surveillance and regulatory costs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that is provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) thereunder,[13] upon the date Amendment No. 1 was received, November 2, 2000. The Exchange intends to implement the fee effective as of January 1, 2001. At any time within 60 days of the filing of Amendment No. 1 to 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 purpose of the Act.

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

[3] In Amendment No. 1, the Phlx corrected a typographical error which stated that ''initial, maintenance, and transfer registration fees pertaining to Registered Representative registration will each be increased from $125 to $45.'' The correct amount of the increase, as stated above, is from $25 to $45. The Phlx also provided a corrected Exhibit B with rule language that conforms to its initial filing. *See* Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Sapna C. Patel, Law Clerk, Division of Market Regulation, Commission, dated November 1, 2000.

[4] *See* Securities Exchange Act Release No. 32833 (September 14, 1993), 58 FR 48922 (September 20, 1993).

[5] *See* Securities Exchange Act Release No. 36348 (October 6, 1995), 60 FR 53450 (October 13, 1995).

[6] *See* Securities Exchange Act Release No. 39044 (September 10, 1997), 62 FR 48914 (September 17, 1997).

[7] *See* Securities Exchange Act Release No. 42122 (November 10, 1999), 64 FR 63098 (November 18, 1999).

[8] The Exchange has represented that initial, transfer, and maintenance Registered Representative fees have traditionally been billed and collected by the NASD. The NASD would continue to bill for and collect these fees under the proposed rule change. Phone message from Jurij Trypupenko, Counsel, Phlx, to Melinda Diller, Law Clerk, Division, Commission, on October 28, 1999. *See* Securities Exchange Act Release No. 42122 (November 10, 1999), 64 FR 63098 (November 18, 1999), at footnote 7.

[9] *See supra* note 7.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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 Phlx. All submissions should refer to File No. SR–Phlx–00–95 and should be submitted by December 12, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29711 Filed 1–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43539; International Series Release No. 1234; File No. SR–Phlx–00–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Narrowing of the Exercise Strike Price Interval for Foreign Currency Options on the Euro

November 9, 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 12, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'') 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 Phlx. On October 20, 2000, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] 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 Phlx proposes to revise its exercise strike price policy with respect to foreign currency options on the Euro denominated in U.S. dollars (''Euro FCOs'').[4] The Phlx proposes to reduce the exercise strike price interval of American and European style, standardized Euro FCOs from 2¢ to 1¢ in all six expiration months.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to reduce the exercise strike price interval of American and European style, standardized Euro FCOs from 2¢ to 1¢ in all six expiration months. The Exchange's exercise strike price interval policies are administered in accordance with Phlx Rule 1012 (Series of Options Open for Trading). Pursuant to Phlx Rule 1012, there are regular and month-end Euro FCO contracts listed, with one, two, three, six, nine and twelve months until expiration. Euro FCO contracts are currently listed at 2¢ intervals, and have strike prices of 80, 82, 84, 86, 88 and 90 in all of the six expiration months, as specified above. Under the proposal, strike prices of 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, and 90 could become available for trading.

The Exchange proposes to reduce the exercise strike price interval of all Euro FCO series from 2¢ to 1¢, due to the decrease in the spot price of the Euro in terms of the U.S. dollar. In 1999, the Euro was worth $1.18738. As of the date of this filing, the Euro was worth only $.8544, a dramatic decline in the value of the Euro in terms of the U.S. dollar.[5]

The Phlx represents that the purpose of the proposed rule change is to respond to customer demand for a narrower strike price interval due to the decrease in the underlying price of the Euro. The Exchange believes that the proposed rule change makes economic sense because a narrower strike price interval in Euro FCOs would provide investors and traders of the options with the ability to more closely tailor investment strategies to the precise movement of the underlying currency (*i.e.,* the Euro). The Exchange notes that the Commission has permitted narrower exercise strike price intervals with respect to foreign currency options based on the market value of the respective underlying security.[6]

Although the proposal makes available more foreign currency option series, the Phlx's Options Floor Procedure Advice F–18, Selective Quoting Facility (''SQF''), continues to apply. The Commission notes that, based on the application of the SQF, generally only a foreign currency option series that is designated by the Exchange as having an ''update strike'' would have its quotes made available for continuous dissemination to the public throughout the trading day.[7] The Phlx represents that the SQF, implemented in 1994, was intended to reduce the number of strike prices continuously being updated and disseminated, thus resulting in more timely and accurate foreign currency options quote displays. Therefore, the Exchange believes that with the use of the SQF, the predicted increase in the number of Euro FCO series should not adversely affect the Exchange's quote traffic and computer processing capacity. The Exchange represents that it will distribute a memorandum to all of its members and foreign currency options participants notifying them of the change in the exercise strike price interval for Euro FCO contracts,

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[14] 17 CFR 200.30–2(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded the original filing in its entirety. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 19, 2000.

[4] The underlying currency is the Euro. The trading currency, in which the strike price and premium are quoted, is the U.S. dollar.

[5] The Phlx previously traded options on the European Currency Unit (''ECU''), but delisted the product in July 1997 due to lack of open interest and trading activity. The Phlx reintroduced the ECU options in May 1998 with a 2¢ strike price interval. *See* Securities Exchange Act Release No. 39940 (April 30, 1998), 63 FR 25258 (May 7, 1998) (SR–Phlx–98–17). This provided investors with an investment vehicle during the conversion from the ECU to the Euro, which occurred in January 1999. The Phlx began trading the Euro FCO in January 1999. Securities Exchange Act Release No. 40953 (Jan. 15, 1999), 64 FR 3734 (Jan. 25, 1999) (SR–Phlx–99–01).

[6] *See* Securities Exchange Act Release No. 25685 (May 10, 1988), 53 FR 17524 (May 17, 1988) (Order approving narrower strike price intervals with respect to foreign currency options on the British pound denominated in U.S. dollars) (SR–Phlx–88–13); Securities Exchange Act Release No. 35631 (April 20, 1995), 60 FR 20544 (April 26, 1995) (Order approving narrower strike price interval with respect to foreign currency options on the French franc denominated in U.S. dollars) (SR–Phlx–95–06).

[7] *See* Phlx Rule 1012, Commentary .04.

effective as of the date of Commission approval of the proposed rule change.[8]

2. Statutory Basis

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act,[9] and in particular Section 6(b)(5) thereof,[10] in that it is designed to promote just and equitable principles of trade by enabling investors and traders of Euro FCO contracts to manage the foreign currency risks with respect to the Euro more effectively.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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

The Phlx neither solicited nor received any written comments.

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 Phlx 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 the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–66 and should be submitted by December 12, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29712 Filed 11–20–00; 8:45 am]

BILLING CODE 8010–01–M

[8] Telephone conversation between Richard Rudolph, Counsel, Phlx, and Hong-Anh Tran, Special Counsel, Division of Market Regulation, Commission, October 25, 2000.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43546; File No. SR–Phlx–00–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. (''Phlx'') Relating to Requirement That Certain Members and Member Organizations for Whom the Phlx is the Designated Examining Authority Give Prior Written Notice to the Phlx's Examinations Department of Any Changes in Business Operation

November 9, 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 November 3, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 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 Phlx proposes to adopt Rule 610 to require that members and member organizations for which the Exchange is the Designated Examining Authority (''DEA''), that operate as a specialist, floor broker and/or Registered Options Trade (''ROT'') and that have changed their business operations, or engaged in new business (for example, an ROT engages in off-floor proprietary trading), which materially affects the net capital, examinations and registration requirements to which the member or member organization is subject, to provide prior written notice to the Exchange's Examinations Department of any such changes in business operations. Below is the complete text of the proposed rule change. Proposed new text is in *italics.*

* * * * *

Philadelphia Stock Exchange, Inc.

* * * * *

Regulation of Members and Member Organizations

* * * * *

Rule 610. Notification of Changes in Business Operations

Any member or member organization for which the Exchange is the Designated Examining Authority (''DEA''), that operates as a specialist, floor broker and/or Registered Options Trader (''ROT''), shall provide prior written notification to the Examinations Department of any change in the business operations of such member or member organization which would cause the member or member organization to be subject to additional or modified net capital requirements, examination schedules or other registration, examination or regulatory requirements.

* * * * *

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 Orgnaization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule is to provide notification to the Exchange's Examinations Department of changes in the business operations of member and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

member organizations to bolster the examinations function. Specifically, pursuant to Section 19(g)(1) of the Act,[3] self-regulatory organizations (''SROs'') are required to enforce member compliance with the provisions of the Act and the SRO's own rules. Conducting cycle examinations of member firms for whom they are DEA is one method used by SROs to assess such compliance. Currently, the Phlx conducts examinations of its member firms on a periodic basis. The type of business a firm conducts is determinate of the interval between examinations as to any one particular firm. For example, the Phlx may examine specialist firms and proprietary trading firms annually, floor brokerage firms once every other year and ROTs once every three years. If a Phlx member would change its business operations, the change may affect the examination cycle for that particular firm. Further, new business operations often trigger both subtle changes in various regulatory requirements as well as larger issues of applicability of new provisions and obligations of which a firm may not be aware.

As stated above, the proposed rule change would require any member or member organization operating as a specialist, floor broker, and/or ROT and whose DEA is the Phlx, to notify, in writing, the Phlx Examinations Department of any change in its business operations which would cause it to be subject to additional or modified net capital requirements. The Examinations Department could then adjust the examination cycle as to the particular firm, as well as to advise such firm of new reporting and net capital requirements, if applicable. This information will also assist the Examinations Department in better focusing its examinations.

The Exchange believes that the proposed rule change should facilitate more efficient and effective periodic and systematic assessment of its member firms' compliance with the Act, consistent with its mandate under Section 19(g) of the Act.

2. Statutory Basis

The Phlx believes that the proposal is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(1) of the Act[5] in particular, in that it is designed to ensure that Phlx is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Phlx. The proposed rule change is also consistent with Section 6(b)(5) of the Act,[6] in that it is designed to ensure member firm compliance with federal securities laws and the rules of the Phlx, which should protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder[8] because the rule change will become operative 30 days after the date of filing with the Commission, and because this proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) the Exchange provided written notice to the Commission with a brief description and the text of the proposed rule change on July 12, 2000. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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, view 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 at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–47 and should be submitted by December 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29713 Filed 11–20–00; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(1).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.03–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43558; File No. SR–Phlx–00–85]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to Equity Option Transaction Charges For Broker-Dealers and Firms

November 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the amended proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[1] On October 4, 2000, the Phlx filed the original proposed rule change. 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 Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt a $.20 equity

[1] *See* Amendment No. 1 dated November 2, 2000 from Cynthia K. Hoekstra, Philadelphia Stock Exchange to Madge M. Hamilton, Esq., Division of Market Regulation, SEC (''Amendment No. 1''). This release incorporates all changes made in Amendment No. 1.

option transaction charge on off-floor members for broker-dealer transactions, as defined herein, including a related definition of ''firm/proprietary'' for the purpose of the Summary of Equity Option Charges that appears in the Exchange's schedule of dues, fees and charges.[2]

A copy of the text of the Summary of Equity Option Charges may be obtained from the Exchange or the Commission.

II. Self-Regulatory Organization's Statements 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 section 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

Currently, the Exchange imposes a transaction charge on equity options transactions executed on the Exchange. The charges vary depending on whether the transaction involves a firm, Registered Options Trader (''ROT'') or specialist. Previously, equity option transaction charges were also imposed on customer executions, but on August 31, 2000, the Exchange eliminated all equity option transaction charges for customer executions.[3] Other exchanges also eliminated similar customer equity option fees.[4]

To offset the elimination of the customer equity option transaction and comparison charges, the Exchange proposes to impose a fee on its members of $.20 per contract for all off-floor broker-dealer orders routed to the Exchange. This category would include ROTs who are trading from off-floor and broker-dealer routing orders through firm, customer or market maker accounts carried by a member clearing firm, but not firm/proprietary orders, as defined below. All other equity option transaction charges will remain unchanged. Thus, the purpose of the proposal is to offset the recently waived equity option customer charges.

For purposes of the equity option transaction charge, the term broker-dealer charge is defined as a charge that is applied to members for orders, entered from other than the floor of the Exchange, for any account (i) in which the holder of beneficial interest is a member of non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-floor. The Exchange believes the proposed fee is reasonable and equitable, as the next-highest equity option transaction charge is $.19 for ROTs ($.16 transaction charge + $.03 comparison charge) and $.18 per contract for specialists. Thus, the proposed $.20 fee is only slightly higher.

Because the proposed $.20 fee does not apply to firm orders, (which may otherwise be captured in the proposed broker-dealer definition), the Exchange proposes a corresponding change to the definition of firm for purposes of the firm/proprietary comparison and transaction charges that would now limit these fees to a certain category of firm trades—firm/proprietary trades. According to the proposal, a firm/proprietary transaction or comparison charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. Firms will be required to verify this amount to the Exchange by certifying that they have reached this threshold and by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (''GAAP''). In the event that a firm has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. This definition applies to both the option comparison charge and the transaction charge, and would appear on the summary of equity option charges as a footnote. Currently, a definition of ''firm'' does not appear on the summary. In addition, the footnote text that reads ''(Non-clearing firm members' proprietary transactions are eligible for the ''firm'' rate based upon submission of a Phlx rebate request form with supportive documentation within thirty (30) days of invoice date.)'' will be deleted as it is no longer necessary now that the category of broker-dealer is specifically included in the option transaction charge.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) of the Act, in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among members and other Exchange participants. The Exchange believes that the proposed increase in the Equity Option transaction charge for broker-dealers is not unreasonable, as stated above. In addition, the Exchange notes that members will be charged the same option transaction charge for trades on behalf of both member and non-member broker-dealers trading off the floor (including ROTs trading from off-floor) of the Exchange. The Exchange emphasizes that only members/member organizations are billed transaction fees, whether for their own trading or their customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder. Accordingly, the proposal will take effect upon filing of Amendment No. 1 with the Commission. At any time within 60 days of the filing of Amendment No. 1, 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.

[2] Equity Option Charges are comprised of the Option Comparison charge, Option Transaction charge, Option Floor Brokerage Assessment and the Floor Brokerage Transaction Fee.

[3] *See* Securities Exchange Act Release No. 43343 (SR–Phlx–00–80) (September 26, 2000), 65 FR 59243 (October 4, 2000).

[4] *See* Securities Exchange Act Release No. 42676 (SR–AMEX–00–15) (April 13, 2000), 65 FR 21223 (April 20, 2000); Securities Exchange Act Release No. 42850 (SR–CBOE–00–06) (May 30, 2000), 65 FR 36187 (June 7, 2000); and Securities Exchange Act Release No. 43115 (SR–PCX–00–16) (August 3, 2000), 65 FR 49280 (August 11, 2000). *See also* Securities Exchange Act Release No. 43020 (SR–PCX–00–14) (July 10, 2000), 65 FR 44558 (July 18, 2000).

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 the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–85 and should be submitted by December 12, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–29747 Filed 11–20–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before January 22, 2001.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Harriet Fredman, Deputy Assistant Administrator, Office of Women Business Ownership, Small Business Administration, 409 3rd Street, SW., Suite 4400.

FOR FURTHER INFORMATION CONTACT: Harriet Fredman, Deputy Assistant Administrator, 202–205–6673 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION: *Title:* Mentoring Programs that work, Women's Network for Entrepreneurial Training (WNET).

Form No's: 2031, 2031A, 2031B, 2013C, 2031D, 2031E, 2031F, 2031G.

Description of Respondents: SBA's Women's Business Ownership Representatives.

Annual Responses: 10,000.

Annual Burden: 2,000.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, System Accountant, Office of Investment Division, Small Business Administration, 409 3rd Street, SW., Suite 6300.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, System Accountant, 202–205-7559 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION: *Title:* Request for information concerning Portfolio Financing

Form No: 857.

Description of Respondents: SBIC Investment Companies.

Annual Responses: 2,160.

Annual Burden: 2,160.

Title: Financial Institution Confirmation Form.

Form No: 860.

Description of Respondents: SBIC Investment Companies

Annual Responses: 750.

Annual Burden: 750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–29825 Filed 11–20–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Notice of Sale of Business and Disaster Assistance Loans

AGENCY: Small Business Administration.

ACTION: Notice of Sale of Business and Disaster Assistance Loans—Loan Sale #3.

SUMMARY: This notice announces the Small Business Administration's (''SBA'') intention to sell approximately 19,200 secured and unsecured business and disaster assistance loans, (collectively referred to as the ''Loans''). This is SBA's third sale in its Asset Sales Program and the second sale that includes disaster assistance loans, which includes both business and consumer loans. The total unpaid principal balance of the Loans is approximately $1.15 billion (U.S.). SBA previously guaranteed some of the Loans under various sections of the Small Business Act, as amended, 15 U.S.C. 631 *et seq.* or the Small Business Investment Act, as amended, 15 U.S.C. 695 *et seq.* Any SBA guarantees that might have existed at one time have been paid and no SBA guaranty is available to the successful bidders in this sale. The majority of the loans were originated from and are serviced by SBA. The collateral for the secured Loans includes commercial and residential real estate and other businesses and personal property located nationwide. This notice also summarizes the bidding process for the Loans.

DATES: The Bidder Information Package will be available to qualified bidders beginning on or about October 3, 2000. The Bid Date is scheduled for December 5, 2000, and closings are scheduled to occur between December 15, 2000 and December 29, 2000. These dates are subject to change at SBA's discretion.

ADDRESSES: Bidder Information Packages will be available to qualified bidders from SBA's Transaction Financial Advisor, Hanover Capital Partners Ltd. (''Hanover''). Bidder Information Packages will only be made available to parties that have submitted a completed Confidentiality Agreement and Bidder Qualification Statement and have demonstrated that they are qualified bidders. The Confidentiality Agreement and Bidder Qualification Statement are available on the SBA Website at *www.sba.gov/assets/sale3.html* or by calling (877) 457–6754. The completed Confidentiality and Bidder Qualification Statement should be sent to the attention of Kathryn Merk, SBA Loan Sale 3, by fax, at (732) 572–5959 and mailed, to Hanover Capital Partners Ltd., 100 Metroplex Drive, Suite 301, Edison, NJ 08817.

The Due Diligence Facility is scheduled to open on or about October 3, 2000 and close on or about December 4, 2000. These dates are subject to change at SBA's discretion.

FOR FURTHER INFORMATION CONTACT: Margaret L. Hawley, Program Manager, Small Business Administration, 409 Third Street, SW, Washington, DC 20416; 202–401–8234. This is not a toll free number. Hearing or speech-impaired individuals may access this

number via TDD/TTY by calling the Federal Information Relay Service's toll-free number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: SBA intends to sell approximately 19,200 secured and unsecured business and disaster assistance loans, collectively referred to as the ''Loans''. The Loans include performing, sub-performing and non-performing loans. The Loans will be offered to qualified bidders in loan pools that will be based on such factors as performance status, collateral status, collateral type and geographic location of the collateral. A list of the Loans, loan pools and pool descriptions is contained in the Bidder Information Package. SBA will offer interested persons an opportunity to bid competitively on loan pools, subject to conditions set forth in the Bidder Information Package. SBA shall use its sole discretion to evaluate and determine winning bids. No loans will be sold individually. The Loans to be sold are located throughout the United States as well as Puerto Rico, U.S. Virgin Islands, Guam and other Pacific Islands.

The Bidding Process

To ensure a uniform and fair competitive bidding process, the terms of sale are not subject to negotiation. SBA will describe in detail the procedure for bidding on the Loans in the Bidder Information Package, which will include bid forms, a non-negotiable loan sale agreement prepared by SBA (''Loan Sale Agreement''), specific bid instructions, as well as pertinent loan information by loan pool such as total outstanding unpaid principal balance, interest rate, remaining term, loan to value, aggregate payment history and collateral information including geographic location and type. The Bidder Information Package also includes CD–ROMs that contain information pertaining to the Loans.

The Bidder Information Package will be available approximately 9 weeks prior to the Bid Date. It will contain procedures for obtaining supplemental information about the Loans. Any interested party may request a copy of the Bidder Information Package by sending a written request together with a duly executed copy of the Confidentiality Agreement and a Bidder Qualification Statement to the address specified in the **ADDRESSES** section of this notice.

Prior to the Bid Date, one or more Bidder Information Package Supplements will be mailed to all recipients of the original Bidder Information Package. The final list of loans included in Sale #3 will be contained in a Bidder Information Package Supplement as well as any final instructions for the sale.

Deposit and Liquidated Damages

Each bidder must include with its bid a deposit equal to 10 percent of the amount of the bidder's highest bid. If a successful bidder fails to close in accordance with the terms of the Loan Sale Agreement, SBA shall retain the deposit as liquidated damages.

Due Diligence Facility

A bidder due diligence period will commence on or about October 3, 2000. During the bidder due diligence period, a non-refundable assessment of $1,000 US (the Due Diligence Assessment) entitles qualified bidders to receive the Due Diligence CD–ROM, and enables qualifed bidders to access an imaged database of file documents relating to the Loans (''Asset Review Files'') either off-site electronically, by visiting SBA's Due Diligence Facility, or both. Alternatively, for a non-refundable assessment of $500 US, qualified bidders may review the Asset Review Files by visiting the Due Diligence Facility located at 499 South Capital, SW, Suite 300, Washington, DC 20003. Bidders that have paid the due diligence assessment of $500 US will also receive the Due Diligence CD–ROM that contains due diligence materials such as loan payment history and updated third party reports.

Specific instructions for accessing information in electronic format or making an appointment to visit the Due Diligence Facility are included in the Bidder Information Package.

SBA Reservation of Rights

SBA reserves the right to remove loans from the sale at any time prior to the Bid Date, and add loans prior to the Cut-Off Date for any reason and without prejudice to its right to include any loans in a later sale. SBA also reserves the right to terminate this sale at any time prior to the Bid Date.

SBA reserves the right to use its sole discretion to evaluate and determine winning bids. SBA also reserves the right in its sole discretion and for any reason whatsoever to reject any and all bids.

SBA reserves the right to conduct a ''best and final'' round of bidding wherein bidders will be given the opportunity to increase their bids. A best and final round shall not be construed as a rejection of any bid or preclude SBA from accepting any bid made by a bidder.

Ineligible Bidders

The following individuals and entities (either alone or in combination with others) are ineligible to bid on the Loans included in the sale:

(1) Any employee of SBA, any member of any such employee's household and any entity controlled by an SBA employee or by a member of such employee's household.

(2) Any individual or entity that is debarred or suspended from doing business with SBA or any other agency of the United States Government.

(3) Any contractor, subcontractor, consultant, and/or advisor (including any agent, employee, partner, director, principal, or affiliate of any of the foregoing) who will perform or has performed services for, or on-behalf of, SBA, either in connection with the Loans, this sale or the development of SBA's Asset Loan Sales Program.

(4) Any individual who was an employee, partner, director, agent or principal of any entity, or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of, SBA, either in connection with the Loans, with this sale or the development of SBA's Asset Sales Program.

(5) Any individual or entity that has used or will use the services, directly or indirectly, of any person or entity ineligible under any of paragraphs (1) through (4) above to assist in the preparation of any bid in connection with this sale.

Loan Sale Procedure

SBA plans to use a competitive sealed bid process as the method to sell the Loans. SBA believes this method of sale optimizes the return on the sale of Loans and attracts the largest field of interested parties. This method also provides the quickest and most efficient vehicle for the SBA to dispose of the Loans.

Post Sale Servicing Requirements

The Loans will be sold servicing released. Purchasers of the Loans and their successors and assigns will be required to service the Loans in accordance with the applicable provisions of the Loan Sale Agreement for the life of the Loans. In addition, the Loan Sale Agreement establishes certain requirements that a servicer must satisfy in order to service the Loans.

Scope of Notice

This notice applies to SBA Sale #3 and does not establish agency procedures and policies for other loan sales. If there are any conflicts between

this Notice and the Bidder Information Package, the Bidder Information Package shall prevail.

Dated: November 2, 2000.

LeAnn M. Oliver,

Acting Associate Administrator for Financial Assistance.

[FR Doc. 00–29561 Filed 11–20–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3306]

State of Michigan

Genesee County and the contiguous counties of Lapeer, Livingston, Oakland, Saginaw, Shiawassee, and Tuscola in the State of Michigan constitute a disaster area due to damages caused by heavy rains and flooding that occurred on September 22–23, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 2, 2001 and for economic injury until the close of business on August 1, 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:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 330606 for physical damage and 9J4600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 1, 2000.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 00–29762 Filed 11–20–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VI Houston District Advisory Council; Public Meeting

The Small Business Administration Region VI Houston District Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting at 11:00 a.m. until 3:30 p.m. on Tuesday, December 12, 2000, at Chase's Conference Room (Mezzanine level), 707 Travis Road, Houston, TX 77002, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information write or call Myriam Gonzalez, U.S. Small Business Administration, 9301 Southwest Freeway, Suite 550 Houston, Texas 77074; (713) 773–6500 Ext. 254.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–29761 Filed 11–20–00; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority: Correction

AGENCY: Social Security Administration.

ACTION: Correction Notice.

SUMMARY: This notice corrects the notice: Social Security Administration—Statement of Organization, Functions and Delegations of Authority, published in the **Federal Register** on September 26, 1997 (62 FR 50649).

SUPPLEMENTARY INFORMATION: In the notice document 97–25611, which appeared on pages 50649 and 50650 in the issue of Friday, September 26, 1997, we show two incorrect SAC's for the Office of Publication and Logistics Management in the Office of the Deputy Commissioner, Finance, Assessment and Management (ODCLCA). This correction notice corrects that mistake. Make the correction as follows:

On page 50649, in the second column under ''Organization'', item D, change the SAC in parentheses from S1SC to S1SH and in item E, change the SAC in parentheses from S1SH to S1SN.

On page 50649, in the second column under ''Functions'', item D, change the SAC in parentheses from S1SC to S1SH. On page 50649, in the third column under ''Functions'', item E, change the SAC in parentheses from S1SH to S1SN.

Dated: November 15, 2000.

Lewis H. Kaiser,

Director, Center for Classification and Organization Management.

[FR Doc. 00–29732 Filed 11–20–00; 8:45 am]

BILLING CODE 4191–02–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Under the Caribbean Basin Trade Partnership Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The United States Trade Representative has determined that Guyana is making substantial progress toward implementing and following the customs procedures required by the Caribbean Basin Trade Partnership Act and, therefore, imports of eligible products from Guyana qualify for the enhanced trade benefits provided under the Act.

EFFECTIVE DATE: November 9, 2000.

FOR FURTHER INFORMATION CONTACT: Christopher Wilson, Director for Central America and the Caribbean, Office of the United States Trade Representative, (202) 395–5190.

SUPPLEMENTARY INFORMATION: The Caribbean Basin Trade Partnership Act (Title II of the Trade and Development Act of 2000, Pub. L. No. 106–200) (CBTPA) expands the trade benefits available to Caribbean and Central American countries under the Caribbean Basin Economic Recovery Act (CBERA). The CBTPA reduces or eliminates tariffs and eliminates quantitative restrictions on certain products that previously were not eligible for preferential treatment under the CBERA. The enhanced trade benefits provided by the CBTPA are available to imports of eligible products from countries that (1) are designated as ''CBTPA beneficiary countries,'' and (2) have implemented and follow, or are making substantial progress toward implementing and following, certain customs procedures, drawn from Chapter 5 of the North American Free Trade Agreement, that allow U.S. Customs to verify the origin of the products.

On October 2, 2000, the President designated all 24 current beneficiaries under the CBERA as ''CBTPA beneficiary countries.'' Proclamation 7351 delegated to the United States Trade Representative (USTR) the authority to determine whether the designated CBTPA beneficiary countries have implemented and follow, or are

making substantial progress toward implementing and following, the customs procedures required by the CBTPA. The President directed the USTR to announce any such determinations in the **Federal Register** and to implement any such determinations in the Harmonized Tariff Schedule of the United States (HTS).

Based on information and commitments provided by the Government of Guyana, I have determined that Guyana is making substantial progress toward implementing and following the customs procedures required by the CBTPA. Accordingly, pursuant to the authority vested in the USTR by Proclamation 7351, general note 17(a) to the HTS, U.S. note 7 to subchapter II of chapter 98 of the HTS, and U.S. note 1 to subchapter XX of chapter 98 of the HTS are each modified by inserting in alphabetical sequence in the list of eligible CBTPA beneficiary countries the name ''Guyana.'' General note 17(d) to the HTS is modified by striking ''duty-free'' and inserting in lieu thereof ''tariff'' and by striking ''October 2, 2000'' and inserting in lieu thereof ''the date announced in one or more **Federal Register** notices issued by the United States Trade Representative as the date on which each CBTPA beneficiary country qualifies for the tariff treatment provided in this note.'' The foregoing modifications to the HTS are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after November 9, 2000. The USTR will publish additional notices in the **Federal Register** announcing any determinations that other CBTPA beneficiary countries have satisfied the required customs procedures.

Richard Fisher,

Deputy United States Trade Representative.

[FR Doc. 00–29793 Filed 11–20–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 10, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–8265.

Date Filed: November 8, 2000.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0321 dated 7 November 2000, Resolution 033f—Local Currency Rate Changes—Hungary, Intended effective date: 1 January 2001.

Docket Number: OST–2000–8275.

Date Filed: November 9, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC31 N&C/CIRC 0134 dated 7 November 2000, TC31 Circle Pacific Expedited Resolution 002q, PTC31 N&C/CIRC 0135 dated 7 November 2000, TC31 Circle Pacific Expedited Resolutions 002k, 073c, Intended effective date: 30 November 2000.

Docket Number: OST–2000–8277.

Date Filed: November 9, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC31 N&C/CIRC 0136 dated 7 November 2000, North and Central Pacific Areawide Expedited Resolution r–1 PTC31 N&C/CIRC 0137 dated 7 November 2000, TC31 North and Central Pacific, TC3 (except Japan)–North America, Caribbean Expedited Resolutions r2–r10 PTC31 N&C/CIRC 0138 dated 7 November 2000, TC31–North and Central Pacific, TC3–Central America, South America Expedited Resolutions r11–r16, Intended effective date: 1 December 2000.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 00–29757 Filed 11–20–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8241]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1995 BMW 8 Series Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1995 BMW 8 Series passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1995 BMW 8 Series passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is December 21, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. Docket hours are from 9 am to 5 pm.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland (''J.K.'') (Registered Importer 90–006) has petitioned NHTSA to decide whether 1991–1995 BMW 8 Series passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1991–1995 BMW 8 Series passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Bayerische Motoren Werke, A.G., as conforming to

all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991–1995 BMW 8 Series passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1995 BMW 8 Series passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991–1995 BMW 8 Series passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1991–1995 BMW 8 Series passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour. The petitioner stated that the entire instrument cluster on the vehicles will be replaced with a U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front sidemarker lights; (b) installation of U.S.-model taillamp assemblies and associated rear sidemarker lights; (c) installation of a U.S.-model high mounted stop light assembly.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* Installation of a relay in the power window system so that the window transport mechanism is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's side air bag and knee bolster on 1991–1992 model vehicles, the driver's and passenger's side air bags and knee bolsters on 1993–1995 model vehicles, and the control unit, sensors, and seat belts on all model year vehicles, with U.S.-model components if the vehicle is not already so equipped. The petitioner states that all model year vehicles covered by the petition are equipped with combination lap and shoulder restraints which adjust by means of an automatic retractor and release by means of a single red push button in all front and rear outboard designated seating positions.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles and installation of U.S.-model door bars on vehicles that are not already so equipped.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that non-U.S. certified 1991–1995 BMW 8 Series passenger cars will be inspected prior to importation to ensure that they are equipped to comply with the Theft Prevention Standard found in 49 CFR Part 541 and that a U.S.-model anti-theft device will be installed on vehicles that are not already so equipped.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 16, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–29756 Filed 11–20–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33958]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Illinois Central Railroad Company and Grand Trunk Western Railroad Company

Illinois Central Railroad Company (IC) and Grand Trunk Western Railroad Company (GTW) have agreed to grant limited overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) between: (1) A point near GTW's milepost 8.6 near 49th Street and Central Park in Chicago, IL, where GTW and BNSF connect, and a point near GTW's milepost 23.2 near 154th Street and Lathrop in Harvey, IL, to a point near IC's milepost 22 near IC's Harvey Yard, a distance of approximately 16.6 miles; (2) a point near IC's milepost 8.3 (Belt Crossing), where IC and the Belt Railway Company of Chicago connect in Chicago, IL, and a point near IC's milepost 22 at IC's Harvey Yard, a distance of approximately 27.3 miles; and (3) a point near IC's milepost 2.3, where IC and BNSF connect on the West end of the St. Charles Airline Bridge and milepost 22 at IC's Harvey Yard, a distance of approximately 21 miles. The total amount of trackage involved is approximately 64.9 miles.

The transaction is scheduled to be consummated on November 15, 2000.[1]

[1] Pursuant to 49 CFR 1180.4(g), a railroad must file a verified notice with the Board at least 7 days before the trackage rights are to be consummated. In its verified notice, BNSF indicated that it proposed to consummate the transaction on or about November 14, 2000. Because the verified notice was filed on November 8, 2000, consummation could not take place until November 15, 2000, at the earliest. BNSF's representative has been contacted and has confirmed that the

The purpose of the trackage rights is to allow BNSF to deliver or receive RoadRailer equipment in interchange to and from IC, GTW and Canadian National Railway Company, and to make available RoadRailer equipment available for BNSF customers at IC's Harvey Yard.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions 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. 33958 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, one copy of each pleading must be served on Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: November 14, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29611 Filed 11–20–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33957]

Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—Kern Valley Railroad Company

Kern W. Schumacher and Morris H. Kulmer, individuals (collectively applicants), have filed a verified notice of exemption to continue in control of the Kern Valley Railroad Company (KVR), upon KVR's becoming a Class III railroad.

The transaction is scheduled to be consummated on or after November 13, 2000.

This transaction is related to STB Finance Docket No. 33956, *Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc.,* wherein KVR seeks to acquire an approximate 30.0-mile line of railroad (line) in Las Animas County, CO, from Trinidad Railway, Inc. (TRI) and has agreed to assume TRI's common carrier railroad obligations pending the line's abandonment.[1]

Applicants currently indirectly control one existing Class III railroad: Tulare Valley Railroad Company, operating in the State of California.

Applicants state that (i) the rail line of KVR will not connect with any other lines of a railroad under their control or within their corporate family, (ii) the transaction is not part of a series of transactions that would connect the railroads with each other or any railroad in applicants' corporate family, and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions 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. 33957, 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 Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: November 13, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29608 Filed 11–20–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33956]

Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc.

Kern Valley Railroad Company (KVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the railroad lines and other assets (line) of Trinidad Railway, Inc. (TRI) and has agreed to assume TRI's common carrier railroad obligations pending the line's abandonment.[1] The line extends from milepost 2.0, at Jensen, to the end of the line at milepost 30.0, at the former New Elk Mine, east of Stonewall, in Las Animas County, CO, a distance of approximately 30.0 miles.[2]

The transaction is scheduled to be consummated on or after November 13, 2000.

This transaction is related to STB Finance Docket No. 33957, *Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—Kern Valley Railroad Company*, wherein Kern W. Schumacher and Morris H. Kulmer have concurrently filed a verified notice to continue in control of KVR upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption

consummation could not take place before November 15, 2000.

[1] The line is the subject of a notice of exemption for its abandonment in *Trinidad Railway, Inc.*—Abandonment Exemption—in *Las Animas County, CO,* STB Docket No. AB–573X (STB served Sept. 21, 2000). By decision served October 20, 2000, the Board postponed the effective date of that exemption until November 30, 2000, pending completion of the offer of financial assistance (OFA) process or, if the OFA process terminated, a period to provide for interim trail use negotiations.

[1] The line is the subject of a notice of exemption for abandonment in *Trinidad Railway, Inc.—Abandonment Exemption—in Las Animas County, CO,* STB Docket No. AB–573X (STB served Sept. 21, 2000). By decision served October 20, 2000, the Board postponed the effective date of that exemption until November 30, 2000, pending completion of the offer of financial assistance (OFA) process or, if the OFA process terminated, a period to provide for interim trail use negotiations.

[2] TRI has retained a real estate interest in the right-of-way between milepost 15.11, in Segundo, and the end of the line subject to a permanent and irrevocable easement to KVR to fulfill its common carrier obligation, pending abandonment of the line, including access to the line for work on the tracks, ties and other track materials.

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. 33956, 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 Fritz R. Kahn, Esq., 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: November 13, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29609 Filed 11–20–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 583X)]

CSX Transportation, Inc.—Abandonment Exemption—in Ohio County, WV

On November 1, 2000, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad in the Central Region, known as its Allegheny Division, Ohio River Subdivision, extending from railroad Milepost BN–0.63 to railroad Milepost BN–2.51 in Wheeling, Ohio County, WV, a distance of 1.88 miles. The line traverses United States Postal Service Zip Code 26003 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the labor protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 16, 2001.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 11, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 583X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street–J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before December 11, 2000.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545 [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: November 14, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–29610 Filed 11–20–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 13, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 21, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1440.

Regulation Project Number: INTL–64–93.

Type of Review: Extension.

Title: Conduit Arrangements Regulations.

Description: This document contains regulations relating to when the district director may recharacterize a financing arrangement as a conduit arrangement. Such recharacterization will affect the amount of withholding tax due on financing transactions that are part of the financing arrangement. These regulations will affect withholding agents and foreign investors.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,000.

Estimated Burden Hours Per Recordkeeper: 10 hours.

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–29774 Filed 11–20–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 15, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 21, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1143.

Form Number: IRS Form 706–GS(D–1).

Type of Review: Extension.

Title: Notification of Distribution From a Generation-Skipping Trust.

Description: Form 706–GS(D–1) is used by trustees to notify the IRS and distributees of information needed by distributees to compute the Federal GST tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 80,000.

Estimated Burden Hours Per Recordkeeper:

Recordkeeping—1 hr., 33 min.
Learning about the law or the form—1 hr., 48 min.
Preparing the form—42 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 348,800 hours.

OMB Number: 1545–1447.

Regulation Project Number: CO–46–94 Final.

Type of Review: Extension.

Title: Losses on Small Business Stock.

Description: Records are required by the Internal Revenue Service to verify that the taxpayer is entitled to a section 1244 loss. The records will be used to determine whether the stock qualifies as section 1244 stock.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Recordkeepers: 10,000.

Estimated Burden Hours Per Recordkeeper: 12 minutes.

Estimated Total Recordkeeping Burden: 2,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–29775 Filed 11–20–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Solicitation of Applications for Membership on Customs Cobra Fees Advisory Committee

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice; amendment; extension of application period.

SUMMARY: By a document published in the **Federal Register** on June 22, 2000, Customs set forth criteria for membership on the Customs COBRA Fees Advisory Committee and requested that applications be submitted for membership on the committee. This document presents amended criteria for membership on the committee, and extends the time within which applications for membership may be made. Customs is broadening the criteria governing the selection of members to serve on the committee in order to afford a greater pool of eligible applicants from which members may be selected for participation.

DATES: Applications for membership will be accepted until January 22, 2001.

ADDRESSES: Applications should be addressed to Richard Coleman, Trade Compliance Team, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Room 5.2–A, Washington, D.C. 20229, Attention: COBRA 2000.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Trade Compliance Team, U.S. Customs Service, 202–927–0563.

SUPPLEMENTARY INFORMATION:

Background

By a document published in the **Federal Register** (65 FR 38884) on June 22, 2000, Customs set forth criteria for membership on the Customs COBRA Fees Advisory Committee and requested that applications be submitted for membership on the committee.

In principal part, the criteria contained in the June 22, 2000, **Federal Register** document limited membership on the committee to one U.S. Customs representative and up to eight parties that were directly subject to the payment of COBRA user fees. These parties included operators of: railways, trucks, barges, commercial cargo vessels, commercial passenger vessels, general aviation, and passenger aircraft. In this regard, it was also stated that, whenever possible, two members would be selected from among passenger aircraft operators and one member each from the other enumerated sectors; additional passenger aircraft operators could be selected if the other sectors did not have a qualified applicant.

Under the June 22, 2000, **Federal Register** document, applications for membership on the committee were accepted until July 24, 2000.

By this document, Customs is broadening the criteria governing the selection of members to serve on the committee in order to afford a greater pool of eligible applicants from which members may be selected for participation. To this end, an amended charter for the committee will be duly filed. Consequently, Customs is further extending the time within which applications may be made for membership on the committee.

Amended Membership Criteria

While industry membership on the committee remains limited to up to eight parties, such members will now be selected from a cross-section of transportation industry interests that are concerned with COBRA user fees. Membership on the committee is thus no longer restricted to any of those parties described above that directly pay COBRA user fees. In addition to those parties, trade association and similar transportation industry representatives are now eligible for membership on the committee.

It is intended that the composition of the committee will be arrived at in such a way as to create a balanced forum, taking into account a number of factors appropriate to its nature and function. However, there is no longer any specific formula or goal regarding the selection of members from particular sectors of the transportation industry.

In addition, as made clear in the June 22, 2000, **Federal Register** document, any party who serves on another advisory committee is ineligible for

membership on the Customs COBRA Fees Advisory Committee if the other advisory committee is chartered by the Department of the Treasury, including any bureau, service or other office within the Department of the Treasury.

Applications for Membership

As provided in the June 22, 2000, **Federal Register** document, applicants seeking to serve on the Customs COBRA Fees Advisory Committee must provide the following: a statement of interest and reasons for applying together with a complete professional biography or resume. Applicants must state in their applications that they agree to submit to pre-appointment security and tax checks. There is no prescribed format for the application. For further information on the committee and why it is being created, applicants should refer to the June 22, 2000, **Federal Register** notice. Applicants may send a cover letter describing their interest and qualifications, along with a resume. Persons who have already submitted applications for membership on the committee pursuant to the June 22, 2000, **Federal Register** document do not have to resubmit them.

Dated: November 16, 2000.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 00–29803 Filed 11–20–00; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 65, No. 225

Tuesday, November 21, 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 HEALTH AND HUMAN SERVICES

Office of Public Health and Science; National Action Plan on Overweight and Obesity: Notice of Opportunity for Public Comment; Notice of Public Meeting

Correction

In notice document 00–28642 beginning on page 67011 in the issue of Wednesday, November 8, 2000, make the following corrections.

1. On page 67011, in the third column, the subject heading should read as set forth above.

2. On page 67012, in the first column, under **FOR FURTHER INFORMATION CONTACT**, four lines from the bottom, ''www.sbogesity.niddk.nih.gov'' should read ''www.sgogesity.niddk.nih.gov''

3. On the same page, in the second column, under **Written Comments**, in the last paragraph, in the first line ''26'' should read ''27''.

[FR Doc. C0–28642 Filed 11–20–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D-1563]

Draft Guidance for Industry on Carcinogenicity Study Protocol Submissions; Availability

Correction

In notice document 00–28521 appearing on page 66757, in the issue of Tuesday, November 7, 2000, make the following correction:

On page 66757, in the second column, under the heading **DATES:** , in the second line, '' February 5, 2000'' should read '' February 5, 2001''.

[FR Doc. C0–28521 Filed 11–20–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of the Bureau of Indian Affairs, Washington, DC, and in the Possession of the University of Denver Department of Anthropology and Museum of Anthropology, Denver, CO

Correction

In notice document 00–28860 beginning on page 67759 in the issue of Monday, November 13, 2000, make the following correction:

On page 67760 in the third column, in the first full paragraph, in the 13th line from the bottom ''[thirty days after publication in the **Federal Register**]'' should read ''December 13, 2000''.

[FR Doc. C0–28860 Filed 11–20–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43514; No. SR-NASD-99-53]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 8 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of Nasdaq Order Display Facility and to Modifications of Nasdaq Trading Platform

Correction

In notice document 00–29020 beginning on page 69084 in the issue of Wednesday, November 15, 2000, make the following correction:

On page 69109, in the second column, in the first paragraph, in the second to last line ''[insert date 21 days from the date of publication]'' should read ''December 6, 2000''.

[FR Doc. C0–29020 Filed 11–20–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
November 21, 2000

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 2090, et al.
Mining Claims Under the General Mining Laws; Surface Management; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090, 2200, 2710, 2740, 3800 and 9260

[WO–300–1990–00]

RIN 1004–AD22

Mining Claims Under the General Mining Laws; Surface Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM or ''we'') amends its regulations governing mining operations involving metallic and some other minerals on public lands. We are amending the regulations to improve their clarity and organization, address technical advances in mining, incorporate policies we developed after we issued the previous regulations twenty years ago, and better protect natural resources and our Nation's natural heritage lands from the adverse impacts of mining. We intend these regulations to prevent unnecessary or undue degradation of BLM-administered lands by mining operations authorized under the mining laws.

DATES: This rule is effective January 20, 2001.

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, 202/208–4201; or Michael Schwartz, 202/452–5198. Individuals who use a telecommunications device for the deaf (TDD) may contact us through the Federal Information Relay Service at 1–800/877–8339.

SUPPLEMENTARY INFORMATION:

I. What Is the Background of This Rulemaking?

Under the Constitution, Congress has the authority and responsibility to manage public land. See U.S. Const. art. IV, § 3, cl. 2. Through statute, Congress has delegated this authority to executive-branch agencies, including the Bureau of Land Management (BLM). The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.*, directs the Secretary of the Interior, by regulation or otherwise, to take any action necessary to prevent unnecessary or undue degradation of the public lands. See 43 U.S.C. 1732(b). FLPMA also directs the Secretary of the Interior, with respect to public lands, to promulgate rules and regulations to carry out the purposes of FLPMA and of other laws applicable to the public lands. See 43 U.S.C. 1740. ''Public lands'' are defined in FLPMA (in pertinent part) as ''any land and interest in land owned by the United States * * * and administered by the Secretary of the Interior through the Bureau of Land Management. * * *'' See 43 U.S.C. 1702. This final rule is also authorized by 30 U.S.C. 22, the portion of the mining laws that opens public lands to exploration and purchase ''under regulations prescribed by law.'' [1]

Under this statutory authority, BLM issued regulations in 1980 to protect public lands from unnecessary or undue degradation and to ensure that areas disturbed during the search for and extraction of mineral resources are reclaimed. See 45 FR 78902–78915, November 26, 1980. We call these regulations the ''surface management'' regulations. They are located in subpart 3809 of part 3800 of Title 43 of the Code of Federal Regulations. For this reason, they are also called the ''3809'' regulations.

We amended the 1980 regulations in 1997 to strengthen the bonding requirements, but the 1997 amendments were overturned. Thus, the 1980 regulations, unchanged for 20 years, remain in place. Please refer to the ''Background'' section of the proposed rule for a detailed description of our efforts to develop revised regulations (64 FR 6423–6425, February 9, 1999).

On February 9, 1999, we published in the **Federal Register** a proposed rule to amend the 3809 regulations. See 64 FR 6422–6468. The 120-day public comment period closed on May 10, 1999. We issued the notice of availability for the draft environmental impact statement (EIS) that analyzes the potential impacts of the proposed changes to the 3809 regulations on February 17, 1999 (64 FR 7905). The comment period on the draft EIS also closed on May 10, 1999.

In the 1998 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, sec. 120(a)), Congress directed BLM to pay for a study by the National Research Council (NRC) Board on Earth Sciences and Resources. The study was to examine the environmental and reclamation requirements relating to mining of locatable minerals on Federal lands and the adequacy of those requirements to prevent unnecessary or undue degradation of Federal lands in each State in which such mining occurs. The law directed NRC to complete the study by July 31, 1999.

In the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, sec. 3002), Congress prohibited the Department of the Interior from completing its work on the February 9, 1999, proposed rule and issuing a final rule until we provide at least 120 days for public comment on the proposed rule after July 31, 1999. The NRC completed and published its report, entitled, *Hardrock Mining on Federal Lands* (hereafter the NRC Report), in late September 1999. Accordingly, we reopened the comment period on the proposed rule and the draft EIS for 120 days. See 64 FR 57613, October 26, 1999. We also supplemented the proposed rule with some of the recommendations from the NRC and asked for public comment on them.

In the fiscal year 2000 appropriations bill for the Department of the Interior (Pub. L. 106–113, sec. 357), Congress prohibited the Secretary from spending money to issue final 3809 rules, except that he may issue final rules ''which are not inconsistent with the recommendations contained in the [NRC Report] so long as these regulations are also not inconsistent with existing statutory authorities.'' Congress also added this provision to the Department's fiscal year 2001 appropriations bill (Pub. L. 106–291, section 156).

We received and considered a total of about 2,500 public comments during both 120-day comment periods. While many comments merely expressed support or opposition for the proposed rule, some comments offered useful and constructive suggestions for changes to the proposed rule. Where possible and advisable, we made changes to the proposed rule to incorporate the suggestions contained in these comments. Part II of this preamble describes the substantive changes to the proposed rule that we incorporated into this final rule.

Legal Basis for the Final Rule

This final rule is supported by FLPMA and the Mining Law of 1872, as amended (hereafter ''mining laws''). Section 302(b) of FLPMA, 43 U.S.C. 1732(b), directs the Secretary to manage

[1] Although BLM is responsible for administration of the mining laws for lands within the National Forest System, the Secretary of Agriculture has responsibility for promulgating rules and regulations applicable to surface management of lands within the National Forest System. For this reason, none of the regulatory changes we are adopting apply to the National Forests. See 36 CFR part 228 for regulations governing mining operations on National Forests.

development of the public lands. In addition, the final rule we are adopting today carries out the FLPMA directive that, ''[i]n managing the public lands, the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the public lands.'' See 43 U.S.C. 1732(b). The ''any action necessary'' language of this provision shows that Congress granted the Secretary broad latitude in the preventive actions that he could take. Congress did not define the term ''unnecessary or undue degradation,'' but it is clear from the use of the conjunction ''or'' that the Secretary has the authority to prevent ''degradation'' that is necessary to mining, but undue or excessive. This includes the authority to disapprove plans of operations that would cause undue or excessive harm to the public lands. Readers should note that the Secretary has delegated to BLM many of his management responsibilities under FLPMA and the mining laws.

The final rule we are adopting today is consistent with the FLPMA directive, as well as the general rulemaking authorities of FLPMA and the mining laws (43 U.S.C. 1740 and 30 U.S.C. 22 respectively). Other portions of this preamble contain discussions of legal authorities for this rule in the context of specific sections of the regulations.

As explained in more detail later in this preamble, we are continuing the 3-tiered classification of operations with the attendant increasing degree of BLM involvement in review or approval. As mining operations increase in size and complexity, BLM's up-front involvement should also increase. We are continuing, with necessary refinements, the set of outcome-based performance standards that operations must comply with to prevent unnecessary or undue degradation. We are adopting financial guarantee requirements for exploration and mining operations that go beyond ''casual use'' to prevent unnecessary or undue degradation caused by failure to fulfill the reclamation obligation. We are adopting reasonable and graduated enforcement procedures and penalties, which incorporate due process, as a deterrent to practices that would result in unnecessary or undue degradation. These and other provisions described later in this preamble are focused on preventing unnecessary or undue degradation while at the same time avoiding, to the extent possible and foreseeable, unintended adverse impacts on the ability of mining claimants and operators to explore for and develop mineral resources.

In addition to this preamble, the preamble to the February 9, 1999 proposed rule (64 FR 6422) and the comment responses in the final EIS (Volume 2) also contribute to the basis and purpose of this rule.

Consistency With the NRC Report Recommendations

In the fiscal year 2000 appropriations bill for the Department of the Interior (Pub. L. 106–113, sec. 357), Congress prohibited the Secretary from spending money to issue final 3809 rules other than those ''which are not inconsistent with the recommendations contained in the [NRC Report] so long as these regulations are also not inconsistent with existing statutory authorities.'' Comments we received during the second comment period indicate that there are divergent views on the consistency question. Some commenters appear to strongly believe that the ''not inconsistent with'' provision should be interpreted as setting strict limits on what we can include in this rulemaking. That is, we can promulgate only regulations that conform exactly to specific NRC Report recommendations, and no more.

We do not agree with these comments. The NRC Report, *Hardrock Mining on Federal Lands* (1999), was prepared in response to a Congressional directive in our fiscal year 1999 appropriations (Pub. L. 105–277, sec. 120(a)). Congress asked the NRC to assess the adequacy of the existing regulatory framework for hardrock mining on Federal lands. Congress did not ask the NRC to analyze our proposed rule, and the NRC Report did not do so. As a result, while portions of the NRC Report overlap the proposed rule, the study is not coterminous with the proposal, and a number of the issues addressed in the proposed rule are not covered by the NRC Report recommendations.

Congress was aware that the NRC Report and our proposed rule were not coterminous when Congress was considering the appropriations bill in the Fall of 1999. The proposed rule was published in February 1999. Congress was also aware of the regulatory recommendations made in the NRC Report, which was published on September 29, 1999. The appropriations bill did not pass Congress until November 19, 1999. (The President signed the bill on November 29, 1999.) Thus, six weeks elapsed between the issuance of the NRC Report and Congressional action on our appropriations bill. If Congress had intended for this rulemaking to be limited strictly to things recommended by the NRC Report, it could have said so, but did not. Congress used the ''not inconsistent with'' language, which is much less restrictive than other possible formulations, such as the rules must be ''limited to'' or ''restricted to'' or ''must not go beyond'' the recommendations of the NRC Report.

This interpretation of Congress's purpose in the fiscal year 2000 Interior appropriation is supported by recent Congressional action to twice expressly reject language (once in bill text and once in a conference report) that would have imposed a greater limitation on the Secretary's authority to amend subpart 3809 than the ''not inconsistent with'' language of the fiscal year 2000 appropriations rider (Pub. L. 106–113, section 357). By way of background, on December 8, 1999, the Interior Department Solicitor issued an opinion interpreting section 357. The opinion concluded that the ''not inconsistent with'' language of section 357 applied only to the numbered, bold-faced recommendations in the NRC Report. The Solicitor also concluded that final rules addressing subjects that lie outside the specific NRC Report recommendations would not be affected by section 357.

Subsequently, in the second session of the 106th Congress, legislative language was added to an agriculture appropriations bill that would have limited the final rules to ''only the regulatory gaps identified at pages 7 through 9 of the [NRC Report].'' See section 3105 of S. 2536, as contained in S. Rpt. 106–288. This language would have imposed additional limits on the Secretary's authority to amend subpart 3809. The amendment was dropped and replaced in the conference on the current year Interior appropriations bill by the more neutral ''not inconsistent with'' language of section 156 of Pub. L. 106–291.

Similarly, Conference Committee report language to accompany section 156 was proposed that would have expressed the committee's intent ''for [BLM] to adopt changes to its rules at 43 CFR part 3809 *only if those changes are called for* in the NRC report.'' (Reported in *Public Land News*, vol. 25, no. 19, Sept. 29, 2000. Emphasis added.) See also 146 Cong. Rec. S10239, statement of Sen. Durbin. This language was dropped from the final conference report. See H. Rpt. 106–914, p. 154. Although the Conference Report cautioned that re-enactment of the ''not inconsistent with'' language in the fiscal year 2000 Interior appropriations was not intended to constitute congressional ratification of the Solicitor's December 8, 1999 opinion, the Conference Report

does not explain how it interprets section 156 in any way different from how the Solicitor interpreted the identical language in section 357 of the previous year's appropriations.

Our view of the plain meaning of the ''not inconsistent with'' language in both the fiscal year 2000 and 2001 appropriations acts remains as the Solicitor described it in his December 8, 1999 opinion as follows: To the extent that an NRC Report recommendation and the proposed rule overlap, then the final rule must be entirely consistent with the recommendation. However, it is reasonable to interpret the ''not inconsistent with'' language as not applying to parts of this final rule related to subjects lying outside the recommendations of the NRC Report. In these cases, there can be no question of consistency with the NRC Report recommendations because those recommendations are silent on an issue or not dispositive of an issue.

As discussed in more detail later in this preamble, all the provisions of this final rule that overlap the recommendations of the NRC Report are not inconsistent with the report. Other provisions of this final rule, for which there is no corresponding NRC Report recommendation, are consistent with the Secretary's statutory authority to prevent unnecessary or undue degradation of the public lands and other legal authorities supporting the final rule. BLM wishes to emphasize that we carefully reviewed the entire NRC Report and gave appropriate weight to its entire contents. Even if the ''not inconsistent with'' language were construed to mean that these final rules could not be inconsistent with the entire NRC Report, BLM believes that this final rule would comply.

A commenter stated that even without the limits placed on BLM by the ''not inconsistent with'' language of section 357 of H.R. 3423 (the FY 2000 Interior Appropriations bill, which was enacted by reference in the Consolidated Appropriations Act, Pub. L. 106–113), neither FLPMA nor any other authority grants BLM the power to promulgate the regulations as proposed. The commenter stated that in addition to a general lack of authority to promulgate the 3809 proposal, Congress's specific and direct commands in section 357 further restricting BLM's authority to promulgate regulations related to subpart 3809 independently demonstrate that the proposed regulation is not authorized by law.

BLM disagrees with the comment. As discussed earlier in this preamble, BLM has the authority to issue these final regulations. The ''not inconsistent with'' language of section 357 of H.R. 3423 (and its successor, section 156 of Pub. L. 106–291) imposes a separate requirement. BLM's underlying statutory authority under FLPMA and the mining laws remains intact. Indeed, both section 357 of fiscal year 2000 Interior appropriations and section 156 of fiscal year 2001 Interior appropriations recognize that BLM's ''existing statutory authorities'' continue to apply to these rules. These rules have been reviewed, and changed as necessary, to address the requirements of sections 357 and 156. Thus, the final rules are not inconsistent with the recommendations contained in the NRC Report.

Record of Decision Under the National Environmental Policy Act

This preamble constitutes BLM's record of decision, as required under the Council on Environmental Quality regulations at 40 CFR 1505.2. The decision is based on the proposed action and alternatives presented in the Final Environmental Impact Statement, ''Surface Management Regulations for Locatable Mineral Operations.''

After considering all relevant issues, alternatives, potential impacts, and management constraints, BLM selects Alternative 3 of the Final EIS for implementation. Alternative 3 changes the existing 3809 regulations in several general areas: (1) it changes the definition of unnecessary or undue degradation to better protect significant resources from substantial irreparable harm, (2) it requires mineral operators to file a plan of operations for any mining activity beyond casual use regardless of disturbance size, (3) it requires operators to provide reclamation bonds for any disturbance greater than casual use, (4) it specifies outcome-based performance standards for conducting operations on public lands, (5) it provides an improved program from enforcement of the regulations in cases of noncompliance, and (6) it provides options for Federal-State coordination in implementing the regulations. A comprehensive description of Alternative 3 is presented in Chapter 2 of the Final EIS. The specific regulation language to carry out Alternative 3 follows the preamble discussion.

Alternatives Considered

BLM considered a full range of program alternatives for development of the 3809 regulations. See Chapter 2 of the final EIS for a description of how specific issues drove the formulation of the alternatives. BLM developed the five alternatives considered in the EIS in response to issues raised by the public during the EIS scoping period and comments we received on the draft EIS. The alternatives ranged from the required ''no action'' alternative, which would have retained the 1980 regulations, to Alternative 4, the ''maximum protection'' alternative. A fifth alternative, Alternative 5, was added to the final EIS in response to comments that BLM should only make changes to the 3809 regulations that were specifically recommended in the NRC Report. The following is a brief description of the alternatives and the rationale behind their formulation:

Alternative 1, No Action—This alternative would not have changed the regulations. Locatable mineral operations would continue to be managed under the regulations that BLM promulgated in 1980. This alternative served as the baseline for the EIS analysis. The No Action alternative encompasses the view expressed by many in industry and State governments that changes in the regulations are not needed, and that BLM should make non-regulatory changes to improve the way the program works prior to proposing any regulatory changes.

Alternative 2, State Management—The State Management alternative would have required rescinding the 1980 regulations and returning to the prior surface management program strategy, under which State or other Federal regulations governed locatable mineral operations on public land. Compliance with these other regulations would have been deemed adequate to prevent unnecessary or under degradation under Alternative 2. We developed this alternative in response to comments that BLM should evaluate ways to encourage mineral development through less regulation, and that a BLM regulatory role was not needed since the respective State regulatory programs were adequate to protect the environment. Consideration of Alternative 2 also served as a benchmark for considering the effectiveness of State programs absent a BLM regulatory role.

Alternative 3, Proposed Final Regulations—This alternative considered the implementation of the proposed regulations developed by the 3809 Task Force. Alternative 3 is the BLM's proposed action and the agency's ''preferred alternative.'' The alternative was changed between the draft and final EIS in order to incorporate conclusions and recommendations from the NRC Report and in response to public comments. This alternative represents the preferred regulatory approach of agency management and program specialists after considering the results

of public scoping, comments on the February and October 1999 proposed rules, results of the NRC Report, and the effects of other alternatives discussed in the EIS.

Alternative 4, Maximum Protection—The maximum protection alternative was developed presuming that the 3809 regulations could not change the basic mineral resource allocations made by the mining laws, and that the public lands are open to entry, location, and development of valuable mineral deposits unless segregated or withdrawn. While a total prohibition on mining activity would also achieve maximum environmental protection, it would be beyond the scope of the action, which is to manage activity authorized by the mining laws in a way that prevents unnecessary or undue degradation. A surface management program under Alternative 4 would allow BLM to give the highest priority to protecting resource values and impose design-based performance criteria. We developed this alternative in response to comments that stronger environmental requirements were needed, that BLM should have total discretion to deny certain mining operations, and that designed-based performance standards should be developed as a nationwide minimum best management practice.

Alternative 5, NRC Recommendations—Alternative 5, like Alternative 3, incorporates the recommendations made by the NRC Report. However, Alternative 5 limits changes in the regulations to those specifically recommended by the NRC. See the NRC Report, especially pages 7 to 9. We developed this alternative in response to public comments and a then-pending budget rider that would have restricted BLM to implementing only some of the recommendations of the NRC Report.

Environmentally Preferred Alternative

Although not selected for implementation, the environmentally preferred alternative is Alternative 4, the maximum protection alternative. While many of the environmental protection measures contained in Alternative 4 were included in the final regulations under Alternative 3, the BLM decided not to select Alternative 4 due to its adverse economic impact and administrative cost compared to the environmental benefit.

Decision Rationale

BLM has included all practical means to avoid or minimize environmental harm in the selected alternative. The following is a summary of the rationale for selection of the preferred alternative as compared to the other alternatives. A detailed rationale for the selection of each regulatory provision is discussed in this preamble.

Definition of ''Unnecessary or Undue Degradation''

The selected alternative satisfactorily addresses the overall program issue of improving BLM's ability to prevent unnecessary or undue degradation, as required by FLPMA. The regulations change the definition of ''unnecessary or undue degradation'' to clarify that operators must not cause substantial irreparable harm to significant resources that cannot be effectively mitigated. Clarifying that the definition specifically addresses situations of ''undue'' as well as ''unnecessary'' degradation will more completely and faithfully implement the statutory standard, by protecting significant resource values of the public lands without presuming that impacts necessary to mining must be allowed to occur.

In comparison, Alternatives 1 and 5 would not protect significant scientific, cultural, or environmental resource values of the public lands from substantial irreparable harm because they would not change the definition of ''unnecessary or undue degradation.'' Alternative 2 would remove the definition as a regulatory criteria, and BLM would not have a reasonable assurance that unnecessary or undue degradation would be prevented since BLM would have no role in the review of individual projects.

Although under Alternative 2 operators would have to comply with State regulations and other environmental laws, certain resources, such as wildlife not proposed or listed as threatened or endangered, cultural resources, and riparian areas would not necessarily be given appropriate consideration in planning and conducting mineral operations.

Alternative 4 would tie the definition of ''unnecessary or undue degradation'' to use of design-based standards and best available technology, which BLM does not believe are flexible enough for application to the wide variety of mining operations and environmental conditions on public lands, resulting in over- or under-regulation of some operations.

Performance Standards

The selected alternative provides performance standards that enumerate specific outcomes or conditions, yet do not mandate specific designs. This type of performance standard provides BLM with the level of detail needed to ensure that all environmental components are addressed, and at the same time preserves flexibility to consider site-specific conditions and allows for innovation in environmental protection technology. The performance standards developed under the selected alternative often require compliance with, or achievement of, the applicable State standard. This facilitates coordination with the States and reduces the potential for a single operation to be subject to conflicting standards. The final 3809 regulations also provide for monitoring programs to be adopted as part of individual project approvals to ensure compliance with the necessary mitigating measures. The final regulations specify the content requirements of these monitoring programs.

We did not select Alternatives 1 or 5 because they would retain the performance standards in the 1980 regulations, which are sometimes too vague and subjective, causing them to be applied inconsistently.

Under Alternative 2, operators would have to comply with the performance standards of the State in which their operations are located. While BLM has found the standards in many States generally adequate in the areas they cover, BLM believes that minimum Federal standards are needed for operations on public lands in order to prevent unnecessary or undue degradation. Relying on individual State standards which may vary widely, which may not address all resources of concern to BLM, or which are subject to change or varying application would not, in our judgment, allow BLM to prevent unnecessary or undue degradation. Therefore, Alternative 2 has not been selected for implementation.

The performance standards under Alternative 4 would be design-based and would not be flexible enough to account for the variety of mining operations and environmental conditions on public lands. The performance standards under Alternative 4 may be overly stringent for some operations or possibly not stringent enough in other cases. In addition, the NRC report recommended against the adopting of prescriptive design-based standards such as those in Alternative 4.

Notice/Plan of Operations Threshold

BLM's main mechanism for preventing unnecessary or undue degradation is review of notices and review and approval of plans of operations. The threshold for when to

file a plan, what it must contain, and how it is reviewed are part of this issue. After considering a variety of approaches for setting the notice/plan of operations threshold, including the NRC Report recommendations, BLM decided the threshold should generally be set between exploration and mining. In special category lands, BLM decided to set the threshold at any activity greater than ''casual use.'' By using these thresholds, the selected alternative will provide for the more detailed review and environmental analysis process conducted for a plan of operations to be targeted at the activity (mining) most likely to create significant environmental impacts. Exploration generally has not created major environmental impacts, or does not involve issues difficult to mitigate. Casual use generally results in no or negligible disturbance of the public lands. The requirement to file a notice for operations involving exploration activities, combined with the selected alternative's financial guarantee requirements and performance standards, will prevent unnecessary or undue degradation.

BLM has also included other changes to the regulations applicable to plans of operations in the selected alternative. We have developed a more comprehensive list of content requirements to ensure that critical items, such as plans for interim management and environmental baseline studies, are not overlooked. We have added a mandatory public notice and comment requirement to the process of reviewing proposed plans of operations to ensure the public has an opportunity to comment prior to approval of plan activity that may impact public resources.

We did not choose Alternative 1 because the 1980 regulations have not functioned well with the notice/plan of operations threshold generally set at 5 acres of disturbance. Some small mining operations disturbing less than 5 acres have created significant environmental impacts or compliance problems. These problems could have been avoided or reduced if the operator had submitted a plan of operations and had been subject to environmental review under NEPA and BLM approval.

Alternative 2 would not have addressed this issue satisfactorily. While generally all States have some permit review process, most do not have a comprehensive review process similar to NEPA. Others may have permits geared towards specific media like air or water, which may not address concerns such as cultural resources, or may not always include a public involvement process.

Conversely, Alternative 4 would require a plan of operations for any activity greater than casual use, including exploration. Use of agency resources to process plans of operations for exploration projects, which have a low environmental risk, would not be efficient and would result in unnecessary delay to the mineral operator. In addition, this requirement would not be consistent with the NRC Report, which recommended that plans of operations be required for mining and milling operations (but not exploration activities), even if the area disturbed is less than 5 acres.

While Alternative 5 has the same notice/plan of operations threshold as the selected alternative, it does not have the more specific plan of operations content or public notice and comment requirements. BLM believes these requirements are necessary for the identification and prevention, or mitigation, of environmental impacts associated with mining.

Financial Guarantees

The posting of a financial guarantee for performance of the required reclamation is a major component of the regulatory program under all the alternatives considered. The selected alternative requires that all notice-and plan-level operators post a financial guarantee adequate to cover the cost as if BLM were to contract with a third party to complete reclamation according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal and State environmental standards. BLM decided to require financial guarantees for all notices and plans of operations because of the inability or unwillingness of some operators to meet their reclamation obligations. At present, the potential taxpayer liability for reclamation of unbonded or underbonded disturbances conducted under the 3809 regulations is in the millions of dollars. BLM has decided that to protect and restore the environment and to limit taxpayer liability, financial guarantees for reclamation should be required at 100 percent of the estimated cost for BLM to have the reclamation work performed. This includes any costs that may be necessary for long-term water treatment or site care and maintenance.

The 1980 regulations (Alternative 1) do not contain financial guarantee requirements adequate to achieve this level of protection. Under the 1980 regulations, notice-level operators are not required to provide a financial guarantee for reclamation, and financial guarantees for plan-level operations are discretionary. A number of notice-level operations have been abandoned by operators, leaving the reclamation responsibilities to BLM. In addition, the existing regulations are silent on the need to provide bonding for any necessary water treatment or site maintenance. BLM believes it is necessary to specify this requirement to eliminate any argument about requiring such resource protection measures.

Alternative 2 would rely on State financial guarantee programs. While BLM intends to work with the States under the selected alternative to avoid double bonding, relying exclusively on State bonding may not provide adequate protection of the public resources. Not all states require a financial guarantee for all disturbance at 100 percent of the estimated reclamation cost.

Alternative 4 requires financial guarantees for reclamation of all disturbance at 100 percent of the estimated reclamation costs. Alternative 4 would also require bonding for undesirable events, accidents, failures, or spills. BLM believes it would be overly burdensome on the operator to require a financial guarantee for the remediation of events with a low probability of occurrence and has therefore not selected the Alternative 4 financial guarantee provisions. Such potential problems are best addressed by a thorough review of the operating plans and the development of contingency measures, which are part of the selected alternative.

Alternative 5 would impose financial guarantee requirements similar to the selected alternative. However, under Alternative 5, the procedural requirements for establishing the amount of a financial guarantee are more limited than those followed under the selected alternative. For example, there is no public notification before release of the financial guarantee, as there is in the selected alternative. BLM believes these procedures are of value in arriving at a final reclamation financial guarantee amount and has therefore not selected the Alternative 5 financial guarantee requirements.

Enforcement

The selected alternative contains a program for enforcement of the regulations through issuance of enforcement orders and use of civil and criminal penalties where appropriate. It has been developed in response to the cumbersome enforcement provisions of the existing regulations which often necessitate involvement of the U.S. Attorney to pursue noncompliance

actions. BLM believes the selected alternative's enforcement program will improve operator compliance while reducing the administrative burden on the government. This approach is also part of Alternative 5.

Relying exclusively on the States' enforcement programs under Alternative 2 may have limited utility in achieving Federal land management or reclamation objectives. Conversely, State enforcement in such delegated programs as air quality or water quality may be more effective than BLM enforcement action. The selected alternative provides for cooperation with the State in order to quickly resolve noncompliance in these delegated programs areas.

Alternative 4 contains a requirement for mandatory enforcement. This means when a violation is observed in the field, the BLM inspector must issue a noncompliance and must assess a penalty. Resolution of the problem in the field with the operator must be preceded by the notice of noncompliance. The problem with this approach is that there may be extenuating circumstances that an inspector should consider before taking an enforcement action, or it may be possible to resolve the violation in the field without issuing a notice of noncompliance. We have not selected this mandatory enforcement provision. BLM believes the regulatory approach to compliance in Alternative 4 may actually hinder the resolution of compliance problems by providing an incentive for their concealment.

Federal/State Coordination

Most of the mineral activity under the 3809 program occurs in the Western states. These States have regulatory programs applicable to mineral operations in the form of either specific regulations that apply to mining, overall environmental protection regulations for a specific resource such as water quality, or both. How the BLM surface management program is coordinated with the State programs is an issue that crosses all elements of the alternatives considered. After consultation with the States, consideration of BLM resource protection needs, and evaluation of the various alternatives, BLM has selected the Federal/State coordination approach in Alternative 3 for implementation.

Alternative 3 provides a combination of Federal/State agreements that can be used to coordinate efforts, reduce duplication, and improve resource protection while not overly burdening the operator. The selected alternative provides for two types of Federal/State agreements, those that provide for joint administration of the program, and those in which BLM defers part or all of the program to the State (with BLM retaining minimum involvement). BLM selected this alternative to provide flexibility for the BLM field offices to develop their own Federal/State program specific to their States' operating and regulatory environment. By also incorporating State performance standards into the BLM performance standards, as described above, this alternative facilitates coordination between BLM and the State regulatory agencies when it comes to development and implementation of Federal/State agreements.

While the 1980 regulations (Alternative 1) provide for Federal/State agreements, they do not provide for BLM to concur in the State's approval of each plan of operations or in the approval, release, or forfeiture of a financial guarantee. BLM believes that retaining at least a concurrence role in these actions is the minimum required to prevent unnecessary or undue degradation of the public lands.

Alternative 2 would leave review, approval, and enforcement for mineral operations to the respective State programs. Total reliance on State regulation may not be adequate to protect all the public land resources from unnecessary or undue degradation. BLM as a land manager has to meet a comprehensive requirement to protect all the resources on public lands from unnecessary or undue degradation. A State regulatory agency would not be able to provide the resource protection required for public lands without BLM involvement in the review, approval and compliance processes. In addition, this would be a burden on the State for which BLM would not be able to provide compensation. For these reasons, we didn't select Alternative 2.

BLM didn't select Alternative 4 because it would assert Federal control over operations without any effort to coordinate with State activities. Such an approach could lead to conflicting, or at least confusing, standards for operators, and duplication of effort. Independent BLM standards would be difficult to administer because of the intermingling of private and public land that occurs at many mining operations. Alternative 4 could result in situations where two different performance requirements apply within the same operating area depending upon the land status. Nor does Alternative 4 result in substantial environmental benefits. Where the States have developed performance standards for mineral operations, they are generally considered adequate for operations on public lands. Where there are regulatory gaps in State standards or programs, development of a specific BLM requirement is warranted.

Federal/State coordination under Alternative 5 would not differ greatly from the 1980 regulations. Alternative 5 would provide procedures for referral of enforcement actions to the State. However, it would not provide for retention of a minimal level of involvement by BLM in individual project approvals or financial guarantees. BLM believes this minimal level of participation is needed to meet its obligation to prevent unnecessary or undue degradation. For these reasons, BLM has not selected Alternative 5.

Consistency With the NRC Report

Since release of the NRC Report, ''Hardrock Mining on Federal Lands,'' the last two Congressional appropriations acts have contained a requirement that any final 3809 regulations must be ''not inconsistent with'' the recommendations in the NRC Report. The Department of the Interior Solicitor has interpreted the key phrase ''not inconsistent with'' to mean that so long as the final rule does not contradict the specific recommendations of the NRC Report, the rule can address whatever subject areas BLM determines are warranted to improve the regulations and meet the FLPMA mandate to prevent unnecessary or undue degradation of the public lands. This Congressional requirement places some management constraints on the selection of a final alternative for implementation. Of the five alternatives in the Final EIS, only Alternatives 3 and 5 would clearly not be inconsistent with the recommendations in the NRC Report.

The ''No Action'' Alternative would retain the 1980 regulations, but would clearly be inconsistent with the recommendations of the NRC Report. The NRC report identified specific gaps in the regulations and made six recommendations for regulatory changes. See the NRC Report, pages 7–9. BLM could not now decide that the existing regulations were adequate without being inconsistent with the NRC recommendations and violating the applicable Congressional mandate.

Selection of Alternative 2 would be inconsistent with most of the NRC recommendations. Alternative 2 does not provide reclamation bonding for all disturbance greater than casual use, does not provide for a plan of operations for all mining activity, does not provide for clear procedures for modifying plans of operations, and does not require interim management plans. The NRC report clearly recommends regulatory

changes that are inconsistent with the decreased BLM role inherent in Alternative 2.

Regulations developed under Alternative 4 would be more stringent than those suggested by the NRC and therefore inconsistent the NRC recommendations. The Alternative 4 requirement to file a plan of operations for all activity greater than casual use would be inconsistent with the NRC finding that exploration involving less than 5 acres of disturbance should be allowed under a notice. The use of design-based standards and mandatory pit backfilling under Alternative 4 would be inconsistent with the NRC recommendation that BLM use performance-based standards. It is also not in harmony with a discussion (which was not incorporated in a specific recommendation) of the NRC Report which suggested that pit backfilling should be determined on a case-by-case basis.

Neither Alternative 3 nor Alternative 5 would be inconsistent with the NRC recommendations. Both alternatives would incorporate the NRC recommendations into the 3809 regulations. The main difference between these two alternatives is that Alternative 5 limits the changes in the regulations to the specific NRC recommendations, while Alternative 3 includes both the changes recommended by NRC and additional regulatory changes to address issues identified by BLM. These additional changes reflect the Secretary's judgment as to what is required to prevent unnecessary or undue degradation of the public lands, and since they are not addressed in the NRC Report, are not inconsistent with it. Selection of Alternative 3 does not preclude BLM from pursuing the NRC recommendations for non-regulatory changes in the surface management program.

Additional discussion of the consideration of EIS alternatives and of how the NRC Report and Congressional budget rider affect the final rule adopted today can be found in other portions of the preamble and in the responses to comments in the Final EIS.

Summary of Rule Adopted

This part of the preamble describes in general terms some of the major features of the final rule. A reader who is interested in a quick overview of the final rule may find this part useful. However, if you are looking for a detailed description of the final rule, you should look at the section-by-section analysis which appears later in this preamble.

The final rule continues, with some modification, BLM's three-tier classification scheme for mining operations on Federal lands. For activities that ordinarily result in no or negligible disturbance of the public lands or resources (''casual use''), a person would not have to notify BLM or seek our approval. In certain situations, described later in this preamble, persons conducting activities on the public lands must contact BLM in advance so that we may determine that the proposed activities, both individually and cumulatively with other activities, will not result in more than negligible disturbance. For exploration operations disturbing less than 5 acres and some kinds of bulk sampling, the operator would have to notify BLM 15 calendar days in advance of initiating operations. For all mining operations and for exploration operations disturbing more than 5 acres, the operator would have to submit a plan of operations and receive BLM's approval.

The final rule continues BLM's authority to enter into agreements or memoranda of understanding with States for joint Federal/State programs. The final rule also provides for Federal/State agreements in which BLM would defer to State administration of some or all of the surface management regulations. These agreements enable BLM and the States to coordinate activities to the maximum extent possible and avoid duplication of effort. Federal/State agreements currently in effect would be reviewed for consistency with this final rule. Existing agreements could continue in effect during the review period. If the review results in a BLM finding of no inconsistency, existing agreements could continue.

In the final rule provisions applicable to notices, BLM continues its goal of reviewing notices in 15 calendar days. The final rule explicitly provides that BLM can require a prospective notice-level operator to modify a notice. Existing notices can continue under the current operator for two years, or longer, if the notice is extended. BLM is not requiring financial guarantees for existing notices until they are extended or modified. When a notice expires, all disturbed areas must be reclaimed.

For plans of operations, which are required for all mining, even if the disturbed area is less than 5 acres, the final rule expands the list of items that an operator must include in a plan. However, BLM will require less information about smaller and simpler mining operations. We are adding a 30-day public comment period on plans of operations. Existing and pending plans of operations may continue to be regulated under the plan content and performance standards of the previous surface management regulations. The list of performance standards applicable to plans of operations is expanded to explicitly include many items that were implicit in the previous performance standards. The final rule applies to modifications of existing plans of operations that add a new facility. Modifications to existing facilities would not necessarily come under the final rule if the operator demonstrates it is not practical to do so.

The final rule requires financial guarantees for all notices and plans of operations. Each existing plan of operations has 180 days from the effective date of the final rule to post the required financial guarantee if any existing financial guarantee doesn't satisfy this subpart. Acceptable forms of financial guarantee include bonds, marketable securities, and certain kinds of insurance. Corporate guarantees will no longer be accepted, although existing corporate guarantees are not affected by the final rule. At the time of final financial guarantee release, BLM will either post in the local BLM office or publish a notice in a local newspaper and accept comments from the public for 30 days.

The final rule sets forth BLM's goal of inspecting certain operations, including those using cyanide leaching technology, at least four times each year. In the procedures for ensuring compliance with the 3809 regulations, BLM can issue a variety of orders—from requiring an operator to take specified action within a specified time frame to requiring an immediate suspension of operations. The final rule provides for administrative civil penalties of up to $5,000 for each violation. Affected parties have the right to appeal a BLM decision under this subpart to the State Director and to the Interior Board of Land Appeals. The final rule also allows BLM to schedule public visits to mines on public lands if a visit is requested by a member of the public.

II. How did BLM Change the Proposal in Response to Comments?

In this preamble, we respond to the significant comments we received from the public and other interested parties on the February 9, 1999, and October 26, 1999, proposed rules (64 FR 6422 and 64 FR 57613, respectively). Interested readers should also refer to the final EIS for additional responses to comments.

General Comments

Many commenters questioned the need for changes to BLM's surface management regulations. ''If it ain't broke, don't fix it,'' was a common refrain. Other commenters asserted that BLM had failed to justify the proposed changes or to point out the exact problems the revisions are designed to solve. Other commenters argued that sufficient regulations governing mining activities on Federal lands are already in place, either at the State or Federal level. The NRC Report indicated that the overall structure of Federal and State laws and regulations is generally effective (p. 5). Many commenters perceived this general conclusion by the NRC to obviate any regulatory changes. Some commenters felt that the proposed regulatory changes were unnecessary because they would duplicate the provisions of existing State regulatory programs. Other commenters suggested BLM use other mechanisms, such as policy changes or better implementation of existing regulations, as the means to address problems. On the other hand, many commenters argued for strengthening the 3809 regulations to provide adequate protection for communities and the environment and to ensure that the mining industry does not burden taxpayers with the costs of cleaning up environmental degradation of the public lands.

Congress has expressly directed the Secretary, in managing the public lands, to prevent unnecessary or undue degradation of the public lands. This final rule represents the Secretary's judgment of the regulations required to prevent unnecessary or undue degradation.

Some of the regulations adopted today are designed to address real-world, on-the-ground environmental problems caused by exploration and mining operations on the public lands. For example, provisions that increase or amplify the information that an operator must include in a proposed plan of operations are intended to address unanticipated problems that occur after BLM has approved a plan of operations, such as dewatering of springs, acid seeps and drainages, failure or slumping of waste or tailings piles, and so on. Some of the regulations adopted today address the recommendations for filling regulatory gaps included in the NRC Report. For example, the final rule requires financial guarantees for all notice- and plan-level operations. See recommendation number 1 (p. 93). Some of the regulations adopted today are designed to clarify and streamline administrative processes. For example, we are adopting changes to the regulations governing review of notices to clarify the circumstances under which BLM will need longer than 15 days to review a notice. Some of the changes we are adopting today are designed to make information easier to find in the regulations, and once found, easier to understand. For example, we have broken up the regulations into more and shorter sections. This increases the amount of information that is printed in the table of contents of subpart 3809, making it easier to find specific information without having to read through non-relevant sections. In summary, all the changes we are adopting today are necessary for one or more reasons and are aimed at preventing unnecessary or undue degradation, either directly or indirectly.

Although BLM recognizes that many States have programs in place to regulate the operations covered by this rule, BLM has a non-delegable responsibility to manage the public lands in a way that prevents unnecessary or undue degradation. These rules are intended to establish a Federal floor for such regulation, but to do so in a manner that will not unnecessarily intrude where other regulatory schemes are working properly.

Sections 3809.1 to 3809.116 General Information

Section 3809.1 What Are the Purposes of This Subpart? and Section 3809.2 What Is the Scope of This Subpart?

The final rule at § 3809.1 describes the purposes of this subpart, which are to (1) prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws and (2) provide for maximum possible coordination with appropriate State agencies to avoid duplication and to ensure that operators prevent unnecessary or undue degradation of public lands.

The final rule states at § 3809.2 that this subpart applies to all operations authorized by the mining laws on public lands where the mineral interest is reserved to the United States, including Stock Raising Homestead lands as provided in final § 3809.31(c). It also states that this subpart lists the lands to which the regulations do not apply and includes a reference to the patented mining claims in the California Desert Conservation Area that are subject to the regulation. Additionally it describes the mineral commodities subject to the regulation and those excluded from the operation of the mining laws by statute.

The preamble discussion of §§ 3809.1 and 3809.2 in the proposed rule consolidated several sections and covered a wide range of subjects on which we received comments during the scoping process. First, the discussion noted that the language of the proposed rule did not include previous language that expressed the Departmental policy to encourage development of Federal mineral resources and reclamation of disturbed lands, a deletion made in the interest of brevity.

The preamble to the proposed rule also briefly mentioned the November 7, 1997 Solicitor's Opinion [M–36988] regarding the proper acreage ratio for mining claims and mill sites and its implementation via the existing 3809 regulations. This final rule does not contain provisions expressly addressing that opinion. It should be noted, however, that approval of a plan of operations under this subpart constitutes BLM approval to occupy public lands in accordance with its provisions whether or not associated mining claims on millsites are determined invalid. Such authority is provided by section 302(b) of FLPMA. See also the preamble discussion of final § 3809.100, below.

The language in these sections and the accompanying preamble discussion prompted comments. We received comments on removal of some of the objectives language, implying that the exclusion of the language was not based on a search for brevity, but was in fact based on the desire to have BLM field personnel forget the Departmental policy when implementing the regulations. We received comments demanding reform or repeal of the mining law as well as comments supporting the mining law and demanding an end to BLM's administrative reform or repeal of the law. There were comments both pro and con regarding the continued utility of mining law, mineral patenting and payment of royalties. Other commenters expressed concern about the proposed rule's apparent extension of BLM's surface management jurisdiction to unclaimed lands. We received comments on royalties and taxes, patenting costs, liability and the moratorium on processing patent applications. Lastly we received comments on recent policy changes and the new regulations.

Changes to the Proposal

The language of this section is a slight revision of the original language contained in the 1980 regulations. We have added a sentence to final

§ 3809.2(a) to specify that when public lands are sold or exchanged under 43 U.S.C. 682(b) (the Small Tracts Act [2]), 43 U.S.C. 869 (the Recreation and Public Purposes Act), 43 U.S.C. 1713 (sales) or 43 U.S.C. 1716 (exchanges), minerals reserved to the United States continue to be segregated from the operation of the mining laws unless a subsequent land-use planning decision expressly restores the land to mineral entry, and BLM publishes a notice to inform the public. We added this sentence to clarify that this final rule does not restore land that has been removed from mineral entry under the mining laws because of disposal of the surface by sale or exchange (that is, non-Federal surface over Federal minerals). As proposed, subpart 3809 could have had this effect because section 209(a) of FLPMA, 43 U.S.C. 1719(a), and BLM's land resource management regulations (43 CFR §§ 2091.2–2(b), 2091.3–2(c), 2201.1–2(d), 2711.5–1, and 2741.7(d)) state that public lands with reserved minerals are closed, segregated, or removed from the operation of the mining laws until the Secretary issues regulations addressing such lands. If the 3809 proposed rule has been put in final as proposed, it could have been considered as the issuance of regulations referred to in the land resource management rules, and thus could have removed the regulatory barriers contained in those regulations.

We have added a second sentence of section 3809.2(a), however, to prevent the issuance of these rules from automatically restoring all such lands to mineral entry under the mining laws, and maintaining the status quo pending future BLM action. The lands will continue to remain removed from operation of the mining laws until subsequent land-use planning decisions expressly restore the land to mineral entry, and BLM publishes a notice to inform the public. Because the addition of this sentence in the final rule makes the references to future regulations in BLM's land resource management rules superfluous, we have removed those references in this rulemaking as technical conforming changes.

The reason for this change is as follows: Keeping lands with reserved minerals removed from mineral entry under the mining laws indefinitely pending the issuance of rules in the future (as was the status under the former land resource management rules) is not a reasoned approach to land-use planning. Conversely, promulgation of subpart 3809 rules is not an appropriate basis for generally restoring all such lands throughout the country to mineral entry. BLM believes strongly that site-specific conditions need to be factored into the determination whether to restore areas currently removed from mineral entry under the mining laws. Such considerations are best addressed in land-use decisions that will be subject to public participation. Thus, although these rules remove the regulatory bars in the former land resource management rules which prevented public lands with reserved minerals from being restored to mineral entry under the mining laws, they allow such restoration to occur on an area-specific basis only after subsequent land-use planning decisions occur, and BLM notifies the public.

As a conforming change, we deleted the references to the Small Tracts Act and the Recreation and Public Purposes Act from what was proposed as § 3809.2(b).

We have also added a sentence to final § 3809.2(d) to clarify that the final regulations do not apply to private land unless the lands were patented under the Stock Raising Homestead Act or are a post-FLPMA mineral patent in the California Desert Conservation Area. The same sentence states that BLM may collect information about private land that is near to, or may be affected by, operations authorized under this subpart for purposes of analysis under the National Environmental Policy Act of 1969.

Consistency With the NRC Report Recommendations

Final §§ 3809.1 and 3809.2 are not inconsistent with the NRC Report recommendations because those recommendations don't address the issues of the purposes and scope of subpart 3809.

Comments and Responses

Commenters asserted that as the 1872 Mining Law was written over 100 years ago it is ''out of date,'' ''anachronistic,'' ''antiquated,'' and a ''subsidy.'' Other comments pointed out that the law was written during a period favorable to resource development and that time had changed, thus the law needed to change. The general sentiments expressed by these commenters favored outright repeal/reform of the mining law.

Repeal or reform of the mining laws is not within the jurisdiction of the agency. While the Administration has and continues to support reform of the mining laws, that process must be undertaken by the Congress and not the Executive branch. Further, BLM agrees that some of the past practices carried out under the mining laws have had undesirable environmental results. That is the very reason that the regulations being published today were developed. BLM further notes that the flexibility demonstrated by the mining laws and laws like FLPMA allows BLM to incorporate a greater degree of environmental protection within its own regulations, in addition to any imposed by other agencies under the environmental protection laws.

Some commenters praised the 1872 Mining Law for more than 100 years' service as ''effective,'' ''fair,'' ''resilient'' and perhaps more efficient them most other Federal programs. Several comments accused the BLM and the Secretary of attempting to administratively effect a ''back-door'' reform or repeal of the mining laws, stating that it is not BLM's job to re-write the laws and that job belongs to the Congress. Other commenters noted the legal constraints on the mining laws, including the environmental protection laws, yet the law continued to effectively function.

BLM responds that it is not attempting to effect a ''back-door'' reform of the mining laws. BLM agrees with the comment that the reform of the mining laws is the job of the Congress and the Administration will continue working with the Congress to get common sense reforms. BLM also agrees with the commenter who noted the legal constraints that apply to operations conducted under the mining laws. In developing these regulations BLM has been careful to incorporate where appropriate references to the environmental protection statutes that apply to operations under the mining laws.

One commenter objected strenuously to the removal of language contained in previous § 3809.0–2. BLM consolidated several sections of the regulations in the interest of clarity and brevity. The commenter asserts this is an attempt to divert attention away from the rights granted to the miner under the mining laws during the application of the regulations.

BLM disagrees with the assertion that the change is intended to divert attention away from the miner's rights. BLM personnel are aware that miners may have property rights in their claims, but generally speaking, their rights may be regulated to prevent unnecessary or undue degradation.

Commenters objected to the proposed removal of previous § 3809.0–6, which recognized the declaration of policy in section 102 of FLPMA that the ''public

[2] Although the Small Tracts Act was repealed by FLPMA, and therefore new conveyances are not being made, tracts previously conveyed under that Act contain minerals that were reserved to the United States.

lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals * * * from the public lands including implementation of the Mining and Mineral Policy Act of 1970 * * *'' 43 U.S.C. 1701(a)(12). One commenter characterized BLM's duty as ''to encourage development of Federal mineral resources.'' The commenters also stated that the proposed regulations conflict with the 1970 Mining and Mineral Policy Act and the 1980 National Materials Policy Research and Development Acts, because they would not only inhibit most small-scale operations, but also keep new people from wanting to get into prospecting and mining to begin with. Commenters asserted that BLM appears intent on reducing the level of mineral activity on the public lands through the creation of an unnecessary and redundant scheme, and that BLM is not in compliance with FLPMA unless it takes into account the impacts of cumulative regulations that apply to supplying the Nation's need for domestic sources of minerals. The commenters concluded that if BLM truly intends to fulfill its statutory obligation to encourage development of Federal mineral resources, then this language is an important part of the rules and should be retained.

BLM disagrees with the comments. Section 102(a) of FLPMA contains a number of diverse policies, including implementation of the Mining and Minerals Policy Act of 1970 (section 102(a)(12)) and protection of the environment and other resources on public lands (section 102(a)(8)). All of these policies, however, cannot be maximized on each parcel of public lands. BLM has made a reasoned effort to reconcile these policies and to meet its statutory responsibilities. The reference to the Mining and Minerals Policy Act has been removed from subpart 3809 because it is not necessary for regulatory purposes. This does not change any of the statutory requirements of FLPMA or the Mining and Minerals Policy Act. BLM is still subject to the requirements of these acts and of other acts such as the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). It is neither necessary nor appropriate to present a complete listing of all applicable acts in the regulations, or all the policies set forth in the 13 paragraphs of section 102(a) of FLPMA.

BLM understands that the final regulations, which are based in part on the NRC Report recommendations that all mining operators obtain a BLM-approved plan of operations and submit financial guarantees, may have an impact on the small miner who works on an individual basis. We have found, however, that the small, notice-level mining operations create a disproportionate share of the abandonment and compliance problems. A 1999 survey of BLM field offices showed over 500 abandoned 3809 operations where BLM was left with the reclamation responsibility. Most of these were notice-level operations. BLM believes, as did the NRC, that these changes to the 3809 regulations are necessary to address this problem, prevent unnecessary or undue degradation, and to provide for environmentally responsible mineral operations.

Several commenters observed that royalties and taxes should be imposed on operations subject to these regulations. Other commenters observed that any royalty or tax must be enacted by Congress. While the Administration has and will continue to support a fair return to the taxpayer for the miner's use of Federal mineral resources, BLM agrees with the commenters that observed that the creation of such taxes and royalties is the sole province of the Congress.

A commenter observed that an agency cannot end the patenting process, which allows mining companies to obtain public land for a fraction of its value as that requires congressional action. Some commenters objected to the low purchase price paid by mining claimants for their mineral patents. One commenter suggested there had been a recent inversion in land prices for mineral lands (formerly high compared to non-mineral lands, but now low) versus non-mineral land (formerly low relative to mineral lands and but now high) seeming to imply the need for a change. Another commenter suggested that the price of a patent be indexed to account for inflation since 1872. Another commenter observed that patented land reduces liability to BLM, aids in protecting mining-related improvements, and should be ''restored,'' albeit at fair market prices. Other commenters raised national security concerns in supporting the patent provisions of the mining laws. Other commenters argued that the process to get a patent is neither quick nor cheap and costs significantly more than the purchase price. These same commenters objected to the amount of time required to complete the Secretarial review process.

BLM agrees with the commenters who note that congressional action is required to end the patenting process. BLM also agrees with the comments regarding the low prices for mineral patents and that the purchase price should be changed. The Administration will continue to support congressional action that will end patenting once and for all. BLM does not agree that the patent process is the only way to protect mining related improvements. For example, BLM's regulations at 43 CFR 3715 create a specific process to deal with trespass and damage to mining improvements. As to the amount of time and expense in pursuing the patent process, and in particular the amount of time required by the Secretarial review process, BLM agrees that the process is expensive and time consuming, but because the patent gives away what could be very valuable Federally owned resources for a nominal fee, care in reviewing patent applications is warranted. BLM notes also that a patent is not required to mine a valuable mineral deposit found in Federal lands.

Commenters observed that BLM already had authority to write policies that made the existing regulations more effective and cited several examples. These commenters asserted that the development of policy was the proper way to address and solve problems rather than to undertake wholesale modification of the existing regulations. One commenter supported incorporation of the cyanide and acid drainage policies into the new regulations. Several commenters pointed to BLM's development of the use and occupancy ''policy'' as having resolved a ''significant'' problem.

BLM's authority to develop policies that extend and improve implementation of regulations is limited by the Administrative Procedure Act (APA). When policies go beyond simply explaining or otherwise implementing an existing set of regulatory standards, the APA requires that they be published as rules. BLM's amended bonding rules set aside by the court in *Northwest Mining Association* v. *Babbitt* (No. 97–1013, D.D.C. May 13, 1998) incorporated parts of earlier bonding and cyanide policies. These final regulations incorporate elements of the bonding, cyanide, and acid drainage policies. The use and occupancy ''policies'' (43 CFR 3715) originated out of a commitment in 1990 to initiate a separate rulemaking to provide field managers with a set of tools to manage legal occupancy and terminate illegal mining claim occupancy. As such, they predated the initiation of this rulemaking in 1991 and did not flow from that review, as claimed by one commenter.

BLM is fully aware that approvals of plans of operations on unclaimed lands are not based on property rights under the mining laws, and that approval of a

plan of operations under subpart 3809 does not create property rights where none previously existed. The purpose of the regulations is to prevent unnecessary or undue degradation, not to adjudicate or convey rights under the mining laws.

One commenter stated that subpart 3809 does not properly incorporate FLPMA's requirement of suitability analysis, which is the multiple-use mandate that governs BLM activities on the public land and regulatory activities. The commenter stated that FLPMA requires the BLM to balance competing resources to determine what is in the best interests of the American people. To do this, BLM needs to determine the benefits of a proposed activity and balance that against the impacts on other competing activities, including water quality, recreation, wildlife habitat, and so forth. Also, FLPMA has an eye toward preserving public land resources for future generations. The commenter asserted that this mandate alone suggests that the BLM should do everything it can to protect public land values for future generations, such as requiring the most up-to-date technology to not minimize, but prevent, undue degradation of the public land. Given the concessions that BLM appears to be making to the mining industry, according to the commenter, the agency should require the most up-to-date, best available technology to control all threats to public land values. That approach is underlined by FLPMA's attention to preserving land value for future generations.

BLM does not accept the commenter's suggestion. BLM uses the land-use planning process under section 202 of FLPMA to determine the long-term management of lands, balance competing resource concerns, and decide if any areas should be withdrawn (determined unsuitable) from operation of the mining laws to protect other resources. Once an area is identified for withdrawal from the mining laws, a withdrawal is processed under section 204 of FLPMA. The 3809 regulations are applied where the area is open to operation of the mining laws, or if closed, where there are valid existing rights. The regulations are not intended to be a vehicle for suitability determinations. BLM has added a requirement in the final regulations to the definition of unnecessary or undue degradation that protects certain significant resources from substantial irreparable harm that cannot be mitigated if identified during review of a specific proposal. However, this does not replace the need for comprehensive land-use planning or mineral withdrawals to make broad-based ''multiple use'' determinations about how to manage the public lands.

BLM also disagrees that FLPMA's multiple use mandate requires mining operations to apply the ''best available technology.'' Once it has been determined that an area will be used for mining operations, a certain level of mining-related impacts is inevitable, and the land will not necessarily be available for all other uses.

Section 3809.3 What Rules Must I Follow if State Law Conflicts With This Subpart?

BLM has adopted § 3809.3 as proposed. Final § 3809.3 clarifies situations where State and Federal laws or regulations relating to the conduct of mining operations may conflict. The final rule provides that if State laws or regulations conflict with subpart 3809 regarding operations on public lands, the operator must follow the requirements of subpart 3809. The rule also states that there is no conflict if the State law or regulation requires a higher standard of protection for public lands than this subpart. The final rule incorporates the Supreme Court's ruling in the *Granite Rock* case (*California Coastal Commission et al.* vs. *Granite Rock Co.*, 480 U.S. 572, 581 (1987)) and the 1980 final rule preamble position regarding preemption into the regulations (45 FR 78908, Nov. 26, 1980).

There were many general comments on State conflicts and preemption. Most of the comments on this provision were concerned about the revisions from the previous rule and the negative impacts on Federal/State relationships. Most of the commenters that expressed concern over the proposed regulations urged that BLM not change the previous regulations. Although there were no specific comments that expressly and specifically supported the proposal, there were general comments that expressed concern that State laws are not strict enough to protect public lands and BLM should not abdicate its stewardship responsibilities by deferring to State regulations. Many commenters expressed concern that this section would create confusion, especially at sites with mixed public and private lands.

Other commenters expressed concern that the effect of this section will be to diminish the States' roles as co-regulators on Federal lands within their borders. Another commenter stated that ''this one-sided approach to the preemption issue would abdicate Congress's direction to BLM to ''encourage development of federal resources.'' State agencies expressed concern that this section would harm existing Federal/State relationships. Commenters noted that this provision and the provisions regarding Federal and State agreements would effectively cause the States to change State programs.

Another commenter added that ''This provision coupled with the proposed provisions of the Federal/State relationship (§§ 3809.201 to 3809.204) and the proposed performance standards (§ 3809.420) will have a preemptive effect on State Laws. Preemption of State laws is not contemplated by FLPMA and will cause a host of problems.'' Commenters from the State agencies requested that BLM specifically indicate in the regulations and the draft EIS where there is conflict with specific state laws. Commenters also disagreed that the new provision is consistent with the decision in the *Granite Rock* case. One commenter indicated that any State provision ''that is so stringent that it effectively precludes mining or substantially interferes with mining on the public lands is preempted, because it would run afoul of the provisions of the Mining Law.''

One commenter asked whether BLM would enforce the newly enacted Montana constitutional amendment banning cyanide leach processes from new mining operations, noting that it far exceeds the BLM standards and the Alternative 4 in the draft EIS.

Commenters also asserted that the proposed rules' provisions regarding preemption and Federal/State conflict cannot be reconciled with the NRC Report recommendations and that the existing regulatory relationships work and need not be replaced by the BLM regulations. One commenter noted that the requirements of this section ''would take over administration of the programs previously handled by the states.''

Final § 3809.3 provides that no conflict exists if the State regulation requires a higher level of environmental protection. BLM disagrees that this final rule will significantly affect Federal/State relationships or diminish State roles as co-regulators. Under the final rule, States may apply their laws to operations on public lands. It is expected that conflicts will not be common occurrences. In most cases, satisfying the State requirements will also satisfy BLM's requirements. Satisfying the BLM requirements will also satisfy the State requirements. BLM intends to coordinate with the appropriate State agencies to avoid duplication of efforts. A conflict occurs only when it is impossible to comply

with both Federal and State law at the same time. If a conflict were to occur, the operator would have to follow the requirements of subpart 3809 on public lands. In this case, the State law or regulation is preempted only to the extent that it specifically conflicts with Federal law.

BLM expects to avoid conflicts in part through cooperation with States using the agreements under final §§ 3809.200 through 3809.204. In some situations, a State may choose to strengthen its regulations to be consistent or functionally equivalent to this subpart.

BLM disagrees with the comments that the preemptive effect of the rule violates FLPMA. One purpose of subpart 3809 is to establish a minimum level of protection for public lands. This is within the BLM's authority under FLPMA. States may continue to assert jurisdiction over mining operations on the public lands. As final § 3809.3 provides, it is only where a conflict with these rules exists that State law will be preempted. This is consistent with the U.S. Constitution and Federal law. As the United States Supreme Court stated:

''Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause [of the Constitution]. And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause [of the Constitution].'' We agree * * * that the Property Clause gives Congress plenary power to legislate the use of the federal land on which Granite Rock holds its unpatented mining claim. The question in this case, however, is whether Congress has enacted legislation respecting this federal land that would preempt any requirement that Granite Rock obtain a California Coastal Commission permit. To answer this question, we follow the pre-emption analysis by which the Court has been guided on numerous occasions: ''[S]tate law can be pre-empted in either of two general ways. If Congress evidences an intent to occupy a given field, any state law falling within that field is pre-empted. * * * If Congress has not entirely displaced state regulation over the matter in question, state law is still pre-empted to the extent it actually conflicts with federal law, that is, when it is impossible to comply with both state and federal law, * * *, or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.''

California Coastal Commission v. *Granite Rock Co.,* 480 U.S. 572, 580–581 (quoting other cases, and omitting citations). Final § 3809.3 and the other rules cited by the commenter implement the principle enunciated by the Supreme Court for situations, such as FLPMA, involving areas where Congress has not entirely displaced State regulation. A further analysis of the preemptive effect of these rules appears in the preamble to the February 9, 1999 proposed rule at 64 FR 6427.

Although most of subpart 3809 should not conflict with State laws or regulations, one possible specific case where the regulations may conflict with State requirements is final § 3809.415(d), which requires avoiding substantial irreparable harm to significant scientific, cultural, and environmental resource values that cannot be mitigated. For instance, this requirement could address an issue which is related to the Secretary's trust responsibility for impacts to adjoining or nearby Native American lands. Some States may not have similar requirements. Even such a conflict is expected to be rare as historically most resource conflicts have traditionally been mitigated on the public lands.

There are also certain situations where the State law or regulations may provide a higher standard of protection than subpart 3809, such as the restriction on cyanide leaching-based operations approved by voters in Montana. In this situation, the State law or regulation will operate on public lands. BLM believes that this is consistent with FLPMA, the mining laws, and the decision in the *Granite Rock* case.

Final § 3809.3 is not inconsistent with the recommendations of the NRC Report, none of which expressly addresses preemption of State law. The report recognized that the overall regulatory structure ''reflects the unique and overlapping Federal and state responsibilities'' (p. 90) and also addressed the mechanism for protecting valuable resources and sensitive areas (p. 68). BLM believes that this represents an acknowledgment of the Department of the Interior's responsibilities in regard to FLPMA where the States may not have analogous coverage.

Section 3809.5 How Does BLM Define Certain Terms Used in This Subpart?

In developing the final rule, BLM has streamlined and clarified language in final §§ 3809.5 (definitions) and 3809.420 (performance standards) to address concerns raised by commenters about circular definitions and clarity of regulatory language. Definitions of several terms have been modified based on public comment. The concept of appropriate technology has been retained in final § 3809.420, but the term ''most appropriate technology and practice'' has been dropped from final §§ 3809.5 and 3809.420 to reduce confusion. The BLM has made no attempt to define terms used in the National Research Council Report unless specifically related to terms in the 3809 regulations and pertinent to this regulatory effort.

FLPMA authorizes the Secretary of the Interior to ''prevent unnecessary or undue degradation of the public lands.'' BLM believes that this broad authority provides for performance standards and related definitions. Many definitions included in the final rule are derived directly from FLPMA, CEQ regulations, or long-standing and publicly available Bureau policy. As such, the BLM believes the definitions to be consistent with Federal law and regulation, and not inconsistent with the recommendations of the NRC Report.

There were numerous requests to define terms such as ''feasible,'' ''significant,'' ''necessary,'' and ''substantial.'' BLM has chosen to rely on established definitions of these words in order to ensure greatest understanding of the terms rather than to introduce a specific regulatory definition. In addition, changes have been made in the language of the performance standards and elsewhere in the regulations to make these terms more clearly understood in the regulatory context.

''Casual Use''

This final rule defines ''casual use'' as activities ordinarily resulting in no or negligible disturbance of the public lands or resources. In paragraph (1) of the final definition, we give examples of things that we generally consider to fall within the definition of ''casual use,'' and in paragraph (2), we give examples of things that we don't consider to be ''casual use.'' Changes to the proposed rule in response to comments include adding a number of examples of what is ''casual use'' and eliminating the terms ''hobby or recreational mining'' and ''portable suction dredges.'' We also made a clarifying change related to when the use of motorized vehicles is not ''casual use.'' These changes are discussed below.

A commenter felt that the BLM should focus more on mining operations of less than five acres in size instead of on numerous changes in the definition of ''casual use.'' One commenter indicated that BLM needs to revise the definition of ''casual use'' to be consistent with NRC Report Recommendations 1, 2, and 3. A few commenters said that BLM should assure that the definition of ''casual use'' is similar to the Forest Service definition.

Many commenters felt that BLM should develop a detailed list of what ''casual use'' is to ensure that there is no confusion in anyone's mind about when an activity is considered casual use and when it falls under a notice. Other commenters indicated the current definition needed to be strengthened to ensure protection of public lands and resources, particularly riparian areas. One suggested that the amount of area to be disturbed should be specifically defined.

Many commenters stated that the current definition of ''casual use'' had worked well for nearly 20 years and did not need to be changed. One commenter indicated that the NRC Report supported BLM retaining the definition of ''casual use.'' Other commenters stated that the existing definition of casual use provides adequately for prospecting and recreational mining according to BLM's own data. Some commenters objected to the expansion of items not be to considered ''casual use.''

The final rule definition of casual use is based on the existing definition. We have modified it to address situations that have arisen since the 1980 regulations were published. We have included examples of activities that are generally considered casual use, and examples of activities that are not considered casual use. For instance, the term ''occupancy,'' as defined in 43 CFR 3715.0–5, is not considered ''casual use.'' Similarly, the final rule clarifies that surface disturbance from operations in areas where the cumulative effects of the activities result in more than negligible disturbance is not casual use.

Some commenters stated the proposed definition was too restrictive and recommended that ''casual use'' should include not only hand tools, but also other equipment used by recreational miners. Several commenters felt that some mechanized equipment should be allowed under casual use. Several commenters stated that casual use has always included the use of mechanized equipment. Several commenters felt that the changes in the definition of casual use could be interpreted by some offices in a way that would result in elimination of prospecting and recreational mining on public lands. Others raised a concern that the revised definition of casual use will preclude geochemical sampling and will adversely affect mineral exploration.

Others expressed a general concern about the proposed provision that would have required hobby and recreational miners to file a notice, instead of operating under casual use, where the cumulative effect of their operations results in more than negligible disturbance. Some commenters expressed the view that active prospecting is virtually excluded without the ability to conduct these activities as casual use.

It is not the intention of the BLM to unduly restrict mineral prospecting and exploration on the public lands. Revisions in the final rule are intended in part to address concerns on the part of some members of the public about cumulative impacts to the environment resulting from multiple operations in a single area. The requirement for operations above the ''casual use'' level to file a notice or plan of operations and obtain a financial guarantee is intended to provide an increased measure of environmental protection for public land and resources. On the other hand, exploration techniques involving negligible surface disturbance will not require a notice or financial guarantee. See also the preamble discussion of final § 3809.31(a).

Based on the number and substance of comments about the description of activities that cause negligible surface disturbance, the definition of casual use was expanded in this final rule to include geology-based sampling and non-motorized prospecting activities.

The public comments on suction dredging and its impacts covered a broad range. One commenter stated that the proposed regulations are contrary to the NRC finding that States adequately regulate suction dredging under their own permitting. Another commenter stated that BLM does not acknowledge the NRC finding that BLM appropriately regulates small suction dredge operations under current regulations. The same commenter, as well as others, felt that BLM should allow at least some suction dredge activities under casual use. Other commenters stated that suction dredging should be regulated by State fish and game departments.

Some members of the public indicated that suction dredging should not be handled as a casual use because of associated environmental impacts. Some commenters did not view the damage caused by suction dredging to be a major environmental concern. Another commenter indicated that the major impacts (in California) from suction dredging were associated with abandoned junk, long-term camping, sewage and waste management, and interference with other public land users.

Several commenters felt that the BLM should give more credence to a U.S. Geological Survey study on the Forty Mile River in Alaska that found no adverse impacts to water quality from suction dredges with an intake diameter of 10 inches. Many commenters, from different states, indicated that 4″, 5″, and 6″ (intake diameter) on suction dredges have essentially the same impacts, and in the view of these commenters are not environmentally damaging.

In response to the comments, and to be consistent with the NRC Report discussion, the final definition of ''casual use'' allows small portable suction dredges to qualify on a case-by-case basis as ''casual use.'' BLM believes that this approach is also consistent with IBLA case law because the cases holding that suction dredging is not ''casual use'' were dependent upon the specific facts and circumstances at issue in those cases.

Some commenters feel the complete exclusion of chemicals from casual use operations is unrealistic and too far-reaching. They recommend that only ''hazardous'' chemicals to land or water be prohibited. Other commenters expressed the concern that the definition of casual use should not include small miners because they might not have the expertise to use chemicals properly.

BLM's intent in defining ''casual use'' as not including the use of chemicals does not apply to the use of small amounts of gasoline, oil, or similar products in connection with small operations, but is intended to address concerns about the use of cyanide and other leachates. We did not create an exception to this provision for small miners (some of whom the commenter alleged might not have the expertise to use chemicals properly) because the issue here is the impact of harmful chemicals on the environment, not the size of the operation or the sophistication of the operator.

Many commenters supported the use of truck-mounted drilling equipment under casual use when no new road construction or surface disturbance would be required.

BLM recognizes the desire of those conducting mineral exploration using truck-mounted drilling equipment to maximize their access to drill sites on public lands with minimum regulation. However, the BLM believes that drilling activities should be conducted under a notice or a plan to increase consideration of potential impacts to the environment, including, but not limited to riparian areas, cultural resource sites, and wildlife habitat. Therefore, BLM has not included truck mounted drilling activities under casual use.

Several members of the public commented that there is no provision in

the mining laws for recreational mining, and that it should not be regulated under subpart 3809. Others recommended that the term ''recreational mining,'' if used at all, should be defined in BLM's recreation management regulations (43 CFR 3840). Several commenters indicated that recreational prospecting is generally allowed in most States, and should not be constrained on BLM-administered lands.

Many commenters indicated that recreational or weekend miners will not be able to prospect and extract minerals if they are required to operate under the notice rather than the casual use provisions. Several suggested that they would not be able to afford the cost of filing a notice and obtaining a bond. Another view, expressed by one commenter, identified a concern that small miners might lack the expertise to properly use chemicals or afford a bond.

The public provided a range of perspectives relative to the impacts of ''hobby or recreational mining.'' Many commenters expressed concern about recreational mining being included in the category of casual use because it allowed for uncontrolled use of public lands with associated impacts.

Another commenter stated that if there are inappropriate impacts to the land by weekend recreational miners, stiffer fines are a more appropriate response than a broad-scale restriction of land use. One commenter prefers designations or constraints to be included in the regulations rather than in the land-use plans. Another felt that BLM should identify areas in land-use plans where hobby or recreational mining could occur. Some commenters felt that all recreation and hobby mining should be casual use.

The BLM recognizes that some weekend prospectors and recreational miners may now be required to obtain a notice rather than operate under the casual use provision. However, it is BLM's intent that all operations which cause more than negligible surface disturbance should be conducted under a notice or a plan to ensure appropriate review of environmental concerns and development of appropriate mitigation.

Numerous members of the public stated that the term, ''recreational mining,'' should be more clearly defined or deleted. Some commenters felt that the lack of definition of recreational mining will lead to inconsistent interpretation of what it includes.

Many commenters recommended changing the definition to include some version of the following: ''The term casual use should include the following activities: use of metal detectors, gold spears, and other battery-operated devices for sensing the presence of minerals, battery-operated and motorized high bankers, hand, battery operated, and motorized drywashers, and motorized gold concentrating wheels.''

One individual commented that the definition of ''casual use'' should be modified to state ''Nonprofit organizations or societies, hobbyists, and recreational miners are classified as casual use as long as they do not use motorized tools.'' Many commenters expressed concern that the new definition of casual use could eliminate rock hounding. Others made general statements that the definition is too restrictive. Numerous members of the public felt there should be a provision for collection of mineral specimens with hand tools, hand panning and motorized sluices. Others commented that the definition of casual use should include sampling of rocks and soils.

The BLM concurs with the recommendations made by the public to include various types of sampling, and various types of prospecting activities and equipment in the definition of casual use to clarify its intent that these types of activities are acceptable under the definition of casual use as long as they create no or negligible surface disturbance. The definition has been modified to address this concern. The BLM did not however, elect to include high bankers and other similar equipment in this definition in order to address concerns about the surface disturbing impacts of this type of equipment.

A proposed paragraph (2) of the ''casual use'' definition would have indicated that use of motorized vehicles in areas designated as closed to ''off-road vehicles'' (ORV), as defined in 43 CFR 8340.0–5 is not ''casual use.'' Under BLM's existing ORV regulations, ORV use may be completely prohibited (a ''closed area'') or restricted at certain times, in certain areas, or to certain vehicular use (a ''limited area''). We are concerned that the language of the proposal may be interpreted to mean that only motorized vehicle use in ''closed areas'' exceeds the ''casual use'' threshold. In reality, we intended the language to also mean that motorized-vehicle use that conflicts with the use restrictions in a ''limited area'' exceeds the ''casual use'' threshold. Therefore, we have made a clarifying change to the final rule to indicate that use of motorized vehicles in areas when designated as closed (either permanently or temporarily) is not ''casual use.''

''Exploration''

Although not explicitly requested by the public in comments, the BLM has added a new term, ''exploration,'' to the definitions. The final rule embraces the concept that exploration activities will be covered under a notice, unless they exceed five acres unreclaimed surface disturbance in a calendar year, and any mining activities will be covered by a plan of operations. The definition of ''exploration'' was included to help differentiate when an operator should file a notice and when an operator should file a plan of operations and is necessary to implement the NRC Report recommendations.

Military Lands

A few commenters said that BLM needs to define the term, ''military lands,'' and clarify to what extent subpart 3809 applies to minerals on military lands that are also under the jurisdiction of BLM.

Public Law 106–65 extended the withdrawals for Fort Greely, Alaska; the Yukon Range of Fort Wainwright, Alaska; Nellis Air Force range, Nevada; Naval Air Station Fallon Range, Nevada; McGregor Range of Fort Bliss, New Mexico; and Barry M. Goldwater Range, Arizona. The mining language in the prior Public Law 99–606 withdrawal for these ranges was carried forward into Public Law 106–65.

Public Law 99–606 provided for land-use planning on these military ranges. The BLM has completed land-use plans on all lands addressed by Public Law 99–606 except for Bravo-20 Range at the Naval Air Station at Fallon, Nevada. No lands were found suitable to open to entry under the mining or mineral leasing laws, except at McGregor Range, in New Mexico. Public Law 106–66 calls for the update of these land-use plans. No implementing regulations for these public laws have been promulgated to date. The responsibilities of the BLM would be outlined at such time as these regulations are developed.

''Minimize''

According to one commenter, the proposed definitions of ''minimize'' is fundamentally at odds with the NRC Report because NRC assumes mining will change the landscape. Other commenters thought this definition should be deleted because it is confusing and is defined differently than the commonly understood meaning of the word ''minimize.'' Several commenters stated that ''minimize'' is not synonymous with ''eliminate'' or ''avoid.'' The precise meaning of some

terms within the definition—''most'' and ''practical level''—were unclear to some commenters. Several commenters raised the concern that the second sentence in the proposed regulations has significantly reduced the BLM's flexibility from the current 3809 rules.

BLM is in agreement with the NRC that mining changes the landscape. However, it is the view of the BLM that the NRC Report recommendations do not preclude appropriate attempts to reduce or avoid impacts to public land and resources. BLM has modified the second sentence of the proposed definition of ''minimize'' to reduce confusion and increase flexibility of the authorized officer in evaluating proposed mining operations. Rather than stating that ''minimize'' ''means'' to avoid or eliminate, the final rule clarifies that in certain instances ''it is practical'' to avoid or eliminate particular impacts. In this context, ''practical'' is not based on what a particular company can afford, but rather on technologies and practices reasonably considered to be cost-effective.

By changing the final rule in this manner, BLM will still define the term ''minimize'' as it is used in a number of the performance standards in final § 3809.420 as reducing the adverse impact of an operation to the lowest practical level. During BLM's review of proposed operations, either notice or plan-level, BLM might determine that avoiding or eliminating specific impacts can be achieved practically. BLM would determine the lowest practical level of a particular impact on a case-by-case basis.

''Mining Claim''

The final definition is unchanged from the proposal. A commenter suggested that the definition of ''mining claimant'' should be included in this subpart, rather than including just a cross reference to existing 43 CFR 3833.0–5. The definition should include any citizen or entity in the United States. The definition should be similar to the current definition.

BLM has referenced the definition in 43 CFR 3833.0–5 to promote consistency in definition of terms across Title 43 of the Code of Federal Regulations. The definition provides for citizens of the United States to hold mining claims.

''Mitigation''

The final definition is unchanged from the proposal. A commenter asserted that the term should be deleted from the regulation unless BLM can show specific statutory authority for mitigation. In the commenter's opinion, BLM has no authority to require compensatory mitigation. Several commenters raised the question of when compensation is appropriate and whether BLM has the statutory authority to require it. Some commenters indicated that the definition of ''mitigation,'' which comes from the Council on Environmental Quality definition, should be eliminated because in that context it was used for analytical purposes rather than regulatory purposes, as in this case. Some commenters felt that the revised definition, included in the draft rule, gives the BLM too much latitude without a standard for comparison.

Section 302(b) and 303(a) of FLPMA, 43 U.S.C. 1732(b) and 1733(a), and the mining laws, 30 U.S.C. 22, provide BLM the authority for requiring mitigation. Mitigation measures fall squarely within the actions the Secretary can direct to prevent undue or unnecessary degradation of the public lands. An impact that can be mitigated, but is not, is unnecessary. Section 303(a) of FLPMA directs the Secretary to issue regulations with respect to the ''management, use, and protection of the public lands * * *'' In addition 30 U.S.C. 22, allows the location of mining claims subject to regulation. Taken together, these statutes clearly authorize the regulation of environmental impacts of mining through measures such as mitigation. The final rule does not require compensatory mitigation. However, many companies are currently voluntarily completing compensatory mitigation, and it is clearly an available form of mitigation.

BLM believes it is appropriate to retain the Council on Environmental Quality's government-wide definition of ''mitigation'' as it appears in 40 CFR 1508.20. An operator who must ''mitigate'' damage to wetlands or riparian areas under final § 3809.420(b)(3), or who must take appropriate mitigation measures for a pit or other disturbance, would have to take mitigation measures, which includes the measures listed in the definition. BLM will approach mitigation on a mandatory basis where it can be performed on site, and on a voluntary basis, where mitigation (including compensation) can be performed off site. For example, if, because of the location of the ore body, a riparian area must be disturbed, mitigation can be required on the public lands within the area of mining operations. If a suitable site for riparian mitigation can't be found on site, the operator, with BLM's concurrence, may voluntarily choose to mitigate the impacts to the riparian area off site.

''Most Appropriate Technology and Practices'' (MATP)

The final rule does not contain a definition of MATP. A commenter stated that the only statement in the proposed definition of MATP or in the explanation of the proposed rule regarding cost is that ''MATP would not necessarily require the use of the most expensive technology or practice.'' The commenter asserted that this statement not only fails to address how BLM would consider cost, but suggests that BLM could require the use of the most expensive technology or practice for a mine regardless of whether the mine meets performance standards by using a less expensive technology. The commenter asserted that if BLM claims authority to require use of a particular technology under such circumstances, the proposed rules would clearly violate FLPMA, the general mining laws, and the Mineral Development Act. The commenter stated that requiring the use of a costly technology that may make mining impossible or uneconomical in order to achieve minimal or no environmental benefits would ignore FLPMA's limit on BLM's authority only to prevent ''unnecessary'' and ''undue'' degradation of public lands, would impair the rights of locators and claims located under the general mining laws in violation of 43 U.S.C. 1732(b), and would contravene Congress' policy and intent for BLM to manage public lands in a manner that recognizes the Nation's need for domestic sources of minerals and to implement the Mining and Minerals Policy Act of 1970, as set forth in 43 U.S.C. 1701(a)(12). The commenter also stated that the proposed rules provide no explanation of how BLM will reconcile its proposed authority to impose technology-based requirements with its legal authority and obligations under FLPMA.

BLM disagrees that a statement included to assure operators they would not have to use the most expensive technology could be interpreted to mean they would be required to use the most expensive technology or practice regardless of whether the mine meets performance standards. The term ''MATP'' has been deleted from the final regulations because BLM concluded it was confusing and circular, and did not add to the protection provided by the performance standards. In its place, we added a requirement to the performance standards that requires operators to use equipment, devices and practices that will meet the performance standards. The purpose of this requirement is not

for BLM to specify that an operator use any particular technology, but instead to assure that the methods an operator proposes to employ are technically feasible for meeting the performance standards.

Some commenters stated that the NRC Report indicated that existing State and Federal laws are okay with respect to technology. Others indicated that there was no specific statutory authority for requiring most appropriate technology and practices. Still others felt the BLM should abandon the concept of MATP in favor of best available technology (BAT). There was considerable agreement from numerous commenters that the definition proposed in the draft regulations was unclear, confused, difficult to enforce, ambiguous, and circular. Even commenters who liked the concept of MATP over BAT were critical of the BLM's definition. A few commenters raised a concern about whether this definition would be in conflict with State law or technical standards.

BLM agrees with concerns raised about the term ''most appropriate technology and practices.'' The term has been deleted from the definitions in the final rule. Final § 3809.420(a)(1) incorporates the requirement to use equipment, devices, and practices that will meet the performance standards of subpart 3809.

''Operations''

Several members of the public stated that the definition of ''operations'' needs to clarify that FLPMA only gives the BLM authority to regulate activities on Federal public lands. Another commenter indicated that the definition needs to include any facility that is used for the beneficiation of ore. One commenter expressed a concern that including ''reclamation'' in the definition of ''operations'' might cause confusion. Another commenter asserted that the definition of ''operations'' should be defined to include geologic-based or hobby activities such as rock hounding, hobby mining, fossil collecting, caving, and other similar activities.

In the final rule, BLM did not modify the definition except to add a reference to exploration. The definition is intended to be broad in scope to address ''cradle to grave'' activities authorized under the mining laws on the public lands. Therefore, reclamation is included in the definition of operations. The definition clearly states that it applies to activities on public lands. The BLM may request information about activities on adjacent or near by private lands because a proposed operation may occur on mixed ownership, or environmental analysis requirements under the National Environmental Policy Act may require that BLM have a complete picture of the proposed operation. The definition adopted today covers all activities under the mining laws which occur on public lands as casual use or under a notice or a plan or operations, including the hobby activities mentioned by the commenter.

Several commenters opposed applying subpart 3809 to unclaimed land, asserting that the proposal improperly treats such lands as having valid claims and would codify the industry position. The commenters stated that a decision to allow mining on such lands is discretionary and not based on property rights and that BLM should make decisions regarding mining operations on unclaimed lands based on FLPMA's multiple-use mandate rather than treating operations on such lands as equivalent to operations on lands where operators have property rights under the mining laws. Thus, the commenters concluded that 43 CFR subpart 2920 should apply, not subpart 3809. Subpart 2920 does not authorize the exclusive and permanent use of public lands. Commenters stated that increased costs associated with subpart 2920 might result in lower grade ores not being mined. Commenters inquired whether BLM's interim directive would be extended when it expired in September 1999?

BLM has carefully considered the relationship between FLPMA and rights under the mining laws. In these regulations, BLM has decided that it will approve plans of operations on unclaimed land open under the mining laws if the requirements of subpart 3809 are satisfied, and the other considerations that attach to a Federal decision, such as Executive Order 13007 on Indian Sacred Sites, are also met. This continues the scheme that existed under the previous rules and recognizes that in certain situations acreage authorized under the mining laws may be insufficient to conduct large-scale operations.

Other commenters noted the inclusion of unclaimed land within the reach of regulation. They perceived this as a proposed expansion of the ambit of the mining laws and were opposed to any such expansion.

BLM disagrees with the commenters' interpretation of the mining laws. Lands are open to the right to prospecting and if successful, location of mining claims. The sequence of activity set out in the text of the law itself (exploration, then discovery, followed by claim location) presupposes that activities will be carried out on unclaimed land. The same goes for land that has been improperly claimed, for example, with millsites in excess of applicable limits. The inclusion of unclaimed land within an area of operations subject to these regulations is carried over from the original November 26, 1980 rulemaking. That rulemaking, at 45 FR 78903, addressed similar comments received on that rulemaking's definition of ''mining operations'' and noted, ''One does not need a mining claim to prospect for or even mine on unappropriated Federal lands.'' BLM is simply carrying forward the older definition with only minor modifications. Nothing about the law or the regulations has changed, and the right to use unappropriated Federal lands to engage in reasonably incident uses remains unaffected.

''Operator''

Several commenters stated that it was beyond BLM's authority to include in the definition of ''operator'' all persons who own a mining claim or otherwise have an interest in a claim. A commenter felt the definition of ''operator,'' when combined with the new provisions for joint and several liability are contrary to NRC Report Recommendation 7, which concerns promoting clean up of abandoned mine sites adjacent to new mine areas without causing mine operators to incur additional environmental liabilities. According to one commenter, the proposed definition of ''operator'' is similar to the approach taken under the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*), but there is no authority for this approach in FLPMA.

We evaluated the proposed definition in the context of public comments but did not change it. The definition of ''operator'' adopted today incorporates a ''material participation'' test for determining whether a parent entity or an affiliate is an ''operator'' under this subpart. As discussed in the preamble to the proposed rule (64 FR 6428), this test is in accord with reasoning contained in the Supreme Court decision in the *Best Foods* case. See *U.S.* v. *Best Foods et al.,* 118 S. Ct. 1876. The authority for the definition derives from FLPMA, and BLM bases the definition on participation, not affiliation. BLM disagrees that the definition of ''operator'' is inconsistent with NRC Report Recommendation 7 because subpart 3809 applies to active operations, not to cleaning up previously abandoned mines.

''Project Area''

The final definition is unchanged from the proposal. Numerous commenters stated that there is no legal basis for the definition as proposed in the draft rule. According to many commenters, the proposed definition suggests that BLM is attempting to manage private land and State land. Others said that this term needs to be unambiguously defined to show how it will apply to all mineral ownerships. Commenters felt this to be especially important because they believe enforcement provisions say the mineral owner is financially liable for the actions taken by the operator. Several commenters said the definition should apply only to Federal public land. Clarification is needed, according to more than twenty commenters, on how BLM intends to deal with adjacent private lands.

Several commenters who had concerns about the intent of BLM with regard to private land within a project area tied their concerns to the relationship of joint and several liability to the project area and the definition of ''operator.''

At least one State has raised a concern about the relationship of a project area as defined by the BLM, for regulatory purposes, and an area defined by a state for similar purposes, but defined differently. Others raised concerns that mines should not be able to expand mine waste dumps by using surrounding public land.

In the final rule, BLM has clarified its intentions relative to the definition of ''project area'' in final § 3809.2(d). It is BLM's intent to regulate operations on public lands managed by the Secretary of the Interior through the BLM. However, BLM may collect and evaluate information from private lands for the purpose of analysis under the National Environmental Policy Act.

The ''project area'' concept is used to facilitate defining an area of operations for the purpose of analysis and decision-making. This will not preclude an individual State from using its own means of defining a project area. Differences between BLM and a State can be worked out through cooperative agreement or other means. Since the location and management of mine waste is part of the plan of operations and associated environmental analysis, these should be considered during the processing of the plan of operations or the notice and should be within the established project area for a given mine.

''Public Lands''

Many commenters indicated that the draft rule definition of ''public lands'' caused considerable confusion and consternation about BLM's intent with regard to private land and State land. Several commenters raised concerns about the applicability of the regulations to the Stock Raising Homestead Act lands where the surface is private and the mineral estate is Federal.

Others questioned BLM's authority to regulate activities on Stock Raising Homestead Act lands without the consent of the land owner. Others indicated that the 1993 amendments to the Stock Raising Homestead Act were not cited as an authority in the proposed regulations and that the proposed means of handling Stock Raising Homestead Act lands are not consistent with the 1993 amendments.

The definition of public lands included in the final rule replaces the definition of Federal lands in the existing 3809 regulations. This definition is taken from FLPMA and used throughout this subpart for the sake of consistency. Therefore the definition was not modified from the proposed to the final rule. ''Public land,'' as defined in FLPMA and in this regulation, means land or interest in land owned by the United States and administered through the Secretary of the Interior by the BLM. Public land does not mean State land or private land. See final § 3809.2(d) which addresses the scope of these regulations.

Under provisions of the Stock Raising Homestead Act of 1916 (43 U.S.C. 299), coal and other minerals were reserved to the United States. Individuals were allowed to enter on these private lands to locate and develop these mineral deposits so long as they did not injure, damage or destroy the permanent improvements of the entry man, and are required to compensate the entry man or patentee for all damage to crops caused by the prospecting or development activities. The inclusion of these Stock Raising Homestead Act lands under the revised 3809 rule does not change the statutory requirements established in 1916 or in the subsequent 1993 amendments which clarified requirements for minerals operations on these lands. It is the intent of the final rule and BLM's ongoing rulemaking on Stock Raising Homestead Act lands (43 CFR 3814) to provide specific requirements for mineral exploration and development of the Federal mineral estate to ensure consistency and equity for both those conducting prospecting and development operations on Federal minerals.

A commenter stated that when BLM restated the definition of ''public lands'' in FLPMA, the BLM failed to include the first paragraph of 43 U.S.C. 1702: ''Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by this Act, as used in this Act * * *''

We don't believe that repeating the lead-in statement is necessary. It simply says that if the same terms are used in other legislation, that these definitions do not alter their meaning in those other statutes. Since the 3809 regulations are promulgated under FLPMA, it is the FLPMA definition of public lands that applies.

''Reclamation''

The final definition of the term ''reclamation'' is unchanged from the proposal. Public comments on the definition addressed a variety of concerns. Several commenters felt that the definition of ''reclamation'' needed to retain the concept of ''reasonable reclamation'' from the existing regulations. Another commenter indicated the definition was too onerous because the terms used were problematic—terms like ''applicable performance standards'' and ''achieve conditions required by BLM.'' Several commenters sought clarification about the requirement for regrading and reshaping to conform to surrounding landscape. They felt this requirement to be open-ended. The requirement to provide for post-mining monitoring, maintenance or treatment raised the question in a few commenters' minds about whether this implied that backfilling would be required. Other commenters did not think an operation should be authorized or allowed if post-closure treatment was required. One commenter recommended removal of the words ''placement of a growth medium'' because this is a ''how'' standard, not a performance standard.

Another member of the public expressed the concern that ''reclamation'' should be defined as something that is ongoing, not just at the end of the project. The definition should state that the performance standards for reclamation will be deemed as met when requirements in the plan of operations or notice have been met. Another comment was that the reclamation definition references 43 CFR 3814 relative to reclamation requirements under the Stock Raising Homestead Act (SHRA), but these regulations have not been promulgated.

BLM has carefully considered the concerns expressed by the public about the proposed definition, but did not

change it in the final rule. Reclamation means measures required by BLM in this subpart to meet applicable performance standards and achieve conditions at the conclusion of surface-disturbing operations. These phrases are needed to make it clear that every performance standard doesn't apply to every operation and that each operation will be required to meet site-specific conditions, some of which will be specified in the closure plan. Concurrent reclamation is required in final § 3809.420(a)(5). Reclamation is deemed satisfactory on a plan or a notice when it meets the standards established in the accepted notice or the approved plan of operations.

The final rule does not retain the presumption of backfilling included in the draft rule. There is no intent or requirement in the final rule that regrading or reshaping means backfilling. Post-closure monitoring, maintenance and treatment will be addressed at least twice in the life cycle of a mining operation. To the extent possible at the time a notice or a plan of operations is filed, needs for post-closure activities should be identified and included in the initial plan or notice. In addition, at the time of mine closure, the requirements for subsequent management and maintenance of the site will be evaluated. The more information provided by operators at the beginning of the process, the less ''open-ended'' the process will be. The definition also provides a generic list of the components of reclamation. As explained above, the reference to the Stock Raising Homestead Act is part of another rulemaking that BLM is currently working on. The separate reference to the SHRA is necessary because that Act has its own definition of the term ''reclamation.''

''Riparian Area''

The definition of ''riparian area'' adopted today identifies riparian areas as a form of wetland transition between permanently saturated wetlands and upland areas that exhibit vegetation or characteristics reflective of permanent surface or subsurface water influence. The definition gives examples of riparian areas and excludes ephemeral streams or washes that do not exhibit the presence of vegetation depending upon free water in the soil. Final § 3809.420 requires an operator to avoid locating operations in riparian areas, where possible; minimize unavoidable impacts; and mitigate damage to riparian areas. It also requires an operator to return riparian areas to proper functioning condition, or at least the condition that pre-dated operations, and to take appropriate mitigation measures, if an operation causes loss of riparian areas or diminishment of their proper functioning condition. This definition is currently part of the BLM Manual (BLM Manual, Dec. 10, 1993).

Commenters felt the definition of ''riparian area'' should be deleted unless BLM can show specific statutory authority for riparian management on all lands. The NRC recommended that BLM issue guidance but leave the regulation (of wetlands) to the Environmental Protection Agency (EPA) or the Corps of Engineers. Further, commenters stated that BLM does not have authority over non-jurisdictional wetlands or non-wetlands habitat. The requirement to avoid, minimize, or provide compensatory mitigation was felt to have major effect on Alaska placer miners. Some commenters also requested that ''proper functioning condition'' be defined.

BLM's definition of riparian area has been in use since 1987. BLM's statutory authority for protection of riparian areas is derived from FLPMA. Section 302(b) and 303(a) of FLPMA, 43 U.S.C. 1732 (b) and 1733 (a), and the mining laws, 30 U.S.C. 22, provide BLM the authority for requiring protection of riparian areas. Protection of riparian areas falls squarely within the actions the Secretary can direct to prevent unnecessary or undue degradation of the public lands. An impact that can be mitigated, but is not, is unnecessary. Section 303(a) directs the Secretary to issue regulations with respect to the ''management use, and protection of the public lands * * *'' In addition, 30 U.S.C. 22 allows the location of mining claims subject to regulation. Taken together, these statutes clearly authorize the regulation of environmental impacts of mining through measures such as protection of riparian areas.

The final rule is not attempting to usurp jurisdiction of either the Corps of Engineers or the EPA relative to wetlands. The intent of this subpart is to provide appropriate environmental protection for one of the critical resources on public lands—riparian areas. The policy for protection of riparian areas has been in place in BLM internal guidance for more than 13 years. We believe that including this guidance as part of the rulemaking makes the policy more accessible to the public.

The final rule does not require compensatory mitigation. However, many companies are currently voluntarily completing compensatory mitigation, and it is clearly an available form of mitigation.

''Unnecessary or Undue Degradation''

The first three paragraphs of the final definition of ''unnecessary or undue degradation'' are substantially the same as the February 9, 1999 proposal. BLM added a fourth paragraph, discussed below, in response to comments and to a concern expressed in an NRC Report recommendation. More than seventy commenters from diverse publics felt the proposed definition to be unclear, vague, ambiguous, circular, inflexible, and/or duplicative of existing State and Federal laws. A similar number of commenters felt the current definition is working well and recommended retention of the current language and the current ''prudent operator'' concept.

Concern was expressed by some commenters about new terms that were introduced in the definition that were not defined. Many commenters felt that the proposed definition was moving the BLM from an unnecessary or undue degradation standard provided for in section 302(b) of FLPMA to a ''California Desert'' standard of no degradation taken from section 601(f) of FLPMA.

Some commenters noted significant additional costs the new definition would impose on industry. Others expressed belief that whether or not a mining company could afford appropriate environmental protection measures should not be the determining factor as to whether those measures are required.

Several commenters felt that there should be a specific list of actions or situations that would constitute unnecessary or undue degradation. One commenter said that BLM should take the dictionary definition of ''undue'' (inappropriate or unwarranted) and apply that definition to these regulations. Many commenters were frustrated by the lack of clear language giving BLM the authority to deny a plan of operations or reject a notice. One commenter stated that any operation resulting in permanent post-closure water treatment should be deemed unnecessary or undue degradation. A few commenters supported the inclusion of Best Available Technology and Practice into the concept of undue or unnecessary degradation. Many commenters felt the draft regulations fell far short of steps that should be taken to prevent undue or unnecessary degradation of the public lands. Some commenters felt that the draft regulations don't provide for accountability of BLM line managers. Concern was expressed by some commenters that the definition of ''unnecessary or undue degradation''

needs to reference the impacts of mining operations on other resources on and off of the mining property.

Several commenters preferred that BLM retain the ''prudent operator'' concept, currently incorporated into the undue or unnecessary degradation standard. Several commenters felt the provision of the prudent operator concept for comparison of similar operations to determine what is reasonable and prudent was beneficial and valuable. According to other commenters, use of the prudent operator standard allows the required flexibility for the BLM to make reasoned decisions based on experience and sound judgement. A few commenters stated that narrowing defining unnecessary degradation in terms of ''failure to do'' reduces needed flexibility in real-world regulatory situations. Some commenters felt the current prudent operator standard gives the BLM too much latitude and makes it difficult to hold the authorized officer accountable. Other commenters have combined the concept of the prudent operator, used in the current 3809 regulations, and the ''prudent man'' concept established by case law developed subsequent to passage of the 1872 Mining Law. Comments generally supported the retention of both concepts.

Commenters asserted that FLPMA grants BLM only limited license to regulate mining on public lands. The commenters stated that Congress realized that mining on public lands, which it sanctions expressly in the 1872 Mining Law, necessarily causes some impacts, and thus did not completely prohibit all such impacts or empower BLM to do so in its stead. Rather, it charged BLM with preventing ''unnecessary or undue degradation'' of public lands, which the commenters characterize as a decidedly limited mandate. The commenters stated that FLPMA does not grant BLM the authority to prevent all degradation of public lands, but only to prevent degradation beyond that which a prudent miner causing necessary or appropriate degradation would cause. The commenters concluded that many of the provisions in the proposal overstep this critical limitation.

BLM disagrees with the comments. BLM has not attempted to prevent all degradation as the commenters contend. Such an effort would not be practical in any reasonable regulatory scheme. However, since ''unnecessary or undue degradation'' was not defined in FLPMA, the agency has the discretion to define it through a regulatory program that considers mining technology, reclamation science, and site specific resource concerns. The ''prudent miner'' standard commenters advocate does not appear in FLPMA, is unnecessarily subjective, and need not be retained in the BLM rules. Also, contrary to the commenters' assertions, BLM derives authority for subpart 3809 from the mining laws and sections of FLPMA other than the one sentence referred to by the commenters.

A commenter asked why after stating that ''Despite the urging of certain commenters, BLM is not proposing additional regulations to implement the ''undue impairment'' standard of section 601(f) of FLPMA'' (64 FR 6427), BLM then included such regulations in the proposal.

Contrary to the commenter's assertion, BLM has not added regulations specifically to implement the ''undue impairment'' standard of section 601(f) of FLPMA, related exclusively to the California Desert Conservation Area (CDCA). What was done in the proposed and final rule is continue the previous rule's cross-reference to the section 601(f) standard in the definition of ''unnecessary or undue degradation.'' BLM will continue to apply the standard on a case-by-case basis, as is currently being done. The agency continues to believe that such an approach will provide the necessary level of protection for the enumerated resources in the CDCA.

BLM has changed the final definition of the term ''unnecessary or undue degradation'' in response to numerous comments, and in response to a discussion in the NRC Report that called for clarification of BLM's policy. The revised definition of ''unnecessary or undue degradation'' in the final rule eliminates the current reference to the prudent operator standard because the BLM believes it to be too subjective and vague. Instead the definition defines ''unnecessary or undue degradation'' in terms of failure to comply with the performance standards of final § 3809.420, the terms and conditions of an approved plan of operations, the operations described in a complete notice, and other Federal and State laws related to environmental protection and protection of cultural resources. ''Unnecessary or undue degradation'' would also mean activities that are not ''reasonably incident to prospecting, mining, or processing operations as defined in existing 43 CFR 3715.0–5.'' Based on public comments about the need for BLM to have explicit regulatory authority to deny a proposed mining operation because of the potential for irreparable harm to other resources, we have introduced an additional threshold for undue and unnecessary degradation. As described in the following discussion, we have also made it clear in the regulation that BLM can deny a proposed mining operation under certain conditions in order to provide protection of significant resources. We believe the definition included in the final rule is more comprehensive, straightforward, and easily measured than the prudent operator rule.

Commenters stated that the BLM's proposed unnecessary or undue degradation definition, by continuing to reject implementation of the ''undue degradation'' standard of FLPMA, may tie the agency's hands when occasions arise when a common-sense application of the statutory ''undue degradation'' standard would enable the BLM to avoid the immense damage to many valuable resources of the land which a gigantic, unreclaimed open pit mine would cause in a particular location.

BLM agrees with this comment and has modified the final rule accordingly. In the final regulations the definition of ''unnecessary or undue degradation'' has been modified with the addition of paragraph (4) to address when degradation is ''undue.'' The requirement is that operations not result in substantial irreparable harm to significant resource values that cannot be effectively mitigated. This provision must be applied on a site specific basis and would not necessarily preclude development of a large open pit mine.

With this clarifying change, these final rules will allow BLM to disapprove a proposed plan of operations to protect significant scientific, cultural, or environmental resource values on the public lands from substantial irreparable harm that cannot be mitigated and which would not otherwise be prevented by other laws. The rule accomplishes this by adding a paragraph (4) to the proposed definition of ''unnecessary or undue degradation'' to include conditions, practices or activities that (a) occur on mining claims or millsites located after October 21, 1976 (or on unclaimed lands) and (b) result in substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands, which cannot be effectively mitigated. An accompanying change is being made in final § 3809.411(c)(3), which will require BLM, should it decide to disapprove a plan of operations based on paragraph (4) of the definition of ''unnecessary or undue degradation'' to include written findings supported by a record that clearly demonstrates each element of paragraph (4).

The revised regulation contains important limits to assure that BLM will

disapprove proposed plans of operations only where necessary to protect valuable resources that would not otherwise be protected. *First,* final paragraph (4) applies only to protect significant scientific, cultural, or environmental resource values of the public lands. These are the same values Congress intended to protect under FLPMA, as described in section 102(a)(8). See 43 U.S.C. 1701(a)(8). Thus, the subparagraph will not apply unless BLM determines that these public land resource values are significant at a particular location. *Second,* BLM must also determine that mining will cause substantial irreparable harm to the resources. A small amount of irreparable harm to a portion of the resource will not trigger the protection. The harm must be substantial. *Third,* the harm may not be susceptible of being effectively mitigated. If the harm can be mitigated, the paragraph will not apply. *Fourth,* BLM must document, in written findings based on the record, that all of the elements of the definition have clearly been met. These findings, and BLM's conclusion, will be reviewable upon appeal. In addition, subparagraph (4) will apply only to operations on mining claims or millsites located after the enactment of the undue degradation standard in FLPMA (or on unclaimed lands, if any, on which an operator proposes to conduct operations).

This revision was generated in part by a concern expressed in the NRC Report (p. 7). The NRC panel examined the adequacy of existing laws to protect lands from mining impacts, and observed that the variety of existing environmental protection laws governing mining operations

> may not adequately protect all the valuable environmental resources that might exist at a particular location proposed for mining development. Examples of resources that may not be adequately protected include springs, seeps, riparian habitat, ephemeral streams, and certain types of wildlife. In such cases, the BLM must rely on its general authority under FLPMA and the 3809 regulations to prevent ''unnecessary or undue degradation.'' Because the regulatory definition of ''unnecessary or undue'' at 3809.0–5(k) does not explicitly provide authority to protect such valuable resources, some of the BLM staff appear to be uncertain whether they can require such protection in plans of operation and permits. *Some resources need to be protected from all impacts, while other resources may withstand other impacts with associated mitigation. BLM should clarify for its staff the extent of its present authority to protect resources not protected by specific laws, such as the Endangered Species Act.*

NRC Report at p. 121 (emphasis added). Many commenters echoed the NRC concern and urged that the final rules unequivocally assert BLM's authority to disapprove plans of operation when mining would harm the public lands. Many specifically asserted that BLM should use the ''undue'' degradation portion of Section 302(b) of FLPMA as the basis for BLM's authority.

BLM agrees with the NRC that the extent of BLM's authority to protect valuable environmental resources which are not adequately protected by other specific laws needs to be clarified in the definition of ''unnecessary or undue degradation.'' In addition to following the NRC Report's suggestion to add protection for valuable ''environmental'' resources, the final rule will also include protection for ''scientific'' and ''cultural'' resource values on the public lands. Scientific and cultural resources are plainly within the ambit of the unnecessary or undue degradation standard. FLPMA itself recognizes protection of cultural and scientific resources as an important component of public land management. See, *e.g.* 43 U.S.C. 1702(a) and (c). BLM has concluded that the clarification should appropriately appear in regulatory text, in addition to guidance manuals as the NRC suggests, to better inform the regulated industry and the public.

FLPMA section 302(b) requires that the Secretary, by regulation or otherwise, take whatever action is necessary to prevent ''unnecessary or undue'' degradation of the public lands. The conjunction ''or'' between ''unnecessary'' and ''undue'' speaks of a Secretarial authority to address separate types of degradation—that which is ''unnecessary'' and that which is ''undue.'' That the statutory conjunction is ''or'' instead of ''and'' strongly suggests Congress was empowering the Secretary to prohibit activities or practices that the Secretary finds are unduly degrading, even though ''necessary'' to mining. Commentators agree that the ''undue degradation'' standard gives BLM the authority to impose restrictive standards in particularly sensitive areas, ''even if such standards were not achievable through the use of existing technology.'' Graf, *Application of Takings Law to the Regulation of Unpatented Mining Claims,* 24 Ecology L.Q. 57, 108 (1997); *see also* Mansfield, *On the Cusp of Property Rights: Lessons from Public Land Law,* 18 Ecology L.Q. 43, 83 (1991). Further support for that interpretation is found in the fact that, in the 105th Congress, a mining industry-supported bill introduced in the Senate would have, among other things, changed the ''or'' to ''and.'' S. 2237, 105th Cong. (1998); *see* 144 Cong. Rec. S10335–02, S10340 (September 15, 1998). *See also Utah* v. *Andrus,* 486 F. Supp. 995, 1005 n.13 (D. Utah 1979) (quoting brief of the American Mining Congress).

The definition of ''unnecessary or undue degradation'' in the previous regulations focused generally on those impacts which are *necessary* to mining, and allowed such impacts to occur (except for the incorporation of other legal standards in the definition). The previous regulations sought to prevent disturbance ''greater than what would normally result'' from a prudent operation. The Interior Board of Land Appeals (IBLA) has read the regulations this way. *See Bruce W. Crawford,* 86 IBLA 350, 397 (1985) (the previous regulatory definition ''clearly presumes the validity of the activity but asserts that [unnecessary or undue degradation] results in greater impacts than would be necessary if it were prudently accomplished''); *see also United States* v. *Peterson,* 125 IBLA 72 (1993); *Kendall's Concerned Area Residents,* 129 IBLA 130, 140 (1994). While BLM could have adopted (and indeed might have been obliged to adopt) more stringent rules in order to ensure prevention of ''undue degradation,'' it previously chose to circumscribe only harm outside the range of degradation caused by the customary and proficient operator utilizing reasonable mitigation measures.

As commenters pointed out, however, the focus on impacts that are *necessary* to mining does not adequately address the ''undue'' degradation Congress was concerned about in FLPMA section 302(b), and does not account for irreparable impacts on significant environmental and related resources of the public lands that cannot be effectively mitigated.

Thus, the BLM has concluded that degradation of, in the words of the NRC Report, those ''resources [that] need to be protected from all impacts,'' is appropriately considered ''undue'' degradation. Clarifying that the definition specifically addresses situations of ''undue'' as well as ''unnecessary'' degradation will more completely and faithfully implement the statutory standard, by protecting significant resource values of the public lands without presuming that impacts necessary to mining must be allowed to occur.

BLM recognizes that the ''unnecessary or undue degradation'' standard does not by itself give BLM authority to prohibit mining altogether on all public lands, because Congress clearly

contemplated that some mining could take place on some public lands. *See, e.g.*, 43 U.S.C. 1701(12) (policy statement that the public lands ''be managed in a manner which recognizes the Nation's need for domestic sources of minerals * * * including implementation of the Mining and Minerals Policy Act of 1970 * * * as it pertains to the public lands [3]); 43 U.S.C. 1702(c) (the multiple uses for which the public lands should be managed include ''minerals''). Therefore, ''undue degradation'' under section 302(b) must encompass something greater than a modicum of harmful impact from a use of public lands that Congress intended to allow. *See Sierra Club* v. *Clark*, 774 F.2d 1406, 1410 (9th Cir. 1985). The question is not whether a proposed operation causes any degradation or harmful impacts, but rather, how much and of what character in this specific location. The definition adopted today will allow BLM to address these concerns.

A number of commenters mentioned a recent legal opinion by the Interior Department Solicitor that addressed the standards for approving plans of operation in the California Desert Conservation Area (CDCA). Regulation of Hardrock Mining (December 27, 1999). That opinion focused on the ''undue impairment'' standard set forth in 43 U.S.C. 1781(f), which applies only in the CDCA. Under FLPMA section 601(f), BLM can prevent activities that cause undue impairment to the scenic, scientific, and environmental values or cause pollution of streams and waters of the CDCA, separate and apart from BLM's authority to prevent unnecessary or undue degradation. The IBLA has agreed that BLM's obligation to protect the three enumerated CDCA values from ''undue impairment'' supplements the unnecessary or undue degradation standard for CDCA lands. See *Eric L. Price, James C. Thomas*, 116 IBLA 210, 218–219 (1990). Thus, BLM decisions with respect to development proposals in the CDCA are governed by both the ''undue impairment'' standard of subsection 601(f) and the ''unnecessary or undue degradation'' standard of section 302(b), as implemented by the subpart 3809 regulations.

Although BLM's mandate to protect the ''scenic, scientific, and environmental values'' of lands within the CDCA from undue impairment is distinct from and stronger than the prudent operator standard applied by the previous subpart 3809 regulations on non-CDCA lands, application of the CDCA's undue impairment standard for proposed operations in the CDCA is likely to substantially overlap the undue degradation portion of the definition of ''unnecessary or undue degradation'' adopted today.

Section 3809.10—How Does BLM Classify Operations?

Final § 3809.10 classifies operations in three categories: casual use, notice-level, and plan-level. For casual use, an operator need not notify BLM before initiating operations. For notice-level, an operation must submit a notice to BLM before beginning operations, except for certain suction-dredging operations covered by final § 3809.31(b). For plan-level, an operator must submit a plan of operations and obtain BLM's approval before beginning operations.

The word ''generally'' was deleted in final § 3809.10(a) to reflect the fact that casual use on public lands does not require notification to BLM. We deleted the language in proposed § 3809.11(a) from the final rule and moved the requirement to perform reclamation for casual use disturbance to final § 3809.10(a) for clarity. See final § 3809.31(a) and (b) for certain specific situations requiring persons proposing certain activities to notify BLM in advance.

Two commenters pointed out that proposed § 3809.11(a) required casual use disturbance to be ''reclaimed,'' and wanted to know which reclamation standards apply. We changed the requirement in final § 3809.10(a) to include the word ''reclamation,'' which is defined under § 3809.5, rather than continue to use the phrase ''you must reclaim'' that appeared under proposed § 3809.11(a). The applicable standards depend on the nature of the disturbance and may be found in final § 3809.420. Wording was added to final § 3809.10(a) to clarify that if operations do not qualify as casual use, a notice or plan of operations is required, whichever is applicable. A commenter was concerned about a portion of proposed § 3809.11(a) that would have alerted the public to BLM's intent to monitor casual use activities. The commenter indicated that with no notification requirements, it is not clear how BLM would monitor casual use operations. While BLM intends to monitor casual use operations in the course of our normal duties, we agree with the comment and did not include it in the final rule.

Section 3809.11—When do I Have to Submit a Plan of Operations?

Final § 3809.11 lists instances when an operator would need to submit a plan of operations to BLM. We received several comments asking us to revise the table in proposed § 3809.11 to avoid duplicating or summarizing the definitions in 3809.5 and to eliminate ambiguity. Commenters also stated they found the table was difficult to follow. The table in proposed § 3809.11 has been eliminated from the final rule. The information formerly contained in that table has been reorganized and edited, and, now appears under final §§ 3809.11, 3809.21 and 3809.31.

As indicated under final § 3809.11(a), a plan of operations will be required for all operations greater than casual use, including mining and milling, except as described under final §§ 3809.21 and 3809.31

Consistency With NRC Report Recommendation 2

NRC Report Recommendation 2 provides: ''Plans of operation should be required for mining and milling operations, other than those classified as casual use or exploration activities, even if the area disturbed is less than 5 acres.'' NRC Report p. 95. The intent of Recommendation 2 is to require BLM plan approval for all mining and milling activities, while allowing exploration to occur under notices and allowing casual use to occur without notices or plans.

BLM has adopted the system the NRC Report recommends. Mining and processing require BLM plan approval; casual use can proceed without a notice or plan; generally exploration activities disturbing less than five acres may proceed under a notice, with certain exceptions. The exceptions include those contained in the previous 3809 rules, plus a few others. Previous exceptions included:

(1) Lands in the California Desert Conservation Area (CDCA) designated by the CDCA plan as ''controlled'' or ''limited'' use areas;

(2) Areas in the National Wild and Scenic Rivers System, and areas designated for potential addition to the system;

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by BLM;

(5) Areas designated as ''closed'' to off-road vehicle use, as defined in § 8340.0–5 of this title;

(6) Lands in the King Range Conservation Area.

The final rule would add the following new exceptions:

[3] The Mining and Mineral Policy Act, 84 Stat. 1876, 30 U.S.C. 23a, expresses United States policy as encouraging the development of domestic minerals in an efficient, wise, and environmentally sound way.

(1) National Monuments and any other National Conservation Areas administered by BLM;

(2) Any lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat; and

(3) Bulk sampling over 1,000 tons.

A proposed exception not adopted would have been for activities in all areas segregated in anticipation of a mineral withdrawal and all withdrawn areas.

Commenters asserted that NRC Report Recommendation 2 does not provide for exceptions, and to be consistent with that recommendation, the final rule must provide that all exploration activities on less than 5 acres be allowed to proceed under notices.

BLM disagrees with the comment. BLM believes that NRC intended that exceptions for sensitive areas continue. The NRC was aware of the previous exceptions for sensitive areas,[4] and it did not question BLM's authority or wisdom in carving out certain areas to require plans even for exploration (more than casual use). It did not state the previous exceptions should be eliminated, and did not address whether BLM should include further exceptions to account for additional sensitive areas and resources.

The NRC Report did state ''mine development, extraction, and mineral processing require considerable engineering design and construction activities, whereas, apart from the design of roads to minimize erosion and *impact on sensitive areas*, exploration requires little, if any, engineering and construction (emphasis added).'' NRC Report, p. 95. The reference to ''impacts on sensitive areas,'' when discussing exploration, without a statement that BLM should drop previous exceptions for such areas, supports the inference that the NRC endorsed exceptions for sensitive areas.

Moreover, the NRC Report states that its objective, in urging the Forest Service to allow exploration on less than five acres under something like a notice rather than a plan (Recommendation 3), is ''to allow exploration activities to be conducted quickly *when minimal degradation is likely to occur*.'' NRC Report, p. 98 (emphasis added). Adding areas to the category that require plans is just modifying BLM's judgment as to when minimal degradation is likely to occur.

Thus, inclusion of the previous exceptions where exploration requires plans of operations, and the new exception for additional sensitive areas, including National Monuments, National Conservation Areas, and areas containing Federally listed or proposed threatened or endangered species or their proposed or designated critical habitat, are not inconsistent with the NRC Report Recommendation 2.

In particular, the addition of BLM-administered National Conservation Areas and National Monuments are logical extensions of the sensitive-area exceptions to the previous rules. The addition of National Conservation Areas administered by BLM is a logical extension of the exception for the King Range Conservation Area, which was the only conservation area BLM administered when the previous rules were adopted. Similarly, in 1981, BLM did not administer any National Monuments, but now we do, and their inclusion is also appropriate.

The bulk sampling exception in the final rule also is not inconsistent with the NRC Report Recommendation 2 because of the statement in the NRC Report discussion of Recommendation 2 that ''a plan of operations should generally be required for activities involving bulk sampling.'' NRC Report, p. 96.

The proposed exception that would have required plan approval in advance of exploration activities in segregated and withdrawn areas, without some kind of indication that such areas are sensitive, has not been adopted so as not to be inconsistent with NRC Report Recommendation 2.

Many commenters felt that, to be consistent with the NRC Report, any mining disturbance greater than casual use should require a plan of operations. As discussed above, these comments were adopted in the final rule.

Many other commenters wrote that the current casual use/notice/plan threshold is adequate and should be retained. They believe the threshold protects the environment and reduces costs of exploration for operators. These comments were not adopted. Retaining the above-described threshold would be inconsistent with NRC Report Recommendation 2.

A mining association commented that mining or milling operations, which will cause a significant impact, even if related to 5 acres or less, shouldn't be required to submit a plan of operations for approval. BLM would be inconsistent with the NRC Report recommendation if it were to adopt the alternative suggested in this comment. In light of this and the decision to adopt the NRC Report recommendation, the suggested change has not been made.

A commenter felt that the NRC did not evaluate the adverse impact that NRC Report Recommendation 2 would have on the vast majority of miners who have complied with existing regulations. Another commenter did not support the recommendation because it would automatically exclude some operations under a notice that would not have a significant impact on the environment. Several commenters felt that BLM should adopt the NRC Report recommendation that exploration be allowed under notices, while mining requires plan of operations, but should leave further details to agency guidance. They felt that the criteria for distinguishing between ''exploration'' and ''mining,'' may vary from state to state. One commenter suggested that BLM not require all mining operations to be conducted under plans of operations, retaining the notice level for placer and lode mines that do not use toxic chemicals or create acid-rock drainage. One mining industry commenter felt it unnecessary to require plans of operations for mining in light of the proposed financial assurance requirements for notices. Another commenter proposed that any activity requiring construction equipment or engineering design should need a plan of operations in light of the NRC Report. Mechanized drilling equipment, off-highway vehicles and bulldozers should also require a plan of operations. These comments were not accepted because they are inconsistent with NRC Report Recommendation 2 and because requiring BLM approval for all mining will help assure the prevention of unnecessary or undue degradation.

Several commenters asserted that the lowering of the threshold for notices or plans of operations seems to be in conflict with the 1970 Mining and Mineral Policy Act and the 1980 National Materials and Minerals Policy Research and Development Acts. BLM disagrees with the comment. We believe we have balanced the mandate of FLPMA to prevent unnecessary or undue degradation of the public lands with the above-mentioned mineral policy acts that promote

[4] The Sidebar 1–3 on p. 20 of the NRC Report describes the various categories of mining activities on BLM lands, including casual use, notice level operations, and plans of operation. Although the description of notice level operations does not mention special areas, the description of plans of operations specifically states that a plan of operations is required when an operator disturbs more than 5 acres a year ''or when an operator plans to work in an area of critical environmental concern or a wildneress area.'' Thus, although it did not enumerate each exception, the NRC expressly recognized the BLM although it did not enumerate each exception, the NRC expressly recognized the BLM system of requiring plan approval for operation in sensitive areas.

environmentally sound development of the nation's mineral resources.

Final § 3809.11(b) specifies that bulk samples of 1,000 tons or more require a plan of operation to be submitted for prior approval by BLM. The discussion following NRC Report Recommendation 2 indicated that bulk sampling could be considered as advanced exploration rather than mining: ''Because an exploration project must advance to a considerable degree before bulk sampling is done and because bulk sampling can require the excavation of considerable amounts of overburden and waste rock, the Committee believes a plan of operations should generally be required for activities involving bulk sampling.'' NRC Report p. 96.

A mining association agreed in their comments with the NRC Report findings that some bulk sampling efforts may cross the line from an exploration to a mining activity, although they indicate that this is not universally true. The commenter asserted that bulk sample activity to remove less than 100 tons of material cannot be compared to one that requires 10,000 tons for testing, which they assert is the known range in size of such activities. They believe that while a bulk sample proposal under a notice deserves scrutiny, the final determinations should be made on a case-by-case basis.

A commenter urged BLM to use caution in deciding whether to exclude bulk sampling from notice-level operations, suggesting that the NRC Report was referring to activity that involves the ''excavation of considerable amounts of overburden and waste rock'' to get to layers where the bulk samples will be taken. The commenter agreed that sampling of that nature gets to be so extensive as to require a plan of operations, but felt that other activities that might nominally qualify as bulk sampling, such as ones that do not first involve the removal of considerable amounts of overburden, can properly be treated as exploration activity subject to the notice-level program. The commenter indicated that such sampling involves far less disturbance than the activities identified by NRC, and, in any event, the land from which the bulk samples are taken must still be reclaimed. For these reasons, the commenter urged that, in case of bulk sampling, BLM should focus not on the amount of earth sampled, but rather the sampling method.

BLM recognizes that bulk sampling is not easy to define. Bulk samples vary in many ways, including size and weight, as acknowledged in the NRC Report. The Report discussion on sampling clearly indicates the NRC believes not all sampling programs would require a plan of operations, but that plans of operations would generally be required. In considering the NRC discussion, BLM does not believe that drilling should be considered as a bulk sampling method since NRC characterized bulk samples as excavations from shallow open pits or small underground openings. We have chosen a threshold at the upper limit of the NRC discussion on bulk sampling, that is, bulk samples of 1,000 tons or more will trigger the requirement for a plan of operations. (See final § 3809.11(b)). We believe this implements NRC Report Recommendation 2 in a way that does not unduly constrain exploration (see NRC Report Recommendation 3), yet provides a clear ''cutoff'' that can be verified by BLM field personnel.

Final § 3809.11(c) requires a plan of operations for surface disturbance greater than casual use (even if an operator will cause surface disturbance on 5 acres or less of public lands) in those special status areas listed under final § 3809.11(b) where § 3809.21 does not apply. The final rule incorporates changes in the language from proposed § 3809.11(j).

Final § 3809.11(c)(6) has been modified from proposed § 3809.11(j)(6). The proposed rule included areas specifically identified in BLM land-use or activity plans where BLM has determined that a plan of operations would be required to review effects on unique, irreplaceable, or outstanding historical, cultural, recreational, or natural resource values, such as threatened or endangered species or their critical habitat. Final § 3809.11(c)(6) now requires a plan of operations for surface disturbance greater than casual use on lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat unless BLM allows for other action under a formal land-use plan or threatened or endangered species recovery plan. We deleted all other requirements transferred to this section from proposed § 3809.11(j)(6).

This change was made for several reasons. First, we modified the definition of ''unnecessary or undue degradation'' in final § 3809.5 to include conditions, activities, or practices that result in substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated. Second, we retained language specific to threatened or endangered species in recognition of the consultation requirements of the ESA. In the final rule, we clarified that the reference to ''threatened or endangered species or their critical habitat'' in the proposed rule means Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat. The ESA requires BLM to enter into formal consultation with the Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) on all actions that may affect a listed species or its habitat. Also, BLM must request a formal conference with FWS or NMFS on all actions that may affect a proposed species. Thus, it is BLM's longstanding policy to manage species proposed for listing and proposed critical habitat with the same level of protection provided for listed species and their designated critical habitat, except that formal consultations are not required. BLM Manual Chapter 6840.06(B), Rel. 6–116, Sept. 16, 1988.

BLM has concluded that the areas identified in final § 3809.11(c)(1) through (5), plus areas containing proposed or listed threatened or endangered species or their designated critical habitat, provides a necessary degree of specificity as to when BLM will require a plan of operations. The proposed language did not provide the degree of certainty that is needed for an operator to attempt to proceed with BLM approval.

The final rule also acknowledges that in some cases, under an endangered species recovery plan, notice-level operations may be allowed. The final rule doesn't affect those situations, and notice-level operations could be conducted in those areas if allowed under the land-use plan or recovery plan.

As discussed above, we deleted proposed § 3809.11(j)(8), regarding areas segregated or withdrawn from the final rule based on the requirement not to be inconsistent with the NRC Report.

Two commenters wanted BLM to revise language that now appears in final § 3809.11(c)(3) to state that an Area of Critical Environmental Concern (ACEC) triggers this provision only when the establishment of the ACEC considered and evaluated existing mineral rights and mineral potential. BLM disagrees with the comment. ACEC's are designated through BLM's land use planning process and are subject to public comment prior to designation. This provides the public the opportunity to provide comments on mineral rights and mineral potential. However, the impacts related to a specific mining proposal are better evaluated on a case-by-case basis at the time mining is proposed. Submittal of a

plan of operations to BLM for approval will assure that a proposed operation accounts for and minimizes adverse impact to the ACEC.

Two commenters were concerned about the language now appearing in final § 3809.11(c)(5). They indicate that most mining claims, held by small miners, are located either within areas closed to off-road vehicles or within areas proposed to be closed to off-road vehicles. As such, almost all small miners will be required to prepare a plan of operations for any level operation on their claims. The requirement is restricted to areas designated as ''closed'' to off-road vehicle use. It does not apply to proposed closures. This requirement remains unchanged from previous § 3809 regulations in effect since 1981.

We received numerous comments on proposed § 3809.11(j). One commenter urged BLM to include riparian areas under proposed 3809.11(j), as in the Northwest Forest Plan. Using the new performance standards, including the protection of riparian areas and wetlands found in final § 3809.420(b)(3), we believe that riparian areas will be adequately protected. The comment was not incorporated into the final rule.

Two mining industry commenters opposed the requirement for a plan of operations for operations affecting proposed threatened and endangered species or designated critical habitat, due to the uncertainty and delays to the permitting process that they would anticipate, as well as the additional work load it would cause. BLM appreciates the commenters' concern, but under the ESA, BLM must insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of habitat of such species, including any species proposed to be listed or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

Several commenters asked that we delete the phrase ''unique, irreplaceable, or outstanding historical, cultural, recreational, or natural resource values'' from proposed § 3809.11(j)(6), since this may be too subjective and any public lands could meet these criteria. Some commenters believed that the result of defining ''special status areas'' by those criteria would be to establish ad hoc designations of ACEC's as to mining without following the procedures of 43 CFR 1610.7–2. Other commenters wanted us to delete the term ''activity plans.'' The phrases referred to above have been deleted from the final rule for the reasons discussed above.

Several commenters consider the term ''special status areas,'' used in final § 3809.11(c) to be very broad, and would effectively remove many areas from exploration. Others felt it expanded BLM authority to create such areas. BLM disagrees with these comments. The term is intended to be a general description for the lands listed in that section that have special designations, and does not in and of itself impart any special status to these lands. Each area in the list is comprised of land designations created under separate laws that are already in existence. Operations on lands in this list would be subject to restrictions applicable to each designation.

One commenter indicated that proposed 3809.11(j)(6) is too narrow an approach under BLM's responsibility to prevent unnecessary or undue degradation, and BLM must retain authority to require plans of operations for exploration based on the need to protect affected resources. BLM has not accepted this comment. We believe that affected resources will be adequately protected from operations following the procedures of this rule, including the performance standards and the requirement to prevent unnecessary or undue degradation. Moreover, a general authority to require plans of operation for exploration could be construed to be inconsistent with NRC Report Recommendation 2.

A commenter stated that proposed § 3809.11(j)(6) should be stricken because it is tantamount to a bureaucratic withdrawal authority for which no legal authority currently exists, and is contrary to FLPMA. The commenter stated the Congressional intent to establish sensitive areas is set forth in section 103(a) of FLPMA (43 U.S.C. 1702(a)), defining ''areas of critical environmental concern'' (ACEC) as areas where ''special management attention is required * * * to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards.'' The commenter stated that the ACEC definition is no different than what the BLM cites in proposed section 3809.11(j)(6) as the basis for ''areas specifically identified in BLM land-use or activity plans,'' and that BLM is usurping the authority to create ACEC for an unauthorized expansion of the power of its land-use plans. The commenter concluded that proposed section 3809.11(j)(3) captures ACEC as a proper basis for requiring a higher standard of review, consistent with the intent of Congress, and that no expansion of that authority is justified.

BLM disagrees in part with the comment. Proposed § 3809.011(j)(6) would not have withdrawn an area from operation of the mining laws; it would have served as a threshold for when a plan of operations must be filed instead of a notice. BLM agrees the paragraph contains substantial overlap with the ACEC areas which were listed in proposed § 3809.011(j)(3). In the final regulations, BLM has replaced proposed § 3809.011(j)(6) with a different threshold standard. Final § 3809.11(c)(6) requires a plan of operations in areas that contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat.

A commenter objected to requiring BLM approval for operations in National Monuments because operations in National Monuments are under the provisions of the Mining in the Parks Act and already require approval by the National Park Service. BLM disagrees with the comment. BLM now has eight National Monuments under its administration. These monuments are not a part of the National Park System and, therefore, the Mining in the Parks Act does not apply.

BLM has determined that the language in proposed § 3809.11(f) is unnecessary for the final rule, in light of NRC Report Recommendation 2. That recommendation requires plans of operations for all mining and milling-related operations even if the area disturbed is less than 5 acres. See preamble discussion regarding final § 3809.11 and NRC Report recommendation above. Leaching or storage, addition, or use of chemicals in milling, processing, beneficiation, or concentrating activities that were identified in proposed § 3809.11(f) are now covered under final § 3809.11(a), requiring plans of operations. Therefore, we deleted the language in proposed § 3809.11(f) from the final rule.

We received numerous comments on proposed § 3809.11(f), mostly detailing concerns about eliminating flexibility when requiring plans of operations for uses described in that section. NRC Report Recommendation 2 and the resultant changes in the final regulations described above render these comments moot.

Proposed Section 3809.11 (''Forest Service'' Alternative)

BLM did not adopt in this final rule proposed § 3809.11 (''Forest Service'' Alternative) which would have based the notice/plan threshold on whether a

proposed operation would cause ''significant disturbance of surface resources.'' BLM believes that to effectively prevent unnecessary or undue degradation of the public lands, the agency should review and approve all proposed mining operations, including conducting reviews under the National Environmental Policy Act. In addition, a significant disturbance standard is subjective and open to varying degrees of interpretation. That is, what constitutes significant disturbance in the opinion of one BLM field office may not in the opinion of another. This subjectivity might unfairly result in an operation under the jurisdiction of one BLM field office needing only to file a notice while a similar operation under the jurisdiction of another office having to obtain approval for a plan of operations. In contrast, the notice/plan threshold BLM is adopting, which is based on the type of operation, that is, exploration versus mining, allows far less room for interpretation and variance, and presumably fewer inequitable outcomes.

A principal reason for not adopting the Forest Service alternative is to conform to the mandate of Congress. As described earlier in this preamble, Congress has directed BLM to issue final 3809 rules that are not inconsistent with the recommendations of the NRC Report. The Forest Service alternative significantly differs from the NRC Report recommendation that BLM require a plan of operations for all mining and for all exploration operations disturbing more than five acres. The NRC Report bases the notice/plan threshold on the type of operation, while the Forest Service alternative bases the threshold on a subjective judgment of the level of anticipated disturbance. Under the Forest Service alternative, a mining operation that, in the judgment of the BLM field manager, would not cause ''significant disturbance of surface resources'' could proceed under a notice. Since this result could not occur under the NRC-recommended threshold, the Forest Service alternative is not consistent with the NRC Report recommendation. We believe Congress has limited our discretion here.

Comments on the Forest Service alternative ran about four to one against its adoption. Some commenters who supported the Forest Service alternative did so because they believed it would provide a consistent approach to Federal agency administration of the mining laws. Other commenters asserted that the surface resources on the BLM public lands deserve the same level of protection as do the National Forest lands. One commenter felt that adoption of the Forest Service alternative would be less confusing in those mineralized areas that occur on both BLM lands and National Forests. One commenter compared the Forest Service alternative favorably to proposed § 3809.11 (Alternative 1) due to a perception that the Forest Service alternative would provide greater protection to non-special status areas, that is, those areas not listed in proposed § 3809.11(j). One commenter indicated we did not provide a meaningful basis for reasoned comment on this issue. Finally, a commenter perceived an advantage in the Forest Service alternative because it places the burden of deciding whether a notice or plan is needed on the government as opposed to the operator.

As discussed above, BLM believes that Congress has precluded the agency from adopting the Forest Service alternative. Nevertheless, while adopting the Forest Service alternative would provide a consistent approach on paper, as discussed above, there is no assurance of consistency in application. BLM lands and National Forest lands are managed under different authorities-FLPMA for BLM and the National Forest Management Act (16 U.S.C. 1600) for the National Forests. Thus, the level of protection afforded BLM lands may not be the same as that afforded National Forest lands. The final rule allows for an appropriate degree of variance in protection based on the specific resources in any given location. BLM agrees with the comment that having the same regulations as the Forest Service could, in certain circumstances, reduce confusion, but believe that this benefit may be offset by the potential harm inherent in uneven application of the significant disturbance standard. While BLM agrees that the Forest Service alternative, depending on how ''significant disturbance'' is interpreted, might provide a greater level of protection to non-special areas than Alternative 1, the final rule BLM is adopting is more protective than either alternative. Finally, the regulatory approach BLM is adopting in this final rule eliminates much of the uncertainty about whether an operation should submit a notice or obtain approval of a proposed plan of operations. Under the final rule, all mining operations and all exploration operations disturbing more than five acres must obtain approval of a proposed plan of operations.

Comments opposing the Forest Service alternative included those which considered the significant disturbance standard to be too vague, too open to varying interpretations, as creating uncertainty as to which operations it would apply, and as having significant potential for disagreement between the operator and BLM over whether a planned operation would create significant disturbance. Some commenters felt that the significant disturbance standard goes beyond FLPMA's statutory directive to prevent unnecessary or undue degradation. Several commenters who identified themselves as exploration geologists believed that adoption of the Forest Service alternative would result in elimination of the use of notices for small exploration operations. If so, the commenters felt that their business would be adversely affected. Another commenter felt that elimination of notices for placer mining in Alaska would create a hardship for small miners who would not be able to meet the requirements for filing a proposed plan of operations. Other commenters opposed the Forest Service alternative because they felt it would consume more of BLM's already thinly spread resources potentially causing administrative delays and increase costs due to NEPA compliance requirements.

Section 3809.21 When Do I Have To Submit a Notice?

Final § 3809.21 is a new section, which incorporates changes from proposed § 3809.11(b). Final § 3809.21(a) requires that an operator submit a complete notice at least 15 calendar days before commencing exploration disturbing the surface of 5 acres or less of public lands on which reclamation has not been completed.

The 5-acre threshold for notices has been retained for exploration operations in most instances. See final § 3809.21(a) and the preamble discussion under § 3809.11(a) for information on how we are implementing NRC Report Recommendation 2. We received many comments indicating that small operators count on the 5-acre exclusion for rapid yet responsible evaluation of a large number of projects to make its discovery. They point out that such operators may not have the finances for lengthy permit procedures and time delays, as does a major mining company. Without the 5 acre threshold, they feel that future exploration would be done almost exclusively by the largest of the mining companies.

Two comments were received asking us to define ''unreclaimed'' as used in proposed § 3809.11(b) and proposed § 3809.11(c). Other commenters indicated that BLM should not regard the notice threshold as ''unreclaimed surface disturbance of 5 acres or less.'' The term ''unreclaimed surface

disturbance of 5 acres or less'' has been changed in § 3809.21(a) in order to clarify the requirement. By specifying ''public lands on which reclamation has not been completed,'' we intend to incorporate the definition of the term ''reclamation'' in final § 3809.5. This means reclamation must meet applicable performance standards outlined in final § 3809.420, and such reclamation must be accepted by BLM before release of an applicable financial guarantee. Once reclamation has been completed to these standards, BLM believes such lands may be treated as if never disturbed when considered in determining acreage for submittal of a notice.

One commenter asked us to clarify under proposed § 3809.11(b) how an operator is responsible to reclaim previous disturbance by another operator. As with proposed § 3809.11(b) and (c), and the final rule, the operator is liable for prior reclamation obligations in a project area if conditions described under final § 3809.116 are met. If an operator believes that BLM should not hold it responsible for past reclamation obligations, he/she should contact BLM before causing additional surface disturbance to determine if BLM is taking any action against previous operators or mining claimants at the disturbed site.

Many commenters urged BLM to revise proposed § 3809.11(b) to retain the existing requirement for BLM to act within 15 calendar days. They pointed out that extending the review period to 15 business days would delay exploration activities. They felt that operators need flexibility and speed for notice-level exploration projects, and that timing of exploration activities is often critical. They wanted us to streamline the processing of notices as much as possible and avoid delays. They felt streamlining the process would be consistent with the NRC Report. Other commenters asked us to clarify what is meant by ''business days'' since government business days do not coincide with industry business days. Two commenters felt the 15-business-day review period in proposed rule given the BLM to review notices is too short to ensure adequate investigation by the agency. Thirty days was suggested. We changed the final rule to use calendar days rather than business days. We did this in light of the NRC Report recommendations, in order to minimize impacts on exploration activities and small operators, and public comments.

Section 3809.31 Are There Any Special Situations That Affect What Submittals I Must Make Before I Conduct Operations?

Final § 3809.31 is derived from proposed § 3809.11 (Alternative 1). Final § 3809.31(a) is based on proposed § 3809.11(e), which would have required the representative of any group, such as a mining club, that is involved in any recreational mining activities to contact BLM at least 15 days before initiating any activities. The purpose of the contact would have been to allow BLM to determine whether to require the group to file a notice or a plan of operations.

The language in proposed § 3809.11(e) has been deleted from the final rule. We received many comments from rock collectors and clubs indicating the proposed rule was vague regarding when a notice or plan of operations would be required for recreational mining activities by a group. Other commenters strongly felt that recreational- and mineral collecting groups should not be singled out and have to submit a notice or a plan of operations. They indicated that it is an unreasonable requirement and, in some cases, mineral-collecting groups could not afford the financial guarantees, which they felt are unnecessary for those who use hand tools.

Final § 3809.31(a) differs from the proposal in response to comments. Under the final rule, the BLM State Director may establish specific areas where the cumulative effects of casual use by individuals or groups have resulted in, or are reasonably expected to result in, more than negligible disturbance. In these areas, any individual or group intending to conduct activities under the mining laws must contact BLM 15 calendar days before beginning activities. BLM would use the 15-day period to determine whether the individual or group must submit a notice or plan of operations. BLM will notify the public of the boundaries of these specific areas through **Federal Register** notices and postings in local BLM offices.

As discussed earlier in the preamble discussion of the definition of ''casual use,'' BLM received many comments on whether, and if so, how to regulate recreational mining activities; whether recreational mining should be considered casual use; how to handle casual use activities that cumulatively cause adverse impacts; and what activities are encompassed by the term ''recreational mining activities.'' After carefully considering the public comments and the interrelationships of the various issues raised by the commenters in response to proposed § 3809.11(e), BLM has decided that our regulatory framework will ultimately be more effective in preventing unnecessary or undue degradation if we focus not on the purpose of the activities occurring on public lands, the types of groups involved, and the definitions of ''casual use'' and ''recreational mining,'' but rather on the impacts associated with the activities carried out under the mining laws on public lands.

To that end, we are adopting a regulation that avoids trying to discern the motivations of people who go upon the public lands (that is, commercial motive versus recreational motive), treats all individuals and groups in a similar manner (imposes no special requirements solely on mining clubs), and allows weekend miners and others who cause no or negligible disturbance to continue their customary activities, while at the same time giving BLM a way to regulate the cumulative effects of ''casual use'' activities. BLM field managers know which areas under their jurisdiction are popular with the general public for small-scale panning, washing, prospecting, rock collecting, and other mining-related activities. In some cases, such as when dozens or hundreds of ''rock hounds'' gather for a weekend outing, activities that if carried out individually would be ''casual use'' can cause a much greater level of disturbance. The final rule gives the BLM manager a way to sensibly regulate activities based on existing or anticipated impacts to the public lands.

Final § 3809.31(b) incorporates changes to the language appearing under proposed § 3809.11(h) addressing the use of suction dredges. The reference in proposed § 3809.11(h) to an ''intake diameter of 4 inches or less'' was deleted from the rule. We retained language that relies on State regulation. When the State requires an authorization for the use of suction dredges and the BLM and the State have an agreement under final § 3809.200 addressing suction dredging, we will not require a notice or plan of operations unless otherwise required by this section. In addition, clarifying language and cross-references were added under final § 3809.31(b)(1) and (2). See also the preamble discussion of § 3809.201(b).

Due to public comment and the recommendations in the NRC Report, the proposed rule was modified to remove the four inch or less diameter intake on suction dredges and to allow some small portable suction dredges to qualify on a case-by-case basis as

''casual use.'' This is consistent with the discussion in the NRC Report. With the removal of the reference to the four inch diameter, final § 3809.31(b)(1) reads, ''If your operations involve the use of a suction dredge, the State requires an authorization for its use, and BLM and the State have an agreement under § 3809.200 addressing suction dredging, then you need not submit to BLM a notice or plan of operations, unless otherwise provided in the agreement between BLM and the State.'' It will take some time for BLM and individual States to create new agreements that address suction dredging. In the period between the effective date of this final rule and a Federal/State agreement addressing suction dredging, those persons wishing to conduct operations involving suction dredging must contact BLM first, as provided in final § 3809.31(b)(2), outlined below.

BLM has considered technical information, such as studies about its impact on water quality in evaluating impacts of suction dredging. Suction dredge operations may affect benthic (bottom dwelling) invertebrates; fish; fish eggs and fry; other aquatic plant and animal species; channel morphology, which includes the bed, bank, channel and flow of rivers; water quality and quantity; and riparian habitat adjacent to streams and rivers. Because of the potential for impacts to these resources, final § 3809.31(b)(2) requires the public, before using a suction dredge, to contact BLM to determine whether the proposed user must submit to BLM a notice pursuant to final § 3809.21 or a plan of operations pursuant to final §§ 3809.400 through 3809.434, or whether their activities are considered ''casual use.''.

Final § 3809.31(b) reflects commenters' concerns over the size of intake diameter as well as requests to use State standards. It will be advantageous to State agencies, BLM and suction dredge operators for an agreement addressing suction dredges to be reached between the State and BLM where the State already regulates suction dredging. This will avoid duplication of permit requirements and streamline permit processing while protecting the environment.

We received many comments regarding the 4-inch intake diameter for suction dredges that appeared in proposed § 3809.11(h). Many commenters felt that suction dredges with an intake diameter of 4″ or less (in some comment letters, 5-to-8 inches or less) should be considered casual use and not require a notice or a plan of operations. Other commenters stated that it was not clear how the 4″ intake threshold was determined by BLM. Many commenters felt that BLM should adopt State requirements, including intake size, and not be more stringent than the State. One commenter believed the proposed rule required a notice or plan of operations for any dredging activity, regardless of how insignificant. Another commenter suggested replacing the 4″ nozzle threshold with language that identifies surface-disturbing activities as the threshold for notice level use. Two commenters believed that high value fish and wildlife habitats could be adversely impacted with a 4″ suction dredge intake. One commenter recommended that standards be required for suction dredging concerning cumulative impacts and stream status. A commenter stated that BLM should consider a broader range of values that could be impacted when assessing whether to regulate portable suction dredges under 4 inches in diameter. The commenter felt that suction dredge operators should, at a minimum, be required to obtain an individual National Pollution Discharge Elimination System (NPDES) permit. Another commenter wanted to avoid the contradiction that small suction dredges are not considered casual use yet do not follow requirements for notices or plans of operations. The commenter felt that BLM should define small dredges as recreational or casual use and not require bonding or notices unless the operators have a record of causing problems or non-compliance.

A mining association commented that it didn't believe the NRC wanted small-scale dredging operations, those that use a nozzle size of 8 inches or less, to be categorized as a mining operation. In addition, the commenter felt that very small industrial mineral mines or placer operations (other than the small dredges discussed above) that use only simple sorting methods should not automatically be required to submit a plan of operations. Such determinations, they believe, should be made on a case-by-case basis.

In the final rule, BLM has provided case-by-case flexibility for small portable suction dredges to qualify as casual use, and has removed the size reference that was in the proposal. BLM has not adopted the commenter's suggestion that small industrial minerals mines or placer operations should not have to submit plans of operations. As discussed earlier in this preamble, all mining operations will have to submit plans of operations.

Several commenters concluded that the language now in final § 3809.31(b) would conflict with the NRC Report discussion under Recommendation 2. One commenter stated that such activities are properly managed under state or local authority. Another commenter felt that if the proposed rule is finalized, the proposed alternative that would ''allow an operator to use any suction dredge if it was regulated by the State and the State and BLM have an agreement to that effect'' should be adopted as the least burdensome alternative.

The NRC Report stated that ''BLM and the Forest Service are appropriately regulating these small suction dredging operations under current regulations as casual use or as causing no significant impact, respectively.'' Although the IBLA has ruled on this issue on a number of occasions (See Pierre J. Ott, 125 IBLA 250, and Lloyd L. Jones, 125 IBLA 94.), BLM concludes it is justified in allowing some small portable suction dredges to qualify as casual use, depending on the level of impacts.[5] Given the discussion in the NRC Report that endorses the way BLM currently regulates suction dredging, we believe that the NRC did not intend in its Recommendation 2 to require plans of operations for suction dredging operations.

The final rule will allow most suction-dredging operations to be regulated by State regulatory agencies so long as they have a permitting program that is the subject of an agreement with BLM under final § 3809.200. In the absence of State agreements, BLM will evaluate the expected impacts from suction dredges on a case-by-case basis. If such impacts will be negligible, the proposed suction dredging operations would qualify as casual use. We find that final § 3809.31(b) is not inconsistent with Recommendation 2 of the NRC Report.

A commenter stated that since suction dredging takes place in rivers and streams, and not on the land, it should be under State authority and regulation, not BLM regulation. A few other commenters also raised the question of BLM's jurisdiction over mining activities in navigable rivers and

[5] The final rule is not intended to overrule either the *Ott* or *Jones* IBLA case, which were based upon the facts therein at issue, particularly the *Jones* case which analyzes the level of potential impacts from the operation. See *Jones* at 125 IBLA 96–97. It does depart from the position taken in the *Ott* and *Jones* IBLA cases insofar as the final rule allows certain small suction dredges to constitute casual use even though suction dredging operations involve the use of mechanized earth-moving operations. Under the final rule, the test for whether a small suction dredge operation can be classified as casual use focuses on the level of impacts, that is, whether the activity will result in greater than negligible disturbance instead of focusing only on whether mechanized earth-moving equipment is used, as these cases do.

streams. We generally agree that it is appropriate for States to regulate activities within navigable waters on BLM land. Even in such cases, BLM believes it has the authority to protect the public lands above high-water mark from such operations. Moreover, BLM generally retains authority to regulate activities on non-navigable waters on public lands. BLM intends to regulate activities in streams on the public lands based on the use of the public lands to enter the streams and because, for the most part, such streams have not been determined to constitute ''navigable waters.'' In most cases, there has been no determination of whether waters on public lands are navigable or non-navigable. We believe we have provided for appropriate State regulation of suction-dredging activities in final § 3809.31(b).

BLM concurs with comments that recreational mining and hobby mining are not classifications provided for in the mining laws. Accordingly, the term ''hobby or recreational mining'' is removed from the definition of casual use. It is BLM's intent that the casual use definition will continue to include exploration and prospecting that cause no or negligible disturbance. The final rule may require a notice be filed with the BLM if exploration or prospecting would cause more than negligible disturbance. BLM intends for the States to assume jurisdiction over suction dredging through State-specific agreements with BLM. Such agreements providing for State regulation in lieu of BLM involvement should reduce the number of jurisdictional questions.

Final § 3809.31(d) incorporates the language from proposed § 3809.11(i) regarding operations on lands patented under the Stock Raising Homestead Act. We received no comments on the proposal and are adopting it without substantive change in this final rule.

We added final § 3809.31(e) to account for situations involving public lands where the surface has been conveyed by the United States with minerals both reserved to the United States and open under the mining laws. The final rule provides that where a proposed operation would be located on lands conveyed by the United States which contain minerals reserved to the United States, the operator must submit a plan of operations under final § 3809.11 and obtain BLM's approval or a notice under final § 3809.21. This provision clarifies how this subpart applies in circumstances involving minerals reserved to the United States where the surface is not Federally owned. The reason for requiring a plan of operations for all mining in this situation is to ensure that the impacts of the proposed operation on all potentially affected resources are fully considered, particularly where Federally listed or proposed threatened or endangered species or their designated critical habitat are present. In reviewing a plan of operations, BLM intends to accommodate any agreement between the operator and the surface owner as long as the agreement does not cause unnecessary or undue degradation of public lands resources and is not likely to jeopardize proposed or listed threatened or endangered species or their designated critical habitat.

Section 3809.100 What Special Provisions Apply to Operations on Segregated or Withdrawn Lands?

This section governs the circumstances under which operations may be conducted on segregated or withdrawn lands. The subject of operations on segregated or withdrawn lands is not addressed by the NRC Report recommendations, and this section is therefore not inconsistent with those recommendations.

Final § 3809.100(a) requires a mineral examination report before BLM will approve a plan of operations or allow notice-level operations to proceed on an area withdrawn from the operation of the mining laws. It also allows BLM the discretion to require a mineral examination report before approving a plan of operations or allowing notice-level operations to proceed in an area that has been segregated under section 204 of FLPMA (43 U.S.C. 1714) for consideration of a withdrawal. Final § 3809.100(b) allows BLM to approve a plan of operations before a mineral examination report for a claim has been prepared in certain limited circumstances, including taking samples or performing assessment work. It also allows a person to conduct exploration under a notice only if it is limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier.

These two paragraphs differ from the proposed rule, which only addressed plans of operations in withdrawn or segregated areas. The final rule allows operators to conduct exploration in segregated or withdrawn areas under notices, which would not have been allowed under proposed § 3809.11(j)(8). See earlier discussion of final § 3809.11. Final § 3809.100(a) and (b) have been modified from the proposal to include notices, as well as plans of operations. The final rule recognizes that operations are allowable in areas segregated or withdrawn from the mining laws only to the extent that a person has valid existing rights to proceed, regardless of whether a person intends to proceed under a plan or a notice. Thus, the final rule allows BLM to protect genuine valid existing rights (by requiring a determination that such rights exist) while at the same time protecting areas that have been withdrawn or are being proposed to be withdrawn from operation of the mining laws. Limited activities are allowed before completion of a mineral exam, including taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier; and performing any minimum necessary annual assessment work under 43 CFR 3851.1.

Final § 3809.100(c) allows BLM to suspend the time limit for responding to a notice or acting on a plan of operations when we are preparing a mineral examination report under final paragraph (a) of this section. The proposed rule would have allowed BLM to suspend the time limit for responding to a notice only for operations in Alaska. We deleted this provision because we decided not to adopt proposed § 3809.11(j)(8) for lack of consistency with the NRC Report. See the discussion under § 3809.11 earlier in this preamble.

Final § 3809.100(d) requires an operator to cease all operations, except required reclamation, if a final departmental decision declares a mining claim to be null and void. We received a number of comments on this section, and we discuss them below.

One commenter stated that when BLM conducts an examination in a withdrawn or segregated area to assess valid existing rights (VER), BLM does not impose time periods on itself in making recommendations on the validity of the claims. BLM will make a diligent effort to schedule VER examinations as soon as possible. The examination process will be greatly expedited if mining claimants promptly make their pre-withdrawal or pre-segregation discovery data available for the BLM examiner.

One commenter recommended that if BLM cannot complete a VER determination in a withdrawn or segregated area within 30 business days, the plan of operations should be automatically approved. BLM disagrees with the comment. VER determinations may, as discussed further below, be complex. The test for discovery of a valuable mineral deposit, for example, is very fact-based. BLM will act as

expeditiously as possible, but an arbitrary time limit is not practical.

One commenter was concerned that BLM is intending to unlawfully apply a ''comparative disturbance test'' to determine the validity of mining claims—similar to the ''comparative value test'' that has recently been in dispute in the *United Mining Case*. See ''Decision Upon Review of *U.S.* v. *United Mining Corp.,* 142 IBLA 339'' (Secretarial decision dated May 15, 2000). BLM disagrees with the comment. There are no provisions in subpart 3809 for a ''comparative disturbance test.'' BLM is not addressing the standards for determining the validity of mining claims in this rulemaking.

One commenter asked, concerning VER examinations, how can anyone but the miner decide if a deposit is economically feasible? The law has long been well-established that determinations of VER, including whether a valuable mineral deposit has been discovered are not subjective decisions to be made by the miner. BLM mineral examiners are geologists and mining engineers who are trained in sampling, interpreting, and evaluating mineral deposits to determine whether or not, in their professional opinion, a discovery of a valuable mineral has been made. If that assessment is yes and the other requirements for valid claims are met, the plan of operations will be approved if all other requirements of the 3809 regulations are met. If the answer is no, then BLM will initiate a contest proceeding alleging that no discovery has been made. The contest proceeding affords the claimant full due process and opportunity to be heard and make his or her case. The mining claimant and BLM will appear before an administrative law judge who will decide for the mining claimant or BLM. The mining claimant may appeal an adverse decision to the Interior Board of Land Appeals and then to Federal courts.

A valuable mineral deposit has been discovered where minerals have been found in such quantity and quality as to justify a person of ordinary prudence in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable miner. *Chrisman* v. *Miller*, 197 U.S. 313 (1905). This so-called ''prudent person'' test has been augmented by the ''marketability test'', which requires a showing that the mineral may be extracted, removed, and marketed at a profit. *United States* v. *Coleman*, 390 U.S. 599 (1968). In addition, where land is closed to location and entry under the mining laws, subsequent to the location of a mining claim, the claimant must establish the discovery of a valuable mineral deposit at the time of the withdrawal, as well as the date of the hearing. *Cameron* v. *United States*, 252 U.S. 450 (1920); *Clear Gravel Enterprises* v. *Keil*, 505 F.2d 180 (9th Cir. 1974).

A commenter asked why it is necessary to put the VER for withdrawal or segregation in this regulation. Both the Forest Service and BLM already generally do, as a matter of policy, require VER examinations when operations are proposed on lands that have been withdrawn or segregated. In response, BLM believes that this policy should be embodied in regulations so that all affected interests are fully aware of it, and to assure that mining operations don't proceed in segregated or withdrawn areas unless valid existing rights are present.

One commenter suggested that validity determinations should be required on all lands; including lands no withdrawn or segregated, before plans are approved. BLM disagrees with the comment. We are responsible for closely reviewing data submitted in a plan of operation to ensure that plans for extraction of the mineral deposit make sense. For example, we would not approve a plan of operations for an open-pit gold mine if no data were submitted outlining where the gold mineralization lies. However, if a plan of operations appears to be of marginal or questionable profitability, the BLM manager has the prerogative to request a validity exam before that plan is approved. Generally speaking, however, BLM will not require validity examinations when plans of operations are submitted on lands open to location under the mining laws. On segregated lands, BLM will examine the purpose of the segregation to determine whether a validity exam is necessary to protect the lands.

A commenter asserted that miners cannot afford the cost of validity examinations. BLM's response is that when we initiate VER determinations on lands that have been withdrawn or segregated, the BLM absorbs the cost of this examination under current policy. However, the mining claimant will have some associated costs, especially if the mining claimant must defend his/her asserted discovery in a contest proceeding. Although not part of this rulemaking, BLM is considering regulations that would enable the agency to recover the costs of conducting validity examinations.

One commenter suggested that segregation ought not be enough to trigger disapproval of a plan of operations. Lands should be available until the formal FLPMA withdrawal process has been completed. BLM disagrees with this comment. The final rule gives the BLM manager discretion to approve plans of operations on land under the ''segregated'' category or first to require a validity examination. That decision will be made based on the magnitude of disturbance under the proposed activities, measured against the purpose of the segregation.

Another commenter asserted that the Secretary of the Interior does not have the right to deny access and locations for lands that are merely segregated. BLM disagrees with the comment. Segregated lands are closed to the operation of the mining laws, if so stated in the segregation notice. From this standpoint, there is no difference between ''segregated'' lands and ''withdrawn'' lands during the period of the segregation (ordinarily two years under FLPMA section 402). Both are closed to the operation of the mining laws. That is, no valid claim or discovery can be made after the effective date of either the withdrawal or the segregation.

One commenter observed that it appears that a VER determination on lands withdrawn or segregated is discretionary and recommended that it be mandatory. BLM disagrees in part with the comment. The VER determination is mandatory for lands that are withdrawn. However, for lands segregated, BLM has discretion to approve the plan of operations as long as the proposal is not inconsistent with the purposes of the segregation. See the discussion earlier in this preamble.

One commenter stated, ''When an applicant proposes uses on lands that do not contain valid claims, the BLM may not approve a use of the public land where such use is adverse to the public interest or where such use would effectively result in the exclusive use of that land by the holder of the permit.'' In response, BLM believes that section 302(b) of FLPMA, 43 U.S.C. 1732(b), authorizes BLM, in its discretion, to approve mineral exploration and development regardless of whether there is a valid mining claim or millsite in the area. For example, BLM may approve an exploration activity on a mining claim even when it is not valid; that is, there is not yet a discovery of a valuable mineral. The purpose of the exploration is, of course, to try to make a discovery. If the lands have already been withdrawn, however, it is too late to make a discovery and the activity would be denied.

Section 3809.101 What Special Provisions Apply to Minerals That May Be Common Variety Minerals, Such as Sand Gravel, and Building Stone?

This section is unchanged from the proposed rule and requires a mineral examination report before anyone begins operations for minerals that may be ''common variety'' minerals. There is an exception to the report requirement under which BLM will allow operations to remove possible common variety minerals if the operator establishes an escrow account for the appraised value of the minerals removed.

In the proposed rule preamble (64 FR 6430, Feb. 9, 1999), we indicated we would make a conforming change to 43 CFR 3601.1–1 to reflect BLM's authority to allow disposal of common variety materials from unpatented mining claims with a written waiver from the mining claimant. This final rule does not include that conforming change because we have separately proposed changes to our minerals materials regulations. See proposed § 3601.14, which corresponds to 43 CFR 3601.1–1 (65 FR 55863–55880, Sept. 14, 2000).

The topics covered by this section are not addressed by the NRC Report recommendations, and thus are not inconsistent with those recommendations. We received a number of comments on this section, and we discuss them below.

A commenter observed that when BLM examines a mining claim to determine the locatability of what may be a common variety, it not only has to check for its ''special and unique'' characteristics, but it must also ensure that the mineral deposit is of sufficient quantity and quality to satisfy the ''prudent man'' test. BLM agrees with the comment. We must ensure that the mineral deposit of non-metallic minerals is locatable under the mining laws rather than salable under the Materials Act of 1947, 30 U.S.C. 601 *et seq.* In accordance with the Surface Resources Act of 1955, 30 U.S.C. 612, only uncommon varieties of sand, stone, gravel, pumice, pumicite, or cinders are locatable. Please refer to 43 CFR 3711.1 for a more detailed explanation of the common variety requirements. Court cases have further refined this test. See, for example, *McClarty* v. *Secretary of the Interior*, 408 F2d 907 (9th Cir 1969). Once BLM determines that a mineral deposit consists of a locatable mineral, we will evaluate whether a discovery exists and whether other requirements for a valid claim are satisfied.

In one commenter's opinion, the limited activities permitted in proposed § 3809.101(b) may not be sufficient to allow a mineral report to reach a conclusion whether the deposit is one of an uncommon variety. In response, BLM will allow sampling and testing sufficient to determine whether the mineral is special and unique. Tests may also be done for comparative purposes on other similar mineral deposits that may be used for the same purpose. These tests and the requirements of *McClarty* will be documented in the mineral examination report.

One commenter favored a mineral examination if there is any doubt as to the common versus uncommon nature of the mineral. BLM generally agrees that the locatability of a specific deposit must be determined based on the individual circumstances involved.

A commenter said that although the draft EIS states that the ''present policy is to process the 3809 action and collect potential royalties in escrow while a determination is made on the locatable versus salable nature of the material,'' the proposed rule did not specifically acknowledge this. BLM agrees in part with the comment. Before subpart 3809 was revised, BLM's policy was to encourage an escrow account when the common vs. uncommon nature of the mineral was questionable. However, in the event the operator did not cooperate, subpart 3809 did not expressly address whether BLM may delay approval of a plan of operations while an examination was under way. This final rule gives BLM the express authority to delay approval until escrow is agreed to, or an examination is made.

A commenter recommended that the proposed rule should delete the entire section dealing with special provisions for common variety minerals. BLM disagrees with the comment. It is not in the public interest to delete this requirement. We must ensure that the mineral deposit of non-metallic minerals is locatable under the mining laws rather than salable under the Material Act of 1947 before approving a plan of operations under subpart 3809. In accordance with Public Law 167 (the Surface Resources Act of 1955), only uncommon materials of sand, stone, gravel, pumice, pumicite, or ciders are locatable. As stated in an earlier comment and answer, the test for that determination is outlined in *McClarty* v. *Secretary of the Interior*. In the event the material is asserted to be an exceptional clay, BLM will refer to, among others, the *U.S.* v. *Peck*, 29 IBLA 357, 84 ID 137 (1977).

One commenter asked BLM to clarify that an operator could use common variety road-building material for his operation or common variety reclamation material to fulfill the unnecessary or undue degradation standards. BLM agrees that if use of the common variety mineral material is reasonably incident to an operation authorized under subpart 3809, the operator may use that material on the mining claim at no charge, if that removal is a part of the plan of operations that is approved by BLM.

A commenter was concerned that under proposed § 3809.101(d), BLM would have authority to sell common material from an unpatented mining claim like the Forest Service is doing now. This could result in placing gold-bearing gravels on roads, thus wasting a resource. BLM responds that under the final rule, removal of common material from an unpatented mining claim by a BLM contractor or permittee would only occur after a review of the common material to be sold, to ensure the removal would not interfere with a mining claimant's operation or his or her mineral resource. Obtaining a waiver from the mining claimant would assure that such interference would not occur. A recent Solicitor's Opinion discussed this issue. See *Disposal of Mineral Materials from Unpatented Mining Claims* (M–36998, June 9, 1999).

One commenter asked what is a mineral report, how is it initiated, what are the qualifications for doing a mineral examination and associated report and who reviews the report? In response, there are formal procedures and strict guidelines for the mineral examination, and BLM requires certification by BLM of mineral examiners and reviewers. These are found in BLM Manual 3895 and the Handbook for Mineral Examiners (1989 edition) and can be reviewed in the local BLM office.

In one commenter's opinion, the discussion related to common variety minerals is confusing since common variety minerals are not ''locatable'' under 3809. BLM agrees that common variety minerals are not locatable. However, there are mining claimants who still attempt to remove common varieties under the auspices of the mining laws and associated 3809 regulations. This final rule addresses this practice. By law, common variety minerals are sold under contract by BLM, and the agency must receive market value upon sale.

One commenter asserted that BLM should be liable for any economic losses resulting from a review of whether minerals are common variety, if the minerals are subsequently found to be locatable. BLM disagrees with the comment. If the mining claimant ultimately prevails, any money put in

escrow would be returned to the mining claimant together with any accrued interest.

In one commenter's opinion, the right to ''occupy'' public land in the pursuit and development of mineral deposits exists separate and apart from the claim location and patenting provisions of the mining laws. Therefore, BLM may not promulgate a regulation that limits operations under the 3809 regulations to valid claims. BLM agrees. The 3809 regulations cover operations whether or not valid claims exist. If an operator files a plan of operations on lands withdrawn or segregated, but not encumbered with a mining claim, BLM will reject that plan of operations. Mining claims cannot be located and operations conducted on lands withdrawn or segregated from operation of the mining laws, except for valid existing rights.

Section 3809.116 As a Mining Claimant or Operator, What Are My Responsibilities Under This Subpart for My Project Area?

Final § 3809.116 is adopted with a number of changes from the proposal to clarify BLM's intent, and to respond to comments. A number of commenters asserted that the proposed rule exceeded BLM's authority, and that liability should be proportional. In the final rule BLM has more carefully delineated who is responsible for obligations created by operations, and has included examples in an effort to reduce ambiguity. This is not an area addressed by the NRC Report recommendations, and thus, is not inconsistent with those recommendations.

The final rule separates proposed § 3809.116(a) into two subparagraphs. Final § 3809.116(a)(1) specifies that mining claimants and operators (if other than the mining claimant) are jointly and severally liable for obligations under subpart 3809 that accrue while they hold their interests. This would, for instance, include claimants who lease their claims to operators while keeping an overriding royalty or other purely monetary interest. Maintaining joint and several liability better protects the public lands in cases where one of multiple involved entities refuses to or cannot satisfy its obligations, for example, as a result of bankruptcy.

The final rule is more specific than the proposal and states that joint and several liability, in the context of subpart 3809, means that the mining claimants and operators are responsible together and individually for obligations, such as reclamation, resulting from activities or conditions in the areas in which the mining claimants hold mining claims or mill sites or the operators have operational responsibilities. The italicized text is new and clarifies BLM's intent regarding limitations on responsibilities. To illustrate further, the final rule includes the following three examples:

Example 1. Mining claimant A holds mining claims totaling 100 acres. Mining claimant B holds adjoining mining claims totaling 100 acres and mill sites totaling 25 acres. Operator C conducts mining operations on a project area that includes both claimant A's mining claims and claimant B's mining claims and millsites. Mining claimant A and operator C are each 100 percent responsible for obligations arising from activities on mining claimant A's mining claims. Mining claimant B has no responsibility for such obligations. Mining claimant B and operator C are each 100 percent responsible for obligations arising from activities on mining claimant B's mining claims and millsites. Mining claimant A has no responsibility for such obligations.

The first example illustrates that each mining claimant is 100 percent responsible for obligations resulting from activities occurring on his or her mining claims, but has no responsibilities for activities on someone else's mining claims. The operator is 100 percent responsible for all operations in the areas where it conducts operations.

Example 2. Mining claimant L holds mining claims totaling 100 acres on which operators M and N conduct activities. Operator M conducts operations on 50 acres. Operator N conducts operations on the other 50 acres. Operators M and N are independent of each other and their operations do not overlap. Mining claimant L and operator M are each 100 percent responsible for obligations arising from activities on the 50 acres on which operator M conducts activities. Mining claimant L and operator N are each 100 percent responsible for obligations arising from activities on the 50 acres on which operator N conducts activities. Operator M has no responsibility for the obligations arising from operator N's activities.

The second example illustrates that an operator is jointly and severally responsible with the mining claimant for obligations arising from areas in which it conducts operations, and not for obligations arising from areas in which it has no involvement.

Example 3. Mining claimant X holds mining claims totaling 100 acres on which operators Y and Z conduct activities. Operators Y and Z each engage in activities on the entire 100 acres. Mining claimant X, operator Y, and operator Z are each 100 percent responsible for obligations arising from all operations on the entire 100 acres.

The third example illustrates that the mining claimant and all operators are jointly and severally responsible for obligations arising from all operations on areas where they either hold claims or conduct activities. It should be noted that mining claimant obligations include off-claim reclamation or repair stemming from activities on the claims. Similarly, operator responsibility extends to off-site reclamation or repairs resulting from activities or conditions in the areas where the operator is conducting activities.

Final § 3809.116(a)(2) provides that in the event obligations are not met, BLM may take any action authorized under subpart 3809 against either the mining claimants or the operators, or both.

Final § 3809.116(b) specifies that relinquishment, forfeiture or abandonment does not relieve a mining claimant's or operator's responsibility under subpart 3809 for obligations that accrued or conditions that were created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area. In other words, an entity cannot just walk away from unsatisfied obligations under subpart 3809. Final § 3809.116(c) provides that transfer of a mining claim or operation does not relieve a mining claimant's or operator's responsibility under this subpart for obligations that accrued or conditions that were created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area until BLM receives documentation that a transferee accepts responsibility for the previously accrued obligations, and BLM accepts a replacement financial guarantee that is adequate to cover both previously accrued and new obligations. In other words, a mining claimant or operator can transfer responsibility to an transferee or assignee upon acceptance by the transferee or assignee and the posting of an adequate financial guarantee.

Editorial changes were made from the proposal in paragraphs (b) and (c). These include adding the words ''that accrued'' after the word ''obligations'' in both paragraphs, and making clear that the transferee must agree to accepting previously accrued obligations before the transferor is no longer responsible. These changes are consistent with the intended meaning in the proposal.

Final § 3809.116(a)(1) is consistent with and a restatement of BLM's previous position which has been in the BLM Manual since 1985. See BLM Manual Chapter 3809—Surface Management, Release 3–118, July 26, 1985. It is supported by both FLPMA and the mining laws. Mining claimants

are the ones who hold rights under the mining laws to develop and produce Federal minerals on public lands. Such rights, however, are limited by the responsibility under FLPMA to prevent unnecessary or undue degradation of the public lands, and their liability reflects that continuing responsibility. Mining claimants cannot divest themselves of the statutory responsibilities associated with holding mining claims or millsites by entering into contractual arrangements with operators to develop and produce minerals from their mining claims. Operators on mining claims and mill sites on the public lands derive their development and production rights from mining claimants, and for this purpose are the agents of the mining claimants.

Operators are also independently responsible for their own activities on public lands, regardless of their ties to mining claimants. Approval of a plan of operations (and activities under a notice) allows surface disturbance of the public lands, conditioned upon compliance with statutory and regulatory requirements, including the requirement to prevent unnecessary or undue degradation. If a person's activities disturb the public lands, that disturbance is his or her responsibility. Entities that reap the benefits from mineral development and production should certainly bear the associated costs. As discussed earlier in this preamble, the term ''operator'' includes any person who manages, directs or conducts operations at a project area, including a parent entity or an affiliate who materially participates in such management, direction, or conduct. Thus all persons directly involved with operations and who benefit directly from those operations, are responsible for those operations.

Commenters asserted that the financial guarantee posted with a plan of operations is sufficient to assure satisfaction of claim obligations and thus there is no need for joint and several liability. BLM agrees that the financial guarantee should be adequate to assure satisfaction of claim obligations. There is no guarantee however, that this will always be the case in every situation, even when the financial guarantee is calculated in advance to be sufficient to cover all reclamation costs. A statement of responsibility is necessary to make it clear who will be responsible in the event that obligations remain following forfeiture of a financial guarantee.

Commenters stated that liability among operators should be proportional. BLM agrees in part. The final rule specifies that liability of an entity should be limited to obligations that accrue or conditions, to the extent it can be reasonably ascertained, that result from activities carried out during those periods of time when that entity (mining claimant or operator) has an interest in the claims or operations. Also, under the final rule, obligations of mining claimants are limited to those obligations that result from activities within their mining claims or mill sites, because the exercise of their rights over mining is limited to activities within their claim boundaries. Also, the final rule provides that operator obligations derive only from activities or conditions on areas for which they materially participated in the management, direction, or conduct of operations. As mentioned above, obligations include off-site reclamation resulting from activities on claims or in the project area.

BLM disagrees, however, that responsibility within a specific area should be split proportionately among the persons responsible for that area. Although operators and claimants can, among themselves, divide their responsibilities, they should all be jointly and severally responsible to BLM for the satisfaction of obligations associated with the operations on public lands.

BLM emphasizes that final § 3809.116 applies to and explains obligations under FLPMA and the mining laws. It is not intended in any way to affect obligations or responsibilities under any other statutes, such as the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or the Resource Conservation and Recovery Act (RCRA).

A commenter asserted that establishing joint and several liability for ''parent entities and affiliates'' would seriously chill mining on Federal lands administered by BLM. The commenter stated that investors in mining operations rely upon existing principles of corporate law and liability in evaluating their investments. The proposed liability rules would seriously affect the risk that investors, such as joint ventures, would undertake by participating in a mining project.

BLM disagrees with both the characterization of the rule and the alleged impact. The final rule does not make ''parent entities and affiliates'' responsible because of those relationships. Parent and affiliate entities are responsible if they materially participate in the management, direction, or conduct of the operations. The responsibility derives from their own actions, not through the structure of the relationship. Parent entities or affiliates that do not materially participate are not responsible under this rule. Such responsibility is not new and should not discourage future investment.

A commenter asserted that imposing liability upon mining claimants would expose small mining claimants to full liability for the actions of operators, seriously chilling the willingness of claimants to option or lease claims to operators for mineral development. The commenter stated that some industry members have estimated that this provision in the proposed rules by itself could reduce mining claim activity by fifty percent. If so, the commenter continued, then BLM's estimate of the impacts of the proposed rules is seriously underestimated because it fails to account for the impact of this proposed rule change. BLM disagrees with the comment. Mining claimant liability is not a new concept. Such liability has always existed under the mining laws, and this has been expressly set forth in the BLM Manual since 1985.

A commenter stated that BLM has no authority to create a joint and several liability scheme. BLM disagrees with the comment. As explained above, BLM has authority under the mining laws and FLPMA. Moreover, this rule is not a new concept, but merely a clarification of already existing responsibilities.

A commenter stated that as a practical matter, the proposal disregarded the fact that many mining operations involve many different mining claimants, and that if each owner has to obtain assurances sufficient to protect against the unlikely imposition of joint and several liability, it is unlikely that most operations could obtain adequate bonding.

BLM has revised the final rule to clarify the extent of mining claimant responsibilities. BLM recognizes that liability may be complex in situations involving multiple claimants, but expects that in most instances operators and claimants will agree among themselves as to who will have the initial responsibility for performing reclamation and satisfying reclamation obligations. BLM also disagrees that this provision will make it more difficult to obtain adequate financial guarantees. Final § 3809.116 does not increase the obligations to be covered by the financial guarantee. Instead it explains who will be responsible if the financial guarantee is not sufficient.

Sections 3809.200 to 3809.204 Federal/State Agreements

Final §§ 3809.200 to 3809.204 address Federal/State agreements, including the kinds of agreements that BLM and the State may make (§ 3809.200); the content of the agreements (§ 3809.201); the conditions necessary for BLM to defer part or all of this subpart to a State (sections 3809.202 and 3809.203); how existing agreements relate to this subpart; and which regulations apply during the review of existing agreements (§ 3809.204).

FLPMA section 303(d), 43 U.S.C. 1733(d), provides that the Secretary of the Interior is authorized to cooperate with State regulatory officials in connection with the administration and regulation of the use and occupancy of the public lands. These regulations provide for agreements or memoranda of understanding to implement this statutory provision and meet the intended purposes of FLPMA. Cooperation with the States and the avoidance of duplication are important purposes of these regulations, and are necessary for BLM to carry out its responsibilities, especially for operations which are on both private and public lands. Such cooperation is good management and common sense.

Section 3809.200 What Kinds of Agreements May BLM and a State Make Under This Subpart?

BLM has renumbered proposed § 3809.201 as final § 3809.200. We made no changes to the text. We made this change in section numbers in response to a comment that some sections of the proposed regulations lacked ''logical organization.''

Final § 3809.200 specifies that to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement, BLM and a State may make two kinds of agreements: One that provides for a joint Federal/State program; and another that provides that, in place of BLM administration, BLM may defer to State administration of some or all of the requirements of subpart 3809, subject to the limitations in § 3809.203.

Under the first type of agreement, provided for at § 3809.200(a), BLM and States may coordinate actions to avoid duplication, but each agency retains its own authorities and regulations. The previous regulations at § 3809.3–1 authorized this type of agreement, and BLM has been implementing these agreements for many years. BLM believes that cooperation fostered by this type of agreement greatly aids in the management of the public lands. Final § 3809.200(a) will continue to allow most of the joint agreements and memoranda of understanding that BLM and the States have been utilizing primarily to avoid duplication.

Under the second type of agreement, provided for at final § 3809.200(b), BLM may, in lieu of BLM administration, defer to the States part or all of the regulation of mining operations under State laws, regulations, policy and practices. Under this kind of agreement, BLM retains certain responsibilities that are inherent in Federal public land management under FLPMA, and may not be delegated. These include concurrence on the approval of each plan of operations and responsibility for other Federal laws, such as the National Environmental Policy Act and the Endangered Species Act. The effect is to allow State management of the programs with the minimum oversight necessary to carry out Federal law.

Under the final rule, a State could enter into one or both types of agreements. For example, a State could request that BLM defer to State administration of a part of the program, such as bonding, while the other parts of the program would be cooperatively administered by BLM and the State. Final § 3890.200 allows a State and BLM to tailor a State program to the particular strengths of that State. The minimum national requirements established by subpart 3809 give assurance to operators and the public that a basic consistency and fairness will exist under either kind of State/Federal agreement.

Final § 3809.200(b) references section 3809.202 and 3809.203, which contain the conditions and limitations for those situations where a State may request to have part or all of a program in this subpart deferred to State administration.

Some commenters asked that section 3809.200(b) not be adopted. BLM did not accept those comments. BLM believes that deferral to State regulatory programs can be an effective way to minimize duplication and promote cooperation among regulators, so long as FLPMA's purpose of avoiding unnecessary or undue degradation is also achieved. Deferral may sometimes not be appropriate, but BLM believes it is an option that should be available when circumstances warrant. We believe the final rule contains sufficient checks and balances on the deferral process, including public comment, to avoid deferral to State whose regulatory programs are not consistent with the 3809 subpart.

Section 3809.201 What Should These Agreements Address?

BLM included final § 3809.201 in this rule in response to comments requesting BLM to clarify what Federal/State agreements should include. Final § 3809.201(a) recommends that Federal/State agreements provide for maximum possible coordination to avoid duplication and to ensure that operators prevent unnecessary or undue degradation of public lands. It also recommends that agreements consider, at a minimum, common approaches to the review of plans of operations, including effective cooperation regarding NEPA; performance standards; interim management of temporary closure; financial guarantees, inspections; and enforcement actions, including referrals to enforcement authorities.

In part, these additions address the NRC Report recommendations. NRC Report Recommendation 6 urges clear procedures for referring activities to other Federal and State agencies for enforcement. NRC Report Recommendation 10 urges effective cooperation by agencies involved in the NEPA process. These recommendations may be satisfied through Federal/State agreements.

Final § 3809.201(a) also contains a general requirement for regular review or audit of Federal/State agreements. Commenters suggested that such audits be included. A regular review, established cooperatively by BLM and a State and included in the agreement, would assist in ensuring that such agreements will be kept up-to-date. The section provides BLM and the State the flexibility to develop such provisions tailored to each agreement's situation.

Final § 3809.201(b) addresses agreements that allow States to regulate suction dredging in lieu of BLM, as provided in final § 3809.31(b). It responds to a concern expressed by a commenter that allowing States, instead of BLM, to regulate suction dredging, eliminates the Federal action that would otherwise trigger the requirements of section 7 of the Endangered Species Act (ESA). The concern was that without a Federal action, sufficient assurances will not exist to protect Federally listed or proposed threatened or endangered species or their proposed or designated critical habitat.

Accordingly, to assure that such protection does exist, final § 3809.201(b) provides that if an agreement between BLM and a State is intended to satisfy the requirements of § 3809.31(b) regarding suction dredge activities (so that the State may regulate suction

dredges in place of BLM), the agreement must require a State to notify BLM of each application to conduct suction dredge activities within 15 calendar days of receipt of the application by the State. The agreement must also specify that BLM will inform the State whether Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat may be affected by the proposed activities and any necessary mitigating measures. Under final § 3809.201(b), BLM does not have to approve each suction dredge application. Rather, BLM must conduct any necessary consultation or conferencing with the appropriate agency (either the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS)) and provide the necessary information to the State. To the extent that a State receives multiple suction dredge applications for a particular river or stream, BLM may work with the State (and the FWS or NMFS) to develop programmatic measures that would cover all or some operations in that body of water. We also added a sentence to the end of paragraph (b) to make it clear that operations may not begin until BLM has completed any necessary consultation or conferencing under the ESA.

Section 3809.202 Under What Conditions Will BLM Defer to State Regulation of Operations?

BLM is adopting final § 3809.202 substantially as proposed. It establishes the procedures that BLM will use to review and approve a request to defer to State regulations of operations. The procedures of final § 3809.202 assure that agreements that authorize the deferral of the regulation of mining operations to the States will result in the prevention of unnecessary or undue degradation of the public lands.

To have part or all of the program deferred, a State must show that its provisions are consistent with the subpart 3809 requirements. The final rules explain how BLM will determine consistency with subpart 3809 requirements. BLM will compare State standards with subpart 3809 on a provision-by-provision basis. The final rules provide that non-numerical standards need to be functionally equivalent to BLM counterparts; numerical State standards need to be the same as any numerical BLM standard; and BLM will construe State environmental protection standards that exceed the corresponding Federal standard to be consistent with the Federal standard.

This section does not provide for a delegation of the Secretary's authority under FLPMA. States will act under State laws and regulations which are consistent with the requirements of subpart 3809. The process of determining whether State laws and regulations are consistent with subpart 3809 includes an opportunity for public comment and an opportunity to seek review of the State Director's decision. Because of the decision's policy implications, a State Director's decision may be appealed to the Assistant Secretary for Land and Minerals Management, and not the Department's Office of Hearings and Appeals because of the sensitive policy implications of the decision.

There were many comments on specific requirements of the conditions and limitations regarding deferral. Commenters suggested clarifying many of the specific definitions, conditions and limitations in proposed §§ 3809.202 and 3809.203. Several questioned the meaning and clarity of the terms ''functionally equivalent'' and ''consistency'' in the proposal. One commenter questioned if any State could comply with the term ''functionally equivalent.''

BLM reviewed the comments on the need for making specific changes, such as providing further guidance on consistency and defining ''functionally equivalent.'' The rules already explain how consistency will be determined. BLM will determine functional equivalency on a provision-by-provision basis, as compared to the corresponding BLM provision.

Commenters stated that this provision would require substantial changes to existing State programs. BLM disagrees with the comment. First, nothing in this rule requires a State to do anything. The sufficiency of the State program comes under review only if a State requests BLM to defer administration of portions of its mining program, States programs may remain in place. When BLM receives a deferral request, BLM will determine whether State provisions are functionally equivalent to the corresponding BLM rule. BLM's analysis of State laws and regulations and its review of the comments indicate that many States have statutory, regulatory, and policy requirements that are functionally equivalent to parts or much of the subpart 3809 regulations. Although some State provisions may require upgrading, BLM does not anticipate wholesale deficiencies.

One commenter stated that time frames for State review should be no longer than those required for BLM. Another asked if ''days'' meant business days or calendar days. BLM declines to adopt the commenter's suggestion with regard to State time frames. In most instances, operators are already functioning under State time frames, which have been adopted to accommodate State resources. BLM does not intend to interfere with such time frames in its rules. With regard to time frames in subpart 3809, BLM made the ''days'' requirement consistent throughout the regulations to mean calendar days.

Commenters suggested that BLM consider adding to subpart 3809 provisions for conditional State program approval. These provisions would be analogous to those that apply to conditional approval of State programs under the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*). See 30 CFR 732.13(j). BLM agrees that this comment has merit. The rules do not preclude conditional approval as a possible decision under section 3809.202. As BLM reviews of State programs occur, BLM will determine whether agreements containing conditional deferrals are warranted.

BLM has edited final § 3809.202(b)(2)(ii) to remove unnecessary text without changing the meaning or intent of the proposed regulations.

Commenters urged BLM to conserve its resources by deferring to the States all or portions of the proposed regulations. One commenter stated that the proposal has the potential to provide for less costly, more effective permitting and enforcement. Commenters urged BLM to delegate the entire program to the State without retaining ultimate approval authority. A commenter stated that BLM can best minimize or avoid duplication with deferrals and agreements with State programs. Another commenter asserted that the proposed regulations should adopt a presumption that State requirements are adequate.

BLM disagrees with the comment that it defer to the States and not finalize portions of subpart 3809. The BLM has a nondelegable responsibility under FLPMA to assure that the public lands are managed properly and that unnecessary or undue degradation not occur. BLM would not satisfy its responsibilities by a general deferral to State regulation without determining the adequacy on a State-specific basis, and without retaining the specific regulatory responsibilities set forth in section 3809.203. BLM agrees that Federal/State agreements and MOUs can minimize duplication. BLM disagrees, however, that it has a basis for a general presumption that State regulations are adequate. The basis for the State regulations may or may not be similar

to the prevention of ''unnecessary or undue degradation'' standard that governs this rulemaking.

Several commenters said the proposal was illegal as there are no statutes that allow for State assumption of administration or primacy for hard rock mining on public lands. BLM does agree that the Secretary has no authority to adopt this approach. FLPMA section 303(d), 43 U.S.C. 1733(d), allows States to ''assist in the administration and regulation of use and occupancy of the public lands.'' This rule is not a delegation of Federal authority. It is a recognition by BLM that in certain cases the Federal regulatory role may be exercised more efficiently while still satisfying FLPMA's mandate to prevent unnecessary or undue degradation of the public lands.

Commenters stated BLM did not have the expertise to make decisions as to how much to defer to States. BLM disagrees with the comment. Its professionals will be able to make the judgments necessary to decide whether deferrals are allowable. This will be an open process, with the opportunity for all segments of the public to submit comments and information and appeal State Director decisions on such matters.

One commenter suggested that deferral to the States would result in BLM being ''subservient to the political maneuvering of State government officials that might not have the best interests of the land in question. This should not happen.'' Several commenters stated that the provisions for deferral should be deleted. BLM disagrees with the comments. The comments appear to reflect a complete distrust of the State regulatory processes that BLM does not share. In any event, BLM will need to concur on each approved plan of operations.

Commenters noted that the States have no trust obligation to Native Americans and that deferral of authority to the States would be a dereliction of BLM's trust obligation. BLM disagrees with the comment. BLM concurrence is required on each approval of a plan of operations. Such concurrence will allow for the consideration of trust responsibilities to Native Americans in appropriate circumstances.

One commenter asserted that the proposed provision is a ''passing the buck'' strategy that increases the States' exposure to risk and protects the BLM from accusations of mismanagement and violation of the public's trust. BLM disagrees with the comment. BLM and the States will each maintain a level of responsibility for decisions under its jurisdiction. BLM understands it remains ultimately responsible for protecting the public lands from unnecessary or undue degradation under the final rule.

Commenters asserted that the deferral of programs to the State constitutes an unfunded mandate to the States without any provision of resources to carry out the programs. One commenter noted that there is no Federal money available to the States to implement the program. One commenter suggested that the provision in proposed § 3809.201 be revised to indicate how BLM will reimburse a State for assuming BLM work under an agreement.

BLM disagrees that the rules impose unfunded mandates. There is no legal requirement in this final rule or anywhere else that the States assume some of BLM's responsibilities under subpart 3809. Although Section 303(d) of FLPMA authorizes the Secretary to reimburse States for expenditures incurred in assisting in the administration and regulation of use and occupancy of the public lands, no reimbursements may occur without Congressional appropriation. Congress has appropriated no funds for this purpose.

Section 3809.203 What Are the Limitations on BLM Deferral to State Regulation of Operations?

BLM is also adopting final § 3809.203 as proposed. It sets forth the limitations on any agreement deferring to State regulation of some or all operations on public lands. The limitations are an important way to assure that operators comply with subpart 3809 and that unnecessary or undue degradation of the public lands does not occur.

Final § 3809.203(a) requires BLM to concur with each State decision approving a plan of operations. The existence of a Federal action on the approval of each plan of operations triggers the applicability of NEPA (which is particularly important in those States that don't have an equivalent environmental impact assessment process) and those other Federal responsibilities that attach to Federal actions, such as the National Historic Preservation Act and the Executive Order protecting sacred sites. Although BLM understands that some commenters question the need for BLM to retain the concurrence role, BLM views this as important to carrying out its mandate to protect the public lands from unnecessary or undue degradation. The concurrence responsibility will also apply to plan modifications which are subject to the same procedures as plans.

Some commenters stated that BLM should consider programmatic concurrence and basically provide for blanket approvals. BLM did not change the provision regarding concurrence on plans of operation because such concurrence is important in providing the appropriate degree of assurance under FLPMA that unnecessary or undue degradation will be prevented. These are Federal lands and it is a mandate of Federal law that the Secretary of the Interior must prevent such unnecessary or undue degradation. Although concurrence is required for each plan of operations, the final rule allows the State and BLM some flexibility in determining, as part of an agreement, how to provide this concurrence while still eliminating as much duplication as possible.

Several commenters addressed the issue of the National Environmental Policy Act and its relationship to final §§ 3809.200 through 3809.204. One commenter noted that a State should have a State NEPA-like program in place before BLM considers deferring part of a program. One comment proposed revising § 3809.203 to provide that States prepare the NEPA compliance. One commenter stated BLM should ensure that any State-written findings are included in the NEPA document. The Federal EPA strongly recommended that where a State takes the lead on the surface management program, the Federal/State agreement require that a State be a cooperating agency on the NEPA document. EPA did support BLM deferral of programs to States with laws similar to the Federal NEPA. In addition, NRC Report Recommendation 10 addresses Federal/State cooperation in the NEPA process. Recommendation 10 states that ''all agencies with jurisdiction over mining operations should be required to cooperate effectively in the scoping, preparation, and review of environmental impact assessments for new mines. Tribes and non-governmental organizations should be encouraged to participate and should participate from the earliest stages.''

BLM believes its final rule properly allocates the NEPA responsibility. Under it, BLM retains responsibility for NEPA compliance in any deferral and the State and BLM may decide who will be the lead in any plan review process. Complying with NEPA remains a Federal responsibility although the Council on Environmental Quality may allow BLM and a State to coordinate the NEPA process. See 40 CFR 1501.5 and 1506.2. After review of the comments, BLM did not change the requirements in final § 3809.203. BLM agrees that any State findings need to be considered in the NEPA process. After review of the NRC Report recommendation, BLM

revised final § 3809.201 to recommend that Federal and State agreements should address NEPA to provide for effective cooperation in scoping, preparation, and review.

Final § 3809.203(b) clarifies that BLM will remain responsible for all land-use planning and for implementing other Federal laws relating to the public lands for which BLM is responsible.

Commenters stated that land-use planning on public lands could not be restricted by a State. Commenters also stated that BLM should not relinquish its obligations to balance the uses of the public lands and to determine if mining is an appropriate use of the land. BLM has not changed the final rule in response to these comments. The final rule involves no relinquishment by BLM of its land-use planning responsibilities.

Final § 3809.203(c) makes it clear that BLM may enforce the requirements of subpart 3809 or any term, condition, or limitation of a notice or an approved plan of operations, regardless of the nature of its agreement with a State, or actions taken by a State. The retention of such authority is made express to eliminate any question about whether BLM maintains enforcement jurisdiction where needed. BLM believes that by working cooperatively with States, however, enforcement protocols can be established under which many problems can be resolved through State or other Federal agency action, without the need for BLM enforcement.

A commenter stated that because State decisions also require BLM approval and that BLM may initiate independent enforcement, this provision allowing deferrals to States was largely meaningless. BLM disagrees with the comment. BLM concurrence on each plan and BLM enforcement authority does not make State deferrals meaningless. States may take the lead on the information gathering and analysis associated with each plan of operations and, as long as the State has a sound basis for determining that the requirements of this subpart have been met, BLM is not required to duplicate State efforts before concurring. Similarly, States may take the lead enforcement role for violations on public land and a State's effort may be sufficient to achieve compliance with this subpart without BLM having to exercise its enforcement authority.

Final § 3809.203(d) sets forth limits related to financial guarantees. BLM revised the proposal to include a requirement for BLM to concur with forfeiture of a financial guarantee. The proposed regulations addressed BLM concurrence only for approval and release. BLM concurrence for bond forfeiture was added because of our experience with recent forfeitures where there were bankruptcies, to ensure that BLM and the State maintain close coordination where such situations occur on the public lands. BLM believes the decision whether to declare a bond forfeiture on Federal land is a responsibility it should not delegate under FLPMA.

Final §§ 3809.203(e) and (f) relate to BLM oversight of Federal/State agreements and termination of such agreements. They are unchanged from the proposal.

Section 3809.204 Does This Subpart Cancel an Existing Agreement Between BLM and a State?

Final § 3809.204 describes the effect of the revised subpart 3809 on existing Federal/State agreements. It clarifies that promulgation of subpart 3809 does not cancel Federal/State agreements or memoranda of understanding (MOAS) in effect on the effective date of these rules. (An existing agreement may, however, be terminated at any time under its own terms—this rule does not preclude such action.) As was proposed, BLM and States will review existing agreements and MOAS to determine whether revisions will be required to comply with subpart 3809. The period for the review and any necessary revisions will be one year from the effective date of these rules. BLM and a State could use the review time to determine if the basic relationships in that State should remain or should be changed.

In the proposed rule preamble, BLM requested comments on whether one year would be sufficient time to review and revise existing agreements and MOAS. BLM received comments advocating several different options; this issue was also discussed with State representatives at a meeting BLM held with the States. Several comments indicated that one year was too short a period to review existing agreements and revise them if necessary.

BLM expects that most existing agreements will be successfully reviewed within the one-year time frame. BLM agrees, however, that in some instances a one-year review period may be too short. The final rule adds § 3809.204(b) to provide that the BLM State Director may extend the review period one year at a time for a second or third year if each extension is specifically requested by the State Governor or his or her delegate. At the end of the review period (and any extensions of that period), BLM will terminate existing agreements and MOAS if the review and any necessary revisions have not occurred.

In general, the new regulations will apply during the review period, except as specified in final § 3809.204(c). Final § 3809.204(c) was added to clarify how subpart 3809 applies during the review period in specific (and rare) situations where an existing agreement allows a State to administer portions of the program in a manner inconsistent with the new regulations. In most States, existing agreements provide for close coordination and avoidance of duplication with BLM, without any deferral by BLM. In those few situations where a State currently administers part of the previous rules, such as in Montana for bonding and in Colorado for notices, those specific parts of the program will be administered under the applicable section of the previous rules until the review is completed or the agreement is terminated. State administration refers to those situations where BLM has deferred its authority to the State and allows the State to be responsible for administering a specific part of the program, such as bonding on Federal lands.

Final § 3809.204(c) does not allow those portions which are currently administered by a State to continue past the deadlines in final § 3809.204(a) and (b); those specific parts must comply with subpart 3809 or be terminated. If a State wishes to continue to have BLM defer to State administration of portions of the program, the State must follow the procedures of final § 3809.202.

One commenter stated that there should be public review of existing Federal/State agreements; another commenter suggested that public review should be by State invitation only. These final rules do not provide for public review of existing agreements. If BLM and a State enter into a process to provide for BLM to defer to State administration of a portion of the regulations, then the procedures of section 3809.202 will be followed, including the opportunity for public participation.

Consistency With the NRC Report Recommendations

The regulations related to Federal/State agreements are not inconsistent with the NRC Report recommendations. The NRC Report provided recommendations on actions needed to coordinate Federal and State requirements and programs. The Report noted that memoranda of understanding are the links between the Federal and State agencies, but did not make any specific recommendations regarding the

content or requirements of such agreements.

The NRC Committee on Hardrock Mining on Federal Lands, which prepared the report, noted that strong Federal and State coordination is needed and such coordination can be used to supplement and complement the respective agency programs. Close Federal and State cooperation remains a major purpose of these final regulations. The regulations more clearly identify the roles and authorities of the BLM with respect to State agencies. Final §§ 3809.202 and 3809.203 provide the framework for a State to assume administration of part or all of the BLM program on public lands, consistent with FLPMA. Close Federal and State cooperation remains a major purpose of these regulations. The regulations also provide the opportunity to tailor agreements or memoranda of understanding to address various statewide conditions, and allow the BLM and the State to determine what will work best regarding site conditions in that State.

Although no one recommendation of the NRC Report addressed the contents of Federal/State agreements, the regulations do address the concerns identified in the NRC Report related to Federal/State coordination. BLM added a provision in section 3809.201(a) for BLM and the State to address effective NEPA coordination in any Federal and State agreement, in support of NRC Report Recommendation 10. Also, maintaining a Federal concurrence on each plan of operation is consistent with NRC Report Recommendation 9 because it will assure that NEPA will be used to evaluate each permitting decision. In addition, under the added language of section 3809.201(a), BLM expects that Federal/State agreements will address enforcement referrals, as suggested by NRC Report Recommendation 6.

General Comments Related to Federal and State Coordination

BLM received many comments on Federal and State coordination and agreements. Many of the same comments that were directed to Federal and State coordination and agreements were also applied to other sections of the regulations, such as performance standards and bonding.

General comments ranged widely, from recommending deleting these sections on Federal/State agreements to leaving the previous sections in place. Several commenters asserted that State laws are not strict enough to protect public lands; that BLM should maintain a baseline national program that applies to all States and that BLM should not abdicate its stewardship responsibilities by deferring programs to the States. On the other hand, many commenters asserted that State laws are effective in protecting the environment; Federal and State coordination is excellent and there is no need to change existing agreements. Several commenters asserted that the proposed regulations would create new conflicts with Federal and State relationships. State agencies and the Western Governor's Association questioned the need for new BLM regulations and changes to the existing Federal/State agreements.

General comments on the NRC Report, ''Hardrock Mining on Federal Lands'' also ranged widely. Commenters stated that the Report concluded that the existing Federal/State relationships work and need not be replaced by new BLM regulations. One commenter stated, ''The NRC Report also confirms that BLM should not tinker with the existing and successful Federal/State partnerships that govern hardrock mining on the public lands.'' Other commenters noted that many states already have requirements in place to address many of the regulatory gaps identified by the NRC Report. On the other hand, commenters stated that the study is ''unreasonable'' and contrary to Congressional direction.

BLM has considered these comments and, on balance, decided to continue the basis approach of the proposed rules. BLM is not abdicating its responsibilities under FLPMA. If a State wishes BLM to defer administration of certain portions of subpart 3809, the rules are designed to allow States to use State counterpart provisions which are functionally equivalent to the subpart 3809 rules. Where no deferral exists, the general nature of the Federal performance standards, including the absence of numeric standards in the Federal rules, will make it possible for both the Federal and State provisions to apply without major difficulty and for Federal and State partnerships to continue successfully.

BLM believes that its rules should contain comprehensive performance standards, as suggested in NRC Report Recommendation 9, and that the existence of particular provisions in State laws and regulations does not substitute for needed Federal regulatory provisions. Although the final rules contain a comprehensive set of performance standards to serve as a baseline for environmental protection, they are intended to be outcome based and general so that they will mesh easily with existing State standards which address the same topics. This will reduce the likelihood of conflicting standards, will foster Federal/State cooperation, and will allow continuation of existing Federal/State agreements and MOUs.

Whether or not the NRC Report met Congressional requirements is up to Congress to determine. We note, however, that the Congress has directed these final rules not be inconsistent with the NRC Report recommendations. BLM has reviewed the NRC Report, has included it in the administrative record, and has considered its contents carefully in preparing this final rule.

BLM received numerous comments related to adequacy of State programs and to duplication of effort between State programs and these regulations. Many comments addressed Federal and State programs and other parts of the regulations such as performance standards together.

Many commenters asserted that particular State programs were effective in protecting the environment and these programs prevented duplication of efforts. One commenter noted, ''all of the western states have detailed regulatory programs, covering environmental impacts and reclamation requirements. The Western states are on record in the context of the 3809 rule-making process that the existing regulatory system is working well.'' Most of the Western States' regulatory agencies and the Western Governor's Association provided extensive comments on these themes. There were several comments from State legislative and county commissioners and committees; one comment from the Nevada Legislature's committee on public lands supported the position of the Western Governor's Association that ''the current 3809 regulations are working well on the ground.'' In regard to the coordination between the State programs and BLM, most comments noted that relationships were good. One commenter in reference to BLM and the State mining regulatory agency said, ''Both agencies worked well together, developing a plan to protect and mitigate against environmental degradation by employing existing state and federal regulations.'' Another commenter noted that the proposed regulations would increase the overlap of jurisdiction and level of duplication. Several commenters recommended maximizing the States' roles. Many commenters questioned the need for changing the regulations and one commenter added ''where if it's not broke, don't fix it.''

There were also commenters who asserted that State surface mining laws are not strict enough to protect public lands and that strong Federal standards

are needed. A commenter noted that, ''the bulk of Western states have negligible environmental standards.'' One comment from the California legislative Senate Committee on Environmental Quality urged strengthening the existing 3809 regulations, rather than allow State governments to regulate mining activities on Federal lands. Several commenters pointed out deficiencies or shortcomings in certain State programs which were included in the proposed regulations. One commenter noted that States do not address Native American issues. Another commenter noted that their State mining regulatory law was very weak and every year the legislative attempts to reduce its funding. One commenter noted that several States do not have provisions for bonding of small exploration or mining operations of less than five acres. One commenter noted that certain States refrain from vigorously enforcing their own regulations.

The NRC Report identified specific national regulatory ''gaps,'' such as financial assurance for mining activities less than five acres and long-term post-closure management of mine sites on Federal lands. Not all States have such requirements and a consistent national baseline of requirements for public lands is needed by BLM, which manages hardrock mining on public lands from Alaska to Arizona.

This final rule is intended to modernize the 3809 regulations and correct their shortcomings, such as lack of bonding of all operations on the public lands. The need for the regulations has been established in many studies, reports, public meetings, and discussions since the rules were first adopted in 1980. One of the main goals of this effort is to ensure that FLPMA's purpose of preventing unnecessary or undue degradation is achieved, while minimizing duplication and promoting cooperation among regulatory agencies. BLM believes this final rule meets these objectives. These regulations provide a national baseline or floor of regulatory requirements, which in cooperation with the State programs should provide a sound and consistent foundation to assure the public that exploration and mining on the public lands are being properly managed to prevent unnecessary or undue degradation as required by Federal law. Additionally, these regulations also address the specific regulatory gaps identified by the NRC Report. Although many States have excellent mining regulatory programs, BLM must manage the public lands in a manner that satisfies the Federal responsibilities set forth in FLPMA.

Several commenters noted that the previous regulations provided that the BLM shall conduct a review of State laws and regulations related to unnecessary or undue degradation of lands disturbed by exploration or mining. The preamble to the previous regulations indicated that this review would occur in three years. Several commenters asserted that until the BLM completes this review and analyzes the State programs in the EIS and parts of the regulations the ''ability to rationally revise the 3809 regulations is fundamentally and fatally flawed.'' Several commenters also asserted that BLM did not provide for cooperation with State regulatory programs and did not consult with the States.

BLM acknowledges that a comprehensive, systematic review of all State laws did not take place prior to the start of the events leading to this rulemaking process. BLM has, however, coordinated extensively with State agencies and organizations, such as the Western Governor's Association, and has since reviewed each of the State programs for the States involved.

BLM disagrees with the comment that it was obligated to conduct a comprehensive, systematic review of all State laws before it could undertake this rulemaking. BLM has a lengthy and comprehensive administrative record that fully demonstrates a sufficient basis and purpose for the revisions. For example, in 1989, a BLM Mining Law Administration Program task force addressed significant issues in the Mining Law Program, including adequacy of standards, the 5-acre threshold and the State relationships regarding bonding. In 1991, BLM published an advance notice of proposed rulemaking for possible amendments to the 3809 regulations. Public discussions regarding the regulations and need for changes were held in several States. This initiative was put on hold by BLM because Congress was considering reform of the mining laws. Then on January 6, 1997, Secretary Babbitt directed BLM to restart this rulemaking and directed that, among other things, ''[c]oordination with State regulatory programs should be carefully addressed.'' During the rulemaking process, BLM held 19 public scoping meetings in 12 cities. BLM also met with State agencies and the Western Governor's Association many times, as well as with various State, county and local committees and commissions. Public hearings on the proposed regulations were held in thirteen States and the District of Columbia. The draft EIS also addressed the affected environments and programs of the States. Alternative 2 of the draft EIS analyzed deferral of exploration and mining on public lands to the States. BLM believes that it has adequate information regarding state laws and programs and that it has conducted an extensive coordination and outreach effort regarding the rulemaking.

Sections 3908.300 to 3809.336 Operations Conducted Under Notices

This portion of the final rule (§§ 3809.300 through 3809.336) governs operations conducted under notices. It is based primarily on previous § 3809.1–3. We use two tables: One covers applicability of this subpart to existing notice-level operations (See final § 3809.300.). This is a transition section to address notices in existence when this final rule becomes effective. The other table governs when an operator may begin operations after submitting a notice (See final § 3809.313.). For the sake of simplicity, we have not used a separate set of performance standards applicable only to notices. Instead, final § 3809.320 simply references the plan-level performance standards of final § 3809.420, where applicable. In many cases, some of the performance standards will not be applicable to notice-level operations. See the discussion of the performance standards of final § 3809.420 later in this preamble. Notices have two-year expiration dates, unless extended. This will significantly reduce the number of outstanding notices where operations have either never occurred or where reclamation has been completed to BLM's satisfaction, but the notice has not been formally closed by BLM.

Section 3809.300 Does This Subpart Apply to My Existing Notice-Level Operations?

Final § 3809.300 is in the form of a table that clarifies how this final rule applies to existing notice-level operations. We use tables here and elsewhere in this subpart to reduce complexity and to make it easier for the reader to understand the requirements of subpart 3809. This section allows operators identified in an existing notice already on file with BLM on the effective date of this final rule to continue operations for two years. After 2 years, the notice can be extended under final § 3809.333. New operators will have to conduct operations under subpart 3809. If a notice has expired, the operator will have to immediately reclaim the project area or promptly submit a new notice or plan of

operations under this subpart. Final § 3809.300(a) adds a statement that BLM may require a modification of an existing notice under § 3809.331(a)(1).

Final § 3809.300(c) contains new language about situations where an operator modifies an existing notice after the effective date of the final rule. Final § 3809.300(c)(1) specifies that if an operator modifies an existing notice after the effective date of the final rule, and the modified operations remain within the outline of the original acreage described in the notice, then operations may continue for 2 years after the effective date of the rule, or longer if the operator extends the notice under § 3809.333. The rule also explains that BLM may require an operator to modify the notice under § 3809.331(a)(1). The operator under a modified notice must also comply with the financial guarantee requirements of § 3809.503.

Final § 3809.300(c)(2) requires that operations on any additional acreage described in a modification to an existing notice be subject to the provisions of subpart 3809, including § 3809.11 and § 3809.21, and provides that BLM may require approval of a plan of operations before the additional surface disturbance may begin. For example, a plan of operations may be required if the additional acreage to be disturbed results in cumulative surface disturbance of greater than 5 acres under an exploration project.

Final § 3809.300(d) replaces proposed § 3809.300(c). The language has been modified to clarify that an operator with an expired notice must either submit a new notice under § 3809.301, submit a plan of operations under § 3809.401, whichever is applicable, or immediately commence reclamation of the project area.

One commenter suggested we clarify in § 3809.300(a) that all notices will expire after 2 years, and then the final rules will apply. We have modified final § 3809.300(a) to clarify that the intent of the section is to have all existing notices expire two years from the effective date of this final rule. The operator under an existing notice may extend the notice beyond two years, and this final rule may not necessarily apply to an existing notice that is extended. That is, under final §§ 3809.300(c), 3809.331(a), and 3809.333, an operator may extend an existing notice in two-year increments subject to the terms of the existing notice and the previous regulations if the operator doesn't make ''material changes'' to the operation. The term ''material changes'' is defined in final § 3809.331(a)(2).

Other commenters wanted BLM to delete both the two-year limitation in proposed § 3809.300(a) and all of proposed § 3809.300(b). In addition, some commenters felt the two-year term for notices was too short and wanted to have a five-year term for notices. These commenters asserted that a two-year term would require too frequent re-application for approval of notices and would be inconsistent with the NRC Report recommendations. We should point out that BLM reviews, but doesn't ''approve,'' notices. We disagree with the commenters' suggested deletions and assertion. The two-year term for notices in this final rule will bring notice-level operations that extend beyond the acreage covered by the original notice under the performance standards of this final rule (§ 3809.320) within a reasonable time frame. The NRC Report recommendation does not address the transition for existing notices. Under this final rule, it is being applied to all new mining and exploration.

Section 3809.301 Where Do I File My Notice and What Information Must I Include in It?

Final § 3809.301 lists notice-filing and content requirements. Two commenters suggested we use a tax identification number instead of a Social Security number in the operator information required under proposed § 3809.301(b)(1). We agree and have made that change in the final rule, as well as under final § 3809.401(b)(1). One commenter pointed out that notice-content requirements should not include the dates that operations will begin and when reclamation will be completed, since these are never exactly known. We agree and have changed final § 3809.301(b)(2)(iv) accordingly by asking for the expected dates that operations will commence and reclamation will be completed. We have also specified ''calendar'' days under final § 3809.301(d) for clarity.

A few commenters said they are not opposed to requiring bonding, a reclamation plan and reclamation cost estimate for notice-level operations as required in final § 3809.301(b)(3) and (b)(4). They believed that these safeguards are more than sufficient to prevent unnecessary or undue degradation to public lands.

Several commenters suggested adding a requirement [to proposed §§ 3809.301(b), 3809.312, and 3809.313] for an operator to advertise planned operations in a local newspaper, not commencing operations until 30 days after publication. This would allow the public to file written objections. A commenter suggested adding language to proposed § 3809.311 which would allow any person with an adversely affected interest to file written objections to a notice within 30 days of advertising planned operations. We did not adopt these comments since we believe they would not be consistent with NRC Report Recommendation 3 dealing with expeditious handling of exploration activities.

A few commenters said they should not have to provide a reclamation cost estimate under proposed § 3809.301(b)(4), since BLM would review and modify a reclamation plan in most cases. We do not agree with these comments and we have included the requirement in this final rule. The burden should be on the operator, who is the proponent of the activities requiring reclamation, to provide his or her best estimate of reclamation costs.

Section 3809.311 What Action Does BLM Take When It Receives My Notice?

Final § 3809.311 outlines actions BLM takes when it receives a notice. Based on numerous comments discussed in this preamble under final § 3809.21, we changed final § 3809.311(a) from 15 ''business'' days as proposed to ''calendar'' days from the time that we receive a notice to review it. Final § 3809.311(c) was changed to use 15 calendar days as well. If BLM determines that a submitted notice is incomplete, we will inform the operator of what additional information would be needed to comply with final § 3809.301. The 15-calendar-day review period commences upon BLM's receipt of each submittal (or re-submittal) of a notice. Where feasible, BLM will try to perform its review of the revised notice in a shorter time frame. We received final § 3809.311(c) to clarify that BLM's review of any additional information submitted by a prospective notice-level operator will continue until either the notice is complete or we determine that an operator may not proceed due to the inability to prevent unnecessary or undue degradation.

Several commenters wanted BLM to review notices for completeness in time frames ranging from 5 calendar days to 20 business days. We have not accepted this comment since we believe the 15-day calendar review period should include completeness review. If BLM staff determines that a notice is incomplete in less time, we will notify the operator as soon as possible. Another commenter asked us to clarify the standards BLM will use to see if a notice is complete under 3809.311(a). The standards for completeness are

listed in final § 3809.301, as stated in the final rule.

One State Game and Fish department commented that they would like to review proposals, regardless of acreage, where there is concern about fish and wildlife resources, or limited, high-value wildlife habitats such as riparian zones and wetland habitats. During the notice-review process, BLM will make every effort to coordinate with State regulators. Federal/State agreements described under final § 3809.200 could be used to create a mechanism for such coordination.

Section 3809.312 When May I Begin Operations After Filing a Complete Notice?

Consistent with the changes in the review period in other sections as compared to the proposed rule, and based on public comment, final § 3809.312 specifies that an operator will be able to commence operations 15 calendar days after BLM receives a complete notice from that operator and after the operator provides a financial guarantee that meets the requirements of subpart 3809. The operator may commence sooner if BLM informs the operator that it has completed its review and the financial guarantee requirements are met. This section also alerts the operator that operations may be subject to approval under 43 CFR part 3710, subpart 3715, which governs occupancy of public lands.

Several commenters indicated that BLM should be required to inform the operator when a notice is complete and operations can commence. Other commenters said that the final rule should require that BLM notify an operator that it has completed its notice review. These comments have not been incorporated in the final rule. The notice system is designed to allow an operator to commence operations unless BLM notifies the operator of BLM's concerns regarding compliance with this rule. A commenter suggested that new § 3809.312(e) be added that would notify operators that they may be subject to additional requirements imposed by State regulation, and that operators must be in compliance with such requirements before commencing operations. The comment was not adopted. This requirement is already covered under the definition of ''unnecessary or undue degradation'' in final § 3809.5. See also final § 3809.3. In addition, State law applies by its own terms. One commenter felt that the 15-business-day time frame proposed for notice review would not be realistic since an operator would be required to provide a financial guarantee before commencing operations. In practice, an operator must have a financial guarantee in place at least 15 days before, or soon after, filing a notice in order to commence operations 15 days after filing a notice.

One commenter believed that notice-level operations should not be required to furnish a financial guarantee, as required under proposed § 3809.312(c), if no cyanide or leaching is proposed. This comment has not been incorporated into the final rule. We believe it would be inconsistent with NRC Report Recommendation 1, and that financial guarantees are needed to assure the reclamation of any greater-than-negligible surface disturbance.

Section 3809.313 Under What Circumstances May I Not Begin Operations 15 Calendar Days After Filing My Notice?

Final § 3809.313 outlines, in table format, cases in which BLM may extend the time to process a notice. Consistent with the changes in the review period in other sections as compared to the proposed rule, final § 3809.313 specifies 15 calendar days rather than business days. We have added a statement to final § 3809.313(d) that BLM will notify the operator if the agency will not conduct an on-site visit within 15 calendar days of determining that a visit is necessary, including the reasons for the delay.

Several commenters believed that BLM would be able to extend the 15-business-day review period for a notice indefinitely under proposed § 3809.313 due to the ambiguous proposed language of that section. We have limited the amount of time BLM can extend its review under final § 3809.313(a) to an additional 15 calendar days. We believe this limitation, combined with use of calendar days instead of business days as in the proposed rule, will serve to expedite BLM's review. BLM acknowledges that the review period could be extended beyond 30 days under final § 3809.313(b), (c), and (d) until BLM concerns are satisfied.

Section 3809.320 Which Performance Standards Apply to My Notice-Level Operations?

Final § 3809.320 requires that notice-level operations meet all applicable performance standards listed in proposed § 3809.420. BLM is adopting this section as proposed. See the discussion of performance standards later in this preamble under § 3809.420.

Section 3809.330 May I Modify My Notice?

Final § 3809.330 clarifies that an operator may modify an existing notice to reflect proposed changes in operations. BLM is adopting this section as proposed. BLM will review the modification under the same time frames proposed in § 3809.311 and § 3809.313. This provision addresses confusion over whether a notice may be modified. The previous regulations were silent on this topic.

Two commenters stated that proposed § 3809.330 does not define how an incomplete notice modification impacts the existing notice. Final § 3809.330(b) specifies that modified notices will be handled under the procedures of final § 3809.311, which addresses incomplete notices.

Section 3809.331 Under What Conditions Must I Modify My Notice?

As proposed, final § 3809.331 requires an operator to modify a notice if BLM requires such modification to prevent unnecessary or undue degradation, or if the operator plans to make ''material changes'' in the operations. Where an operator plans to make material changes, the operator would have to submit the modification 15 calendar days before making the changes. While BLM is reviewing the modification, the operator could halt operations or continue operating under the existing (unmodified) notice. However, BLM could require an operator to proceed with modified operations before the 15-day period has elapsed to prevent unnecessary or undue degradation.

The proposal would have defined ''material changes'' as ''the addition of planned surface disturbance up to the threshold described in § 3809.11, undertaking new drilling or trenching activities, or changing reclamation.'' In response to a comment that this language was not clear, we changed the language in the final rule. Under final § 3809.331(a)(2), ''material changes'' are ''changes that disturb areas not described in the existing notice; change your reclamation plan; or result in impacts of a different kind, degree, or extent than those described in the existing notice.''

We received two comments stating that it was unclear how proposed § 3809.331(a)(1) would apply to private lands. Although BLM doesn't directly regulate activities on private lands, BLM is under a duty in FLPMA to manage the public lands to protect them from unnecessary or undue degradation, and in some cases this may require taking steps to protect the public lands from

impacts caused by activities on private lands.

Two commenters indicated that it was unclear how much time BLM would give an operator to comply with § 3809.331(a)(1) if BLM requires modification of a notice. The length of time that BLM requires to modify a notice will depend on site-specific conditions. The time requirements and the reasons for the modifications will be spelled out in an appealable decision letter sent to the operator from the BLM. A commenter indicated we should revise proposed § 3809.331(a)(1) to require documentation of unnecessary or undue degradation that BLM had found. Normal case processing in BLM includes documentation in case files of our findings. This ensures a good written record upon which the local BLM manager can base decisions and findings. The comment has not been incorporated into the final rule.

Section 3809.332 How Long Does My Notice Remain in Effect?

Final § 3809.332 provides for an effective period of 2 years for a notice, unless extended under § 3809.333 or unless the operator were to complete reclamation beforehand to the satisfaction of BLM, in which case BLM would notify an operator that the notice is terminated. An operator's obligation to meet all applicable performance standards, including reclamation, would not terminate until the operator has in fact satisfied the obligation. The word ''complete'' was added before ''notice'' in final § 3809.332 to ensure that only complete notices are ''grandfathered'' under subpart 3809.

Several commenters indicated that two years is a reasonable period for a notice to be effective, however, the responsibility for an operator to reclaim operations should be independent of the validity of the affected mining claim(s). We agree that reclamation responsibilities remain until reclamation is completed, regardless of the validity of mining claims within the project area. No change has been made in the final rule to reflect these comments.

We received several comments asserting that notices should expire in 4 to 5 years. BLM believes such changes are unwarranted. An operator may file an extension under final § 3809.333 to keep records current. Additional extensions are allowed. See preamble discussion under § 3809.333 below.

Several commenters stated that BLM has not demonstrated that an inability to clear expired notice records has resulted in unnecessary or undue degradation and that it would be inappropriate to clear records since reclamation may not be completed for a considerable time in the future at a project area. This provision remains in the final rule as it will help BLM clear its records of notices for which no activity has ever occurred on the ground. Reclamation obligations will continue for the operator until reclamation is completed as required, regardless of the disposition of the notice.

Section 3809.333 May I Extend My Notice, and, if So, How?

Final § 3809.333 contains a provision to allow notices to be extended beyond the 2-year effective period specified in final § 3809.332. This provision would accommodate notice-level operations that cannot be completed within 2 years. We received one comment asking that we clarify that notices would be extended only if there is an acceptable financial guarantee as provided under § 3809.503. We have incorporated a reference to § 3809.503 in this subsection of the final rule.

We received several comments regarding whether the 2-year time period is adequate for extension of notices. The comments ranged from agreeing that the 2-year time frame is adequate, to comments that it is too short. Others stated that notice renewals should not be required if operations do not change. We believe the 2-year period for notice extensions will be adequate since notices may be extended more than once with minimal additional paperwork.

One commenter wished us to indicate that the only reason a notice extension might not ensue is in the instance of noncompliance, and in that case, the operator would be notified by BLM. BLM declines to adopt the suggestion. Although BLM will notify operators in noncompliance of the reasons for the noncompliance and steps needed to correct it, the existence of the noncompliance will not automatically preclude extension of the notice.

One commenter suggested that language be added to § 3809.330(a) and to § 3809.333 that would require public notification for notice modifications and extensions respectively. We have not incorporated this comment in the final rule. We believe adding such public notification requirements would be inconsistent with NRC Report Recommendation 3 concerning the expeditious handling of notices.

Section 3809.334 What if I Temporarily Stop Conducting Operations Under a Notice?

Final § 3809.334 clarifies that during periods of temporary cessation, the operator must take all steps necessary to prevent unnecessary or undue degradation as well as maintain an adequate financial guarantee. BLM is adopting this section as proposed. BLM will require in writing that the operator take such steps if the agency determines that unnecessary or undue degradation would be likely to occur.

A State regulator commented and agreed with the need for interim site stabilization during temporary cessations of operations under proposed § 3809.334. Several commenters were concerned that BLM provide written documentation of any finding under proposed § 3809.334(b) that temporary cessation of operations will likely cause unnecessary or undue degradation. BLM's findings, on a case-by-case basis, will be spelled out in an appealable decision letter sent to the operator from the BLM.

One commenter asserted that proposed § 3809.334 would inadequately address unnecessary or undue degradation caused by improper storage and containment of hazardous materials and remediation of contaminated soils. BLM disagrees with the comment. The performance standards applicable under § 3809.320 as well as the continued requirement to prevent unnecessary or undue degradation adequately address these concerns.

Several commenters asked that the final rule define ''period of time'' as used in proposed § 3809.334(a) and ''extended period of non-operation'' as used in proposed § 3809.334(b)(2). We did not incorporate these comments into the final rule. Regardless of the ''period of time'' that passes, at all times, an operator must meet the requirements of final § 3809.334(a). BLM will take actions necessary to ensure the prevention of unnecessary or undue degradation. The term of an ''extended period of non-operation'' will be determined by BLM on a case-by-case basis, after considering the sensitivity of the resource values in the project area.

Section 3809.335 What Happens When My Notice Expires?

Final § 3809.335 describes what must occur when a notice expires and is not extended. BLM is adopting this section as proposed. The operator must cease operations, except reclamation, and promptly complete reclamation as described in the notice. The operator's responsibility to complete reclamation continues beyond notice expiration, until such responsibilities are satisfied. This provision helps address the problem of abandoned operations by

clearly establishing the operator's responsibilities.

One commenter suggested that a third option be added to proposed § 3809.335(a) which would allow an operator to provide written notice to BLM of the intent to extend the notice per § 3809.333. The commenter reasoned that if an operator misses the extension deadline, but intends to operate, he/she should not be forced to reclaim. Operators who face this situation would not be in compliance with § 3809.333, which requires they notify BLM in writing *on or before* the expiration date of their desire to conduct operations for 2 additional years. We wrote § 3809.333 in this way in order to avoid long periods of time after a notice expires for reclamation to be completed, and to prevent unnecessary or undue degradation from occurring. If a notice expires, § 3809.335(a) ensures that reclamation is promptly completed. If an operator inadvertently misses a notice-extension deadline, he/she must immediately submit a new notice and provide adequate financial guarantee as required under § 3809.301, then follow § 3809.312. Quick submittal of a new notice will ensure the prevention of unnecessary or undue degradation and continuity of operations. A complete, new notice must be submitted before BLM initiates forfeiture of the operator's existing financial guarantee.

Section 3809.336 What if I Abandon My Notice-Level Operations?

Final § 3809.336(a) describes what characteristics BLM uses to determine if it considers an operation to be abandoned. Final § 3809.336(b) specifies that BLM may, upon a determination that operations have been abandoned, initiate forfeiture of an operator's financial guarantee. BLM is adopting this section as proposed. BLM may complete reclamation if the financial guarantee is found to be inadequate, with the operator and all other responsible persons liable for the cost of reclamation.

Several commenters pointed out that since exploration is typically intermittent, notice-level operations may appear to be ''abandoned'' at some time during the two-year notice term. We have included criteria in final § 3809.336 that is designed to inform the public of indicators of abandonment. BLM will strive to contact operators in cases where it is not clear whether operations have been abandoned. Our major concerns are that unnecessary or undue degradation be prevented and that operators maintain public lands within the project area, including structures, in a safe and clean condition.

Other commenters suggested that we revise proposed § 3809.336(a) to require BLM to provide an appealable determination that the project area has been abandoned. Any written decision that BLM sends to an operator may be appealed as specified under final § 3809.800.

Sections 3809.400 through 3809.424 Operations Conducted Under Plans of Operations

Section 3809.400 Does This Subpart Apply to My Existing or Pending Plan of Operations?

Proposed § 3809.400 described how the new regulations would apply to existing and pending plans of operations. If an operator had an existing approved plan of operation before the effective date of the regulations, then the operations would not be subject to the new performance standards. If the plan of operations was pending (not yet approved) then BLM proposed a distinction on how the new regulations would be applied based upon how much NEPA documentation had been completed. If an environmental assessment (EA) or EIS had been released, the plan content and performance standards did not apply. If an EA or draft EIS had not yet been released, then all portions of the final regulations would have applied to the plan of operations.

BLM received considerable comments expressing concern that release of the EA or draft EIS was not an appropriate threshold. The concern was that by the time of document release the operator had invested considerable time and resources in the development of a plan of operations. There was also concern that plans of operations just days away from release of the NEPA documents to the public would be caught with having to go back and redesign plans to meet the new performance standard and supply additional information to meet the content requirements. Furthermore, the operator had no control over when BLM would release the NEPA document and should not be punished for actions beyond its control. It was suggested that instead BLM chose a simpler cutoff for existing and pending plans of operations. It was suggested that if the plan of operations had been submitted to BLM before the effective date of the regulations, it would fall under the existing 3809 regulations for plan content and performance standards.

BLM was persuaded by these comments and has changed final § 3809.400 to provide that any plan of operations submitted prior to the effective date of the final regulations would be able to use the plan content requirements and performance standards in the previous regulations. All other provisions of the final regulations, such as the posting of financial assurances and penalties for noncompliance would still apply. BLM believes this is appropriate as it protects the investment operators have made in preparing their plans of operations and supporting NEPA documents, yet provides BLM with the financial assurance that reclamation will be completed and that enforcement actions can be taken to remedy any future noncompliance, should it occur. The revised text in § 3809.400 of the final regulations has been rewritten to reflect these changes in three paragraphs. The proposed table in this section has been deleted. Parallel changes have also been made in final § 3809.434 regarding pending modifications to plans of operations for new or existing mine facilities.

This section of the regulations dealing with existing and pending plans of operations is not inconsistent with the NRC Report recommendations. The NRC Report recommendations did not specifically address how existing operations should transition into any change in the regulations, but they did recommend that all operations on public lands provided adequate financial assurance and were subject to BLM enforcement authority. This section of the regulations meets those NRC Report objectives.

Section 3809.401 Where Do I File My Plan of Operations and What Information Must I Include With It?

Final § 3809.401 describes where a plan of operations has to be filed and what information it must contain. Final § 3809.401(a) states that the plan of operations must be filed in the local BLM office with jurisdiction over the land involved. This is an intentional change from the previous regulations which required the plan of operations to be filed in the BLM District Office with jurisdiction over the lands involved. BLM has reorganized, and in some areas there are no longer three tiers of administration with a District Office. The intent of the regulations is to now make sure the plan of operations is filed in the local BLM field office responsible for day-to-day management of the lands involved.

No detailed comments were received on this paragraph of the regulations. Part of the following paragraph (proposed § 3809.401(b)) has been

moved into final paragraph (a) for purposes of clarity as explained below.

Final § 3809.401(a) is not inconsistent with the recommendations of the NRC Report. The NRC Report did not address where a plan of operations should be filed. The NRC Report did recommend that a more timely permitting process be developed. By not requiring the plan of operations to be on a particular form, BLM saves operators time and resources by allowing them to provide copies of information they may already have assembled to meet other agencies' filing requirements.

Section 3809.401(b)

This section of the regulations lists all the content requirements for a complete plan of operations. The section is broken into five major paragraphs covering: operator information, description of operations, reclamation plan, monitoring plan, and the interim management plan.

A plan of operations is not considered complete until the information required under final § 3809.401(b) has been provided in enough detail for BLM to determine that the plan of operations would prevent unnecessary or undue degradation. The language on the demonstration in proposed paragraph (b) has been moved to final paragraph (a) because it is not a content requirement but rather defines the end result of the plan review process.

There were many general comments on this section that said the content requirements were too detailed or were too open ended, and did not specify why BLM needed this level of detail. In response, BLM has revised the regulations to specify that the level of detail must be sufficient for BLM to determine that the plan of operations would prevent unnecessary or undue degradation. BLM has also deleted the word ''fully'' from the proposed paragraph and instead will have the level of detail be driven by the needs of the individual review process.

This approach is not inconsistent with the NRC Report or its recommendations which emphasized the variety of mining operations and environmental settings and contained a general caution against one-size-fits-all requirements.

Operator Information

The proposed regulations would have required the operator to supply basic identification information including, name, address, phone number, Social Security Number or corporate identification number, and the serial number of unpatented mining claims involved. The proposed regulations would also have required the operator, if a corporation, to designate a corporate point of contact, and to notify BLM within 30 days of any change in operator. BLM has adopted the proposed language with the changes described below.

Comments received on this paragraph questioned the legality and purpose in requiring the operator to supply a Social Security number. The purpose of the requirement is for the BLM to be able to definitively identify the operator responsible for the operation and reclamation of the site. The final provision has been changed to require a taxpayer identification number, as suggested by some commenters. A notice or plan of operations would not be considered complete without information sufficient to identify the responsible operator.

This requirement is not inconsistent with the NRC Report recommendations. While NRC did not specifically address operator identification, it did recommend that operators be held accountable for meeting the requirements of the regulations through improved enforcement provisions. The requirement that operators responsible for compliance be identifiable is not inconsistent with this recommendation.

Description of Operations and Reclamation

Final § 3809.401(b)(2) and (3) require the operator in a plan of operations to describe its proposed operating plans and associated reclamation plans. These sections of the regulations specify much of the information that many operators are providing today under the existing regulations. Items required include, where applicable; a description of the equipment, devices or practices that will be used; maps showing the location of mine facilities and activities; preliminary or conceptual designs and operating plans for processing facilities and waste containment facilities; water management plans, rock characterization and handling plans; quality assurance plans; spill contingency plans; a general schedule of operations from start through closure; plans for access roads and support services; drill-hole plugging plans; regrading and reshaping plans; mine reclamation plans including information on the practicality of mine pit backfilling; riparian and wildlife mitigation; topsoil handling and revegetation plans; plans for the isolation and control of toxic, acid-forming or other deleterious materials; plans for removal of support facilities; and plans for post-closure management. Again, this information is only required to the extent it is applicable to the operation. For example, a plan of operations for exploration drilling would not be required to provide information on mine pit reclamation since it would not involve the excavation of a pit.

Many commenters were concerned that the information required was too detailed and was not needed by BLM to meet its mission of preventing unnecessary or undue degradation—that operators would waste time and resources redesigning plans after the approval decision had been made. Other commenters were concerned that BLM was requiring the operator to provide a final plan of operations before the review process had even begun, and suggested that BLM should let the NEPA process decide what information was needed in the plan of operations. Several commenters stated that BLM should be able to require any information needed to evaluate the plan of operations. One commenter was concerned that BLM's use of ''preliminary designs'' indicated BLM would approve plans that were not final.

BLM has carefully considered these comments. BLM believes that the content requirements for plans of operations essentially put into regulation the process that is currently being implemented by most BLM field offices. By describing these in the regulations themselves, BLM intends to improve consistency among field offices and provide operators more precise information on what is expected in a plan of operations. The purpose of the information requirements is to obtain a plan of operations that describes what the operator proposes to do in enough detail for BLM to evaluate impacts and determine if it will prevent unnecessary or undue degradation. The required level of detail will vary greatly by both type of activity proposed and environmental resources in the project area. On large EIS-level projects scoping may actually start before a plan of operations is submitted, through discussion with BLM staff on the anticipated issues and level of details expected. A certain level of detail is needed to begin public scoping. In the initial plan submission it is up to the operator to determine what level of detail to include in the plan. BLM will then advise the operator if more detail is required, concurrent with conducting the scoping under NEPA. By conducting the NEPA issue identification process (scoping) concurrent with the plan completeness review, both BLM and the operator can identify the appropriate level of detail for the plan of operations

that addresses agency and public concerns.

In response to the comment on use of preliminary designs in plan review, it should be noted that many plans of operations are expected to present preliminary or conceptual designs for mine facilities that must eventually be highly engineered prior to construction. During plan review, BLM typically requests information about such facilities in order to ascertain location, size, general construction, operation, environmental safeguards, and reclamation. The level of detailed required is highly variable and site specific, but must be enough that the agency can evaluate whether the facility is not going to result in unnecessary or undue degradation of the public lands. An approved plan of operations allows for the mine facility to be constructed within the parameters outlined in such preliminary designs. Since the operator does not know what BLM's decision will be regarding plan approval, or conditions of approval, it may wait until the approval decision is issued before committing the often significant amount of resources necessary to prepare final detailed construction engineering drawings and specifications. For example, an operator may propose a tailings impoundment of a certain size and location, but the environmental analysis may evaluate several alternative locations or disposal methods. In this case, it may not be advisable for the operator to prepare final designs for an impoundment that may never be constructed. Once the preferred alternative is selected, the plan of operations approval decision could then require the operator to submit final approved engineering designs (and later ''as-built'' reports) in order to verify that the plan of operations, as approved, would be followed. Final § 3809.411(d)(2) had been added to clarify this process.

BLM has revised the final regulations to eliminate the word ''detailed'' from the proposed descriptions of operations and reclamation in order to let the issues of a specific plan of operations determine the appropriate level of detail. This does not mean the operator may not eventually be required to provide detailed information, just that it may not be immediately necessary to have such a level of detail in the initial plan of operations submitted for BLM review. Likewise, the term ''conceptual'' has been added to final § 3809.401(b)(2)(ii) to clarify that detailed final engineering designs are not required at the initial step in the review process. Under final § 3809.401(b)(3)(iii), an information requirement has been added on mine pit backfilling. This is in response to a discussion in the NRC Report suggesting that the advisability of requiring pit backfilling ought to be considered on a case-by-case basis. This information will allow BLM to consider pit backfilling on an individual basis, without being subject to a presumption that backfilling should occur.

Final § 3809.401(b)(3)(viii) has been edited to clarify that acid materials, as referred to in the proposed regulations, means acid-forming materials. Several commenters also questioned what was meant by ''deleterious materials.'' ''Deleterious material'' is material with the potential to cause deleterious effects if not handled properly. This could include material which generates contaminated leachate, is toxic to vegetation, and/or poses a threat to human health or wildlife. The term is broader and more inclusive than material with the potential to produce acid drainage.

Final § 3809.401(b)(3)(ix) has been edited to clarify that stabilization in place, rather than removal, may be appropriate for some facilities at reclamation. This is consistent with the definition of ''reclamation'' at final § 3809.5.

The plan of operations content requirements related to the operating and reclamation phases of an operation are not inconsistent with NRC Report recommendations. NRC Report Recommendation 9 encourages BLM to continue to base permitting decisions on the site-specific evaluation process provided by NEPA. The process set out in the final rule does just that. Also, the NRC Report recommendation for a more timely permitting process would be facilitated by providing prospective operators with a comprehensive list of requirements that may be applicable to their operations. While many of these requirements are not new, they have not been clearly articulated under the existing regulations. The final regulations would help operators put together a plan of operations that would allow BLM to initiate a substantive evaluation earlier than is presently occurring.

Monitoring Plan

Final § 3809.401(b)(4) requires operators to provide monitoring plans as part of the plan of operations. Monitoring plans must meet the following objectives: demonstrate compliance with the approved plan of operations and other Federal or State environmental laws and regulations, provide early detection of potential problems, and supply information that will assist in directing corrective actions should they become necessary. Where applicable, the operator must include in monitoring plans details on type and location of monitoring devices, sampling parameters and frequency, analytical methods, reporting procedures, and procedures to respond to adverse monitoring results.

Many commenters were concerned that monitoring plans could not be developed until after the plan of operations was approved and facility locations and outfalls were known. Other commenters felt that monitoring plans would duplicate or conflict with similar State or other Federal monitoring requirements.

In response, BLM anticipates that certain portions of the plan of operations may change as a result of the NEPA review process, including monitoring programs. However, BLM requires information on all aspects of the plan of operations, including monitoring programs, to determine whether they will prevent unnecessary or undue degradation. This means basic information is required up front on what resources will be monitored where and how, and what corrective measures would be triggered by what monitoring results. The purpose of the NEPA process is to identify shortcomings in such plans and develop corrective measures (mitigation) in those plans. BLM does not agree that development of monitoring programs should be deferred until after the plan of operations has been through NEPA analysis. A monitoring program, tied to corrective action triggers, can serve to mitigate many environmental impact concerns and should be developed simultaneously with the plan of operations. BLM acknowledges that many existing State or Federal monitoring programs, where present, would satisfy most monitoring needs. The final regulation text has been revised to make it clear that monitoring plans should incorporate existing State or other Federal monitoring requirements to avoid duplication.

Other commenters were concerned that by requiring monitoring the BLM was attempting to regulate resources such as water quality and air quality that have not been delegated to BLM. States or other Federal agencies regulate water quality and air quality by establishing discharge limits and monitoring them to determine compliance with set numeric levels. BLM is not attempting to duplicate these regulatory programs under this subpart, but BLM is required to regulate mining activity under FLPMA to prevent unnecessary or undue

degradation of all resources of the public lands, including those protected by other authorities. In order to evaluate the impact of mining operations, and the effectiveness of mitigation in preventing unnecessary or undue degradation, it is important to have the information that monitoring provides. Requiring monitoring plans under this subpart does not give BLM any additional authority beyond what it already has under FLPMA to prevent unnecessary or undue degradation, but rather allows BLM to ensure operations are following the approved plan and to identify the need for any modifications should problems develop.

Finally, independent of the provisions of this subpart, BLM must ensure that its actions (both direct activities and activities it authorizes) comply with all applicable Federal, State, tribal and local air quality laws, statutes, regulations, standards, and implementation plans. See the pertinent portions of FLPMA, 43 U.S.C. 1712(c)(8), 1732(c), and 1765(a)(iii), and the Clean Air Act, 42 U.S.C. 7418(a) and 7506(c). Therefore, BLM may conduct, or require authorized users to conduct, appropriate air quality monitoring to demonstrate such compliance.

The monitoring requirements in the final regulations are not inconsistent with the NRC Report recommendations. NRC did not make any recommendations to limit monitoring, and in fact acknowledged that continued monitoring after mine closure would be necessary and may need to include monitoring of surface and groundwater.

Interim Management Plans

New § 3809.401(b)(5) has been added to the final regulations. We added this section in response to NRC Report Recommendation 5, which says that BLM should require interim management plans for periods of temporary closure. This provision of the final regulations is not inconsistent with other NRC Report recommendations. This paragraph requires operators to provide plans for the interim management of the project area during periods of temporary closure. The new text requires that interim management plans include, where applicable: measures to stabilize excavations and workings; measures to isolate or control toxic or deleterious materials; provisions for the storage or removal of equipment, supplies and structures; measures to maintain the project area in a safe and clean condition; plans for monitoring site conditions during periods of non-operation; and a schedule of anticipated periods of temporary closure during which the operator would implement the interim management plan, including provisions for notifying BLM of unplanned or extended temporary closures.

Some commenters did not see the need for an interim management plan in each plan of operations because it would be a significant burden on the operator, and it was only speculative that an operation may be suspended. It was also commented that an interim management plan prepared as part of the plan of operations probably wouldn't be adequate to address the environmental concerns at some future temporary closure.

BLM believes that interim management plans do not pose a significant burden to operators if prepared as part of the plan of operations. An operator, in planning to mine, should also be able to plan under what conditions they might temporarily not mine, and how they would manage the site to prevent unnecessary or undue degradation during the temporary closure. If conditions change at temporary closure, the interim management plan can be modified to address the new conditions or circumstances.

BLM considered requiring interim management plans to be submitted only upon temporary closure, but concluded that preparing and processing an interim management plan as a modification under § 3809.431 would impose a greater burden than if it was done as part of the initial plan of operations. In addition, deferring preparation of interim management plans until a temporary closure was imminent would not provide the up front planning needed to consider the issues associated with temporary or seasonal closures. Final § 3809.424(a) has also been revised to require operators to follow the interim management plan if they stop conducting operations and to modify the interim management plan if it does not cover the circumstances of the temporary closure.

Section 3809.401(c)

Final § 3809.401(c) says that BLM may require the operator to provide operational or baseline environmental information needed by BLM to conduct the environmental analysis as required by NEPA. This is a separate requirement from the information needed under final § 3809.401(b) to have a complete plan of operations. Presently, many operators are already providing information needed to support the NEPA analysis, and this regulation would formalize that arrangement. For other operators, especially those who could file a notice under the previous regulations, this would represent a significant burden, but BLM believes it is appropriate for the operator to be responsible for providing this information to have their proposed plan of operations be favorably acted upon.

Many commenters were concerned with one aspect of this provision, that the information provided could include that applicable to private as well as public lands. Some commented that the requirement suggests BLM intends to regulate non-public lands. Others were concerned BLM was using NEPA authority to regulate mining when it should be used as an analysis and disclosure process.

Final § 3809.2(d), discussed earlier in this preamble, has been added to make clear that BLM is not intending to exercise regulatory authority over private lands. However, NEPA requires that any environmental analysis conducted under that statute describe the environmental effects on all lands, regardless of ownership, that would result from the BLM approval action for the public lands portion of a project. BLM agrees that NEPA is a procedural statute that does not set substantive requirements operators must achieve. However, the NEPA regulations do require BLM to describe impacts to all resources, including those over which BLM may not have regulatory authority, or for which BLM shares regulatory authority with other agencies and to address mitigating measures for those impacts.

Several commenters were concerned about the substantial additional burden that the information requirements would pose for many mine operators, but then stated that the information was being collected anyway to meet State or other Federal requirements and was duplicative. BLM agrees with the comments that much of the information is already being collected by the operator; therefore we don't agree that it constitutes a substantial additional burden for the operators of large mines.

Another commenter suggested that the quality and quantity of baseline studies should be determined in the NEPA scoping process, and that as written, this requirement to supply information is an open-ended invitation for uneven or arbitrary and capricious action by BLM to request data that it thinks would be ''nice to have,'' and that BLM should not pass on the cost of ''basic inventory'' or ''nice to have'' data to an owner/operator unless the owner/operator is given financial credit equal to the cost of the data collection.

BLM does not believe that final § 3809.401(c) provides an open-ended request for ''nice to have data.'' The provision specifically links baseline data needs to the NEPA process. Scoping, as part of the NEPA process, would be used to identify issues associated with the operator's proposal and to determine the baseline data needs. This would serve to keep the data requirements tied to the issues identified for the individual plan of operations under consideration. That is also the reason BLM has not required set minimum amounts or durations of data collection as suggested by some commenters.

Requiring baseline operational and resource information under final § 3809 401(c) is not inconsistent with NRC Report recommendations. To the contrary, we believe it may facilitate the implementation of NRC Report Recommendation 9 regarding use of the NEPA evaluation process, NRC Report Recommendation 10 regarding early interagency NEPA coordination, NRC Report Recommendation 14 regarding long-term post-closure site management, and NRC Report Recommendation 16 regarding a more timely permitting process. Early communication with the operator on information collection needs will result in a more efficient permitting process.

Section 3809.401(d)

Final § 3809.401(d) says that at a time specified by BLM, the operator must submit an estimate of the cost to fully reclaim the operations as required by § 3809.552. This section was made separate from the completeness requirements for a plan of operations because it does not make sense for the operator to provide this information until the final reclamation plan is known with some certainty.

BLM received several comments on this section that stated BLM should be required to set a specific time limit on how long BLM will have to review the reclamation cost estimate and a time line for the operator so he knows when the cost estimate is due.

In response, we have added language to final § 3809.401(d) to the effect that BLM will review the cost estimate and notify the operator either of any deficiencies or additional information needed or that we have determined the final amount on which the financial assurance is based. We did not set a specific time limit on how long we have to review the information because of the variability of the plan approval process. For example, some of the reclamation costs are based on mitigation measures developed through the NEPA process, which may be far from complete when the operator submits the estimate.

A reclamation cost estimate can represent a significant amount of time and engineering resources. BLM believes operators should prepare the cost estimate when the plan of operations review process is nearly finished, not at the time the operator submits the initial proposed plan of operations. This way changes to the reclamation plan resulting from the NEPA analysis can be incorporated into the cost estimate, saving the operator resources.

This section of the regulations is not inconsistent with NRC Report recommendations. The first recommendation in the NRC Report was to require financial assurance for all disturbance greater than casual use. The NRC went on to suggest the establishment of standard bond amounts for certain types of activities in certain terrain. The BLM agrees with the use of standard bond amounts for certain activities, but does not believe they should be included in the regulations. As long as the regulations require that bond amounts be adequate to cover all the reclamation costs, standardized bond calculation approaches that meet this objective can be developed in local policy and guidance documents where regional cost structures can be taken into account. Reclamation cost estimates can rely on BLM guidance documents, but may need to be modified to account for site-specific circumstances.

Section 3809.411 What Action Will BLM Take When It Receives My Plan of Operations?

Final § 3809.411 contains the review process BLM will follow when it receives a plan of operations. In general, the process involves reviewing the plan for completeness; conducting the necessary environmental analysis, interagency consultation and public review; making a determination on whether the plan would prevent unnecessary or undue degradation; identifying any changes in the plan that must be made to prevent unnecessary or undue degradation; and issuing a decision to either approve, approve as modified or not approve the plan of operations.

Comments on this section expressed concern with the time it would take to process a plan of operations. Commenters also expressed concern over the purpose and utility of a public review process specific to the financial guarantee amount, although some commenters endorsed the public review process for reclamation bonding. Other comments were concerned with the situations where the regulation states that BLM ''must disapprove'' a plan of operations, which, when coupled with the completeness requirements, they argued would create endless appeals. Comments were made regarding the difficulty of bonding for perpetual water treatment and that plans involving perpetual water treatment should be denied. Other commenters questioned what was meant by a complete plan of operations and by adequate baseline information. Specific comments follow:

A comment specifically asked on proposed § 3809.411(a), what BLM meant by the term ''complete.'' In response, a ''complete'' plan of operations is one that contains a complete description of the plan, using the applicable information content listed in § 3809.401(b), in enough detail that BLM can conduct a NEPA analysis on the plan and make a determination as to whether it would cause unnecessary or undue degradation.

One comment expressed serious concerns regarding delays in agency actions. The commenter stated that BLM's proposal would essentially eliminate the limited time deadlines which now exist in the current 3809 rules. After 18 years of experience, the commenter asserted, BLM should need less time to review plans, not more because, this commenter felt, delay in the permitting process is one of the most significant impediments to continued domestic mining investment and recent experiences with BLM approvals for plans of operations have shown increasingly longer periods of time to obtain approval of the plans. The commenter suggested that meaningful regulatory time frames for plan review should be specified, such as 90 days where only an environmental assessment is required, and 18 months where an environmental impact statement is prepared.

In response, BLM notes that even under the existing regulations it may not be possible to complete review of a non-EIS-level plan of operations within the suggested 90 days. Many of the time frames BLM must follow, and the delays sometimes encountered, are related to coordination with other agencies or with completing mandatory consultation processes which cannot be placed under preset time restrictions. While BLM has gained much experience in processing plans that has facilitated plan processing, to a considerable extent the efficiencies created by this experience has been offset by the fact that more technically complex issues, such as acid drainage, often require careful and comprehensive review, and by the additional coordination efforts

needed to interact with other agencies. BLM believes that under these circumstances the best way to expedite the process is for the final regulations to identify the information requirements for the operator, require BLM to provide the operator with a list of any deficiencies within 30 days, provide for interagency agreements with the States to reduce overlap, and to consult with operators early in the mine planning process on the required information and level of detail that would be needed to meet the requirements of the regulations.

Several commenters were concerned with proposed § 3809.411(c) which requires that ''BLM must disapprove, or withhold approval of, a plan of operations if it (1) does not meet the content requirements of 3809.401.'' They commented that there is no conceivable legal or policy reason why BLM would want its regulations to require that it ''must disapprove'' a plan. That language can only constrain the agency's discretion, and on appeal, IBLA's. One commenter stated that this proposed language, combined with the detailed plan content requirements, creates fertile ground for appeals by opponents to mining projects. On appeal, BLM may be required to defend not only the substance of its decision, but its decision on the completeness of every aspect of the plan of operations, including the level of detail of the project description and design, and the long list of plans required by proposed § 3809.401.

BLM has reworded the particular sentence of concern under final § 3809.411 to remove the ''must disapprove'' phrase, although it remains clear that BLM may still disapprove a plan of operations because it is incomplete. It should also be noted that a decision by BLM that a plan of operations is ''complete'' does not mean BLM has determined it is adequate to prevent unnecessary or undue degradation. A ''complete'' plan is only one where the operator has merely described their proposal in enough detail that BLM is able to analyze the plan to determine whether it would prevent unnecessary or undue degradation. It is only after the complete plan has been analyzed, and any additional mitigation developed that might be needed to prevent unnecessary or undue degradation, that BLM may issue an approval decision on the adequacy of the plan to prevent unnecessary or undue degradation. Upon appeal, the decision under review would be whether the plan of operations ''as approved'' will prevent unnecessary or undue degradation. BLM does not intend that its determination that a proposed plan of operations is complete is appealable to the Interior Board of Land Appeals. Only final decisions on whether plans are adequate to prevent unnecessary or undue degradation are appealable.

Another comment was that proposed § 3809.411 seemed to require compliance with all of the information requirements of proposed § 3809.401 before the plan is ''complete,'' and before the BLM can initiate the substantive review process, including NEPA review. The commenter questioned whether this was BLM's intent, for it requires the operator to submit documentation in a needless level of detail and requires BLM's employees to review plans and information that can be no more than hypothetical.

BLM wants operators to understand that it is their responsibility to provide a sufficient level of detail up-front to BLM on their proposed plan of operations so that the potential for unnecessary or undue degradation can be evaluated. The review process is ongoing and begins when the operator initially submits a plan of operations. However, lack of information on what the operator is proposing will only delay the review and approval process. BLM has added a mechanism in final § 3809.411(d)(2) which allows for the incorporation of additional levels of implementation detail that may result from review of the plan by BLM or by other agencies.

A comment was made on proposed § 3809.411(c)(2) which may require BLM to disapprove operations that are in an area segregated or withdrawn from the operation of the mining laws. The commenter felt that segregation is not enough to trigger disapproval of a plan of operations, that lands should be accessible under the mining laws until the formal FLPMA withdrawal process has been followed. And that to do anything different would violate FLPMA's congressional mandate.

BLM disagrees with this comment. FLPMA is clear that areas segregated from operation of the mining laws, in anticipation of a withdrawal, are legally not available for locatable mineral entry. The only mining activity that can be allowed in these areas are those associated with mineral discoveries made on valid mining claims prior to the segregation order and which therefore have prior existing rights. The final regulations at § 3809.411(d)(3)(ii) reference § 3809.100 which provides for a determination that the operator holds prior existing rights to mineral development over the segregation or withdrawal.

EPA commented that the proposed regulations should be changed to fully integrate the input from EPA and State environmental agencies prior to plan of operations approval. EPA stated that under current procedures, after a final EIS is issued, the mining company submits its draft operating plan to BLM for approval. There is no formal requirement that BLM secure certification from State environmental agencies or the EPA that all applicable environmental permits have been secured prior to plan approval. Such a process would assure that the mining companies have met with and secured the entire range of permits needed to comply with environmental regulations.

The EPA comment does not accurately reflect the current process. A proposed plan of operations is submitted prior to preparation of the EIS. It is this proposed plan that constitutes the proposed action of the NEPA document. As a result of NEPA review, the plan may be modified by conditions of approval needed to prevent unnecessary or undue degradation. We hope and expect that interagency agreements developed with the States under § 3809.201 would address coordination of State environmental permits with the plan of operations approval. Final § 3809.411(a)(3) has an added requirement that BLM consult with the States to ensure operations are consistent with State water quality standards. Final § 3809.411(d)(2) has been added to provide for the incorporation of other agency permits into the final plan of operations.

Commenters raised the issue that the BLM's approval of a plan of operations is a ''federal licence or permit'' and requires a Clean Water Act section 401 certification (or waiver of certification) from the State to be valid as long as a discharge is anticipated by the plan of operations.

BLM agrees with the comment, but does not need to amend subpart 3809 to comply with section 401 of the Clean Water Act. BLM will not approve a plan of operations under subpart 3809 until any necessary certification has been obtained by the operator or waived under section 401 of the Clean Water Act. A section 401 certification is required for any plan of operations where discharges into navigable waters are anticipated. BLM does not consider this a new requirement because 43 CFR 3715 already makes uses and occupancies under the mining laws subject to all necessary advance authorizations under the Clean Water

Act. See 43 CFR 3715.3–1(b) and 3715.5(b) and (c). If the State, interstate agency, or EPA, as the case may be, fails or refuses to act on a request for certification within six months after receipt of such request, the certification requirements will be considered waived. In such circumstances, BLM will follow EPA rules at 40 CFR 121.6(b) and notify the appropriate EPA Regional Administrator that there has been a failure of the State to act on the request for certification within a reasonable period of time after receipt of the request.

Several commenters asked how proposed § 3809.411(d), which requires BLM to accept public comment on the amount of financial guarantee and proposed § 3809.411(a)(4)(vi), which states BLM may not approve a plan of operations until it completes a review of such comments, would work. If the intent of this section is that BLM will respond to these comments as well, according to this comment, this should be stated in the regulations, but the commenters also noted that these requirements will add extensive time to the BLM review process and increase BLM's workload without increasing the effectiveness of BLM's surface management regulations. According to this comment, BLM and the States have expertise in setting financial assurance, and the public does not have the necessary knowledge or training to comment on financial guarantees prior to plan approval and is not likely able to add anything to that process. It was suggested that if public comments are believed to be appropriate, they should be solicited in the same manner and according to the same time frame applicable to other issues in the NEPA process.

In response, BLM has changed the proposed regulations to eliminate the specific public comment period on the financial guarantee amount. BLM believes soliciting comments on the merits of the operating and reclamation plans is more useful than obtaining comments strictly on the reclamation cost calculations, and is therefore requiring a mandatory 30-day minimum public comment period for all plans of operations. This comment period could, and typically would, be conducted as part of the NEPA process. Comments could also be provided at this time on the financial guarantee amounts, to the extent cost estimates are available during the comment period. In any event, financial guarantee information would still be available to the public so that they can comment on what BLM may require in the way of financial guarantees to ensure the public doesn't bear the cost of required reclamation. For example, the public may suggest mitigation measures that, if incorporated into the reclamation plan, would affect the financial guarantee amount. BLM will respond to comments made on the reclamation cost estimate at the same time and manner as they respond to comments made on the NEPA analysis of the plan of operations.

Commenters on proposed § 3809.411(c) were concerned that the section does not identify what options an applicant has if the plan of operation is denied or disapproved.

In response, this section has been modified and moved to final § 3809.411(d)(3). The BLM decision on the plan of operations would advise the operator of corrective actions that must be taken in order for the plan to be approved, or of the specific rationale behind a decision that the plan of operations could not be approved because it would cause unnecessary or undue degradation of the public lands, including substantial irreparable harm to significant resources that could not be mitigated. The BLM decision would also advise the operator of the appeals process if it disagreed with the decision and wanted to appeal it to the State Director or IBLA.

One commenter said that BLM has the authority to, and should, prevent all offsite impacts due to mining whether these impacts be caused by actual surface disturbance, wind blown pollution, mine dewatering, acid drainage, or anything else. Mining proponents should not be allowed to externalize their costs over hundreds of square miles of surrounding public lands (as occurs in northern Nevada due to dewatering drawdown). Onsite impacts should be limited to surface excavation and be totally reclaimed.

In response, BLM's authority is to take any action necessary to prevent unnecessary or undue degradation to public lands. This includes lands within and outside of the project area. However, it should be noted that impacts from mining operations and many other activities on public lands cannot be confined exclusively to the area of direct surface disturbance. Impacts to many resources transcend the direct disturbance boundary due to the nature of the effect. Visual impacts can often be seen for miles. Noise from operations can be heard a good distance from the project area. Wildlife may be displaced. Impacts to such resources as water and air will extend beyond the immediate disturbance due to the establishment of compliance points and mixing zones by other regulatory agencies. Due to the nature of mining, these situations will occur even with model operations that are in compliance with all applicable laws and regulations. The decision BLM must make upon plan review is to determine if the impacts would constitute unnecessary or undue degradation, and if so, decide what measures must be employed to prevent it from occurring.

Some comments expressed concern that BLM would be duplicating existing State and Federal programs and that this would have the effect of extending the time required for approval of plans of operations and permitting.

BLM is not trying to duplicate other Federal or State programs, but to incorporate their requirements into the review process to make it more comprehensive. This is not a substantial change from the current practice of working with the States or other Federal agencies on joint reviews. MOUs developed under the regulations that provide for the State to have the lead role may actually expedite the permitting process.

Several comments were concerned that proposed § 3809.411 takes away the 30-day response time the BLM has to reply to a miner's plan of operations. This could allow the BLM to delay action on a proposed plan and possibly cost the miner a whole season. The commenter stated that by removing the 30-day response time, the BLM has a new tool for stopping a proposed operation without the actual denial of a plan of operations. Comments were made that the present time frames by which BLM had to approve a non-EIS level plan of operations should be retained.

BLM does not believe mandatory time frames for the plan review and NEPA analysis can be realistically set due to the uncertainty associated with many mining technical issues and the need for interagency coordination and consultation. BLM has committed in final § 3809.411(a) to respond within 30 calendar days to an operator's proposed plan of operations as to the completeness of the plan. After a complete plan of operations is received and the environmental analysis prepared, there is a 30-day public comment period. BLM acknowledges it could take several months to review and approve even a mine plan where there do not appear to be any substantial resource conflicts. The operator should anticipate this review time and submit its proposed plan enough in advance that activity can begin when scheduled. It should also be noted that for seasonal activity, a plan of operations does not necessarily have to be filed with BLM every year. A single plan of operations

that describes the seasonal nature of the activity and the overall duration of the plan would be sufficient. For example, a plan could state that mining would occur from May 1st through September 1st every year for the next 5 years. Final § 3809.401(b)(5) has been added to the regulations to assist operators with development of interim management plans for plans of operations that involve seasonal activity.

EPA commented that it was concerned with the perpetuation of current procedures that do not promote cross-referencing between the final EIS and the operations plan. Past experience has shown that mining companies often change key design and operating features in the operations plan that were not noted (or were given little analysis) in the final EIS. Not linking the EIS process with the operations plan process allows the introduction of features that were not adequately evaluated or publicly disclosed and which could potentially increase environmentally risks at the site. EPA believes that the proposed regulations should include a process to ensure that major mine design features noted in the operations plan are fully evaluated in the final EIS. If there are significant changes in the mine plan after the final EIS is complete, a supplemental NEPA document should be prepared. Also, EPA suggests that the recommendations noted in the final EIS regarding mitigation measures be cross checked in the operations plan to assure that mitigation approaches committed to by BLM in the EIS process are included in the operations plan.

BLM believes the final regulations address the problems perceived by EPA. First, under the existing regulations, operators are required to follow their approved plans of operations. If an operator doesn't follow the approved plan of operations, it is a compliance problem, not a NEPA problem, and is best addressed through improved enforcement. The proposed regulations specifically provide that failure to follow the approved plan of operations constitutes unnecessary or undue degradation. Final § 3809.601(b) provides that BLM may order a suspension of operations for failure to comply with any provision of the plan of operations. Mitigating measures needed to prevent unnecessary or undue degradation, developed during the NEPA process, are required as conditions of approval. The final regulations at § 3809.411(d)(2) provide a mechanism to require the operator to incorporate these mitigating measures into the plan of operations. If operators want to change their operations they have to file a modification under final § 3809.431(a) and undergo a review and approval process similar to the initial plan of operations approval, including any necessary NEPA compliance.

One commenter repeatedly commented on various aspects of the proposed regulations that BLM needs to assure that the final regulations are consistently used in the same way by both BLM and the Forest Service.

The Forest Service has responsibility for surface management impacts of mining activities on National Forest Lands. BLM has developed the final regulations it believes best meet BLM management needs and are not inconsistent with the recommendations in the NRC Report.

One commenter was specifically concerned with the problems and inherent risks in estimating a bond for perpetual water treatment. The commenter stated that if the bond is insufficient to meet the costs of operating and maintaining the treatment facility, it will almost certainly be the public that is obligated to meet the deficit, or to bear the cost of degraded water quality if treatment is discontinued or degraded. There is also a potential burden on the mine operator in that if the amount bonded is overestimated, the profitability of the mine can be negatively affected. When bonds are established, an agency makes assumptions not only about the long-term replacement and operating costs of a treatment plant, but also about the average inflation over the period of time covered by the bond and the average return-on-investment the bond amount will generate over its lifetime. According to the commenter, as anyone who follows the financial markets knows too well, there is a considerable amount of instability and risk in both of these assumptions Typically, changing either the inflation rate or the rate for return-on-investment by a single percentage point will cause a huge change on the required bond amount. With a bond for perpetual treatment, ultimately the public bears the risk of these assumptions. In addition, predicting what costs might be, what other problems might arise, and whether the vehicle chosen to provide financial assurance all involved a considerable amount of uncertainty. Second, there is a risk that the financial vehicle used for the bond may not be available or viable when it is required for treatment. Financial institutions, and even government institutions, have a finite life. If these institutions change significantly, or fail, the potential for damage from water pollution is still there.

In response, BLM acknowledges the difficulty in calculating an adequate financial guarantee for long-term, continual, or perpetual water treatment. A sufficient margin of safety for the public and the environment must be built into the cost assumptions, even though that may increase the financial guarantee amount and add to the operator's cost. That is a problem inherent in proposing an operation in an area that requires perpetual water treatment to prevent unnecessary or undue degradation. It would then be up to the operator to decide whether to proceed with the project in view of the significant financial guarantee that would have to be provided. In BLM's view, the alternative of not acknowledging that long-term water treatment is a possibility, and bonding accordingly, presents even greater public risks given the low reliability of present predictive modeling techniques.

Additional comments on long-term water treatment urged that the best policy is to deny any application for a mine that includes a requirement for long-term water treatment. The commenters asserted that the long-term risk to the public, who is the ultimate guarantor for any long-term cleanup, is too great, and that by doing so, BLM would be best able to ''assure long-term post-closure management of mines sites on federal lands'' as stated by NRC Report Recommendation 14. This commenter also asserted that it is possible to design most mines to preclude conditions that will require long-term water treatment by using operating and reclamation procedures to minimize the contamination of water. Commenters also asserted that if it is not possible to design preventative measures into the mine, then the mine should not be permitted to open.

BLM did consider an alternative that would not approve plans of operations that involved long-term or perpetual water treatment. BLM decided that it is difficult at best to accurately assess the post-closure treatment needs of a mine up front, which could be decades before actual closure would take place. BLM was concerned that adopting such a restriction might, paradoxically, result in less analysis and disclosure by the proposed operator of information relevant to potential water quality impacts, and lead operators to be over optimistic about, and place greater reliance than may be warranted by the facts on, source control measures. BLM agrees that mine design and operation should focus on pollution prevention measures, and the regulations are written to stress this preference. Similarly, the use of some treatment

systems is desirable even in cases where pollution prevention measures have reduced contaminant loads significantly. BLM did not want to rule out the use of combined pollution prevention techniques such as source control with treatment programs. This is a difficult issue and is, in our judgment, a close call, but ultimately BLM believes that site-specific factors should drive the decision on the acceptability of perpetual treatment both in terms of its ability to prevent unnecessary or undue degradation under the new definition which considers significant irreparable harm, and its potential cost to the operator in terms of the financial assurance that will be required to operate these systems in perpetuity.

Several comments were received on the regulations regarding how the recent Solicitor's Opinion on millsite acreage limits may impact plan of operations approval. Some commenters objected that the 3809 regulations might be used where there was mine waste placement in excess of the millsite acreage limits in the mining laws as explained in that opinion. Other commenters endorsed the relationship presented in the proposed regulations, stating that the millsite ratio was immaterial to the review and approval of a plan of operations. These commenters also argued that if BLM intends a change in these principles from the proposed regulations, it cannot make such changes in a final 3809 rule without having to re-propose its 3809 proposal, because no alternative to the existing system for establishing one's land and claim position is studied in the EIS or noticed for comment, nor is even the idea of such a change in the regime for operating a hardrock mine on BLM lands noticed for comment.

The final rules are consistent with the February 9, 1999, proposed rule. Under these final rules, BLM will not disapprove plans of operations based on the ratio of mill site acres to the number of mining claims. The 3809 regulations govern the surface management of operations conducted under the mining laws, and are intended to assure that operations do not result in unnecessary or undue degradation. Under the mining laws, operations may be conducted on lands without valid mining claims or mill sites, as long as such lands are open under the mining laws. It must be clearly understood, however, that persons who conduct operations on lands without valid claims or mill sites do not have the same rights associated with valid claims or sites. This means that BLM's decision whether to approve such activities under section 302(b) of FLPMA, 43 U.S.C. 1732(b) is not constrained or limited by whatever rights a mining claimant or mill site locator may have, and thus is of a somewhat different and more discretionary character than its decision where properly located and maintained mining claims are involved. For example, an operator doesn't have a properly located or perfected mill site would not be able to rely upon a property right under the mining laws to place a tailings pile on unclaimed land. Such situations will be evaluated on a case-by-case basis in accordance with BLM policy.

Some commenters stated that the issue of land manager discretion must be made clear in order to meet FLPMA standards and that BLM needs the authority to consider other competing resource values and also the history of mining companies. Bad environmental records should lead to denial of permits to some companies. To protect public lands, land managers should have the right and be expected to weigh other uses and be able to deny mining proposals, including operations that would cause unnecessary or undue degradation. The commenters suggested that the final regulations need to provide land managers with discretion to deny mining permits for these reasons. Commenters also stated that small mines must not be exempt from FLPMA standards.

Final § 3809.411(d)(3) provides that BLM may deny a plan of operations that would result in unnecessary or undue degradation, or revoke a plan of operations under final § 3809.602 for failure to comply with an enforcement order or where there is a pattern of violations. The regulations can't provide total discretion to land managers in making decisions on proposed operations involving properly located and maintained mining claims because of the rights these claimants may have under the mining laws. The regulations do provide for denial of a plan of operations if BLM determines the plan of operations would cause unnecessary or undue degradation. This includes creating substantial irreparable harm to significant resources that cannot be effectively mitigated. Small operators have never been exempt from the FLPMA standard to prevent unnecessary or undue degradation.

Changes have been made in final § 3809.411 for organizational purposes, editorial purposes, and to change procedural requirements for plan review and approval.

Final § 3809.411(a) has been changed to 30 calendar days from business days for the initial plan of operations review. Proposed § 3809.411(a)(3) has been deleted because BLM will not be able to approve a plan within 30 days due to the addition of a minimum 30-day public comment period for each plan of operations prior to approval.

In final § 3809.411(a)(3)(iii), we have added a reference to the Magnuson-Stevens Fishery Conservation and Management Act, under which BLM may also have to conduct consultation. On October 11, 1996, the Sustainable Fisheries Act (Pub. L. 104–297, 16 U.S.C. 1801 *et seq.*) became law which, among other things, amended the habitat provisions of the Magnuson Act. The re-named Magnuson-Stevens Act calls for direct action to stop or reverse the continued loss of fish habitat. Toward this end, Congress mandated the identification of habitat essential to managed species and measures to conserve and enhance this habitat. The Act requires Federal agencies to consult with the Secretary of Commerce regarding any activity, or proposed activity, authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat. The National Marine Fisheries Service has promulgated regulations to carry out the Magnuson-Stevens Act. The regulations governing Federal agency consultation are found in 50 CFR 600.920. This change makes it clear that these pre-existing statutory and regulatory requirements apply to operations on Federal lands under the mining laws.

On BLM managed public lands, ''essential fish habitat'' refers to those waters and substrate necessary to salmon for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the definition of ''essential fish habitat'': ''waters'' includes aquatic areas and their associated physical, chemical, and biological properties that are used by salmon and may include aquatic areas historically used by salmon where appropriate; ''substrate'' includes sediment, hard bottom, structures underlying the waters, and associated biological communities; ''necessary'' means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and ''spawning, breeding, feeding, or growth to maturity'' covers a species' full life cycle. See 62 FR 66531, Dec. 19, 1997.

Final § 3809.411(a)(3)(vi) replaces the BLM review of public comments on the amount of the financial guarantee with a review of public comments on the plan of operations itself consistent with final § 3809.411(d).

BLM has added final § 3809.411(a)(3)(ix) to the final

regulations. This provision provides for BLM to complete consultation with the State when needed to make sure that the plan of operations approved by BLM will be consistent with State water quality standards. This allows for measures need to meet applicable water quality standards to be incorporated into the plan of operations, limiting the need for later modification to the plan of operations.

BLM has replaced proposed § 3809.411(d) with final § 3809.411(c). This paragraph replaces the requirement for public review on the amount of the financial assurance with a 30-day minimum public review period on the plan of operations. BLM believes soliciting comments on the merits of the operating and reclamation plans are more useful than obtaining comments strictly on the reclamation cost calculations themselves. BLM intends that the comment period can be conducted as the public comment period on the NEPA document, either the EA or draft EIS, prepared for a specific plan of operations. Reclamation cost estimates, to the extent they are available, would be included in the NEPA documents, but would not be the focus of public review and would not be reviewed using a separate comment period. All reclamation cost calculations would still be available for public inspection. All comments received would be handled under the NEPA process.

Final § 3809.411(d) has been added to clarify the decisions BLM may make with regard to a plan of operations. BLM may approve the plan as submitted, approve it subject to modification to prevent unnecessary or undue degradation, or not approve it for the reasons listed in final § 3809.411(d)(3).

Aside from the organizational changes for purposes of clarity, two changes in this paragraph are substantial. The second sentence in final § 3809.411(d)(2) has been added which states: BLM may require an operator to incorporate into the plan of operations other agency permits, final approved engineering designs and plans, or other conditions of approval from the review of the plan of operations filed under § 3809.401(b). This additional sentence is to acknowledge that plans may be approved subject to the satisfactory completion of final design work, obtaining other necessary permits, or completion of specific mitigation plans or studies. The benefit of this provision for the operator is that it lets the operator preserve engineering and technical resources until the operating parameters have been set by the plan approval. The benefit to BLM and other agencies is that it requires the plan of operations to be updated upon completion of the review to incorporate all relevant agencies' requirements in a single comprehensive document.

The other substantial change is in final § 3809.411(d)(3)(iii) where it provides for BLM to disapprove a plan of operations that would result in unnecessary or undue degradation. We have added language to describe how BLM would document disapproval of a plan of operations that would cause unnecessary or undue degradation under paragraph (4) of the final definition of ''unnecessary or undue degradation'' in § 3809.5. The added text states that, ''If BLM disapproves your plan of operations based on paragraph (4) of the definition of 'unnecessary or undue degradation' in § 3809.5, BLM must include written findings supported by a record clearly demonstrating each element of paragraph (4) including that approval of the plan of operations would create irreparable harm; how the irreparable harm is substantial in extent or duration; that the resources substantially irreparably harmed constitute significant scientific, cultural, or environmental resources; and how mitigation would not be effective in reducing the level of harm below the substantial or irreparable threshold.'' Paragraph (4) of the definition of ''unnecessary or undue degradation'' states, in part, ''* * * conditions, activities, or practices that * * * result in substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated.'' Any decision to deny the plan of operations must be supported by documentation showing how all four criteria have been met. It is BLM's intent that a plan of operations would be denied on this basis only in exceptional circumstances.

The final regulations in section 3809.411 are not inconsistent with the NRC conclusions and recommendations. We discussed earlier in this preamble how the paragraph (4) provision responds to the NRC Report recommendation that BLM clarify its authority to protect valuable resources that may not be protected by other laws. See the preamble to the definition of ''unnecessary or undue degradation.'' The NRC Report recommended that BLM plan for, and implement, a more timely permitting process, while still protecting the environment; and that BLM involve all agencies, Tribes, and non-governmental organizations in the earliest stages of the NEPA process. The requirements of final § 3809.411 and information description in final § 3809.401(b) establish a process where the operator is advised early as to the needed contents in the plan of operations, and the information required to support the NEPA analysis. This should facilitate plan review. The process will also provide for public comment on all plans of operations, and for consultation with the other State and Federal regulatory agencies, surface managing agencies, and Tribes. This early involvement by other parties, should they chose to participate, would reduce the potential for last minute surprises or delays in the approval process.

The NRC Report also recommended that BLM develop procedures that will enable the agency to identify during the plan of operations review process, the kinds of post-mining requirements that are likely to arise, and to incorporate these into the approved plan of operations. BLM has accomplished this in the final regulations by requiring: (1) In § 3809.401(b)(3) that plans of operations address post-closure management; (2) in § 3809.411(d)(2) the incorporation of other agency plans and permit requirements (including closure requirements), into the approved plan of operations; (3) in § 3809.420(a)(3) that operations comply with applicable land use plans; and (4) in § 3809.431(c) that plan modifications be submitted prior to mine closure to address unanticipated events, conditions or information.

Section 3809.412 When May I Operate Under a Plan of Operations?

Final § 3809.412 describes when an operator may conduct operations under a plan of operations. It lists two criteria: (1) BLM must have approved the plan of operations; and (2) the operator must have provided the required financial guarantee.

BLM has edited this section for clarity to remove the reference to the financial guarantee required under proposed § 3809.411(d) since that section merely requires an estimate of the guarantee amount. The reference has been replaced with one to final § 3809.551, which provides options for the financial guarantee instrument and associated requirements.

BLM received several comments on proposed § 3809.412 suggesting that BLM should notify the operator when the operator may begin operations.

When BLM issues a decision to the operator under final § 3809.411(d), notifying them of the approval of their plan of operations, BLM would also state in that decision when operations may begin. This notification would list any deficiencies that must be satisfied

prior to initiating operations. The purpose of final § 3809.412 is to advise the operator that under no circumstances may operations begin until the plan of operations has been approved and the financial guarantee provided. This section of the regulations explicitly precludes operators from conducting operations under a plan of operations without BLM approval and an adequate reclamation bond. This is not inconsistent with NRC Report Recommendation 1 that financial assurance should be required for the reclamation of all disturbances greater than casual use.

Section 3809.415 How Do I Prevent Unnecessary or Undue Degradation While Conducting Operations on Public Lands?

Final § 3809.415 lists the items operators must do to prevent unnecessary or undue degradation on public lands while conducting operations. It parallels the elements in the definition of ''unnecessary or undue degradation'' at final § 3809.5.

BLM received several comments on this section. One comment was that tying prevention of unnecessary or undue degradation in proposed § 3809.415(a) to complying with the terms and conditions of your approved plan of operations would open the door for BLM to prescribe any terms and conditions without being limited to the objective of preventing unnecessary or undue degradation. Another was that the rules should be crafted so that compliance with an approved plan of operations is sufficient to demonstrate compliance with any performance standards.

In response, as final § 3809.411(d) states, any terms or conditions BLM places on a plan of operations approval would be those needed to meet the performance standards in § 3809.420. Compliance with the performance standards is part of preventing unnecessary or undue degradation. However, while BLM intends that compliance with an approved plan of operations would be adequate to meet the performance standards, this may not always be the case. Conditions or circumstances that were not anticipated during initial plan approval may eventually occur, requiring that operations be modified in order to meet the performance standards and prevent unnecessary or undue degradation.

One comment asked BLM to (1) clarify what level of incremental activity they want to judge for unnecessary or undue degradation under proposed § 3809.415(b) and (2) change ''reasonably incident'' to ''logically incident''.

The requirement to prevent unnecessary or undue degradation applies to all levels of locatable mineral activity on public lands, casual use activities, notice-level activities and to plans of operations. All activities conducted under casual use, notices or plans must be reasonably incident to prospecting, mining, or processing operations. Activities that are not reasonably incident to these operations must be authorized under agency authorities other than the 3809 regulations. The term ''reasonably incident'' comes from Public Law 167, codified at 30 U.S.C. 612, and from the regulations at 43 CFR 3715. BLM needs to retain this term to maintain consistency with the applicable legal standards.

One comment expressed concern that proposed § 3809.415(c) did not include the White Mountains National Recreation Area. The commenter asserted that this is an example of the flawed character of the proposed regulations and illustrated a lack of consideration given to the special environmental conditions that apply in Alaska, the State with the largest amount of public and other Federal lands.

BLM provided the list in proposed § 3809.415(c) to present examples of areas where certain levels of protection are required by specific law or statute above the requirements in the 3809 regulations. It was not intended to be an exhaustive list of all areas where such requirements exist. The local BLM Field Offices are responsible for identifying such areas under their management when they administer the 3809 regulations. Operators are responsible for knowing if they are operating or proposing to operate in such areas.

The final regulations add § 3809.415(d) which says, ''You prevent unnecessary or undue degradation while conducting operations on public lands by * * * (d) Avoiding substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated.'' This addition was made to parallel the change made in the definition of ''unnecessary or undue degradation'' with the addition of paragraph (4) in the final regulations at § 3809.5.

Final § 3809.415 is not inconsistent with the NRC Report recommendations. The report noted that the current regulatory definition of ''unnecessary or undue degradation'' does not explicitly provide authority to protect valuable or sensitive resources that are not protected by other laws, and the NRC recommended that BLM ''communicate the agency's authority to protect valuable resources that may not be protected by other laws.'' See the NRC Report at pp. 120–22; see also at p. 69. The NRC recommended that this be done through ''guidance materials'' and ''staff training,'' but we have decided it is more fair to the public and the regulated industry, and overall more effective, to communicate this through these regulations. The explicit listing of requirements that must be taken to prevent unnecessary or undue degradation in the final regulations will address the NRC concern with the previous definition.

Section 3809.420 What Performance Standards Apply to My Notice or Plan of Operations?

Final § 3809.420 explains which performance standards apply to a notice or plan of operations. The previous regulations at § 3809.2–2 provided general performance standards in areas such as performing reclamation and complying with all applicable State and Federal environmental requirements. Due to confusion in implementing this portion of the previous regulations in the field, BLM determined that additional performance standards (which are incorporating some policies that BLM had already put into effect without amending the earlier regulations) and a clearer explanation of the standards, would assist both operators and BLM in defining and preventing unnecessary or undue degradation.

BLM considered developing performance standards that would specify the design and operating requirements for exploration, mining and reclamation components. These requirements would serve as minimum national standards that would specify how all operations had to be designed, constructed, and operated. We decided this approach is impractical and inflexible given the range of environmental conditions on the public lands and the wide variety of exploration and mining activities and for inconsistency with the NRC Report.

The approach selected for final § 3809.420 is to focus on the outcome of accomplishments that the operator must achieve. These ''outcome-based'' performance standards put minimal emphasis on how the operator conducts the activity, so long as the desired outcome is met. This approach allows the operator maximum flexibility, encourages innovation, and fosters the development of low-cost solutions. In implementing final § 3809.420 BLM will

review each notice or proposed plan of operations to determine if it is reasonably likely to meet each outcome-based performance standard, but BLM won't require any specific design to be used. The approach we have selected is consistent with a recommendation in the NRC Report that BLM continue to use comprehensive performance-based standards rather than using rigid, technical prescriptive standards.

The NRC Report also suggested that some changes to the previous rules are warranted. The NRC emphasized that BLM as a land manager on the public's behalf stands in a different relationship to the land and its resources from other landowners and from regulators who focus on specific environmental media. The Federal land managers have a mandate to ensure long-term productivity of the land, protection of an array of uses and potential future uses, and management of the Federal estate for diverse objectives. This relationship means that the term ''regulator does not fully describe BLM and Forest Service responsibilities when dealing with mining activities on Federal lands. It also means that these agencies are not merely landholders. They are both landholders and regulators, with set statutory management standards. Further they must serve a constituency almost always described in national terms—''the nation's need,'' ''all Americans,'' ''future generations.'' NRC Report at p. 40. The NRC Report also noted that, in general, the presence of multiple regulatory programs helps to assure that large-scale mining on Federal lands is subject to substantial scrutiny.

The performance standards are divided into three groups: General Performance Standards, Environmental Performance Standards and Operational Performance Standards. This was done to distinguish the broad performance standards—such as concurrent reclamation and conformance to the applicable land use plan—from the environmental performance standards that are specific to certain media such as air and water; as well as from the operational performance standards which describe what operational components a project must achieve.

Proposed § 3809.420 was modified in response to comments; primarily to provide added flexibility to operators. Requirements to ''prevent'' the introduction of noxious weeds, and ''prevent'' erosion, siltation and air pollution were replaced with requirements to ''minimize'' these things. This was done in response to public comments that pointed out an operator cannot always prevent impacts from occurring. ''Minimize'' means to reduce the impact to the lowest practical level. During its review of plans of operations, BLM may determine that it is practical to avoid or eliminate particular impacts altogether.

BLM added the phrase ''where economically and technically feasible'' or the phrase ''where technically feasible'' to make it clear to BLM and operators when economic and/or technical feasibility would be considered in achieving certain performance standards. See, for example, final §§ 3809.420(b)(3)(ii) and 3809.420(b)(4)(ii).

To acknowledge the fact that some States delegate certain environmental requirements to local governments, we added language to say that where delegated by the States, operators must comply with local governments laws and requirements. We dropped the concept of Most Appropriate Technology and Practices from proposed §§ 3809.5 and 3809.420. Instead, in final § 3809.420(a)(1), we clarified that operators must utilize equipment, devices and practices that will meet the performance standards. We also added language ''to minimize impacts and facilitate reclamation'' to final § 3809.420(a)(2) to clarify the purpose of this requirement.

In our continued effort to clarify that BLM is not usurping the States authority to regulate water resources, BLM dropped the requirement from proposed § 3809.420(b)(2)(i)(B) Surface water to handle earth materials and water in a manner that minimizes the formation of acidic, toxic, or other deleterious pollutants of surface water systems'' and removed the same language from proposed § 3809.420(b)(2)(ii)(B) Groundwater. In addition, at both proposed § 3809.420(b)(2)(C), now final § 3809.420(b)(2)(B), and § 3809.420(b)(2)(ii)(B) Groundwater, we eliminated the words ''Manage excavations and other disturbances'' and inserted the words ''conduct operations'' in their place to clarify that all aspects of operations have to comply with these requirements.

A commenter asserted that BLM's regulatory authority under FLPMA does not extend to water quality or water quantity issues. The commenter reasoned as follows: FLPMA grants BLM the authority to prevent ''unnecessary or undue degradation of the public lands.'' Public lands under FLPMA must be owned by the United States and administered by BLM. The United States does not hold title to navigable waters, and thus, navigable waters generally are not included within the definition of public lands. Consequently, because the United States does not own the navigable waters lying within the States, BLM lacks the statutory authority to promulgate regulations under FLPMA managing the quality of such waters. The commenter stated that BLM's previous regulations correctly deferred water quality regulation to applicable environmental protection statutes and regulations. With regard to water quantity, the commenter stated that BLM has long recognized that it must defer to and comply with state water right laws with respect to matters of water use and allocation.

BLM disagrees in part with the comment. The final rules do not establish water quality standards. BLM does have the authority, however, to regulate operations conducted on public land to prevent unnecessary or undue degradation, and may appropriately give consideration given to the effects an operation may have on water quality and quantity. FLPMA, at section 102(a)(8), states in part that, ''the public lands be managed in a manner that will protect the quality of * * * water resource * * * values * * *'' 43 U.S.C. 1701(a)(8). In general, BLM relies on operator compliance with State or Federal water quality standards to meet this objective. BLM can also require operators to incorporate protective measures for water resources into their operating and reclamation plans.

BLM agrees that the 3809 regulations do not apply to operations on State land, such as on certain beds of waters that were navigable at statehood. But the legal rules for determining ownership of the beds of waterbodies are complex, and in many situations throughout the public lands, it has never been determined who owns the beds of particular waterbodies. For one thing, whether particular watercourses were in fact navigable at statehood has never been adjudicated. Furthermore, the U.S. not only generally owns the beds of waterbodies that were not navigable at statehood, but also owns the beds of waterbodies that were navigable at statehood, if the U.S. had reserved the lands for Federal purposes prior to statehood. See, for example, *United States* v. *Alaska* (521 U.S. 1, 117 S. Ct. 1888 (1997)). Finally, even where States do own the beds of navigable waters on public lands, operators usually must use public land above and adjacent to the high water mark as part of their operations. Such use is subject to the 3809 regulation and requires plan approval, which may be withheld unless the plan of operations includes measures necessary to protect the public lands from any activities conducted by

the operator. As to matters of water use and allocation, this final rule respects established systems of State law that allocate water rights.

A commenter stated that by focusing on ''degradation * * * of the public lands,'' Congress consciously tasked BLM with managing the surface impacts of mining and that Congress did not authorize BLM to regulate or limit the effects of mining on ground water, surface water, or other environmental media. The commenter asserted that Congress did not ignore the need for environmental protections on the public lands, but it empowered BLM to incorporate State and other Federal environmental laws into its regulatory program, which the commenter asserted is what BLM has done in the 20 years that the 3809 regulations have been on the books. The commenter concluded that in the proposed rule BLM is seeking to tread heavily in environmental areas Congress said were off limits.

BLM disagrees with the comment that unnecessary or undue degradation does not consider the effects of mining on ground water, surface water, or other environmental media. FLPMA section 102(a)(8) states in part that, ''the public lands be managed in a manner that will protect the quality of * * * ecological, * * * environmental, air, * * * [and] water resource * * * values * * *'' The FLPMA mandate to prevent unnecessary or undue degradation includes degradation of water resources or of any other resource located upon the public lands. BLM has the authority to regulate operations conducted on public land with consideration given to the effects an operation may have on any of these resources. In part, BLM relies on operator compliance with State or Federal media-specific standards and programs to meet this objective. However, BLM can also require operators to incorporate protective measures for environmental media into their operating and reclamation plans. Federal law requires BLM to ensure that its actions (both direct activities and authorized activities) comply with all applicable local, State, tribal and Federal air and water quality laws, regulations, standards and implementation plans. See FLPMA sections 202(c)(8), 302(c), and 505(a)(iii), Clean Air Act sections 118(a) and 176(c) and Clean Water Act section 313(a). Therefore, BLM may require operators to conduct operations to avoid or limit impacts to air and water resources or require them to conduct appropriate air and water quality monitoring to demonstrate compliance.

The final rules contain a revegetation performance standard, § 3809.420(b)(5), which required operators to use native species for revegetation when they are available and to the extent technically feasible. We added the ''when available'' language in recognition of the fact that at the present time, sources for seeds of native species cannot keep up with demand. When we use the term ''native species'' in this final rule, we mean to give the term the same definition of ''native species'' found in Executive Order 13112, entitled ''Invasive Species,'' dated February 3, 1999. Under the Executive Order and this final rule, ''native species'' means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

There are occasions when non-native plant material may need to be used in revegetation of an area, but we also added language to the final rule to specify that in a situation where an operator uses non-native species, the non-native species should not be invasive, nor inhibit re-establishment of native species. For example, operators often use a seed mixture of non-native annual and native plant material for revegetation because the non-native seed will germinate quickly to hold the soil in place and keep invasive species from encroaching into the disturbed site. (Native species usually take longer to germinate and become established.) This would be allowable under the final rule if the non-native species would gradually give way as the native species become established on the site. Another example is when a seed bank of native species exists in the soil of a site being revegetated. Under the final rule, an operator could plant short-lived, non-native species to hold the soil in place until the native species reestablish themselves from the on-site seed bank.

In the final rule, we changed the heading of the proposed fish and wildlife performance standard, § 3809.420(b)(6) to read, ''Fish, wildlife, and plants'' to clarify that it also covers plants. In final § 3809.420(b)(6)(ii), we clarified that the reference to ''threatened or endangered species and their habitat'' in the proposed rule means Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat. The ESA requires BLM to enter into formal consultation with the FWS or the NMFS on all actions that may affect a listed species or its habitat. BLM must request a formal conference with FWS or NMFS on all actions that may affect a proposed species. Thus, it is BLM's longstanding policy to manage species proposed for listing and proposed critical habitat with the same level of protection provided for listed species and their designated critical habitat, except that formal consultations are not required. BLM Manual Chapter 6840.06(B), Rel. 6–116, Sept. 16, 1988. Also, to maintain consistency with final § 3809.420(b)(6)(iii) and to clarify that any actions to prevent impacts to threatened or endangered species are required, BLM added the word ''any'' so the final reads, ''You must take any necessary measures to protect Federally proposed or listed threatened or endangered species, both plants and animals, and their proposed or designated critical habitat as required by the Endangered Species Act.''

BLM lengthened the time requirement of 20 business days in proposed § 3809.420(b)(7)(ii) to 30 calendar days in final § 3809.420(b)(7)(ii) to give time required to ''evaluate the discovery and take action to protect, remove, or preserve the resource.''

At final § 3809.420(c)(3)(ii) and (iii), which is the performance standard for acid-forming, toxic, or other deleterious materials, BLM added migration control so final § 3809.420(c)(3)(ii) now reads, ''If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate (migration control).'' Final § 3809.420(c)(3)(iii) reads, ''You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control measures have been employed.''

At final § 3809.420(c)(7), concerning pit reclamation, BLM removed the presumption for pit backfilling, in response to public comments and the discussion in the NRC Report. Final § 3809.420(c)(7)(i) now reads, ''Based on the site-specific review required in § 3809.401and the environmental analysis of the plan of operations, BLM may determine the amount of pit backfilling required, taking into consideration economic, environmental, and safety concerns.'' Final § 3809.420(c)(7)(ii) was modified from the proposed rule for clarity to read, ''You must apply mitigation measures to minimize the impacts created by any pits or disturbances that are not completely backfilled.'' These changes regarding pit backfilling are consistent

with current BLM management practices.

A commenter asserted that BLM does not have the authority to impose regulations that will eliminate environmental impacts if those regulations also limit the opportunity to develop mining claims on public lands. The commenter stated that this issue was addressed in the final EIS for the previous 3809 regulations, where the Department of the Interior explained why it was not adopting an alternative that would have imposed stricter environmental standards. The commenter asserted that, while BLM has the authority to take ''any action necessary to prevent unnecessary or undue degradation of the public lands,'' the word ''necessary'' places a limit on BLM's authority. The commenter stated that the proposed rule would expand the BLM's regulatory role beyond that authorized by FLPMA, and would fundamentally change BLM from a land management agency with jurisdiction shared with the States into an EPA-like agency, setting Federal environmental standards that in turn drive standards on Federal, State and private lands. The commenter asserted that this is far beyond what Congress had in mind when it directed the BLM in FLPMA to prevent unnecessary or undue degradation.

BLM disagrees with the comment. The mining laws do not establish an unfettered right to develop mining claims free from environmental constraints. The Mining Law of 1872 itself refers to ''regulations prescribed by law,'' 30 U.S.C. 22, and FLPMA mandates regulation to prevent ''unnecessary or undue degradation.'' That is, section 302(b) of FLPMA expressly amended the mining laws by making rights under the mining laws subject to the Secretary's responsibility, by regulation or otherwise, to take any action necessary to prevent unnecessary or undue degradation of the public lands. Because FLPMA did not define ''unnecessary or undue degradation,'' the Secretary may do so in these rules. BLM believes that the regulation changes are necessary to prevent unnecessary or undue degradation. BLM has identified numerous regulatory issues that need to be addressed. The NRC Report has also identified issues and recommended regulatory changes. The commenter is also wrong in asserting that proper land management does not include setting appropriate environmental standards for activities that occur on the public lands, particularly in light of the Congressional policy set forth in section 102(a)(8) of FLPMA.

A commenter disagreed with a statement in the draft EIS that the BLM lacks ''clear, consistent standards for environmental protection'' (p. 12, Draft EIS). The commenter stated that there are over 20 State and Federal environmental regulations that control mining industry impacts on the environment, and that Congress delegated authority for implementation of environmental regulation to specific Federal and state agencies in order to avoid overlapping authority and redundancy. The commenter asserted that Congress limited the authority of the BLM to regulate locatable mineral exploration and development in accordance with FLPMA and has not significantly modified this authority since 1976. Thus, BLM must ensure that its regulatory actions are consistent with the intent of Congress as reflected in the existing environmental statutes.

BLM disagrees that its rules exceed its statutory authority under FLPMA and the mining laws. Although other Federal and State agencies regulate various aspects of mining under other statutes, BLM has its own responsibilities under FLPMA and the mining laws to protect the resources and values of the public lands from unnecessary or undue degradation. The statement from the draft EIS reflects the difficulty BLM often encounters in determining what constitutes unnecessary or undue degradation. The NRC Report noted this difficulty in its Recommendation 15. See NRC Report, pp. 120–22; see also id. pp. 68–71.

Numerous commenters were concerned that BLM's requiring compliance with State or Federal environmental requirements duplicates existing State and Federal programs and permitting requirements, especially regarding water quality. BLM made modifications to the proposed rule to clarify that BLM is not duplicating State or Federal requirements but instead is making it clear to operators, the public and BLM field managers that operators must comply with State and or Federal environmental requirements. BLM as the land manager of public land is ultimately responsible for ensuring that operations on land under its jurisdiction are in compliance with various Federal, State, tribal or, where delegated by the State, local government environmental requirements. If operators are cited for violations of these environmental requirements by appropriate authorities, BLM will notify operators they are in non-compliance with their plan of operations and act accordingly. The NRC Report observed that, ''In general, the existence of multiple regulatory programs helps to assure that at least large-scale mining on Federal lands is subject to substantial scrutiny.'' See p. 54.

Commenters expressed concern over mitigation. BLM has adopted a three-tiered approach to mitigation. First, we encourage avoiding the impact altogether by not taking the action or certain parts of an action. Secondly, we encourage the operator to minimize the impact by (a) limiting the degree or magnitude of the action and its implementation; (b) rectifying or eliminating the impact by repairing, rehabilitating, or restoring the affected environment; and (c) reducing or eliminating the impact over time by taking appropriate steps during the life of the action. Thirdly, an operator may, if the impacts are unavoidable, compensate for the impact by replacing or providing substitute resources or environments. Mitigation would only occur on a limited case-by-case basis if this strategy is followed.

Some commenters questioned BLM's authority to require mitigation of unavoidable impacts. We believe, however, that sections 302(b) and 303(a) of FLPMA, 43 U.S.C. 1732(b) and 1733(a), and the mining laws, 30 U.S.C. 22, provide the BLM with the authority to require mitigation. Mitigation measures fall squarely within the actions the Secretary can direct to prevent unnecessary or undue degradation of the public lands. An impact that can be mitigated, but is not, is clearly unnecessary. Section 303(a) of FLPMA directs the Secretary to issue regulations with respect to the ''management, use and protection of the public lands * * *'' In addition, 30 U.S.C. 22, allows the location of mining claims subject to ''regulations prescribed by law.'' Taken together these statutes clearly authorize the regulation of environmental impacts of mining through measures such as mitigation. BLM may mandate particular steps to mitigate where mitigation can be performed onsite. For example, if due to the location of the ore body a riparian area must be impacted, mitigation can be required on the public land within the area of mining operations. If a suitable site for riparian mitigation cannot be found on site, the operator may voluntarily choose, with BLM's concurrence, to mitigate the impact to the riparian area off site.

Some commenters were concerned that BLM did not have the authority to, or should not require, operators to follow a ''reasonable and customary mineral, exploration, development, mining and reclamation sequence.'' In BLM's experience, there have been instances in the past where operators

have created unnecessary impacts by not following a reasonable and customary mineral development sequence. Therefore we believe regulating sequencing may be necessary to prevent unnecessary or undue degradation. BLM will review sequencing on a large scale and will not regulate the sequencing of small portions of an operation.

Numerous commenters wanted BLM to establish explicit provisions for groundwater protection as well as general and operational performance standards. BLM considered establishing numeric standards for groundwater affected by operations. Currently, there are no Federal groundwater standards, and several States where mining activities subject to these regulations occur do not have their own groundwater standards. BLM decided not to propose numeric standards because of the difficulty of designing nationwide numeric standards relevant to the range of conditions. BLM believes the States are better equipped to develop groundwater standards applicable within their borders. Instead, the regulations adopt a pollution minimization requirement, in preference to treatment or remediation, and rely upon applicable State standards for groundwater where they are present.

Some commenters were concerned that BLM's requirement to return disturbed wetlands and riparian areas to proper functioning condition, where economically and technically feasible, would infringe upon the U.S. Army Corps of Engineers (COE) and EPA's responsibility to manage wetlands under their jurisdiction (so-called ''jurisdictional wetlands'') under § 404 of the Clean Water Act. BLM is not proposing to duplicate the regulation of jurisdictional wetlands. Not all wetlands meet the definition of jurisdictional wetlands. BLM has responsibility for wetland and riparian areas found on public lands under its jurisdiction that do not fall under the COE jurisdiction, and the final rules require that impacts to them either be avoided or mitigated.

Commenters were concerned that waste dumps should not be located on millsites (non-mining claims). Final § 3809.420 does not address whether waste dumps can be located on particular mining claims. The issue raised, in part, relates to whether locating waste dumps on mining claims rather than millsites affects the validity of those mining claims under the mining laws. This is an issue the Department is currently examining, but is not implicated in this rulemaking.

Some commenters supported BLM requiring the use of Best Available Technology and Practices (BATP) and opposed the use of Most Appropriate Technology and Practices. Since BATP doesn't lead to innovation and development of new technology, BLM chose not to require the use of BATP, preferring instead to use outcome-based performance standards, as discussed earlier in this preamble. The definition of MATP also served to confuse and not add any value to the regulations and was therefore dropped from the final rule. BLM has sought, in the development of performance standards, to focus on the outcome or accomplishment the operator must achieve.

Some commenters thought that the requirement to ''minimize changes in water quality in preference to water supply replacement'' was an improper infringement upon State water laws. We believe, however, that sections 302(b) and 303(a) of FLPMA, 42 U.S.C. 1732(b) and 1733(a), and the mining laws, 30 U.S.C. 22, authorize, if not mandate, that BLM require mining operators to minimize water pollution (source control) in preference to water treatment, and it is appropriate for BLM to make these decisions in reviewing and deciding whether to approve mining plans. This review falls squarely within the actions the Secretary can direct to prevent unnecessary or undue degradation of the public lands. While allocation and permitting of water use is primarily the responsibility of the States, the ''prevention of unnecessary or undue degradation'' mandate makes it BLM's responsibility to address impacts to water resources on the lands under its jurisdiction, in deciding whether to approve plans of operations under these regulations.

There were comments that BLM should not require operators at closure to detoxify leaching solutions and heaps. Final § 3809.420(c)(4) lists acceptable practices for detoxification of leaching solutions and heaps and adds that other methods that achieve the desired success are acceptable. However, all materials and discharges must meet applicable standards. Partial detoxification is not acceptable if upon completion, all materials and discharges don't meet applicable standards.

Some commenters expressed concern that the performance standards would not require compliance with BLM's standards and guidelines for grazing administration (43 CFR part 4100, Subpart 4180). The rangeland health standards are expressions of physical and biological conditions or degree of function required of healthy sustainable lands. Operations under this subpart would have to comply with the performance standards of final § 3809.420. These performance standards will ensure that the rangeland health standards can be met. To the extent that the standards for rangeland or public land health are incorporated in BLM's land use plans, they will be reflected in the plans of operations that BLM approves under this subpart.

Section 3809.423 How Long Does My Plan of Operations Remain in Effect?

Final § 3809.423, which was not changed from what was proposed, states that the plan of operations is in effect as long as operations are being conducted, unless BLM suspends or revokes the plan of operations for failure to comply with this subpart.

BLM received several comments on this section of the proposed regulations. One comment suggested that BLM should establish a term or duration after which a plan of operations would have to be renewed. A term of 5 years was suggested for active plans of operations and a term of 1 year for inactive operations.

BLM considered issuing plan of operations approvals with limited periods of effectiveness or terms, but could not decide upon a standard term or duration due to the variability in mining operation sizes and types. BLM believes it is more appropriate to have the operator propose an overall schedule for operations. During the plan review and approval process, BLM would then approve the operations schedule for the individual mining plan under review. Changes or extensions in the schedule could be provided through plan modifications under § 3809.431(a), if needed.

Other comments were concerned with the revocation clause in this section of the regulations. One commenter suggested removing the revocation provision from the regulations. Another asked how long BLM would give the operator before revoking the operating plan.

Final § 3809.423 provides that the plan of operations approval is good for the life of the project as described in the plan. In the event the operator fails to comply with an enforcement order, however, the plan approval can be revoked under § 3809.602. BLM believes this is appropriate where the operator is failing to take corrective actions specified in an enforcement order. Final § 3809.602(a)(1) provides that a plan may be revoked after the time frames provided in the enforcement order have been exceeded, and it provides the operator with due process to appeal

such a determination. The enforcement order's time frame will vary from case to case depending upon the specific cause of the violation and the urgency with which it must be abated to prevent unnecessary or undue degradation.

Final § 3809.423 is not inconsistent with the recommendations of the NRC Report. The NRC Report did discuss the issue, as follows:

> The Committee did not determine if plans of operations should be reviewed or reopened at predetermined intervals. The evolutionary nature of mining at individual sites—particularly at mines using newer technologies and dealing with disseminated mineral deposits—requires changes in the limitations on plan modifications in the original BLM and Forest Service regulations. Updating of financial assurance instruments should also take place as conditions change that might affect the levels of bonding or other forms of financial assurance. Practices now vary among the states and federal agencies.

Report, p. 101. The issues of plan modification and changes in levels of financial assurance are discussed further below.

Section 3809.424 What Are My Obligations if I Stop Conducting Operations?

Final § 3809.424 addresses the obligations of operators should they stop conducting operations. This section of the regulations provides in table format a list of conditions operators must follow during periods of non-operation. It also describes what BLM will do if non-operation is likely to cause unnecessary or undue degradation; or if BLM determines the operation has been abandoned.

The final regulations at § 3809.424 carry out Recommendation 5 of the NRC Report, which was that BLM require interim management plans, define conditions of temporary closure, and define conditions under which temporary closure becomes permanent and all reclamation and closure requirements must be completed.

Final § 3809.424 requires that if an operator stops conducting operations for any period of time, the operator must follow the approved interim management plan for its plan of operations, take all necessary action to prevent unnecessary or undue degradation, and maintain an adequate financial guarantee. If the interim management plan does not address the particular circumstances of the temporary closure, the operator must submit a modification of the interim management plan to BLM within 30 days. The regulations also provide that BLM will require the operator to take all necessary actions during the period of non-operation to assure that unnecessary or undue degradation does not occur. This includes requiring the removal of structures, equipment and other facilities, and reclamation of the project area. After 5 consecutive years of inactivity BLM will review the operation to determine whether the operation is abandoned and whether BLM should direct final reclamation and closure. If BLM determines the operation has been abandoned, it may initiate bond forfeiture and conduct the reclamation. If the bond is not adequate to pay for the reclamation, BLM may complete the reclamation and hold the operator liable for the reclamation costs.

Comments received on proposed § 3809.424 included suggestions for incorporating the NRC Report recommendation on temporary and abandoned operations; concern that BLM would terminate plans, thus causing a decrease in the value for the operator; suggestions for putting limits on how long an operation can wait for improvement in commodity prices; and objections that operators would be held responsible for reclamation costs that exceed the amount of the financial assurance should BLM terminate a plan and implement reclamation. Specific comments and responses to proposed § 3809.424 follow.

Numerous commenters were concerned that proposed § 3809.424(a)(3) and (4) be revised to incorporate NRC Report recommendations and describe the conditions that will cause BLM to unilaterally terminate a plan of operations. They noted that an approved plan of operations has financial value to the owner/operator and can be transferred to another owner or operator as part of a total mining package. The commenters asserted that BLM should not have the ability to unilaterally terminate a financially valuable part of a mining operation. The proposed 5-year threshold for terminating an approved plan of operations failed to properly consider the economic consequences of unilateral cancellation when the suspended mining operation is not causing unnecessary or undue degradation and BLM has certified that the financial guarantees are adequate. Other commenters suggested amounts of time, ranging from 3 years to 10 years, that operations should be allowed to remain inactive before terminating the plan of operations. One comment suggested that the temporary closure be considered permanent only when the operator advises BLM it is permanent. Others suggested that five years is just the right length of time. A comment was made that the rule should not just direct BLM to review to see if termination is warranted, but should instead require BLM to initiate termination.

In response to comments, BLM has incorporated the NRC Report recommendation regarding interim management plans into final §§ 3809.401 and 3809.424. Because of the recognized value an approved plan of operations may have, and the potential for changing market conditions, the rule allows up to 5 years to pass before BLM conducts a review to see if the plan should be terminated. The final regulations do not require the plan to be terminated after five years, only that a review be conducted to determine if it should be terminated. If there is adequate bonding in place, no unnecessary or undue degradation occurring, and persuasive reasons exist to maintain an inactive status, there may be no reason for BLM to terminate the plan and direct final closure. However, a plan of operations cannot be allowed to remain inactive and unreclaimed indefinitely. BLM believes that 5 years is a reasonable amount of time to allow most operators to maintain standby conditions. After 5 years of inactivity, it will be increasingly difficult to remove equipment, maintain suitable access for reclamation purposes, control weed infestations, preserve topsoil stockpiles, and ensure public safety. At some point, BLM should direct reclamation and closure.

One commenter proposed an alternative approach for interim management plans, as follows: (1) BLM should require an operator to notify BLM and the State of intent to temporarily cease operation. (2) An interim management plan should be adopted within 90 days of a decision by the mining company to cease operations due to market conditions or other factors. (This approach is taken in some state programs, such as section 273(h) of California's Surface Mining and Reclamation Act.) (3) BLM should annually review the operation to determine whether the site is viable to restart, and assess the intent of the operator to continue operations. (4) If, after two consecutive years, the operator has not indicated an intent to restart mining, the BLM should require the operator to begin reclamation. (5) If the ''temporary'' closure extends to 5 years, the operator must demonstrate that the site will be re-opened. Otherwise, the operator must begin reclamation.

Another comment suggested that the operator should be required to obtain approval of an interim management plan that describes what measures will

be taken to comply with proposed § 3809.424(a)(1)(i-iii).

BLM prefers to require that the operator propose an interim management plan for periods of non-operation as part of the initial plan of operations. This approach should reduce the workload on both the operator and BLM, plus provide for up-front planning on how to manage periods of non-operation. If the period of non-operation is not adequately covered by the interim management plan, BLM would require the operator to submit a modification within 30 days, while at the same time assure that unnecessary or undue degradation does not occur. We believe final § 3809.424(a)(3) would accomplish the objective of this commenter. If the operator could not demonstrate the site would reasonably be expected to reopen, BLM may consider it abandoned and order reclamation.

Several comments wanted proposed § 3809.424(a)(3) revised to unambiguously explain the difference between inactive and abandoned mining operations and to be consistent with the NRC Report recommendations. One commenter wanted assurance that BLM and FS are using and applying the definitions for inactive and abandoned operations in a uniform manner.

Under the final regulations at § 3809.424(a), an operation is considered inactive if it is not operating (mining, exploring or reclaiming), but is following its interim management plan. An operation may be considered abandoned for a variety of reasons, including failure to follow or amend the interim management plan, or after 5 consecutive years of inactivity. Other reasons for considering an operation abandoned may include inability to locate the operator, or if the operator is deceased. This is consistent with NRC Report recommendations regarding inactive and abandoned operations. BLM is unable to assure the Forest Service would adopt similar regulations for defining inactive or abandoned operations.

EPA expressed concerns about the potential for interminable delays that may occur between mine closure and reclamation. The time when mining is terminated and the interval between cessation of mining and restoration needs to be carefully addressed in the plan of operations. It is sometimes difficult to determine when an operator is finished mining the site. Most mining activities are sensitive to world fluctuations of commodity prices, and may have to be discontinued when prices are not high enough to make the operation profitable. The occurrence or length of these ''down times'' caused by low commodity prices cannot be determined in advance. Nonetheless, EPA asserted, there needs to be some criteria, within the plan of operations, to determine when extractable resources have been exhausted, and when reclamation should commence. EPA recommended that criteria be included that define mining activity end-points that are consistent with the financial objectives of the applicant, and at the same time identify a time line for the initiation of reclamation activities.

BLM believes that the final regulations generally address EPA's concerns. Final § 3809.401 requires operators to provide a general schedule of activities from start through closure and an interim management plan for periods of non-operation. The general performance standard in § 3809.420 requires the operator to perform concurrent reclamation on areas that will not be disturbed further under the plan of operations. Final § 3809.424 puts limits on the amount of time an operation can remain temporarily closed without undergoing review to determine if it is abandoned. This combination of requirements means individual plans of operations will have to set out an extraction and reclamation schedule for agency review and approval that describes when mine facilities would be open and when they would be reclaimed, and that reclamation would have to occur at the earliest practical time. In addition, temporarily inactive operations would receive greater scrutiny with defined time limits for periods of inactivity. BLM believes these combined requirements will promote timely reclamation within a defined period after operations cease, yet be flexible enough to take into account ordinary fluctuations in world commodity markets.

Several commenters requested that proposed § 3809.424(b) be revised to make it clear that the obligations of the owner/operator are only those contained in the approved plan of operations and associated financial instruments, such as bonds. Some commenters characterized the plan of operations and associated requirements as in the nature of a ''contract'' between the BLM and the operator, and asserted that an operator may use ''reasonable and customary methods'' to comply with the contract. They would have the regulations deny BLM unilateral authority to change that ''contract'' and make the operator liable beyond this. They assert that operators should not be required to monitor a site in perpetuity, and that, without well-defined closure or success criteria, operators will have a difficult, if not impossible, time securing reclamation bonds.

BLM disagrees with the comment. The operator's liability is not limited to the amount of the reclamation bond or other financial instrument. The operator is responsible for preventing unnecessary or undue degradation. This includes complying with applicable environmental standards such as water quality and air quality standards, and to reclaim the site to the performance standards in § 3809.420. The financial instrument is an enforcement tool to back up the operator's obligations, if it is unable or unwilling to meet these regulatory requirements. It does not represent the limits of the operator's responsibility, but merely provides the BLM some level of assurance that the work will be performed. If a reclamation bond is not adequate to perform the reclamation work, the operator is liable for the unfunded portion needed to meet the minimum regulatory requirements.

BLM also disagrees with the commenter's characterization of its obligations as being contractual in nature. The operator's obligation to reclaim and prevent unnecessary or undue degradation is based on Federal statute and regulations. The test for compliance is not whether the operator uses ''reasonable and customary practices,'' but whether the operator achieves success in meeting the performance standards. Site-specific success criteria and post-closure monitoring requirements should be established as a result of the individual plan of operations review process. Once a closure plan has been successfully implemented, no additional work or monitoring may be necessary by the operator. However, operator remains responsible for future problems that might develop on that site deriving from the operator's activities.

One commenter recommended that BLM should not be mandated to forfeit the bond within 30 days of the determination that the operation was abandoned. The commenter recommended instead a statement indicating that the BLM may initiate forfeiture under this section. In this way, the BLM would have an opportunity to take enforcement action prior to forfeiture.

BLM agrees with the comment and final § 3809.424(a)(4) provides that BLM may initiate forfeiture under § 3809.595. Final § 3809.595 has been revised to substitute ''may'' for ''will'' on conditions which would cause BLM to initiate forfeiture.

One comment was made that ''inactive'' status under the mining laws

may constitute ''abandonment'' under CERCLA (Superfund) where a release or threat of a release exists because of inadequate controls for public safety, health and the environment.

These rules do not reflect any judgment that ''inactivity'' here equates with ''abandonment'' under CERCLA. CERCLA liability is determined by that statute. We believe, however, that a release or threat of release under CERCLA from a mining operation subject to these rules could also constitute unnecessary or undue degradation. The interim management plan required under final § 3809.401(b)(5) must address management of toxic or deleterious materials during periods of temporary closure. This includes measures needed to prevent a release or the threat of a release. Operations which have a release, or threaten release, may be considered abandoned by BLM and subject to immediate forfeiture of that portion of the financial guarantee needed to stabilize the area or to prevent or correct the release conditions.

One comment was not opposed to procedures regarding abandonment, temporary cessation of operations, or a specified time frame for expiration of a notice, as the NRC Report recommends, but urged that BLM work with States to determine how best to plan and define those circumstances when temporary closure becomes permanent. States already have extensive experience in this area. No new Federal program is necessary and would only duplicate these existing State programs and authorities.

BLM agrees that temporary closure is one of the items that must be coordinated with the respective States. This has been specified in final § 3809.201 as one of the items that should be covered under Federal/State agreements. However, BLM believes that, as recommended by the NRC Report, it must have its own procedures in place to address ongoing problems with inactive and abandoned operations.

One commenter objected to the requirement for preparation of interim management plans, asserting that it was a significant burden on operators and not needed where unnecessary or undue degradation has not occurred or is not expected. For example, the commenter stated, it is inappropriate to require an interim management plan in all plans of operations because of speculation that the mining operation may be suspended in the future. Further, the commenter suggested any interim management plan prepared as part of the plan of operations application would become out of date in the future.

BLM believes that interim management plans do not pose a significant burden on operators if prepared as part of the plan of operations. The operator, in planning to mine, should also be able to plan under what conditions they might temporarily not mine, and how they would manage the site to prevent unnecessary or undue degradation during the temporary closure. If conditions change at temporary closure, the interim management plan could be easily modified to address the new conditions or circumstances. More importantly, by giving consideration to possible interim management needs during the project planning phase, the operator is better prepared to address temporary closure should it become necessary. Finally, there is some efficiency in using a single NEPA document and a single review process to process the entire plan of operations, instead of treating the interim management plan as a plan modification later, with its own review periods and NEPA documentation requirements.

One comment objected to what it called the ''implied'' requirement of an interim management plan to remove equipment and/or facilities. The comment asserted that this issue should be considered in the BLM plan of operations decision for final reclamation, and at least BLM should describe factors under which it might consider equipment or facility removal during temporary suspension of operations.

BLM does not know in advance all situations where removal of equipment might be required. However, under the interim management plans that would be submitted as part of the plan of operations, it is the operator who will propose the provisions for storage or removal of equipment, supplies, and structures during periods of temporary closures. BLM will review the proposed interim management plan and decide if the plan would prevent unnecessary or undue degradation. Obviously, the need to remove equipment at the end of mine life is greater than it would be for relatively short periods of non-operation.

Some commenters did not agree that BLM needed to require interim management plans or to specifically define the conditions under which temporary closure becomes permanent, triggering the requirement for final reclamation, although they did acknowledge that the NRC Report recommended (Recommendation 5) that BLM define such conditions.

BLM believes the NRC was correct and that it is appropriate to have interim management plans prepared for both planned and unplanned temporary closures as part of the overall plan of operations. BLM has defined 5 years as the maximum time period an operation can maintain temporary closure without a review to evaluate whether final closure should be directed. This gives operators a reasonable amount of time to await changes in financial conditions yet provides flexibility in that closure is not necessarily mandated after the 5-year period.

Other commenters were concerned that BLM be consistent with NRC Report Recommendation 5. They pointed out that following the recommendation would add clarity and provide useful guidelines. In addition, that BLM should allow for extended periods of temporary closure.

In the final regulations, BLM has added the requirement under § 3809.401(b) that plans of operations include interim management plans as recommended by the NRC Report; and to final § 3809.424 that operators follow their approved interim management plans during periods of non-operation. BLM believes these requirements are consistent with NRC Report Recommendation 5 and provide useful guidelines for temporary, seasonal, and abandonment determinations. Operators may propose to extend periods of temporary closure by submitting a modification to their interim management plans while maintaining an adequate financial assurance during the closure period.

Changes made to final § 3809.424 have been made under the ''Then'' column of § 3809.424(a)(1). Several sentences have been inserted in the final regulations to the effect that if an operator stops conducting operations for any period of time, the operator must follow the approved interim management plan submitted under § 3809.401(b)(5), and must submit a modification under § 3809.431(a) to the interim management plan within 30 days if it does not cover the circumstances of the temporary closure.

Other changes made to final § 3809.424(a)(1) are the deletion of the phrase, ''maintain the project area, including structures, in a safe and clean condition;'' and deletion of the phrase, ''* * * including those specified at 3809.420.(c)(4)(vii).'' These phrases have been added to § 3809.401(b)(5) as part of the content requirements for all interim management plans. With the addition to final § 3809.424(a)(1) that interim management plans must be

followed, these phrases became redundant and have been deleted.

Final § 3809.424 is not inconsistent with the conclusions or recommendations of the NRC Report. NRC Report Recommendation 5 stated that BLM should adopt consistent regulations that (a) define conditions under which mines will be considered to be temporarily closed; (b) require that interim management plans be submitted for such periods; and (c) define the conditions under which temporary closure becomes permanent and all reclamation and closure requirements must be completed.

The final regulations implement the NRC Report recommendation. Interim management plans that define the anticipated conditions of temporary closure are required to be approved as part of all plans of operations. The interim management plans must be implemented during periods of non-operation, and modifications must be submitted within 30 days if circumstances of the closure change from that anticipated in the interim management plan. Final § 3809.424 provides that after 5 consecutive years of inactivity, BLM will review the operations and may determine that the closure is permanent and direct final reclamation and closure be completed. BLM may also determine at any time that the operation has been abandoned, and direct final reclamation, if the interim management plan is not being implemented and the indicators of abandonment in final § 3809.336(a) exist.

Sections 3809.430 Through 3809.434 Modifications of Plans of Operations

Section 3809.430 May I Modify My Plan of Operations?

Final § 3809.430 says that the operator may request a modification of the plan of operations at any time when operating under an approved plan of operations. No substantive comments were received on this section of the proposed rule, and no changes have been made to the final regulations. Providing for operator-requested modifications is not addressed by any recommendation of the NRC Report, and therefore this section is not inconsistent with any recommendation of the NRC Report.

Section 3809.431 When Must I Modify My Plan of Operations?

Final § 3809.431 describes the three circumstances under which operators must modify their plans of operations: (1) Before making any changes to the operations described in the approved plan of operations; (2) when required by BLM to prevent unnecessary or undue degradation; and (3) before final closure to address impacts from unanticipated events or conditions or newly discovered circumstances or information. The final regulations then provide examples of what might constitute unanticipated events or conditions or newly discovered circumstances or information that would warrant a plan modification before final reclamation and closure. These include: the development of acid or toxic drainage, the loss of surface springs or water supplies, the need for long-term water treatment and site maintenance, providing for the repair of potential reclamation failures, assuring the adequacy of containment structures and the integrity of closed waste units, provisions for post-closure management, and eliminating hazards to public safety.

A new paragraph has been added under final § 3809.431(c) to address NRC Report Recommendation 14 that BLM plan for and assure the long-term post-closure management of mine sites. BLM believes that the best way to do this, aside from comprehensive planning in the initial plan of operations, is to provide a mechanism where plans of operations may be modified before closure to address specific closure needs due to unanticipated events or conditions, or newly discovered circumstances or information.

Experience has shown that, especially with large mining projects spanning ten or more years, it is often useful to reevaluate reclamation plans prior to final closure. This allows for the incorporation into the reclamation plan of environmental information gained throughout the mine life, consideration of ''as built'' mine conditions, and the ability to apply the most recent developments in reclamation or remediation technology. This does not mean that all plans of operations would require modification prior to reclamation and closure. The requirement to modify the plan of operations would have to be triggered by a significant change that makes reclamation and closure plans approved as part of the initial plan of operations no longer adequate or appropriate.

BLM received comments expressing concern about when BLM would require an operator to modify a plan of operations. Some commenters were concerned that a modification not be directed just because BLM suddenly changed its mind regarding acceptable impacts. Others were concerned that BLM could use the new definition of unnecessary or undue degradation with the modification requirements to retroactively apply the new performance standards to existing operations. Some commenters recommended periodic reviews for all plans of operations while others were against periodic reviews. Some operators were concerned with the amount of operational change that would warrant a modification requiring BLM review and approval.

In response, BLM believes we must have the authority to require a plan modification in a timely manner to prevent unnecessary or undue degradation. In this regard, the NRC Report had some relevant observations:

> Where * * * modifications are needed to prevent unnecessary undue degradation, such review should be expeditious and tied to the NEPA document approving the initial plan of operations. In addition, revised agency procedures should contain safeguards to assure that modifications are imposed only after serious consideration and following a procedure that protects the interests of the mining company in continuing to conduct operations, consistent with the avoidance of unnecessary or undue degradation.

NRC Report, p. 101. BLM would not use the modification requirement to place existing operations under the new performance standards. Final § 3809.400 makes it clear that an existing operation can continue to implement the existing plan of operations under the performance standards in the existing regulations. Furthermore, the final regulations do not require reviews of plans of operations at predetermined intervals, or modifications of already approved plans of operations for non-substantive changes in circumstances.

Two commenters asked if proposed § 3809.431(b) was ''retroactive'' onto private lands. As discussed earlier in this preamble, the 3809 regulations apply only to operations located on lands managed by the BLM. Final § 3809.2(d) has been added to the regulations to make this more clear.

One comment objected to statements in the proposed rule preamble that the proposed rule would eliminate the procedures relating to required modifications because the ''procedures are unnecessarily detailed and cumbersome'' and the ''proposal would allow BLM field staff flexibility to streamline the modification review process.'' The commenter asserted that the provisions in the existing regulations provide justifiable and substantive protections to operators that have expended enormous sums designing and constructing facilities in accordance with BLM-approved plans, and that BLM shouldn't be allowed to wipe the slate clean merely because it

changes its mind in a situation where all impacts were foreseen from the start. The commenter asserted that the existing provisions have worked well over time to allow BLM to protect the public lands from unforeseen events without disturbing the legitimate expectations operators gain through approval of their plans and their resulting investment of significant sums in mining operations.

BLM has developed the modification procedures in the final regulations in response to NRC Report Recommendation 4 that BLM revise its modification requirements to provide more effective criteria for modifications to plans of operations. The NRC Report concluded that the current procedures are not straightforward enough to allow BLM to require a modification even where needed to prevent unnecessary or undue degradation, and should not depend upon ''looking backward'' at what should have happened in the initial plan of operations approval. See the NRC Report, pp. 99–101. The new modification procedures are designed to be consistent with the discussion in the NRC Report.

One comment specifically requested that BLM require a closure plan that includes all actions to both reclaim and remediate any outstanding environmental issues. BLM has added final § 3809.431(c) to the final regulations to require a modification prior to final mine closure if needed to address unanticipated events or conditions, or newly discovered circumstances or information that must be taken into account by final reclamation activities. This would include requiring, as part of the modified final reclamation plan, plans for remediation of any outstanding environmental problems that were not adequately covered in the approved plan of operations.

Several commenters were concerned that the agency's authority to direct an operator to modify its approved plan be subject to some constraint. They asserted that operators are entitled to due process, including some written specification on how and why the agency has determined that operations it previously approved as not constituting unnecessary or undue degradation of BLM-managed land has suddenly become unnecessary or undue degradation. They urge that the rule require the agency to state in writing, in any such directive to modify a plan, how and why the modification is being directed.

Any order issued under final § 3809.431(b) requiring an operator to submit a plan modification would contain a detailed description on why BLM had determined that the modification is necessary. Procedural protections for the operator are preserved in final § 3809.800. An operator may challenge an order of the BLM field manager by appealing it to the BLM State Director and eventually to the Interior Board of Land Appeals. This approach is consistent with discussions in the NRC Report on revising the criteria for requiring plan modifications, and on preserving due process for operators.

One comment said that proposed § 3809.431 would create a separate and inconsistent standard for modifications to plans of operations by allowing BLM to require a modification to ''minimize environmental impacts, or to enhance resource protection.'' The commenter asserted that BLM should only be able to require a modification to prevent unnecessary or undue degradation. Final § 3809.431 doesn't use the terms suggested in the comment, but requires modifications to prevent unnecessary or undue degradation and to account for unanticipated events or conditions, or newly discovered circumstances or information.

Several commenters were concerned that existing operations would be affected by the rule changes. In their view, proposed § 3809.431(b) would essentially create a ''Catch-22'' situation by providing that a plan of operations must be modified if BLM concludes it does not prevent unnecessary or undue degradation, because the rule will also modify the definition of ''unnecessary or undue degradation'' and the related performance standards. This gives BLM the authority to require modification at any time to require compliance with the new performance standards. The commenter asked that the rule be clarified with respect to BLM's ability to impose the new performance standards on existing operations through a modification order.

In response, BLM has revised final § 3809.400(a) to make it clear that operations existing on the effective date of this final rule are exempt from the new performance standards. A modification required under 3809.431(b) for operations covered by a plan of operations approved or pending as of the effective date of the final regulations would be tied to the previous definition of ''unnecessary or undue degradation'' and the previous performance standards. Existing operations would remain subject to modification orders under final § 3809.431, but the modification requirements themselves would be based on the previous performance standards and definition of unnecessary or undue degradation.

One commenter suggested that the regulations clarify when changing conditions warrant a change or modification in operations. For example, a single mine in a basin doesn't have the same impact as several; therefore changes should be required throughout the basin rather than to put all of the mitigation requirements on the last mine permitted.

Final § 3809.431(c) has been added to provide some examples of when a change in conditions or circumstances would require a plan modification. The allocation of mitigation measures among different mine operators contributing to cumulative impacts may be factually complex and may also raise legal issues. BLM believes such situations must be dealt with on a case-by-case basis.

Several comments noted that most operations at some time make changes in their plans of operations, such as to expand the scale of operations, or to extend mine life, or to convert from open pit to underground operations. Eventually, according to these comments, most existing mining operations will likely be impacted by these new regulations.

BLM agrees that most existing operations are likely to undergo a modification in the future. We have written final § 3809.433 specifically to address how the final regulations would apply to new modifications of existing plans of operations and to provide a transition approach that BLM believes would not significantly affect existing operations.

Some commenters recommended no periodic reviews. Commenters also asserted that, as a practical matter, mining plans of operations are amended relatively frequently to reflect changing economic and geologic conditions, that mandatory periodic review creates undue burden on the entire industry and on the BLM, and that changing environmental conditions or standards can be considered in evaluation of plan amendments submitted by the operator. Others felt that if BLM imposes this periodic review of plans, reviews should be no more frequent than every five years. One commenter believed that the regulations should require BLM to conduct an annual review on all plans of operations. According to this commenter, an annual review would be a good time for BLM to review the bond amount and specifically address the adequacy of the approved plan of operations in the light of actual on-the-ground performance. BLM could also determine at this time if a modification

was needed to prevent unnecessary or undue degradation.

The NRC Report did not take a position on whether plans should be ''reviewed or reopened at predetermined intervals,'' (p. 101), although it did say that ''[p]rovisions for periodic review of plans of operations, and the ability to require modifications, are important to deal with adverse effects on public lands.'' *Ibid.* It also said that ''[s]taff comments and documents reviewed by the Committee suggest that the regulations should be modified to improve criteria for modifications, require periodic reviews, and/or specify expiration dates for approved plans of operations to assure the opportunity to adjust practices where needed.'' (p. 100.)

BLM has decided not to require annual or other mandatory reviews of plans of operations at predetermined intervals. Final § 3809.431 provides for the BLM to require modifications to existing plans of operations to prevent unnecessary or undue degradation on an as-needed basis when unanticipated conditions or situations arise. This provision, coupled with inspection and monitoring requirements, provides adequate protection of public lands without burdening either the operator or the agency with periodic reviews on a fixed schedule to determine if modifications are needed. BLM can review a plan of operations at any time to determine whether modifications are needed to prevent unnecessary or undue degradation, and can conduct a review at any time to verify that the financial guarantee is adequate to cover the reclamation liability. Due to the site-specific nature of the various mining operations on public land, BLM decided not to specify a set time interval for review of plans of operations.

There were several comments about the discussion in the NRC Report under its Recommendation 4, which says that BLM and Forest Service regulations ''should not require the agencies to make retrospective findings on 'foreseeability' or whether 'all reasonable measures' were applied in approving the existing plan. Modifications should be based on the results of monitoring or other data that demonstrate the occurrence or likely occurrence of unnecessary or undue degradation if the plan is not modified.'' (P. 101) These commenters assert that the revised definition of ''unnecessary or undue degradation'' proposed by BLM in this rulemaking would be impossible to administer. The commenters believe that because the proposed definition of ''unnecessary or undue degradation'' is essentially circular (*i.e.,* unnecessary or undue degradation is whatever BLM says it is), and therefore proposed § 3809.431 is unworkable and inconsistent with the NRC Report recommendation for more effective modification criteria.

BLM does not agree that the modification language is unworkable with the new definition of ''unnecessary or undue degradation.'' We believe the final definition of ''unnecessary or undue degradation'' provides a more direct basis for evaluating whether a modification is needed by being tied directly to the performance standards in final § 3809.420, as well as to compliance with other Federal and State laws. Further, the plan modification procedures in the final regulations remove the State Director determinations regarding initial plan approval that were of concern to the NRC.

One commenter questioned whether the application of the millsite acreage limits would affect BLM's review if an operator proposed a modification. They noted that currently there are no serious consequences to an operator if a change in the plan of operations is labeled a modification. They expressed concern whether a ''modification'' of a plan would lead BLM to examine whether the millsite acreages in the operation exceed the acreage limits in the Mining Law, as interpreted in the Solicitor's Opinion on millsites. The commenter was concerned that an operator might forego improvements in efficiency to its operation, including reductions in environmental impacts or improvements in efficiency (reducing the volume or distance of waste rock or ore hauls), if proposing a ''modification'' to its existing plan would force BLM to get into claim position reviews never before undertaken, and never before deemed relevant under the 3809's in the siting and environmental clearance of existing and planned facilities.

In the final regulations, BLM did not include a specific review requirement regarding millsite acreage limits. Any modification filed for a plan of operations will be reviewed in the context of the need to prevent unnecessary or undue degradation. Whether an operation is in compliance with the acreage limits on mill sites or any other requirement of the Mining Law concerning claim location and maintenance is generally outside the purview of these regulations. Such matters can be raised by BLM at any time, regardless of the status of operations.

One commenter asserted that any requirement to modify a plan of operations must be coordinated with State permitting requirements so as to avoid unnecessary duplication of effort and to minimize industry and agency time devoted to evaluating minor changes. In Nevada, for example, key permits for mining and exploration projects must be renewed or updated on a regular basis. (A Water Pollution Control Permit must be renewed every five years; a Reclamation Permit must be updated every three years). The commenter requested that BLM's plan modification process should be coordinated with these State requirements to minimize duplication.

BLM agrees with the comment that where States or other regulatory agencies conduct periodic reviews of operations, operators should provide BLM with updates on operations activities that have occurred within the scope of the approved plan of operations. For operational changes that would exceed the scope of the approval, the operator should contact BLM and the appropriate State agency well in advance to determine what modification requirements need to be followed.

One commenter asserted that the proposed rule is vague in defining the circumstances under which BLM would require a plan modification. While the creation of a new facility (waste rock dump, heap leach pad, etc.) or expansion of an existing facility would require a plan modification, as provided for in proposed § 3809.433, the commenter believes the following activities should also trigger plan modifications: boundary adjustments, changes in a financial assurance, and temporary closure (which would trigger a modification for ''interim'' operations).

BLM does not intend that administrative actions, which do not approve or create any on-the-ground impacts, will trigger a plan of operations modification, such that the NEPA analysis would need to be supplemented or the public comment period would need to be reopened. Examples of such administrative actions include a change in operator, property boundary changes, or enforcement actions. These actions are clearly within the scope of implementing the approved plan of operations. A modification would be triggered by a material change in operations outside the scope of the existing approved plan of operations, or by events or conditions which create the possibility of unnecessary or undue degradation as described in the preamble discussion of final § 3809.431(c). A change in revegetation plans, an increase in mining rate, or a greater disturbance footprint beyond

that described in the approved plan of operations are all examples of material changes that would require a plan of operations modification prior to implementing.

Final § 3809.431(c) requires a plan modification prior to final closure to address unanticipated events or conditions or newly discovered information. Final § 3809.431 has also been revised and reformatted to present the possible circumstances that would require plan modification in a sequential fashion.

Final § 3809.431 is consistent with the recommendations of the NRC Report. NRC Report Recommendation 14 is that BLM plan for and assure the long-term post-closure management of mine sites. The final regulations provide not only for up-front post-closure management plans under § 3809.401(b), but also provide a mechanism under § 3809.431(c) where plans of operations can be modified prior to closure to address specific closure and post-closure needs due to unanticipated events or conditions or newly discovered circumstances or information.

Recommendation 4 of the NRC Report was for BLM to revise its modification requirements to provide more effective criteria for modifications to plans of operations. The NRC stated that the current procedures are not straightforward enough to require a modification even when ''the results of monitoring or other data * * * demonstrate the occurrence or likely occurrence of unnecessary or undue degradation if the plan is not modified.'' (p. 101) BLM has developed the procedures for when it can require a modification in final § 3809.431 and removed the complex State Director evaluation process which was of concern to the NRC. The final regulations now provide that BLM may require a modification to a plan of operations when needed to prevent unnecessary or undue degradation. The final regulations also preserve procedural protection for operators by allowing for appeals of a BLM-required modification decision.

Section 3809.432 What Process Will BLM Follow in Reviewing a Modification of My Plan of Operations?

Final § 3809.432(a) describes the review and approval process that BLM will use for modifications to plans of operations. BLM will review and approve a modification in the same manner as it reviewed and approved the initial plan of operations. This is not a change from the previous regulations at § 3809.1–7(b). BLM follows these procedures for modifications involving changes in the plan of operations that exceed the scope of the initial review and approval. For example, modifications to add new mine facilities, extend mine life, or change the operating and reclamation plans are reviewed and approved following the same procedural steps as used for the initial plans. In appropriate cases, BLM may supplement or tier off of the previously prepared NEPA documents (EA or EIS), as allowed under the CEQ regulations, in order to expedite the modification review process.

Final § 3809.432(b) describes how BLM will process minor modifications that do not constitute a substantive change in the plan of operations and do not require additional environmental analysis under NEPA. The final regulations provide that BLM will accept such modifications after review for consistency with the approved plan of operations and consistency with NEPA analysis previously done on the operation. Examples of such modifications include a change in mining rate, adjustment of monitoring plans, substitution of revegetation species, implementation of engineering practices, minor realignment of roads or disturbance areas within the approved project footprint, or administrative changes such as a change in operator or mining claim information.

Several commenters suggested that under proposed § 3809.432(b), BLM should provide an operator with an approval or disapproval to a requested plan modification. The degree of administrative review would vary depending on the magnitude of the requested plan modification, but the operator should be informed that a requested plan modification has been either approved or disapproved. Otherwise, the operator may be unknowingly in violation of approved permits.

BLM agrees that the operator needs to be advised as to the outcome of our review of a modification request. Under final § 3809.432(b), BLM will notify the operator of the acceptability of proposed changes in the plan of operations as minor modifications. BLM does not intend to issue approvals or denials of minor changes, but to merely screen them for conformance with the existing approved plan requirements and consistency with previous NEPA documentation, and advise the operator if they are acceptable without undergoing the formal review and approval process in final § 3809.432(a).

One commenter wanted to know how much of the information listed in proposed § 3809.401 would be required for a plan modification. BLM will require all of the information listed in § 3809.401 that is applicable to support the review and approval of the plan modification. The amount of information depends on the type and magnitude of the proposed modification. Minor changes could be sufficiently addressed on a single page while major modifications may require much more information.

One commenter was concerned with the situation where modifications are being processed when a plan of operations is under appeal. The commenter recommended that BLM add a provision that we would deny any substantial amendments until appeals are settled. BLM notes that under current procedures, when a BLM decision is under appeal before IBLA, BLM does not take any additional action on matters covered by the pending appeal, unless agreed to by the IBLA. During the pendency of the appeal, the IBLA has jurisdiction over the matter covered by the appeal. For example, if a modification approval for a mine expansion is under appeal before IBLA, BLM won't approve a second modification while the appeal on the first one is pending.

Several commenters want BLM to define ''minimally'' as used in proposed § 3809.432(a) regarding not soliciting public comments if the financial guarantee amount would only be changed ''minimally.'' It was suggested that since the word ''minimally'' is open to differing interpretations, it would be helpful if BLM would pick a certain percentage change in the guarantee amount (20% or 80% were suggested) before triggering public comment. Or that BLM should use the NEPA compliance process to determine whether the proposed modification is ''minimal.'' If a supplement to the EIS is required, it would not be ''minimal;'' whereas if only an EA/FONSI is required it would be ''minimal.''

As discussed earlier in response to comments on proposed § 3809.411(d), BLM has removed the requirement for public review on the amount of the financial guarantee. BLM has also deleted reference to public review from the last half of § 3809.432(a) which included the term ''minimally.'' Therefore, comments on defining this term are no longer relevant. Plan modifications processed under final § 3809.432(a) would still have public comment periods on the modification. Comments on the financial guarantee could still be provided during the 30-day comment period on the plan modification, but the comment period is

not contingent upon any change in the financial guarantee.

Other commenters requested that BLM define ''substantive'' as used in proposed § 3809.432(b). They stated that since virtually everything in a plan of operations is substantive; the regulations need a qualitative adjective to distinguish matters of minor substance from those of significance. They suggested including in the definition in § 3809.5 that any change proposed would not be substantive when BLM uses an EA/FONSI for NEPA compliance.

In response, BLM believes a substantive change takes place at a lower threshold than suggested by the commenter, and occurs when the activity would exceed the scope of the approved plan of operations. A substantive change may require either the EA or the EIS analysis to be supplemented. Even if the impact is not significant (able to be approved using an EA) the change itself could be substantive compared to the initial approved plan of operations. For example, expanding a 25-acre waste rock dump by ten acres may be a substantial change, but it may not trigger the significant impact threshold of NEPA, and might be processed using an EA instead of an EIS. Placing an extra lift of ore on a leach pad involves no additional surface disturbance, but could still present potentially significant impacts through changes in mass stability or leaching solution inventory, and might trigger preparation of an EIS or supplement. For these reasons BLM does not believe it is appropriate to tie the substantive change criteria for minor modifications to either the level of NEPA review required or to the amount of surface disturbance involved.

One commenter was concerned that the modifier ''substantive'' will not work because virtually everything in a plan of operations is substantive. The commenter asserted that the regulations need a qualitative adjective to distinguish matters of minor substance from those of significance, and only the latter should be required to be reported. The provision must be modified to clearly indicate that only ''significant'' changes require a modification of a plan of operations.

In response, BLM points out that the test for how a modification submitted under the final regulations at 3809.431(a) is processed does not rely on whether the project component being modified is ''substantive,'' but on whether the ''change'' itself would be substantive from that already approved. BLM anticipates that there are three levels of changes or modifications which an operator could make to a plan of operations. The first are changes within the confines of the approved plan of operations, such as a change in equipment size or type that is within the range already described in the plan. These do not require any notification to BLM as they are within the scope of the existing plan approval. The second are changes which, while not substantive enough to require supplemental NEPA analysis, must be reviewed by BLM for consistency with the approved plan of operation to ensure unnecessary or undue degradation would not result. These would include such things as a revision to monitoring parameters or frequency, a seed-mix substitution, or a minor road re-alignment. The third types of modification are those that involve a material change in operations, either in extent, intensity, duration or type of activity such that they are not within the scope of the existing approved plan of operations and require formal review and approval. Examples of this type of modification include construction of new or expanded mine facilities; changes in mineral processing that change the potential impacts or increase their intensity; or changes needed to address unanticipated events or conditions, such as subsidence or development of acid drainage. This is not much different from the existing regulations. Operators are already required to contact BLM before making changes that exceed the scope of their existing approvals. The threshold for each of these levels is site-specific, and operators should contact the local BLM office if they have any question on the change in operations they would like to make.

Several commenters were concerned that by requiring such detailed plans to be submitted, BLM increases the likelihood that when circumstances are encountered that are different from those projected by the exploration work, the details of the plan will require changes. Under the draft rules, any ''substantive change'' may require reinitiating the same process required for initial plan of operations approval under § 3809.432. In the view of these commenters, this process can be extraordinarily expensive and time-consuming. The commenters suggest that the draft rules should either reduce the level of detail required in plans of operation, or ease the procedural requirements for plan modifications.

BLM notes that while a substantive change may require review and approval similar to the process followed for the initial plan of operations, only the information pertinent to the modification need be submitted under § 3809.401(b). Furthermore, the NEPA analysis for the modification may use or supplement existing documents, serving to facilitate the modification review. BLM does not believe the information requirements in final § 3809.401 are overly detailed. Plans of operations may be proposed in such a manner that preserve operators' flexibility to make minor adjustments without exceeding the scope of the plan approval.

Several commenters question how a ''substantive change'' under proposed § 3809.432(b) was the same as a ''significant modification'' under the previous regulations at 43 CFR 3809.1–7. They were concerned that the term ''substantive'' could mean any change that is not strictly ''procedural,'' and thus, an operator might have to go through a formal BLM approval process for something as minor as a proposal to add 10 square feet to a storage shed.

In response, a substantive change or modification is one that is outside the scope of the approved plan of operations. It is very similar to the ''significant modification'' under the existing regulation, but BLM decided to use ''substantive'' instead of ''significant'' to avoid confusion over whether ''significant'' in this context was the same as ''significant impacts'' as used in NEPA to trigger preparation of an EIS. It has never been BLM's policy or practice under the previous regulations that a change had to exceed the EIS significance trigger before a modification was required, and using the term ''substantive'' makes the regulation better conform to BLM's practice. Regarding the example, BLM believes that in most situations a 10-square-foot increase in the size of a storage shed would be considered minor and not require further NEPA analysis or require BLM approval. However, if for some reason the size of the storage shed had been an issue during the initial plan approval and the storage shed size had been specifically limited to meet the performance standards, then an increase in its size would require a modification under final § 3809.432(a).

Another comment was that proposed § 3809.432 should include time frames for BLM's review of modifications and that BLM needs to return to the current language which recognizes the reality of ongoing mining operations, where minor operating changes are made constantly as a matter of course. The commenters recommended that the new regulations not create a system which even implicitly requires the operator to constantly barrage the local BLM office with non-significant changes.

BLM recognizes that day-to-day operations often include minor changes. However, anytime the operator makes a change in operations that goes outside what was provided for in the approved plan of operations, it is substantive and the operator must contact BLM. For a substantive modification, BLM would follow the time frames for review found in final § 3809.411. If the substantive change requires additional analysis under NEPA, then we will process it in the same manner as the initial plan of operations. If the change is a minor modification consistent with the approved plan of operations, it can be handled expeditiously as a compliance matter between the operator and BLM.

One commenter felt that the NRC Report was inaccurate in its depiction of how small miners were allowed to make modifications. In the commenter's opinion, BLM does not permit small miners to make minor modifications to approved plans of operations without requiring extensive re-processing. The commenter asserted that the NRC has reported something other than what actually does occur for all small miners, has failed to comply with the law mandating the study, is unreasonable, and should not be followed.

In response, the final regulations apply to all plans of operations, including both small and large mines. The final regulations provide flexibility for plan modifications to be judged on an individual basis as to the need for additional environmental review. Whether or not the NRC Report has accurately portrayed the process for small miners, Congress has required that BLM rules not be inconsistent with the NRC Report recommendations.

Changes made to final § 3809.432 include deleting the last clause from proposed § 3809.432(a) with respect to a specific public comment period on the amount of the financial guarantee. The paragraph now reads, ''BLM will review and approve a modification to your plan of operations in the same manner as it reviewed and approved your initial plan under §§ 3809.401 through 3809.420.''

BLM has also edited final § 3809.432(b) to clarify that it applies to minor modifications that are consistent with the approved plan of operations, and do not require additional NEPA analysis. The final paragraph now reads: ''BLM will accept a minor modification without formal approval if it is consistent with the approved plan of operations and does not constitute a substantive change that requires additional analysis under the National Environmental Policy Act.'' This change is needed to allow for the expeditious consideration of minor modifications which, may be a substantive change, yet are still consistent with the approved plan such that additional NEPA analysis is not warranted.

The final regulations are not inconsistent with the recommendations in the NRC Report. Final § 3809.432(a) maintains a public review and approval process, consistent with NRC Report Recommendation 10, for modifications that are clearly outside the scope of the approved plan of operations. Consistent with the NRC Report discussions following Recommendation 4, final § 3809.432(b) recognizes that operational changes are often necessary, and an expeditious process is needed where minor modifications can be reviewed under the existing NEPA documents used to approve the original plan of operations.

Section 3809.433 Does This Subpart Apply to a New Modification of My Plan of Operations?

Final § 3809.433 addresses the situation where an operator may propose to modify an existing plan of operations after the effective date of the final regulations. The regulations consider two types of modifications that might occur. One is a modification to add a new and distinct mine facility, such as a new waste rock repository, leach pad, drill site, or road. The second is a modification that changes an existing mine facility, such as by enlarging a leach pad, waste rock repository, or mine pit.

Where the operator adds a new mine facility, the final regulations require the new facility to follow the plan content requirements of final § 3809.401 and meet the performance standards of final § 3809.420. The other portions of the operation can continue under the terms and conditions of the existing plan of operations.

Where the operator changes an existing mine facility, the final regulations require compliance with the plan content requirements of final § 809.401 and the performance standards of final § 3809.420, except that if the operator can demonstrate to BLM's satisfaction that it is not practical to apply the new requirements for economic, environmental, safety or technical reasons, then the modified facility may operate under the plan content requirements and performance standards of the previous regulations. This is because BLM recognizes it may not be practical or desirable to retrofit an existing mine facility with new requirements.

One commenter stated that if an existing facility is modified after the effective date of the final rule, the entire modified facility (not just the modified portion of it) must generally be retrofitted to comply with the new performance standards unless this is not ''feasible.'' For instance, if more environmentally protective processes become available in the future, an operator might be hesitant to incorporate them into an existing facility, for fear of having to retrofit the entire facility in all respects. Or, the commenter asserted, if an operator wants to expand operations, rather than modify (and thereby retrofit) an existing facility, it may decide instead to build an entirely new facility—thereby resulting in more environmental impacts than a modified, but not retrofitted, facility.

As part of the modification review process to determine whether unnecessary or undue degradation would occur, BLM would consider the environmental trade-offs should the operator propose building a new facility versus expanding and retrofitting an existing facility. The provision in § 3809.433(b), allowing for a demonstration that applying the final regulations the entire facility is not practical, should mitigate the impact on most operators while identifying the environmentally preferred approach for mine expansion.

A couple of comments were concerned with how final § 3809.433(b) would apply if the mine pit layback is on patented ground and how much road widening is allowed. There was a question on the amount of deviation allowed on a day-to-day basis to grade roads, and when it would be considered road widening.

The 3809 regulations do not apply where private lands overlie private minerals, even if those lands are within the project area. Therefore, a modification approved by BLM would not be required for a pit layback totally on private lands. However, it should be noted that if the layback on private lands causes some change in activity on BLM-managed lands, such as increased waste rock disposal or expanded leach pad areas, then a plan modification would be needed for those activities. Regarding roads and grading, provisions for day-to-day maintenance needs should be written into the plan of operations, and the overall specified road width should take such activities into account. If the plan of operations calls for a road with a certain maximum width, and the operator wants to grade it to exceed that width, then we would consider it widening of the road and would require an approved modification.

A commenter stated that, under proposed § 3809.433(b), economic reasons alone would not prevent the application of the new performance standards to new or expanded facilities within an existing operation. The commenter suggested that operating plans and the economics of established operations are based upon requirements and laws at the time those plans and operations were developed, therefore these requirements should be modified so that the regulations would not apply to any activities within an ''integral operating area'' covered by an approved plan or by a plan submitted to the BLM at least 18 months prior to the effective date of the regulations.

BLM understands that the economics of a specific operation were determined by the regulations in place at the time the project was first approved. That is why BLM believes it is appropriate that parts of the regulations be applied prospectively to new plans of operations or expanded activities that require modification of already approved or pending plans of operations. BLM believes that final § 3809.433(b) provides a reasonable transition approach allowing the operator and the BLM to consider whether a certain measure can be applied to satisfy the purpose of the statute and these regulations to prevent unnecessary or undue degradation while respecting the investments operators have made. In response to the commenter's concern, we have revised the provision to replace ''feasible'' with ''practical'' to account for the economic factors that must be considered, and we have added the word ''economic.'' BLM does not believe it is necessary to introduce the term ''integral operating area'' into the regulations.

Several commenters were concerned that proposed § 3809.433 would be creating too much confusion by setting up a situation where one set of regulations governs part of an operation and another set governs another part, especially when it is not simply parts of ''an operation'' that may be under different standards, but parts of the same, integrated ''facility''—an individual milling unit, an individual pit, a leach pad, or a waste rock repository. The commenters proposed that the regulations in effect when a plan of operations is submitted would govern the plan and all subsequent modification to avoid confusion. Another commenter suggested letting the operator decide where and how they wanted the new regulations to apply on future modifications.

BLM does not believe that allowing operations to continue to expand or modify indefinitely under the old regulations is a reasonable transition approach. Given the incremental nature of mining, and the need to achieve economies of scale, it is not uncommon for a modification to be larger in size and scope than the initial approved plan of operations. Final § 3809.433(b) provides a reasonable test of practicality in applying the new requirements to future modifications of existing mine facilities. BLM believes that as long as the overall facility design and operating parameters are clearly laid out in the approved plan of operations, the BLM inspector should be able to discern the appropriate requirements.

One commenter was concerned that a literal reading of the proposal required an operator who wished to modify a facility to incorporate new environmentally protective technology could do so only if first retrofitting the entire facility to comply with all of the proposed performance standards or established to BLM's satisfaction that retrofitting was not ''feasible.'' The commenter stated that in such circumstances, the operator would likely not install the new environmentally protective technology. For these reasons, the commenter suggested that the new rules should at most apply only to the modified portions of an existing facility.

BLM agrees with the comment and notes that the intent of final § 3809.433 is not to apply the new regulations to the entire mine facility, but only to the portion that is being modified, and only if the application of the new regulations is practical. The final regulations have been revised to clarify that the requirement applies to the modified portion of the mine facility.

Another person commented that under proposed § 3809.433(b), the term ''feasible'' can be interpreted to mean that it is simply not possible. This in turn could mean that absent bankrupting the company, an operator could be required to expend enormous sums to retrofit an existing facility merely because it came to BLM proposing to make only a minor change to the facility.

For clarity, BLM has, throughout the final regulations, modified the term ''feasible'' by ''technically'' and ''economically'' as appropriate to make it clear when we intend ''feasible'' to include economic considerations. In final § 3809.433(b), we have replaced ''feasible'' with ''practical'' to acknowledge that economics (cost) is one of the factors that will be considered in deciding to exempt a modification of an existing mine facility from the new performance standards.

One commenter asked that the regulations be clarified regarding whether, when a modification is filed, it opens the entire plan of operations to the new 3809 regulations.

The final rule makes it clear that the review and approval are for the modification being proposed, so that a proposed modification does not open the entire plan of operations to re-approval. However, it should be noted that while the modification is what would be review and approved, the scope of any NEPA analysis that might be required would have to consider the cumulative impacts of all the past actions.

Another commenter asserted that the last sentence of proposed § 433(b) (in the ''Then'' column of the table) contained a minor and a major defect. The minor one is that ''areas'' do not ''operate.'' Rather, ''operators use areas.'' The major one is that, as written, it only expressly provides for the operator to continue to operate facilities, or in areas, NOT subject to the modification. The negative implication is that all use of facilities or areas in the modification area must cease (leaching must cease in the pad to be enlarged; excavation must cease in the pit to be laid back). The commenter questioned whether this was intended and sought to have the regulations make clear that operations may continue, under the existing terms of approval, in the area of facility subject to the modification. The comment suggested that the sentence should read, ''You may continue to operate under your existing plan of operations, including at those facilities and in those areas that are the subject to the modification.''

In response, BLM intended that all operations not part of the modification, including portions of the facility to be modified, would not be subject to the new regulations and could continue to operate as approved under the existing plan of operations. In addition, an operator may continue to conduct activities at the facility proposed to be modified under the approved plan of operations until BLM acts on the proposed modification. The sentence is unnecessary, and BLM has deleted it to avoid confusion.

One commenter was concerned that BLM could simply undo decisions made and compromises wrought in the initial plan approval process regarding facility siting and operation, after the operator has invested in opening the mine under the terms of the original approval, by simply issuing a directive to modify the plan.

BLM notes that existing approved facilities, while subject to modification

under the existing regulations as needed to prevent unnecessary or undue degradation, would not be required to change from the old performance standard to the new standards. The modification language under final § 3809.433(b) applies the new performance standards only to that portion of the new facility being modified, and does not mean the entire facility would be subject to new requirements.

Another comment on proposed § 3809.433 concerned how to apply the performance standards of the new regulations to the expansion of an existing facility, in areas of mixed ownership. The commenter cited an example where an open pit mine on private land would require a small area of BLM land for expansion of the mine pit slope. The commenter was concerned that under final § 3809.420(c)(7), BLM would be able to require backfilling of the part of the pit that expanded onto BLM land, which would effectively require backfilling the entire pit, even on the private land part of the mine, and even though a minuscule area of BLM land may be involved. The commenter cited this example as a reason for exempting all modifications of existing operations from application of the final regulations.

The backfilling situation described above, with a large amount of private land, is a good example of where BLM would allow an exclusion from the new regulations as specified in final § 3809.433(b) based upon practicality, or a determination made under final § 3809.420(c)(7) that backfilling was not necessary. Other mine design and operation aspects, such as leach pad containment design, would be reviewed in a similar fashion and a determination made regarding the practicality of applying the new regulations to the modification.

Changes made in the final regulations to § 3809.433 occur in paragraph (b) of the table. BLM has deleted the last sentence in the ''Then'' column to avoid confusion regarding continued operations. We have edited the text to specify that the paragraph applies to the modified portion of facility. We have replaced the term ''feasible'' with ''practical,'' added the word ''economic,'' and provided a citation to the 3809 regulations that were in effect prior to these final regulations.

Final § 3809.433 is not inconsistent with the NRC Report. While NRC did not specifically address how to transition existing operations into any new regulations, it did discuss the need for regulations to have ''safeguards to assure that modifications are imposed only after serious consideration and following a procedure that protects the interests of the mining company in continuing to conduct operations, consistent with the avoidance of unnecessary or undue degradation.'' (p. 101) Under final § 3809.433, operators proposing a modification do not have to retrofit existing mine facilities. In addition, operators may be given an exemption from the content and performance standards of the new regulations by showing it is not practical to apply them to the modification of an existing mine facility. This approach is not inconsistent with the discussions contained in the NRC Report regarding plan modifications.

Section 3809.434 How Does This Subpart Apply to Pending Modifications for New or Existing Facilities?

We have combined proposed §§ 3809.434 and 3809.435 into final § 3809.434. This section describes how the regulations will apply to modifications of plans of operations for new or existing mine facilities that are pending before BLM when the final regulations go into effect. We have rewritten both proposed sections, deleted the tables, and simplified the concepts.

The final regulations provide that modifications pending on the effective date of the final regulations will be subject to the new regulations, except for the plan of operations content requirements (final § 3809.401) and performance standard requirements (final §§ 3809.415 and 3809.420). The existing plan of operations content requirements and performance standards that were in effect when the modification was submitted would continue to apply to the modification.

Several commenters said that BLM was making these subsections too complicated, burdensome, and cumbersome. The commenters suggested that if the new facility or modification can be done under an EA/FONSI then the standards in effect at the time of plan approval should apply. If the modification or new facility requires amendment to the EIS prepared for the original decision by BLM, then the Supplemental EIS should determine the extent, if any, new regulations apply.

BLM did consider using a NEPA criteria such as EA/Supplemental EIS for when to apply the new regulations to a pending modification, but did not adopt it because of potential problems with consistency and fairness. Instead, BLM has simplified these sections. We have combined proposed § 3809.435 with proposed § 3809.434. The cutoff for application of the new regulations to pending modifications has been relaxed from the NEPA document publication date in the proposed regulations, to the effective date of the final regulations. If an operator's modification was filed before the effective date of the new regulations it remains under the previous plan content and performance standard requirements.

Other comments were concerned that proposed § 3809.434 would create too much confusion by setting up a situation where one set of regulations governs a part of an operation and another set governs another part. The commenters felt that it is even more inappropriate to apply new standards to existing facilities than it is to apply them to a wholly new plan of operations submitted prior to adoption of new standards. This is because the operator relies on the terms and conditions of the initial approval in deciding whether to expand operations. A new facility at an existing mine is proposed because it fits, economically, logistically, and operationally into an existing operation. It can only be designed and located in ways dependent on the design and operation of the existing mine. The commenters were concerned that new facilities would be prohibited by standards that would not have allowed the initial facilities to be located where they are, or to be operated as they are, and felt that the same standards that governed approval of the initial facility location and mode of operations must govern the new facility.

BLM understands the concern that modifications may not be able to occur if held to a higher standard than the initial plan of operations. However, BLM believes the performance standards in final § 3809.420 will generally be compatible with existing operations when applied on a site-specific basis. Modifications under the existing regulations happen frequently, yet evolving changes in reclamation technology and regulatory approaches get incorporated successfully, even when it may be years between the initial facility approval and the modification. It won't be that different with a change in regulations. As long as the approved plan of operations clearly identifies how the overall facility is to be constructed, operated, and reclaimed, there should not be any more confusion over expected performance than occurs today with modifications processed under the existing regulations. Nor does BLM expect facilities be prohibited from expansion due to the changes in performance standards in final § 3809.420.

One comment suggested that we use completion of the public scoping process, instead of the publication date for the NEPA document, as the cutoff for applying this final rule to pending modifications. BLM does not agree with the comment, but we have revised final § 3809.434 to provide that a project modification submitted prior to the effective date of the final regulations may continue under the existing 3809 regulations. Using the cutoff date for the scoping process, as suggested by the comment, would have generated the same confusion as the proposal.

Changes have been made in the final regulations to proposed §§ 3809.434 and 3809.435. All of proposed § 3809.435 has been deleted. Final § 3809.434 has been rewritten to address pending modifications for an existing mine facility that were covered in proposed § 3809.435, as well as pending modifications for new mine facilities. The title of final § 3809.434 has been changed to: How does this subpart apply to pending modifications for new or existing facilities? The table has been deleted and the text presented in four paragraphs.

Final § 3809.434(a) says that this section applies to modifications pending before BLM on the effective date of the final rule to construct a new facility, such as a waste rock repository, leach pad, drill site, or access road; or to modify an existing mine facility such as expansion of a waste rock repository or leach pad.

Final § 3809.434(b) states that all provisions of this subpart, except plan content and performance standards (§§ 3809.401 and 3809.420, respectively) apply to any modification of a plan of operations that was pending on the effective date of final rule. It also cross references § 3809.505 on the applicability of financial guarantee requirements.

Final § 3809.434(c) provides a reference to the plan content requirements (§ 3809.1–5) and the performance standards (§§ 3809.1–3(d) and 3809.2–2) that were in effect immediately before the final rule which apply to a pending modification of a plan of operations.

Final § 3809.434(d) provides that operators could choose to have the new rules apply to their pending modification of a plan of operations, where not otherwise required.

The cutoff date for applicability of the final regulations to pending modifications has been changed from when the NEPA document has been published, to whether the proposed modification has been submitted to BLM prior to the effective date of the final regulations. The reason for this change is that BLM was persuaded by comments concerning the amount of effort that goes into preparing a plan of operations and associated NEPA documents which might have to be partially redone or supplemented, and by the fact that the operator has very little control over when the NEPA document is actually published. BLM believes that using the effective date of the final regulations to determine ''grandfathered'' plans of operations, or modifications, would be simpler to administer and more fair to the operators. However, BLM does expect that in order for pending plans or modifications to be grandfathered, they will have to be substantially complete in addressing the content requirements of the existing regulations before the effective date of the new regulations.

Final § 3809.434 is not inconsistent with the NRC Report. While NRC did not specifically address how to transition pending modifications into any new regulations, they did express concern for the protection of an operator's investment and that the regulations in general contain procedural protections. Under final § 3809.434 operators with a pending modification do not have to redo designs or reopen NEPA analysis that was underway. This approach is not inconsistent with the discussions contained in the NRC Report regarding plan modifications

Sections 3809.500 Through 3809.551 Financial Guarantee Requirements—General

Today's rule establishes mandatory provisions for financial guarantees for all activities greater than casual use, expands the types of financial guarantees available, and establishes the circumstances and procedures under which BLM will pursue forfeiture of a guarantee. It also requires that financial guarantees be redeemable by the Secretary while allowing BLM to accept financial guarantees posted with the State in which operations take place if the level of protection is compatible with this subpart. The rule authorizes the establishment of a trust fund in those circumstances where long-term, post-mining operations and water treatment will be necessary.

This final rule is different from the proposed rule in several significant ways. First, we are not adopting part of the proposal contained in the supplemental rule published on October 26, 1999. See 64 FR 57613, proposed § 3809.552(d). That proposal would have required an operator, when BLM identifies a need for it, to put portion of the financial guarantee in an immediately redeemable funding mechanism that would enable BLM to quickly obtain use of the funds for site stabilization during forfeiture proceedings.

Second, we will no longer accept corporate guarantees for plans approved after the effective date of this regulation. BLM will continue to allow corporate guarantees which are in effect on the effective date of the regulation. However, if a plan modification results in an increase in the estimated costs of reclamation we will require a financial guarantee in a form other than a corporate guarantee for the area covered by the modification.

A third change will provide BLM discretion in determining whether to seek forfeiture of a financial guarantee.

Also, BLM will not require a 30-day period for public comment prior to releasing financial guarantees associated with notice-level activities but will have a 30-day comment period for plans of operation. The comment period will be posted in the BLM field office having jurisdiction, published in a local newspaper, or both.

General Comments on Financial Guarantees

BLM received numerous comments addressing the proposed rules related to financial guarantees. Commenters generally supported the concept that BLM require financial guarantees for all operations beyond casual use. However commenters diverged widely on specific contents of the rule.

General Comments Supporting the Proposal

Numerous commenters supported the notion that adequate bonding is necessary to protect the public from bearing the financial burdens of cleanup should an operator declare bankruptcy and abandon a mine site. In particular, this included industry support for bonding of notice-level operations. BLM received comments in favor of the wide range of financial instruments we proposed to accept and the continued use of State bond pools. Industry expressed satisfaction that BLM proposed to continue to allow corporate guarantees. The environmental community generally supported the provisions proposing a trust fund to cover the cost of post-mining operations and water treatment, although some commenters suggested this did not go far enough. Non-industry commenters supported the provisions allowing a time period for public participation both before plan approval [proposed § 3809.411(d)] and prior to final

financial guarantee release [proposed § 3809.590(c)]. One commenter asked that BLM amend the rule to clarify how we will implement it for a variety of conditions covered in the individual sections of the rule.

General Comments Opposing the Proposal

Some small miners expressed opposition to bonding for notice-level activities because, they felt, this would establish a hardship. There were numerous comments opposing BLM's proposal to accept corporate guarantees and State financial guarantees. Regarding the former, commenters saw this as a risk because if commodity prices decline, corporate assets would also drop. Some commenters expressed that accepting State financial guarantees is risky because of the possibility that a State could call a financial guarantee, leaving the Federal government holding a financial guarantee which would not cover the full cost of reclamation. There was also opposition to the public participation proposal on the part of industry which sees this as creating an unnecessary delay. They see the NEPA process as already affording the public an opportunity to comment on financial guarantee amounts. Industry strongly opposed the provisions calling for a trust fund and the posting of a financial guarantee to cover unforeseen contingencies. With respect to the trust fund, commenters felt that once a financial guarantee is released that is a recognition that reclamation is complete. With respect to contingency bonding, many commenters expressed the belief that it is not workable to provide such an instrument.

Consistency With the National Resource Council Report

Recommendation 1 of the NRC Report stated; ''Financial assurance should be required for reclamation of disturbances to the environment caused by all mining activities beyond those classified as casual use, even if the area disturbed is less than 5 acres.'' The report justifies the recommendation by pointing out it observed unreclaimed exploration and mining sites that operated under a notice. The NRC expressed the belief that disturbances beyond casual use are significant and that financial guarantees would protect the taxpayer by allowing agencies to reclaim lands but not at taxpayer expense. The NRC also thought that a financial guarantee could provide an incentive ''for operators to reclaim land in a timely manner.'' The proposed rule and the final rule carry out this recommendation.

The NRC goes on to describe how it believes BLM could implement a bonding program and suggests BLM should establish standard financial guarantee amounts for ''typical activities'' which it describes as limited activities of under 5 acres. This would preclude the need to calculate a financial guarantee for each activity. The NRC suggests that if BLM were to do this, the amount of bonding must be adequate. Language in both the proposed and final rule is broad enough to allow BLM field managers to establish and accept standard financial guarantee amounts. However, regardless of the standard, and consistent with the NRC Report, if the ''standard'' would result in the filing of an insufficient guarantee, the BLM field manager must require the posting of a greater guarantee, even if this requires a calculation. Likewise, there may be instances when the ''standard'' amount exceeds the likely cost of reclamation. In those cases, BLM would permit the operator to demonstrate this and the field manager could accept a guarantee in an amount less than the ''standard.''

The NRC Report (p. 95) also encourages the use of bond pools. Today's action permits operators to use bond pools provided the pool is adequate to protect the public in case of default.

Except for the items discussed above, the NRC Report provides no guidance on how to operate a bonding program. But it is difficult to imagine a rule which addresses financial guarantees in such a limited manner that BLM and the public would not know the conditions of surety release, forfeiture, or how the States and BLM will work together. Therefore today's action includes provisions necessary to implement the recommendations of the Report.

Section 3809.500 In General, What Are BLM's Financial Guarantee Requirements?

This section requires operators to provide financial guarantees for all activities other than casual use. It mirrors exactly Recommendation 1 of the NRC Report. The only difference from the proposed rule is language we added to state explicitly that if a notice is on file with BLM as of the effective date of the regulation, the operator doesn't need to post a financial guarantee. However, if an operator modifies or extends a notice, the operator will have to post a financial guarantee. (See final § 3809.503)

We received numerous comments in support of requiring financial guarantees for notice-level activities. The majority of the commenters expressed the feeling that financial guarantees should protect the public from having to bear the financial burdens of cleanup should an operator declare bankruptcy and abandon a mine.

Comments opposing this section generally complained that requiring all notice-level operators to post a financial guarantee will create hardships that small operators might not be able to overcome and therefore would be unable to continue in the business. Several Alaska miners thought that the rules would be especially difficult for them and would make it difficult to use the Alaska bond pool. One commenter suggested that BLM be flexible so as to not overly burden small businesses. Hardships were described both as financial, *i.e.*, the cost of the financial guarantee and procedural, *i.e.*, small miners find it difficult to obtain a bond (the most common form of financial guarantee). One commenter suggested that BLM has not demonstrated that the requirement will provide additional environmental protection given that so few notice-level operations actually result in unnecessary or undue degradation.

Commenters suggested that exploration activities not be subject to environmental review or bonding if the operations don't use chemicals. Under these circumstances, some saw bonding as unnecessary given the low level of environmental degradation. Others believe that requiring a financial guarantee would adversely impact the recreational mining community. In a similar vein, commenters suggested that it would cost BLM more to administer a financial guarantee program for notice-level operations than it would cost to simply reclaim the few operations where an individual or company has left their obligations. Several commenters expressed the belief that notice-level bonding is appropriate, but asked that it be done as a separate rulemaking. They believe this would ensure consistency with State laws. One commenter asks how BLM will protect the miner from trespassers who cause degradation that results in the legal miner forfeiting a financial guarantee.

Commenters expressed a concern and requested clarification concerning the possibility that a mine could be double bonded for some parts of an operation because of the requirements for calculating reclamation costs.

One State suggested that BLM distinguish between mining and exploration and not require a financial guarantee for certain exploration projects of less than 5 acres. Recreational miners and hobbyists

expressed concern that the financial guarantee requirements would prevent them from continuing to pursue mining.

BLM believes, along with the NRC, that the posting of a financial guarantee protects the public, and its very existence might encourage an operator to promptly reclaim once the activities have ended. In fact, the NRC was quite specific that operators undertaking exploration activities should post a financial guarantee. With respect to recreational miners and hobbyists, they must follow the requirements of § 3809.11 to determine if their activities go beyond casual use. If so, we must require a financial guarantee because of the potential cumulative impacts and the need to assure reclamation activities are carried out. With respect to the possibility of double bonding, BLM wrote these rules in such a manner that through State-BLM cooperation, double bonding should normally not occur. The only time double bonding might occur is when BLM and State interests diverge, and the parties can't agree on bonding requirements.

If BLM were not to adopt this requirement, we would be inconsistent with a specific NRC Report recommendation. While we can be sympathetic toward those who may face a hardship in securing a financial guarantee, this potential hardship cannot override the Secretary's responsibility under FLPMA section 302(b) to ''prevent unnecessary or undue degradation.'' The NRC said posting a financial guarantee may provide an incentive to reclaim land and also protects the taxpayer from having to pay for the failure of an operator to do so. We agree. This is why we include the requirement in today's action.

A commenter stated that at the time the previous rules were adopted, BLM decided not to burden the small miner with ''confiscatory'' bonding or undue impairment to the point that mining was no longer feasible. The commenter asserted that BLM previously concluded that requiring notice-level operations to obtain bonds was unreasonable enforcement and the taking of capital to mine through bonding, a hardship that took the operating capital from a small-entity operation.

BLM disagrees as to the relevance of its decision in 1980 not to require that notice-level operations be bonded. BLM has documented over 500 cases since 1980 where the operators, most of them at the notice level, have abandoned their operation without performing the required reclamation. BLM now believes that bonding is necessary to ensure performance of reclamation. The bonding provisions have been structured so that the amount of the financial assurance can be incrementally posted and released to correspond with the on-the-ground disturbance or the performance of reclamation. This should keep the impact to operating capital at a minimum while promoting performance of reclamation.

Today's action does not intend to limit the use of State bond pools, including the Alaska bond pool, provided the BLM State Director is satisfied that the bond pool will actually provide the funds BLM might need to carry out reclamation in the event operators fail to carry out their obligations.

The rule attempts to eliminate hardships by requiring bonding for the actual cost of reclamation rather than requiring a minimum financial guarantee as we did in the remanded 1997 rule. In response to those who believe this would cause hardship, BLM contacted the Small Business Administration (SBA) to see how its Surety Bond Guarantee Program might be applied to small mining businesses. The SBA concluded that it is unable to accommodate our request at this time.

Section 3809.503 When Must I Provide a Financial Guarantee for My Notice Level Operations?

This section of the final rule requires an operator to provide a financial guarantee before beginning operations, if the operator files a notice on or after the effective date of the rule. Operators must provide a financial guarantee for operations that existed before today's rule becomes effective only if they modify their operation or extend it beyond two years.

Today's action differs from the proposal in that we modified paragraph (b) to make clear that if an operator modifies a notice that the operator submitted prior to the effective date of the rule, the operator must post a financial guarantee to ensure reclamation for the entire area covered by the notice. We believe that this language, coupled with final § 3809.300 clearly answers any questions regarding the posting of financial guarantees for notices. This change is in response to comments that the proposal was unclear as to whether an operator has to post a financial guarantee if the operator modifies a notice that existed before the effective date of this rule.

We also received a comment asking BLM to clarify that the operator is only responsible for the disturbances created by that operation. The commenter feared that BLM would hold operators responsible for disturbance created by previous operations. One commenter asked BLM to clarify whether if the operator modifies a notice, a financial guarantee is required for the entire notice or just the modified part of the notice. One commenter suggested that we add words to clarify that the State might have requirements for a financial guarantee beyond what BLM requires.

The intent of this section is to state that financial guarantees are posted for current notice-level operations. However, if the operations are continuing under a notice which has been transferred, the joint and several liability provisions of final § 3809.116 would apply. If an operator begins a new operation on lands disturbed by an earlier operation, and if the new operation is not a continuation of the earlier operation, the new operator is responsible for the earlier disturbances only to the extent the new operator redisturbs the area. If an operator modifies a notice, BLM will consider the notice as a new notice, and we will regulate the modified notice under the rules we are issuing today. Therefore, as stated above, we added language to this section to clarify that the operator will have to post a financial guarantee for the entire notice.

We do not think it is necessary to address State requirements for a financial guarantee. Operators know that in addition to the requirements of this subpart, they must comply with all local, State, and Federal requirements. We have made clear that the plan of operations must comply with State, local, Tribal, and other Federal requirements. Where those requirements include the posting of a financial guarantee beyond the BLM requirements, the operator is responsible for doing so.

Section 3809.505 How Do the Financial Guarantee Requirements of This Subpart Apply to My Existing Plan of Operations?

This section allows those operating under an existing plan of operations 180 days from the effective date of today's action to comply with the financial guarantee requirements of this rule. There are no substantive changes from the proposed rule; however we did add a sentence to clarify that if an existing financial guarantee complies with the requirements of this subpart, the operator need not file a new financial guarantee.

We received some comments asking that we lengthen the time period for operators to comply to one year. Some holders asked that BLM extend the requirements from 180 days to one year

to cover seasonal situations and to give the operator additional time to decide whether to continue the notice. We received a comment from a Federal agency asking that we shorten the period to 60 days. We also received a few comments suggesting that we clarify that notice level operators are not subject to the requirements of this section. Several commenters asked that we clarify proposed § 3809.505 to state that the obligation to provide a financial guarantee meeting the requirements of this subpart will not restrict the ability of an operator to continue to operations under an approved plan of operations. One commenter said that the existing financial guarantee should remain in place unless the operator modifies the approved plan of operations.

There were comments that the provisions of the rule for existing plans require clarification. One commenter suggested that proposed §§ 3809.430–434 appear to have requirements that conflict with proposed § 3809.505. Final §§ 3809.430–434 apply to modifications of existing plans of operations whereas this section states that an operator has 180 days to post a financial guarantee meeting the requirements of this subpart. The financial guarantee requirements are independent of modifications. Any modification of an approved plan of operations would require the operator to adjust the financial guarantee before beginning to operate under the modifications. One commenter asked that we modify this section to state explicitly, ''This obligation does not affect your right to continue to operate under the approved plan of operations both before and after complying with the obligation in this section.'' As stated above, we adopted language to make clear that operations may continue during the 180-day period we grant in final § 3809.50.

BLM decided to leave the 180-day transition period in place as this provides ample time to come into compliance. The 180-day period applies to plans of operations, not notices. As most currently operating under a plan will already be complying with these provisions, we believe few, if any, operations will be impacted. But if an existing plan of operations does not have a financial guarantee meeting the requirements of this subpart, there is a need to upgrade the guarantee. Plans of operations frequently result in significant on-the-ground disturbance and other impacts. However, shortening the time period to 60 days has the potential to unnecessarily cause hardship in some instances due to the fact that some work is seasonal and that requiring a financial guarantee could take more than 60 days. If the operator cannot secure an adequate financial guarantee in 180 days, the operator will be in noncompliance. We believe that BLM can justifiably say the operations pose a potential threat and take appropriate enforcement action.

Section 3809.551 What Are My Choices for Providing BLM With a Financial Guarantee?

These rules allow an operator to provide:

- An individual financial guarantee for a single notice or plan of operations,
- A blanket financial guarantee for State-wide or nation-wide operations or,
- Evidence of an existing financial guarantee under State law or regulations.

These choices are identical to those contained in the proposed rule.

Several members of the mining industry commented that companies with several notice- or plan-level operations would be better served with one large financial guarantee, rather than having several different financial guarantees. Conversely, a large financial guarantee is seen by some commenters as a way that industry can skimp on bonding and have all of their operations covered. In addition, the same commenters believe having one financial guarantee for several plans of operations would make defaulting on a financial guarantee more of a possibility.

Commenters suggested that the blanket financial guarantee provision is unclear as to whether the sum of the financial guarantees will equal the sum of financial guarantees required for individual operations. Others objected to blanket guarantees because of the administrative difficulties they could cause BLM.

BLM allows nationwide blanket guarantees in other mineral programs, and we believe we can administer the program soundly. Final § 3809.560(b) states that BLM will accept the blanket financial guarantee if we determine that its terms and conditions are sufficient to comply with this subpart. As the operator must post a sufficient financial guarantee to cover the cost of reclamation for each individual project, we believe that the amount of the financial guarantee must equal the sum of the reclamation estimates for each project.

Sections 3809.552 Through 3809.556 Individual Financial Guarantee

Section 3809.552 What Must My Individual Financial Guarantee Cover?

This final rule requires an individual financial guarantee to cover reclamation costs as if BLM were to contract for reclamation with a third party. The rule also requires financial guarantees to cover all reclamation obligations arising from an operation, regardless of the areal extent or depth of activities the operator describes in the notice or the approved plan of operations. Paragraph (b) BLM establishes the goal of periodic BLM review of the adequacy of the estimated reclamation cost. Paragraph (c) authorizes BLM to require the operator to establish a trust fund or other funding mechanism to ensure the continuation of long-term water treatment to achieve water quality standards or other long-term, post-mining maintenance requirements.

The final rule omits a portion of the proposal contained in the supplemental proposed rule published on October 26, 1999 (64 FR 57613). See proposed § 3809.552(d). That portion of the proposal would have required an operator, when BLM identifies a need for it, to establish a portion of the financial guarantee used to conduct site stabilization and maintenance in a funding mechanism that would be immediately redeemable by BLM. BLM would then use the funds to maintain the area of operations in a safe and stable condition during the period needed for bond forfeiture and reclamation contracting procedures.

Some commenters feared that it would require operators to put up front substantial sums of capital for reclamation which could be used at BLM's whim. Some saw it as potentially giving a competitive advantage to larger companies. Others, silent on how BLM would use the money, felt the provision would tie up large sums of capital. Another comment suggested that all guarantees should be immediately redeemable. We also received several comments suggesting that the supplemental proposed rule did not follow the requirements of the Small Business Regulatory Enforcement and Fairness Act, 5 U.S.C. 601–612, because the regulatory flexibility document did not consider the impact of this proposed change.

We decided to omit this provision from the final rule for some of the reasons expressed in the comments. Requiring a separate interim funding mechanism, while useful, could be complicated, and the complications of creating and maintaining such a fund in every case could outweigh the advantage of having the fund available in the relatively fewer occasions when it would be helpful. We believe the regulatory flexibility document meets the requirements of the Act, even though the economic analysis dated

December 18, 1998, did not specifically address the potential for increased cost of a financial guarantee that would be immediately available to BLM, and the impact of this proposal would have been minimal.

We are adopting the part of the October proposal that requires the financial guarantee to cover any interim stabilization and infrastructure maintenance costs necessary to maintain the area of operation while third-party contracts were being developed and executed. See the last sentence of final § 3809.552(a), which clarifies the February 9, 1999, proposed rule.

One commenter suggested that we amend proposed § 3809.552(b) to require BLM to annually send each operator a written report on the adequacy of the financial guarantee. The same comment asked that we amend paragraph (c) of that section to include a provision to require BLM to show that the trust fund does not duplicate any other authority.

When we published the proposed rule we specifically asked for comments on whether additional financial assurances should be required to satisfy operational or environmental contingencies. We received a number of comments objecting to bonding for contingencies or worst-case scenarios. Numerous commenters suggested that operators have liability insurance to protect against the financial consequences of unforeseen activities. Operators would presumably use the proceeds of this insurance to fund corrective actions that a contingency requires. Other comments see contingency bonding as inconsistent with reclamation and also see the long-term trust fund as something that State and Federal water quality laws address. The potential cost led one commenter to conclude this ''would be a potential violation of the right to mine.''

A national industry association questioned the concept of contingency bonding, stating that this runs counter to the notion of bonding for ''specific and calculable reclamation requirements established in the approved plan of operations.'' These comments describe this requirement as ''phantom bonding'' and suggest that operators liability insurance would provide protection if an unforseen accident occurred. They asserted it would be difficult to obtain a financial guarantee under these circumstances.

One industry comment suggested that requiring contingency bonding is difficult to implement because all mine models are uncertain. This commenter suggested that BLM should consider the worst case and the probability that this would occur. Another commenter pointed out that the expense of such bonding and the infrequency of worst-case occurrences that were beyond the ability of the operators to redress with their funds.

Others believe that bonding for unforeseen contingencies in the reclamation process is an unreasonable requirement. They contend this would give BLM too much discretion in determining the amount of the financial guarantee for an unplanned events. Another commenter suggested this is possible to do through using modeling and determining the probability of an impact occurring.

There were also numerous comments asking BLM to incorporate contingency bonding into these rules because the impact of mining is often not known for many years after it is concluded. One comment suggested we hold a portion of the financial guarantee beyond the time of surface reclamation to assure that off-site impacts will not occur. One Interior Department agency noted that long-term financial support is an important tool for environmental protection.

BLM has decided not to require bonding for contingencies because of the uncertainties involved in calculating the amount. The rules do require that the financial guarantee be sufficient to cover the costs of reclamation described in the plan of operations or notice. If a contingency occurs and creates a new reclamation obligation, the operator must adjust the financial guarantee upward accordingly to cover the new obligation.

Some commenters objected to proposed § 3809.552(c) on the basis that a financial guarantee to establish long-term water treatment or water quality standards should be left to EPA or State regulators. A Federal agency noted the proposal didn't define the criteria BLM would use to base the ''need'' for a long-term trust fund. One commenter asked that we clarify that the State may require financial assurances for water quality requirements that go beyond the requirements of this subpart.

In some circumstances, an important or perhaps the only way an operator may protect water quality from unnecessary or undue degradation is to provide for long-term water treatment. The trust fund or other funding mechanism is appropriate to assure that long-term treatment and other maintenance will continue. The final rule does not preclude States from establishing additional financial guarantee requirements.

Some commenters said that paragraph (c) should be deleted because BLM should not approve any plan of operation that would create the need for long-term water treatment because that constitutes unnecessary or undue degradation. This suggestion is not incorporated into the final rule. BLM defines ''unnecessary or undue degradation'' in such a way that long-term water treatment by itself is not an indicator of unnecessary or undue degradation.

One commenter asked that we revise proposed § 3809.552(a) to specify that BLM administrative costs associated with a default be limited to direct costs of BLM staff directly responsible for implementing the approved reclamation plan. One commenter suggested that instead of financial guarantees BLM (and the Forest Service) should have the funding authority to spend Federal dollars on the ''few, if any'' operations causing unnecessary or undue degradation.

In the final rule we are not limiting the administrative costs to direct BLM costs. Such an action could result in BLM having to use taxpayer funding to properly monitor reclamation contracts. Likewise we did not impose a requirement to send an annual status letter to the claimant/operator or to impose a specific time period for BLM to review the adequacy of a financial guarantee. Both proposals would impose an unnecessary administrative burden on BLM because the normal claim/plan management process affords us the opportunity to review the adequacy of financial guarantees when it is necessary. This final rule also declines to adopt the rules of any one State. We intend this rule to be flexible, avoiding a one size fits all approach. Adopting a rule which mirrors that in one State could inadvertently negatively affect other States. We also decided not to accept the suggestion that BLM seek authority to spend tax dollars to reclaim lands because BLM already has the authority, and it is the objective of these rules to *prevent* unnecessary or undue degradation, not simply to make arrangements for cleaning up problems after they occur at the expense of taxpayers.

BLM has explained on many occasions that these rules do not establish water quality standards. States establish the standards for ground water, and EPA establishes the standards for surface water unless EPA has delegated this function to the State. Final § 3809.420 describes what constitutes an acceptable plan of operations. In this section (final § 3809.552) we are requiring the posting of a financial guarantee to assure that State water quality standards will be

maintained on public lands as a result of mining operations.

BLM did not attempt to define ''need'' because this will differ on a case-by-case basis. BLM believes that allowing the local field manager to work with the operator to determine need is preferable to trying to force a one-size-fits-all set of criteria.

One comment asked that paragraph (b) of this section require BLM to prepare an annual report on the adequacy of the financial guarantee. An association asked BLM to consider incorporating the financial assurance requirement used under California laws, including an annual review. Another commenter recommended that we amend paragraph (b) to require BLM to review the adequacy of financial guarantees at least once every three years.

We are not requiring review of the amounts of financial guarantees at predetermined periods. If a financial guarantee is linked to market fluctuations, the operator must certify annually to BLM that the market value of the instrument is sufficient to cover the cost of reclamation. See final § 3809.556(b). In other cases, the BLM will monitor the adequacy of financial guarantee amounts through our inspection program.

Section 3809.553 May I Post a Financial Guarantee for a Part of My Operations?

This final rule permits operators to provide financial guarantees on an incremental basis to cover only those areas being disturbed. Paragraph (b) establishes BLM's goal of reviewing the financial guarantee for each increment of an operation at least annually. The final rule is unchanged from the proposed rule.

We received one comment on this section which supported incremental bonding as a ''welcome regulatory innovation.''

Section 3809.554 How Do I Estimate the Cost To Reclaim My Operations?

This section requires that an operator estimate the reclamation cost as if BLM were to hire a third-party contractor to perform reclamation of the operation after the operator has vacated the project area. It is unchanged from the proposed rule.

There were numerous comments opposing this provision. Some expressed the belief that the rule should limit financial guarantees to 100% of reclamation costs so that BLM administrative costs would not be part of the calculation. This was seen as an incentive to achieve reclamation. Another comment wanted to limit BLM administrative costs to the direct costs of individuals implementing the approved reclamation plan. Other comments aimed at cost reduction objected to third-party reclamation cost calculations as requiring contractors to pay Davis-Bacon wages.

Others believed that calculating the amount of each financial guarantee was too labor intensive and suggested alternatives such as:

- Establishing thresholds, for example, under $100,000, under $500,000 and over $500,000, for determining the amount of the financial guarantee;
- For notices, establishing a fixed amount;
- Giving notice-level operators the option of using either a dollar per acre figure or a site-specific amount that the operator calculates; or
- Establishing Statewide amounts.

We received a series of comments suggesting that BLM incorporate State models and guidelines to calculate the costs of reclamation. Some see this as a way of avoiding double bonding.

The NRC Report discussion of bonding notes that ''standard bond amounts for certain types of activities on specific kinds of terrain should be established by the regulatory agencies. * * * in lieu of detailed calculations of bond amounts based on the engineering design of a mine or mill.'' Numerous commenters, while expressing general support for the NRC discussion, noted that it would also be reasonable to calculate the amount for individual operations as necessary. One mining association thought BLM ought to allow operators to choose between a per-acre amount and an actual-cost-to-reclaim amount. Another industry group wrote that a one-size-fits-all standard financial guarantee amount would be counter to the heart of the NRC Report which emphasizes the need for site-specific flexibility. One mining company expressed specific support for the cost-estimating approach BLM used in the proposed rule. However, other mining groups suggested that an amount could be set at the State level if BLM and the State worked cooperatively.

Alaskan miners argued that BLM should establish standard amounts and that it is inappropriate to base financial guarantee amounts on the basis of third-party contractor rates.

There were comments that asked BLM to incorporate the NRC proposal to establish fixed amounts for financial guarantees as a means of streamlining the process, while also giving operators a way of knowing ahead of time what their financial guarantee requirements will be.

One commenter asked that we explain what constitutes an ''acceptable'' reclamation cost estimate. We chose not to define ''acceptable'' because the decision as to what constitutes ''acceptable'' must be made at the local level by the field manager for each project.

There were comments asking that BLM reinstate the remanded regulations requiring a third-party professional engineer to certify the reclamation estimate, even suggesting that BLM foot the bill if this would be overly burdensome to small miners. The argument presented was that a company would ''lowball'' the estimate to lower its costs.

This final rule requires that financial guarantees cover actual costs. We believe this is consistent with the NRC Report, which recommends that operators post financial guarantees adequate to cover reclamation costs. The rule is flexible enough to permit the BLM field manager to establish fixed amounts for activities under his or her jurisdiction, but also allows the field manager to require a financial guarantee in an amount over or under the fixed amount if the cost of reclamation of a specific operation deviates from the fixed amount.

As we stated in the preamble of the proposed rule (64 FR 6442, Feb. 9, 1999), the purpose of this section is to ensure that the estimated cost of reclamation, on which the financial guarantee amount is based, is sufficient to pay for successful reclamation if the operator does not complete reclamation. We explained that if funding were not available in the financial guarantee to pay the administrative costs, the costs would have to come out of the funds available for the on-the-ground reclamation. This could result in incomplete or substandard reclamation. This final rule reconfirms BLM's desire to assure complete reclamation without the use of taxpayer funds.

The comments that advocate excluding BLM's administrative costs from the amount of the financial guarantee would not achieve the goal of avoiding the taxpayer bearing the cost of reclamation. Arguments that BLM administrative costs should be limited to direct costs were not accepted because BLM's general policy regarding cost recovery is to include all charges, direct and indirect. We found no reason for making an exception where reclamation financial guarantees are calculated. Similarly, inclusion of Davis-Bacon wages for third-party contracts in the calculation is something

BLM, as well as all other Federal agencies, are required to do as a matter of law.

We decided not to accept suggestions that we establish financial guarantee thresholds, establish fixed amounts, or have different processes for notice operations. Again, the purpose of these provisions is to assure the availability of funding to complete reclamation. Especially in the case of operations beyond the notice level, reclamation costs vary widely depending on size, location, and the mineral being developed. Using a threshold amount would leave BLM vulnerable to having an insufficient guarantee, especially in the case of larger mines.

Notice-level operations pose a different set of problems. While estimated reclamation costs might vary, the range of costs will not be as great. The rule will permit local BLM field managers to establish fixed amounts for reclamation of notice-level activities and work with the operator to adjust the amount of financial guarantee in specific cases. This could work on a district-wide basis. Establishing Statewide amounts is more problematic. For example, within a single State such as California, climate, soil conditions, water quantity may differ widely with an accompanying difference in reclamation costs. The approach we are taking is not inconsistent with the NRC Report, which recognized that different on-the-ground conditions require different levels of financial guarantees.

This final rule does not incorporate State models and guidelines for calculating the cost of reclamation. It would be very difficult to issue a national regulation incorporating the guidelines of the individual States. However, there is nothing to prevent individual States from working with BLM to incorporate all or part of their guidelines into BLM-State MOUs. This approach has advantages over a regulatory solution in that the site-specific needs can be addressed by those most familiar, and, as conditions or knowledge change, it is easier to make adjustments if parties are not locked into a methodology prescribed by regulation.

When we proposed the financial guarantee portion of today's rulemaking, BLM chose not to incorporate a provision of the rules we previously published on this subject that were remanded by a district court, which would have required a third party to certify the estimated cost of reclamation bonding. The experience under the remanded rules was that requiring a third party to certify the estimated cost of reclamation was a burden, particularly on small miners, and on BLM because the BLM field manager must still had to pass on the adequacy of the estimate to make sure the amount of the guarantee was adequate, regardless of who made the estimate. The benefits of the process did not outweigh these burdens. The final reinforces BLM field managers' responsibility to have an adequate financial guarantee in place before operations begin.

Section 3809.555 What Forms of Individual Financial Guarantee Are Acceptable to BLM?

The final rule expands the kinds of financial instruments that are acceptable. In addition to surety bonds, cash, and negotiable securities, which were acceptable under the previous rule, this expanded list of acceptable instruments includes letters of credit, certificates of deposit, State and municipal bonds, investment-grade rated securities, and insurance.

The final rule differs from the proposed rule in that we have decided to include insurance as an acceptable form of financial guarantee as paragraph (f) of this section. The form and function of the insurance must be to guarantee the performance of regulatory obligations in the event of operator default. In adding insurance, we determined that the company must have an A.M. Best rating of AA. This rating limits the risk to the government that the company will be unable to pay should the operator fail to reclaim land after completing operations. Several commenters suggested that we add insurance because it provides BLM as much protection as the other instruments and operators are often able to obtain insurance at a reasonable cost.

We also added language to reference Treasury Circular 570 and removed the word ''Non-cancellable.'' We added the reference to Treasury Circular 570 in response to suggestions that we clarify that BLM will not accept any surety. BLM will only accept bonds of sureties that Treasury Circular 570 authorizes to write Federal bonds.

We took out the word ''non-cancellable'' after considering comments which emphasized the difficulty of obtaining a surety if it could never be canceled. BLM decided these concerns had merit and that an operator's liability would not change and BLM's protection would not be appreciably diminished so long as the liability period of the surety would cover any situation where BLM would make a demand on the surety. If a surety intends to cancel a bond, the operator must have a replacement financial guarantee in place at the time of cancellation to avoid a gap in coverage.

Several commenters asked BLM to consider operators' liability insurance as an additional funding mechanism. Another comment asked us to include language which would, in essence, allow BLM to take any form of guarantee if it would achieve the objectives and purposes of the bonding program. The intent of this suggestion was to provide the greatest possible flexibility for both operators and BLM.

Another comment suggested that BLM require operators to replace an expiring letter of credit 30 days before it expires, because after its expiration there would be no guarantee to collect. The same commenter said BLM should redeem the letter of credit 30 days before it expires if the operator has not replaced it. One comment objected to our proposal to accept investment-grade securities because the commenter views them as close to accepting corporate guarantees. One comment suggested that BLM explore with the States creative forms of guarantees including liens on property. This suggestion was proffered to ease the burden on small business. One comment asked BLM to require the custodian of the security to submit monthly statements to BLM attesting to the market value.

BLM chose not to incorporate any of the above suggestions. We did not include operators' liability insurance because we consider liability insurance to be more appropriate for work-related liability, such as worker injury as opposed to liability for completing reclamation. Companies routinely acquire this type of insurance and while it would normally cover unintended events during mining, such insurance would not cover post-mining liabilities.

BLM chose not to add language regarding expiring letters of credit because in most cases the letter of credit will be for a significant time period. As BLM will be reviewing the adequacy of financial guarantees on a periodic basis, the field manager will be aware of any letter of credit which is about to expire and take appropriate action if the operator is not moving to replace it in a timely manner. Redeeming a letter of credit solely because it is about to expire would not be consistent with the objective of the rule. We would only redeem the letter of credit if the operator were unwilling or unable to complete reclamation.

BLM can explore creative forms of guarantees with the States, but our experience is that the rules should not provide open-ended discretion in this area. If we determine a ''creative'' method is worth including in the list of

acceptable instruments we can incorporate that in a separate rulemaking.

The notions that BLM should not accept investment-grade securities or, if we do, require the custodian to submit monthly statements attesting to their market value, are overly burdensome. In the first instance, an investment-grade security is not equivalent to a corporate guarantee because the value can be determined daily in the marketplace without having to consider intangible corporate assets. Final § 3809.556 provides BLM adequate protection from any declines in the value of the security. The suggestion that the custodian provide a monthly statement would place an unnecessary burden on the custodian without substantially increasing BLM's protection. It would also place a burden on BLM to review and file monthly reports. We believe requiring annual review of these types of financial guarantee instruments will be adequate.

Section 3809.556 What Special Requirements Apply to Financial Guarantees Described in § 3809.555(e)?

This section of the rule requires operators to provide BLM an annual statement describing the market value of a financial guarantee which is in the form of traded securities. Paragraph (b) requires the operator to post an additional financial guarantee if the values decline by more than 10 percent or if BLM determines that a greater financial guarantee is necessary. Paragraph (c) allows the operator to ask BLM to release that portion of an account exceeding 110 percent of the required financial guarantee. BLM will allow the release if the operator is in compliance with the terms and conditions of the operator's notice or approved plan of operations. It is unchanged from the proposed rule.

One commenter suggested deleting this paragraph because § 3809.552(b) contains the same general requirement for an annual review.

We chose not to delete paragraph (b) because it provides the specific requirements for certain types of financial guarantees. As the instruments vary in value, it is important that BLM annually review the value to assure their adequacy. In contrast, final § 3809.552 establishes the framework for all financial guarantees. Part of that framework is paragraph (b) which tells operators that BLM will periodically review financial guarantees without establishing any specific time period for the review. Unlike this section, § 3809.552(b) does not require the operator to submit anything to BLM unless specifically requested by BLM.

Commenters asked why BLM is requiring assets to be 110 percent of estimated reclamation costs before BLM will authorize releasing that portion of the guarantee that exceeds 110 percent. The comment suggests that a guarantee covering 100 percent of the reclamation cost is sufficient. The purpose of requiring 110 percent is to provide assurance that an adequate financial guarantee remains in place regardless of market fluctuations. If we were to use 100 percent it would be logical for us to ask for an increase in the guarantee if the level drops to 95 percent. This would impose a burden on industry and BLM to constantly adjust the level of the guarantee while not providing any real increase in protection.

Section 3809.560 Under What Circumstances May I Provide a Blanket Financial Guarantee?

This section allows operators to provide a blanket guarantee covering State-wide or nation-wide operations. The amount of any blanket financial guarantee would have to be sufficient to cover all of an operator's reclamation obligations. This final rule is unchanged from the proposed rule.

We received a comment asking whether the purpose of this section was to provide administrative convenience or something else. Other comments expressed the fear that blanket guarantees make it easier for companies to post insufficient financial guarantees, declare bankruptcy and walk away. Others see blanket guarantees as a way of avoiding detailed calculations of financial guarantee amounts based on the engineering design of a mine or mill. Others expressed the concern that the blanket guarantees will not equal the sum of guarantees needed for all individual projects.

BLM decided to maintain the option allowing blanket guarantees. The system has been in place for many years and provides administrative convenience to both the operator and BLM. It is a system which is used successfully in other BLM programs. In our experience, a blanket guarantee does not increase BLM's risk of having to use taxpayer funds to reclaim operations. BLM must work with its field managers to review the blanket guarantees to be certain that sufficient funds are available for each project covered in the event the operator does not complete reclamation for whatever reason.

Sections 3809.570 Through 3809.574 State-Approved Financial Guarantee

Section 3809.570 Under What Circumstances May I Provide a State-Approved Financial Guarantee?

This section permits BLM to accept a State-approved financial guarantee that is redeemable by the Secretary, is held or approved by a State agency for the same operations covered by a notice or plan of operations, and provides at least the same amount of financial guarantee as required by this subpart. We are requiring that any State-approved financial guarantee be redeemable by the Secretary so that, in case of failure to reclaim, we have independent authority to initiate forfeiture of the financial guarantee to ensure reclamation of public lands. The redeemability requirement would not apply to State bond pools. The final rule is unchanged from the proposed rule.

We received one comment asking that BLM amend proposed paragraph (c) to provide that the State guarantee need not include funds to cover BLM costs for issuing a third-party contract when the State agreement provides for the State to implement a jointly approved reclamation plan that is in default.

There were comments that the proposal would end joint bonding because a surety would not issue an instrument redeemable by both the State and the Secretary of the Interior. One State asked that we amend the section so that the Secretary of the Interior would not have to sign the guarantee, citing the MOU as providing a means to protect both the State and BLM. Another State pointed out that its law does not provide for jointly held financial guarantees and suggested that to make an MOU workable with respect to financial guarantees could require the State legislature to act. One State expressed concern that BLM should allow that State to hold the financial guarantee instrument because a joint instrument would be difficult to administer.

In the context of State bonding, there were many comments about using State bond pools. One comment stated, ''We are pleased that the State bond pool may continue to work as a means of allowing placer miners and others to easily comply with proposed regulations. In Alaska, all operations disturbing 5 acres or more are required to be bonded for reclamation, and reclamation is required for all operations of any size. The State of Alaska bond pool has been used successfully for many years, and has been approved by the BLM for many operations.''

Another comment said that BLM shouldn't be able to recoup administrative costs from the State bond pool because utilizing the pool saves BLM money. The same commenter noted that States ''have the ability to audit all reclamation costs claimed under a default situation, when monies are drawn from the existing State bond pool.'' Finally, the commenter suggested that BLM proceed with legal action against any and all liable parties before using State bond pool money to remedy the reclamation obligation.

There were comments asserting BLM should not accept financial guarantees that are part of State bond pools. These commenters see such pools as not always solvent and note that one large cost recovery may exceed the value of the pool.

Other commenters asked why BLM would not adopt State rules. Commenters also questioned whether operators would be able to obtain an instrument from a surety that named two different entities with the ability to redeem a guarantee.

BLM did not accept the suggestion that a third-party contract not be included. Even when a State agreement exists, the responsibility for protecting Federal lands remains with BLM. BLM must still administer any third party contracts needed to reclaim land after operations, and this is a legitimate expense. Estimates of the amount of the financial assurances are expected to consider the administration of contracts, so it is not unreasonable to have proceeds from a State bond pool pay this expense. BLM believes it must include its direct and indirect administrative costs in calculating the estimated reclamation costs. These costs should apply to State bond pools as well. In the event of a disagreement with the State, BLM should be certain to have sufficient funds to pay for reclamation. See also the response to comments about the calculation of the estimate in final § 3809.554.

We believe that making a financial guarantee redeemable by the Secretary is a fundamental principle of the financial guarantee program. In final § 3809.203, we state clearly that if the financial guarantee is a single instrument, it must be redeemable by both the Secretary and the State, and this section is consistent with that requirement. We believe that surety companies will cooperate and accept the notion, and that joint State-BLM bonding may proceed. We recognize that sometimes State and Federal interests are not the same. Under FLPMA, the Secretary of the Interior is ultimately responsible for assuring that operators not cause unnecessary or undue degradation, and this appropriately includes a requirement that they assure reclamation of Federal land after mining.

We believe that continuing to use State bond pools is appropriate, especially to assist small miners who might otherwise have difficulty obtaining a financial guarantee from other sources, so long as the conditions of the next section are met. The BLM State Director will have to determine whether the pool is sound (see final § 3809.571) before an operator would be able to post a financial guarantee through the pool. If one large claim would make the pool insolvent, the State would need to find a means to supply the financial guarantees necessary to comply with the requirements of subpart 3809.

We also received a comment asking BLM to add language that would clarify that BLM may still require its own financial guarantee even if there is an existing State-approved financial guarantee. We did not accept this suggestion because we believe the language in final § 3809.570 makes clear that BLM will review State-held financial guarantees and make an independent decision on whether to accept them.

Finally, BLM disagrees that it should have to bring legal action against liable parties before using a bond pool. One principal purpose of financial guarantees is to avoid the necessity of lawsuits to accomplish reclamation.

Section 3809.571 What Forms of State-Approved Financial Guarantee Are Acceptable to BLM?

This section allows an operator to provide a State-approved financial guarantee subject to the conditions in final § 3809.570, in the following forms:

- The kinds of individual financial guarantees specified under § 3809.555;
- Participation in a State bond pool, if the State agrees it will draw on the pool where necessary to meet obligations on public lands, and the BLM State Director determines that State bond pool provides equivalent level of protection as required by this subpart; or
- A corporate guarantee existing on the effective date of this final rule.

The final rule differs from the proposed rule regarding whether BLM will accept a corporate guarantee as a financial guarantee. BLM proposed to continue its policy of accepting corporate guarantees under certain circumstances if the State in which the operations are occurring did so and if the BLM State Director determined that the corporate guarantee would provide an appropriate level of protection. We asked for public comment on whether to continue this policy. A new section, final § 3809.574, explains that BLM will no longer accept corporate guarantees, but will allow those in place to continue for that portion of the operation covered by a corporate guarantee existing on the effective date of this rule.

Numerous commenters argued against permitting corporate guarantees, stating that financial guarantees should be held by an independent third party. Commenters noted that if BLM allows corporate bonding, the value of the ore should not be considered an asset as it fluctuates over time and loses value as it is mined. Thus, the soundness of the guarantee might be most questionable at the time it is most needed. We also received a comment suggesting that allowing corporate guarantees could be inconsistent with the first recommendation in the NRC Report because they may not provide assurance that reclamation will be completed.

Other commenters supported allowing corporate guarantees and suggested approaches the commenters considered workable. One commenter suggested that if BLM decides to permit corporate bonds, we should use a system similar to the system that the Office of Surface Mining (OSM) uses. This is an elaborate system which limits the percentage of corporate bonding based on the assets of a corporation. Other commenters suggested that BLM look at State models (specifically Nevada and California) for determining the levels of corporate guarantees. One comment described and supported the Nevada reclamation regulations pertaining to corporate guarantees, which allow them under certain conditions of corporate financial soundness, but only for 75 per cent of the estimated cost of reclamation. Another comment urged BLM to consider, for small entities, the salvage value of equipment and other property at the mine site. Numerous comments asked that we amend the rule to state that guarantees under the California program are automatically acceptable.

One commenter suggested that BLM use the OCS system which measures assets over liabilities on an annual basis. One commenter suggested that BLM consider using as a model the regulations adopted under Subtitle C of the Resource Conservation and Recovery Act (''RCRA'') with respect to the financial assurance of closure and abandonment costs.

During a January 11, 2000 meeting with the Western Governors' Association, some State representatives

expressed concern about continuing to accept corporate guarantees, for reasons similar to those in the comments we received from others opposing corporate guarantees. However, some State laws specifically allow corporate guarantees. We recognize that the final rule will, in some cases, require a reworking of MOUs with the States.

We found the arguments opposing corporate guarantees persuasive. We agree that a corporate guarantee is less secure than other forms of financial guarantees, especially in light of fluctuating commodity prices. Recent bankruptcies added to the concern that corporate guarantees don't provide adequate protection. We believe the number of new mines that might have wanted to rely on corporate guarantees is relatively small, and we also believe, given the economics of the industry, that companies that would have been eligible to hold a corporate guarantee should not have a significant problem finding a third-party surety, or posting the requisite assets.

BLM currently accepts a corporate guarantee only if there is an MOU with the State and the State accepts corporate guarantees. The proposed rules would have required BLM to evaluate the assets of individual companies before allowing corporate guarantees. Specific models cited in the comments all have requirements to evaluate assets, liabilities, and net worth. Some require judgments as to the amount of a company's net worth in the United States. Annual reviews would be necessary. BLM does not currently have the expertise to perform these reviews on a periodic basis, and even if we did, a risk of default would remain. This contributed to our decision not to allow additional corporate guarantees.

BLM and the State of Nevada currently hold a significant number of corporate guarantees. Some other States also allow corporate guarantees. We have decided not to invalidate existing guarantees, so as not to require these operators to secure an alternative financial guarantee instrument, so long as they are operating under already approved plans. While we have decided not to require operators who currently hold State-approved corporate guarantees to post an alternative guarantee, the final rule seeks to reduce the associated risk by explicitly requiring periodic review of financial guarantees, and directing that appropriate steps be taken if they are determined to be no longer adequate.

Section 3809.572 What Happens if BLM Rejects a Financial Instrument in My State-Approved Financial Guarantee?

This section states that BLM will notify the operator and the State in writing if it rejects a financial instrument in an existing State-approved financial guarantee. BLM will notify the operator within 30 days and explain why it is taking such action. This section requires an operator to provide BLM with a financial guarantee acceptable under this subpart at least equal to the amount of the rejected financial instrument before mining may continue.

The final rule is slightly different from the proposal. In response to comments, we have added language which directs BLM to notify the State if we do not accept a State-approved financial guarantee. We are making this change to assure that lines of communication between BLM and State governments are adequately maintained.

Some commenters stated that BLM should defer to the States on financial guarantees. Many comments questioned the criteria under which BLM would not accept a State bond, saying ''if a state accepts a bond, BLM should accept it.'' To do otherwise, these commenters suggest, might result in duplicate bonding. One commenter asked for a list of criteria under which BLM would not accept a financial guarantee which the State accepts. Other commenters noted that in the event BLM does not accept a State financial guarantee, there is no mechanism or time frame for BLM and the State to resolve what is an acceptable financial guarantee. Another commenter suggests establishing a time frame for the operator to remedy the situation. The same commenter asked BLM to establish an appeals procedure under which BLM would accept the State guarantee while the appeal is pending. Final §§ 3809.800–3809.809 establishes an appeals procedure.

There were some comments in opposition to BLM accepting State financial guarantees on the grounds that the interests of the State and Federal government can diverge.

The process we establish in this section assures that a strong financial guarantee will protect the Secretary if an operator is unable or chooses not to complete reclamation, or if a State establishes a requirement that does not provide adequate protection. If BLM does not accept a State-approved financial guarantee, the operator may not begin mining activities. For this reason, we have declined to accept the recommendation to add a time frame.

Although the appeals procedures in final §§ 3809.800 through 3809.809 apply to all BLM decisions, including whether to approve a financial guarantee, a rejected financial guarantee will not satisfy the regulatory requirement during the pendency of the appeal, because a sufficient guarantee must be in force at all times.

Section 3809.573 What Happens if the State Makes a Demand Against My Financial Guarantee?

Final § 3809.573 requires an operator to replace or augment a financial guarantee within 30 days when the State makes a demand against the financial guarantee and the available balance is insufficient to cover the remaining reclamation cost. This differs from the proposed rule by the addition of a 30-day time frame for augmenting or replacing a financial guarantee. This action conforms to the NRC Report's first recommendation that ''[f]inancial assurance should be required for reclamation of disturbances to the environment caused by all mining activities beyond those classified as casual use.'' It also responds to a comment from a Federal agency asking how BLM and a State would handle a situation where a financial guarantee is inadequate to cover demands made by both entities, and another comment that suggested BLM should add language specifying that the operator must inform BLM within 15 days of the demand's occurrence and require a replacement or augmented guarantee within 15 days. We decided 15 days was too short, and stretching the process beyond 30 days would leave a troubled operation operating too long without a sufficient financial guarantee. Such situations should be avoided if possible by taking care to establish a proper financial guarantee amount to cover both Federal and State obligations.

Section 3809.574 What Happens if I Have an Existing Corporate Guarantee?

As stated earlier, the final rule continues to allow corporate guarantees for existing operations to satisfy financial guarantee requirements, if they were accepted before the effective date of this rule. BLM will not allow an operator to transfer a corporate guarantee to another entity or operator.

Paragraph (b) specifies that if the State changes its corporate guarantee criteria or requirements, the BLM State Director will review any outstanding guarantees to ensure they still afford adequate protection. If the State Director determines they won't provide adequate protection, the State Director may terminate the existing corporate

guarantee and require the operator to post an alternative guarantee.

Sections 3809.580 Through 3809.582 Modification or Replacement of a Financial Guarantee

Section 3809.580 What Happens if I Modify My Notice or Approved Plan of Operations?

This section requires an operator to adjust the financial guarantee if the operator modifies a plan of operations or a notice and the estimated reclamation cost increases. The final rule clarifies the regulatory text by also explaining that if the estimated reclamation cost decreases, the operator may request BLM reduce the amount of the required financial guarantee. This change in the final rule was suggested by numerous commenters who noted that the language in the proposed rule did not allow BLM to approve a decrease in the amount of a financial guarantee even if a modification resulted in a lower estimated reclamation cost.

One comment asked us to clarify that an operator may request BLM to lower the amount of the financial guarantee. As noted in the preamble to the proposed rule (see 64 FR 6443, Feb. 9, 1999), this section makes clear that the proposed section does not preclude an operator from requesting BLM's approval to decrease the financial guarantee if the estimated reclamation cost decreases.

Section 3809.581 Will BLM Accept a Replacement Financial Instrument?

Final § 3809.581(a), unchanged from the proposed rule, authorizes BLM to approve an operator's request to replace a financial instrument. BLM will review and act on the request within 30 calendar days. We received no comments specific to this section.

BLM has added final § 3809.581(b) to clarify a surety's obligations, if for some reason a surety bond is no longer in effect. See, for example, the standard BLM surety bond form entitled, *Surface Management Bond Form* (February 1993), Bond Condition No. 8. See also *U.S. and Nevada* v. *SAFECO Insurance Co. of America,* CV–N–99–00361–DWH(PHA), Order dated Aug. 12, 1999. The final rule makes it clear that a surety is not released from an obligation that accrued while the surety bond was in effect, unless the replacement financial guarantee covers such obligations to BLM's satisfaction. This is not a new policy, but BLM believes it should be stated expressly so that if a surety bond is canceled or terminated, all parties understand that the surety cannot unilaterally terminate liability for obligations that have accrued while the bond was in effect. If the operator submits, and BLM accepts, an adequate replacement financial guarantee that covers the obligations covered by the previous surety bond. Then the earlier surety may be released from its obligations.

Section 3809.582 How Long Must I Maintain My Financial Guarantee?

This section requires an operator to maintain the financial guarantee until the operator, or a new operator, replaces it, or until BLM releases the requirement to maintain the financial guarantee after the operator completes reclamation. With minor editing, it is unchanged from the proposed rule.

One comment suggested that the rule contain criteria for release of a financial guarantee. BLM will not release the financial guarantee until we determine reclamation is complete. The standard is the reclamation plan in the notice or approved plan of operations . The sole criterion for judging whether the standard is met is the successful completion of reclamation. The regulation is clear and therefore we did not change it.

Sections 3809.590 Through 3809.594 Release of Financial Guarantee

Section 3809.590 When Will BLM Release or Reduce the Financial Guarantee for My Notice or Plan of Operations?

The final rule authorizes an operator to notify BLM that reclamation is complete on all or part of notice or approved plan of operations and to request a reduction in the financial guarantee upon BLM's approval of the adequacy of the reclamation. BLM must promptly inspect the area, and we encourage the operator to accompany the BLM inspector. If the reclamation is acceptable to BLM, the operator may reduce the financial guarantee as allowed in final § 3809.591. Paragraph (c) of this section requires BLM to post the proposed final release of the financial guarantee in the field office having jurisdiction, or to publish notice of the proposed final release in a local newspaper of general circulation and accept public comments for 30 calendar days.

We received several comments asking that notice-level activities not be included in the release procedures of paragraph (c). Because notice level activities entail less than 5 acres of surface disturbance, commenters suggested that there is no added value to allowing the public 30 calendar days to review a financial guarantee release.

The final rule differs from the proposed rule by excluding notice-level activities from the public notice and comment provisions of paragraph (c). Release of financial guarantees for notice-level operations do not need to undergo the same level scrutiny as the release of financial guarantees for plans of operations. Notice-level operations are much less likely to involve significant disturbance and in most cases generate little or no public interest. Additionally, the timing of the release of the financial guarantee is important to many notice-level operators as they need the release of one guarantee to post a guarantee on a new notice. Because the final rule limits notices to exploration, this change benefits small business without posing a significant threat to the environment.

A second change from the proposed rule is that the final rule includes language that will give the BLM field manager the discretion to post the proposed release of the financial guarantee in the BLM office or publish it in a local newspaper of general circulation, or both. The proposed rule would have required BLM to publish the proposed release of all financial guarantees in the newspaper. We chose this approach because today's rule limits notices to exploration, which generally has limited impact and limited interest. A newspaper notice for these actions is probably unnecessary. Moreover, BLM already posts many proposed actions in its office for public review; for example, Congress mandated that BLM post all oil and gas applications for permit to drill (APD) in the office as a way of promoting public involvement in decision making. In many cases, the (APD) results in more surface disturbance than small mining operations.

Several commenters believe that BLM should amend paragraph (b) by including a specific number of days within which we will inspect the operation. These commenters consider the term ''promptly inspect'' to be too vague. Other comments suggested we continue the current requirement that the inspection include the owner and/or operator unless they notify BLM in writing that the joint inspection is waived. Another commenter says that BLM should publish the date of inspection so that interested persons can attend.

The opportunity for public participation is controversial. Many respondents stated BLM should give the public an opportunity to be involved in all phases of planning, assessment, and

bond setting, noting that mining may affect local residents for a long period of time. Many others assert the public already has input into this process during the EIS stage, and their further involvement will slow down the process due to the 30-day period for public comment. These commenters feel that financial guarantee release is largely a mathematical exercise where a body of literature provides guidance on how to do the calculations. Other comments stated the general public is not educated in calculating and setting financial guarantees, and the BLM professionals should continue to set these requirements. We also received comments criticizing BLM for not discussing the value of public comment and explaining how differences would be resolved. There were several comments suggesting that the final rules should allow 30 days for BLM to inspect an operation and release financial guarantee, and to require BLM to pay interest if we take longer than 30 days to release the financial guarantee.

Other commenters pointed out that the impact of mining is not always known immediately at the time BLM approves reclamation, and therefore BLM should establish a mechanism to hold bonds after reclamation approval.

We changed the current rule which requires written waivers of joint inspections, and decided not to establish a time frame for when a joint inspection can occur. It is our intent to promptly inspect the reclaimed area, usually within 30 days. However, the time when we do it depends not only on our workload, but the availability of the operator and weather conditions. To state a time frame in the rule would be too inflexible. Requiring the release within a finite number of days could lead to the inappropriate release of some guarantees, or time-consuming appeals when we have legitimate reasons for delaying the release.

One overall purpose of these final rules is to permit an increase in public review of mining. The release of the financial guarantee is an important step in the mine closure process. Allowing the public an opportunity to comment on it should add value to the BLM review. The logistics of including the public on inspections could result in many of the same problems that we identified in deciding not to incorporate the proposal for ''citizen inspections'' (See the discussion of proposed § 3809.600(b) below.). Therefore, we did not add this as a step in the release of financial guarantees.

We view the opportunity for outside parties to comment as a positive. The public that is likely to comment tends to be well-versed in many aspects of mining or be familiar with the on-the-ground condition of the area for which the operator seeks release. BLM will review public comments as promptly as possible to see if they should affect the release of the guarantee. Then we will either release the guarantee or require additional work to meet the requirements of the performance standards and the approved plan of operations. Given the differences in the size and complexity of mines and the number of comments BLM might receive, the time it will take to analyze comments will vary greatly. Therefore, we choose not to place a time limit on the time to analyze comments.

We also chose not to hold financial guarantees after release. The performance bond guarantees reclamation. BLM will release it when it determines that the operator has successfully accomplished reclamation. While we know that the impacts of mining are not always readily apparent, and mining-related problems can subsequently occur, under final § 3809.592, the operator and mining claimant remain responsible for such problems. However, BLM does not think it necessary to hold a financial guarantee longer than the periods specified in final § 3809.591.

Section 3809.591 What Are the Limitations on the Amount by Which BLM May Reduce My Financial Guarantee?

This section governs incremental financial guarantee release. Paragraph (a) provides that this section does not apply to any long-term funding mechanism that an operator establishes under final § 3809.552(c). Paragraph (b) states that BLM will release up to 60 percent of a financial guarantee for a portion of a project area when BLM determines the operator has successfully reclaimed that portion of the project area. Paragraph (c) states that BLM will release the remainder of the financial guarantee when we determine the operator has successfully completed reclamation, if the area meets water quality standards for one year without needing additional treatment or if the operator has established a long-term funding mechanism under § 3809.552(c). These are unchanged from the proposed rule.

Several commenters suggested that the release of financial guarantee should be on a dollar by dollar basis as the reclamation work is completed, rather than, as proposed, holding of a financial guarantee for ''contingency or other unquantified purpose. Some commenters asserted that by the time an operator completes regrading he has spent more than 60 per cent of the total cost of reclamation. These commenters state that even if there were to be a default on the remainder of the financial guarantee, there would be more than adequate funds remaining to cover actual costs and BLM administrative costs. Some suggest we should release 80 percent of the financial guarantee, as once revegetation is completed, there is little left to reclaim. Conversely, other comments asked that we reduce the amount BLM releases to 40 per cent to assure that funds are available for use if necessary. These comments also suggested setting a ten-year period for full release, because problems are often undetected in the first year after mining.

One commenter suggested that we add language requiring the NEPA document to identify the amount of financial obligation BLM should release as each discrete phase of reclamation is completed.

Releasing financial guarantee on a dollar-for-dollar basis would create a somewhat more cumbersome process than relying on a fixed percentage. In addition, it would create a greater risk that toward the end of the reclamation process, the financial guarantee would prove inadequate to cover the cost of the remaining reclamation. Whether to release 40, 60, or 80 percent of a financial guarantee is admittedly a judgment call. In the proposed rule we chose 60 percent to assure that funds would be available at the end of the reclamation process. The comments on both sides of the issue suggest that our proposal took a reasonable middle ground. Therefore, we decided not to change the percentage of the financial guarantee we will release.

The final rule provides that once an operator completes reclamation, including revegetation of the disturbed area, the financial guarantee should be released when the water quality standards are achieved for one year. We believe this will provide a reasonable degree of confidence that reclamation is truly complete. In arid areas of the West, a determination that an area has been successfully revegetated may require the passage of several growing seasons. Until BLM makes that determination, we will not fully release the financial guarantee.

BLM decided not to accept the suggestion to use the NEPA document to identify financial release amounts at discrete phases of reclamation. This would overly complicate the NEPA document and would have the same problems associated with releasing the financial guarantee on a dollar-for-basis as discussed above. Also, because most

plans undergo numerous modifications, BLM and the operator would have to review the financial guarantee release points as we review each modification. Such a process would be overly burdensome.

Section 3809.592 Does Release of My Financial Guarantee Relieve Me of All Responsibility for My Project Area?

The final rule states that an operator's liability does not terminate when BLM releases the financial guarantee. We have included this provision to cover situations where latent defects exist, such as, for example, where a regraded and revegetated slope begins to slump or fail. Paragraph (b) of the final rule provides that release of a financial guarantee does not release or waive claims by BLM or other persons under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, (CERCLA) or under any other applicable statutes or regulations. This is unchanged from the proposed rule.

We received a number of comments opposing the concept of continued liability. Their primary arguments are: (1) because release of the financial guarantee means BLM determined the operator has successfully met the reclamation terms of the approved notice, it is not reasonable for BLM to later say that reclamation is no longer considered successful; and (2) once the reclamation is complete and the land opened up to other uses, someone other than the operator may be responsible for any degradation occurring.

Other commenters found continued liability objectionable because it could last into perpetuity, with the operator never knowing when BLM might require additional mitigation. Some commenters compared FLPMA to CERCLA and stated that FLPMA does not permit BLM to hold operators perpetually liable. Some commenters pointed out that financial guarantee release and release from environmental liability are different issues. One commenter suggested that we add a section addressing the release of a long-term funding mechanism if the anticipated problem never occurs, or is eliminated prior to reclamation.

Other commenters see this section as meaning financial guarantees will either never be returned, or it will be difficult or impossible to obtain financial guarantees because surety underwriters will see this provision as exposing themselves to an unacceptable risk. Another commenter stated that the standards for the release of the financial guarantee are part of the approved plan of operations and thus when they are met, the guarantee should be released. A few commenters suggested that we address definitive termination of liability for notice-level activities and add it as a new section under notices.

On the other side of the issue, some commenters expressed the opinion financial guarantees should address perpetual treatment scenarios, and objected that one year of satisfactory water quality is not sufficient for release of the financial guarantee, because contaminants may not be observed for years after closure. This commenter suggested releasing the financial guarantee after increasing by 50 per cent the time predicted in the mine model estimate.

In the preamble to the proposed rule (64 FR 6444), BLM anticipated these types of objections to paragraph (a). We pointed out that the issue of residual responsibility for a project area after release of the financial guarantee has come up many times since 1980 and the current rules do not address this. We continue to believe that this provision is necessary to cover situations where, for example, a totally regraded and revegetated slope begins to slump or fail. As we pointed out in the preamble to the proposed rule: ''If BLM could not require the operator or mining claimant to come back and fix the problem, unnecessary or undue degradation of public lands caused by the operator's activities would be a likely result.'' We do not anticipate a large number of cases where we would have to direct an operator to come back after release and fix problems, but we believe the final rule will help prevent unnecessary or undue degradation.

Regarding the concerns expressed about perpetual liability, and about possible difficulties in establishing a causal link between mining and subsequently occurring degradation, for liability to be imposed, there must be evidence that ties the on-the-ground problem to the operator's activities. As time passes, it may be increasingly difficult to demonstrate that a particular environmental problem was caused by an operator's mining activities, and not by independent causes.

As we explained in the preamble to the proposed rule, paragraph (b) clarifies the relationship between this subpart and other regulations, by providing that the release of a financial guarantee held to satisfy the requirements of this subpart doesn't affect any responsibility an operator may have under other laws.

We believe it is not necessary to include language here addressing the release of a long-term funding mechanism (trust fund) established under § 3809.552 in the event that the anticipated problem never occurs, or is eliminated prior to reclamation. If the problem does not occur or is eliminated, it is clear that the BLM field manager may release these funds as part of the reclamation release process.

Section 3809.593 What Happens to My Financial Guarantee if I Transfer My Operations?

This section states that a new operator must satisfy the financial guarantee requirements of this subpart. It also states that the previous operator remains responsible for obligations or conditions created while that operator conducted operations unless the new operator accepts responsibility. This means that a financial obligation must remain in effect until BLM determines that the operator is no longer responsible for all or part of the operations. BLM has added the word ''must'' to clarify the intent of the proposal.

We received comments that the rule does not make clear that BLM will promptly release the guarantee once the new operator provides a satisfactory guarantee and assumes the obligations of the former operator. We believe the rule is clear that once, in the language of the rule, ''BLM determines that you are no longer responsible for all or part of the operation,'' BLM will promptly release the financial guarantee. Therefore, we did not adopt the suggestion.

Section 3809.594 What Happens to My Financial Guarantee When My Mining Claim or Mill Site Is Patented?

This section states BLM will release the portion of a financial guarantee that applies to operations within the boundaries of the patented land. The final rules added the term ''mill site'' to make clear that BLM will also release any financial guarantee associated with a patented mill site.

We received one comment asking to delete paragraph (c) from the proposed rule because it addressed only access and therefore does not belong in this rule. We agree and have deleted it in the final rule.

We received one comment asking that BLM assign the financial guarantee on newly patented land to the State to assure that the private surface is reclaimed according to State law. Similarly, the EPA commented that if a cleanup became necessary on patented land, the government would likely have to spend money, thereby suggesting that we maintain the financial guarantee on newly patented land.

Once land is patented, BLM is no longer a party in interest with regard to

the reclamation of the patented land. BLM will, however, retain portions of a financial guarantee whose purpose is to guarantee reclamation of the public lands. BLM will work with States to see if portions of the financial guarantee can be transferred to States to meet State bonding requirements. Because this is likely to vary from State to State, we did not incorporate these suggestions into this final rule.

Sections 3809.595 Through 3809.599 Forfeiture of Financial Guarantee

Section 3809.595 When May BLM Initiate Forfeiture of My Financial Guarantee?

This section states BLM may initiate forfeiture procedures for all or part of a financial guarantee if the operator refuses or is unable to complete reclamation as provided in the notice or the approved plan of operations, if the operator fails to meet the terms of the notice or decision approving the plan of operations, or if the operator defaults on any condition under which the operator obtained the financial guarantee.

The final rule changes the word ''will'' in the proposed rule to ''may,'' to clarify that BLM has discretion in deciding under what circumstances to initiate forfeiture. Many commenters suggested that the term ''will'' would require BLM to initiate forfeiture procedures even for minor violations, and that this was not a reasonable approach, because it would be burdensome on BLM and would not give the operator an opportunity to correct the violation. We agree and made the change to indicate that BLM may, but does not have to, initiate forfeiture for every violation. Final § 3809.596(d) describes how an operator may avoid forfeiture after BLM issues a decision to require forfeiture.

An industry association suggested that we consider using California statutory language for clarity. We have generally avoided using State-specific language to ensure the rule is flexible enough to meet conditions in all States.

Section 3809.596 How Does BLM Initiate Forfeiture of My Financial Guarantee?

Except for minor editing, this section is unchanged from the proposed rule. It describes the process BLM will follow to initiate forfeiture of a financial guarantee. The section also describes the actions an operator can take to avoid forfeiture by demonstrating that the operator or another person will complete reclamation.

A State agency and others commented that Federal procedures are more protracted than State-level procedures and that State procedures can actually resolve the on-the-ground problem quicker. In response, we hope we will only rarely have to initiate forfeiture procedures, and that BLM and the State will be able as necessary to work together to resolve the issues before initiating forfeiture. Of course, if the operator, State, and BLM cannot agree on a course of action, BLM must take the steps necessary to prevent unnecessary or undue degradation. Although the procedures may appear detailed, BLM doesn't view them as protracted. Therefore, we decided to keep the proposed language in the final rule.

Section 3809.597 What if I Do Not Comply With BLM's Forfeiture Decision?

This section describes the next steps in the forfeiture process—how BLM will collect the forfeited amount, and how BLM will use the funds to implement the reclamation plan. This final rule differs from the proposed rule in that we changed the term ''forfeiture notice'' to ''forfeiture decision.'' We believe this is a more accurate description and is consistent with final § 3809.596 which discusses ''BLM's decision to require the forfeiture.'' BLM begins forfeiture by issuing a formal decision.

One comment said the State, not BLM, should be the collection agency and that this should be established in an MOU. Another commenter asked us to add language allowing BLM to use the funds to continue interim reclamation operations as permitted in proposed § 3809.552.

As BLM has the ultimate responsibility to protect Federal lands from unnecessary or undue degradation, BLM and a State may use a general or site-specific MOU to address procedures and responsibilities to assure that monies are collected and used to perform needed reclamation.

The final rule does not include language contained in proposed § 3809.552 that would have allowed BLM to continue interim reclamation, and does not incorporate the suggestion regarding interim reclamation in this section.

Section 3809.598 What if the Amount Forfeited Will Not Cover the Cost of Reclamation?

This section makes clear that if the amount of the financial guarantee forfeited by an operator is insufficient to pay the full cost of reclamation, the operator(s) and mining claimants(s) are jointly and severally liable for the remaining costs. It is unchanged from the proposed rule.

One commenter suggested BLM amend the rule to limit recovery to ''reasonable'' costs of reclamation. Another commenter said that the joint and several liability provisions should be eliminated because BLM does not have the authority to propose such a requirement.

The ''reasonable cost'' of reclamation is what it takes to reclaim the land and associated resources in accordance with these regulations. The primary purpose of posting a financial guarantee is to ensure that the taxpayer does not have to pay for the failure of an operator to reclaim land after completing operations. We have not incorporated the suggestion to limit recovery to the ''reasonable'' costs of reclamation, which are in the eye of the beholder.

Regarding BLM's authority to impose joint and several liability, see the discussion earlier in this preamble of the provisions of final § 3809.116.

Section 3809.599 What if the Amount Forfeited Exceeds the Cost of Reclamation?

This section states that BLM will return the unused portion of a forfeited guarantee to the party from whom we collect it. It is unchanged from the proposed rule. We did not receive any comments on this section.

Sections 3809.600 Through 3809.605 Inspection and Enforcement

This portion of the final rule (§§ 3809.600 through 3809.605) sets forth BLM's policies applicable to inspection of operations under subpart 3809. The final rules follow the proposed rules, with one exception related to allowing members of the public to accompany BLM inspectors to the site of a mining operation. The final rules also set forth the procedures BLM will use to enforce the subpart, including identifying several types of enforcement orders, specifying how they will be served, outlining the consequences of noncompliance, and specifying certain prohibited acts. The inspection and enforcement rules apply to all operations on the effective date of the final rule.

Section 3809.600 With What Frequency Will BLM Inspect My Operations?

Final § 3809.600 clarifies BLM's authority, as the manager of the public lands under FLPMA and the entity that administers the mining laws, to conduct inspections of mining operations. BLM's authority to inspect operations on the public lands derives from 43 U.S.C. sections 1732, 1733, and 1740 and 30 U.S.C. 22 (RS 2319). This section

incorporates previous §§ 3809.1–3(e) and 3809.3–6.

Final § 3809.600(a) provides that at any time, BLM may inspect all operations, including all structures, equipment, workings, and uses located on the public lands, and that the inspection may include verification that the operations comply with subpart 3809. Final § 3809.600(b), which was proposed as paragraph (c), provides that at least 4 times each year, BLM will inspect operations using cyanide or other leachate or where there is significant potential for acid drainage. This paragraph codifies existing BLM policy with regard to inspection of those operations at which this hazard exists. See Cyanide Management Policy, Instruction Memorandum 90–566, August 6, 1990, amended November 1, 1990. As was stated in the proposed rule, BLM believes that cyanide and acid-generating operations have the potential for greater adverse impacts to the public lands than other types of operations and should receive a greater quantity of BLM's inspection resources.

Proposed paragraph (b) is not adopted as proposed, but has been replaced by a more moderate provision allowing once-a-year public visits to mines, codified as § 3809.900, discussed below.

The recommendations of the NRC Report did not address BLM's inspection program. Therefore, the inspection provisions of the final rules are not inconsistent with the NRC Report.

Comments Related to Inspection

BLM received numerous comments addressing the proposed rules related to inspection and enforcement, both for and against the proposal. A number of the comments addressed inspection and enforcement together, and are discussed together for convenience.

General Comments Supporting the Proposal

Many commenters urged that inspection and enforcement must be improved, asserting that inspection and enforcement of mining regulations is a critical element of the regulatory process. Without it, they asserted, improved rules will be meaningless. These commenters asserted that inspection and enforcement activities also need to be strengthened to assure that environmental damage is as limited as possible and, in particular, to protect people, livestock, water, wildlife, and all other resources, from the modern realities of mining activity. One commenter stated that although many miners now operate and clean up in a responsible manner, unfortunately, based on observations ''for many years, both near home and also throughout the region,'' many others fail miserably. The commenter urged that land managers need enough teeth in the regulations to insure the compliance of all. Other commenters asserted that the proposed inspection and enforcement rules do not go far enough and supported the stronger inspection and enforcement measures set forth in Alternative 4 of the draft EIS .

BLM generally agrees with the commenters who urged strengthening of the BLM inspection and enforcement rules.

General Comments Against the Proposal

Some commenters opposed the proposed inspection and enforcement rules, asserting that this section is overly broad and will be administratively infeasible. Commenters stated that the industry's record with notice level compliance, although not spotless, is generally very good. Instead of revising the regulations, they urged, BLM should allocate more resources and get more inspection personnel in the field. BLM disagrees with the comment, and believes that the rules, are not too broad and will be workable.

Budget

The adequacy of BLM resources was a recurring theme. Commenters asserted that BLM must evaluate the personnel and funding it will take to implement the proposed inspection and enforcement provisions since BLM's current resources will be inadequate and no funding increases have been requested. For example, a commenter asserted, it is questionable whether BLM has the necessary resources to conduct inspections ''at least four times a year * * * if you use cyanide or where there is significant potential for acid drainage.'' Rather than cut back on the proposal, some commenters suggested a cost-recovery program, under which miners pay fees to cover inspection and enforcement. These commenters stated that it is sad if fees and reclamation requirements put mining companies out of business, but the reality is that our nation's history has brought many changes since 1872 that alter how we look at and value safety and environmental integrity along with the importance of mineral wealth. If operators cannot afford to mine responsibly, then they should not be mining at all. Other commenters stated that the agency needs to build in budget line items for inspection and enforcement.

BLM is cognizant of budgetary issues related to implementation of these rules. These final rules reflect policy choices that BLM believes appropriate. BLM will determine whether budget and resources are sufficient for implementation and, if they are not, seek additional resources consistent with fiscal constraints and Administration priorities.

Specific inspection issues raised by commenters follow:

Inspection Frequency

A number of commenters addressed the issue of inspection frequency. On one side, commenters urged that inspection and enforcement of the regulations need to be more frequent and rigorous, and include unannounced inspection of mining operations, and more frequent inspections of high-risk operations. These commenters asserted that mining companies have shown through the years that they will not conduct environmentally responsible operations unless forced to by law. Therefore, it is extremely important that enforcement include frequent unannounced inspections. A commenter requested that the final rule address whether inspections would be scheduled in advance or unannounced.

Some commenters suggested mandated inspection schedules for all operations, suggesting quarterly for example. For others, quarterly inspection is not sufficient, urging that every mine needs to be inspected at least monthly, and a sophisticated BLM lab needs to be big enough to process samples of air, water, tailings, dumps, etc. on a monthly basis, including chemical analysis of ground water, tailings, air, etc. Others suggested that the number and frequency of BLM inspections should be directly linked to documented risk evaluated in the NEPA compliance documents and incorporated in the approved plan of operations.

Several commenters opposed incorporating into the rules the current BLM policy of inspecting cyanide operations four times a year. There were suggestions that the number is arbitrary and does not reflect any documented problem with a lack of BLM inspections nor does it recognize that many operations in some areas like Alaska are seasonal. Some complained that the requirement for a minimum frequency of inspections appears to be based, at least in part, on an incomplete assessment of other State and Federal regulatory programs, and that BLM failed to properly account for the number of inspections which are required by States (*e.g.*, pursuant to the air, water, waste and cyanide processing programs) and by EPA.

BLM agrees that inspections are an important part of any regulatory program, but one limited by available resources. BLM has decided to inspect the more hazardous operations at least four times a year, and not to mandate an inspection frequency for other operations. When necessary, the inspections will be unannounced.

The U.S. Environmental Protection Agency suggested that to assure effective environmental compliance at mine sites, inspection efforts must occur from the start of operations and be ongoing. It suggested that the regulations be amended to require that BLM coordinate with the applicable State and Federal environmental agencies to conduct a complete multi-media inspection of mines within five years after beginning full-scale operations. The regulations should send a strong message that a coordinated Federal and State effort will occur at the beginning of the mine life to check environmental compliance. EPA suggested that these types of coordinated compliance inspections should also occur every five years throughout the mine life.

Other commenters asserted that proposed § 3809.600, which would establish new provisions related to the nature and frequency of BLM's inspections of mining operations, are generally unnecessary and inappropriate and reflect BLM's failure to consider the substantial implications of its proposal. Some commenters disagreed with BLM's statement that establishing a specific number of inspections is needed to prevent adverse environmental impacts, although certain large operators did not object to more frequent BLM inspections or visits to the mine sites. These operators stated that contact between BLM and the operator keeps the operator informed of BLM's concerns and educates BLM about the mine operations, concluding that this is desirable and can prevent misunderstandings or compliance problems.

One operator expressed two concerns with the proposed rule. First, it is not clear that a mandatory inspection schedule is the most efficient use of BLM's limited resources. Second, BLM has considered its own inspection program in isolation from other State and Federal regulatory authorities. The operator asserted that a mandatory inspection frequency is inappropriate if it has no relationship to the risk or compliance problems associated with the site to be inspected. The operator pointed to an Office of Surface Mining rule that eliminated a mandatory inspection frequency for certain categories of coal mines ''to free resources that can focus on existing or potential problems at high risk sites.'' 59 FR 60876 (Nov. 18, 1994) (OSM rule reducing frequency of inspections for abandoned, but not completely reclaimed, coal mines). The operator concluded that the goal of quarterly inspections is a useful goal, but should not be written into the regulations as a mandatory requirement. The operator suggested as an alternative, BLM should consider regulatory language that directed the BLM field officers to target their inspection and compliance resources at ''high risk'' sites or at sites during critical periods (such as placement of liners or during construction periods). The operator also proposed that the regulations include a provision that would require a follow-up inspection when a major notice of noncompliance has been issued. These provisions would give the agency more flexibility and would be more effective in preventing unnecessary or undue degradation than a formulaic approach to compliance inspections.

BLM fully intends to cooperate with other agencies with regulatory jurisdiction over mining operations. BLM agrees that it should coordinate both its inspection and enforcement activities with State agencies and with other Federal agencies. Such coordination can become formalized through memoranda of understanding of agreements, as suggested by the NRC Report, to prevent duplications of effort and to promote efficiency. See NRC Report at p. 104. Nevertheless BLM believes it important to codify its existing policy of four inspections a year for operations using cyanide or other leachate or which have a significant acid-generating potential. This policy has been effective so far, in BLM's judgment. The reference to the OSM rule is not on point because that rule dealt with situations involving abandoned coal mines where continued quarterly inspections serve no purpose.

On a technical level, one commenter asked that BLM define the term ''significant potential for acid drainage,'' asserting that there is a wide range of confusing and ambiguous applications of the concept of a mining operation that may or may not produce significant acid drainage. These can range from standard core drilling a high sulfide mineral deposit, to open trenching, to underground mining, to open pit mining to road or airport construction that will expose sulfide bearing country rock. Even where there may be high acid drainage potential, a small scale mining operation may not be threatening. Conversely, a large-scale operation in an area with low acid drainage potential might be significant concern. The commenter suggested that a table such as BLM has used in other parts of the proposed 3809 regulations would help sharpen BLM intentions and provide for uniform application between Resource Area, Districts, and States.

BLM appreciates the comment, but does not believe it requires providing a definition of the concept of ''significant potential for acid drainage,'' but rather calls for common sense in administering this section of the rules.

Requests for Inspection

Some commenters wanted BLM to provide opportunities for citizens to request inspections of mines. BLM does not view it necessary for its rules to provide citizens with the opportunity to request inspections. Anyone may inform BLM of the existence of problems and request inspections. BLM is not aware of a lack of responsiveness of its personnel that needs to be addressed in its rules.

Inspection—How?

Commenters addressed the nature of inspections and the measurement of compliance. One commenter asserted that the practical realities of judging compliance with unachievable performance standards to eliminate impacts will create substantial problems for both the BLM and the mining industry. For instance, how will BLM inspectors determine when erosion control and acid generation management measures comply with the ''minimize'' performance standard? Will each mine or mineral exploration site be judged on a case-by-case basis, subject to the individual inspectors' discretionary interpretation of what constitutes minimize? BLM disagrees that substantial problems will result. Trained, professional BLM inspectors will use their best judgment in determining whether operators comply with their approved plan of operations. Although the rules contain standards such as ''minimize'' rather than numeric standards, the plans will specify the activities that are allowable, and where appropriate, the acceptable parameters at a particular location.

Scope and Timing of Inspections

Some commenters objected to the scope and timing of inspections, asserting the BLM inspector cannot inspect ''at any time'' as provided by proposed § 3809.600(a). Some mining companies did not object to BLM's proposal for BLM employees to inspect mining operations on public lands, as long as such inspections are made at reasonable times—during normal

business hours. These commenters asserted that without a specific grant of authority from Congress, inspections must be conducted at reasonable times. Some commenters asserted that inspectors must notify the operator of their presence, and must permit representatives of the operator to accompany them during any such inspections. In addition, allowing inspectors unrestricted access to ''all structures, equipment, workings and uses located on public lands'' is too sweeping in its effect and creates significant safety concerns. Inspectors' access should be limited to property (both real and personal) having a reasonable relationship to BLM's role of ensuring compliance with the proposed revisions. Such limited access is especially appropriate in light of applicable Federal and State health and safety mandates.

To perform its inspections properly, BLM needs to be able to inspect whenever, wherever, or whatever is required to assure compliance with its regulations on the public lands. Many mining operations are conducted around the clock, and problems can arise anytime and anywhere on a mine site. When appropriate, BLM inspectors may allow operator representatives to accompany them, but not to the extent of interfering with their inspections. BLM expects that its inspectors will ordinarily inform operators of their presence. BLM inspectors will conform to applicable health and safety mandates.

Who Should Inspect?

A number of commenters asserted that those who enforce the regulations should not be the same as those who approve mine permits, if possible, and that the enforcement and regulatory processes should be otherwise kept apart. Such commenters were concerned about the independence of the inspectors. They suggested that BLM should consider dividing the agency into those who approve the mines and those who enforce environmental protection.

Although BLM understands the commenters' concern, the final rules do not address who can or cannot perform inspections. BLM agrees that inspectors need to be impartial in enforcing the rules, but persons who are involved in making decisions on plans of operations should not necessarily be precluded from determining whether operators have complied with the plans. Such persons will be more familiar with what is allowable under a plan of operations than a person who has had no earlier involvement.

Inspection of Residential Structures

A commenter asked that BLM revise proposed § 3809.600(a) to indicate the extent and authority of BLM to inspect the inside of private residential structures owned by workers at the mine site. The commenter asked that BLM define residential structures for the purposes of this subpart because the referenced 43 CFR 3715.7 focuses on a wide variety of uses that are exclusive of mining. For example, the commenter asked, does this include unlimited BLM inspection of living accommodations for the work force at a medium-sized remote mine in Alaska with workers living in trailers/campers. The commenter requested that BLM define how this provision applies to large and small size mines where there are no alternative living provisions.

As referenced in the rule for the convenience of readers, inspection of residences located on the public lands is covered by 43 CFR 3715.7. Section 3715.7(b) provides that BLM will not inspect the inside of structures used solely for residential purposes, unless an occupant or court of competent jurisdiction gives permission. For additional information concerning BLM's occupancy rules, the reader is directed to the July 16, 1996 **Federal Register** preamble at 61 FR 37125.

Self-Monitoring

Commenters opposed self-monitoring by operators. The commenters asserted that mine operators have a huge vested interest in ensuring that the results of such testing do not adversely affect operations at the mine. They questioned the reliability of asking someone in such a position to produce accurate and honest results. Also, commenters asserted that there are some mine operators who may be honest but unskilled in doing accurate scientific measurements.

Although BLM will perform inspections, the rules also require monitoring plans under which operators perform monitoring. Despite the concerns expressed by commenters, operator monitoring can be an effective way to keep track of activities at an operation. Records have to be maintained, and falsification or misrepresentation is a violation of Federal law.

Proposed § 3809.600(b) Citizen Participation in Inspection

One of the most controversial issues in the proposed rule, generating many comments, was the BLM proposal to allow members of the public to accompany BLM inspectors on mine inspections. Under the proposal, BLM would have been able to authorize members of the public to accompany a BLM inspector onto mining sites, as long as the presence of the public would not materially interfere with mining operations or with BLM's activities, or create safety problems. Under the proposal, when BLM authorized a member of the public to accompany the inspector, the operator would have been required to provide access to operations.

Opposition to BLM Proposal

Many commenters opposed public involvement in the inspection process. Specific objections included:

Undue influence—The only members of the public likely to accompany a BLM inspector onto a mine site are apt to be political opponents of the mine or other individuals with anti-mining agendas looking for a means to harass the mine operators. To allow ''biased environmentalists'' along will create unnecessary and undue influence.

Safety considerations—Allowing the public on mine sites with BLM inspectors poses an unacceptably high risk. There is no guarantee or assurance of personal safety of the visitor. MSHA requires that the BLM inspectors have specific MSHA training in order to enter certain hazardous areas of the mine such as the pits and mill. Citizens do not have that level of training and would not be allowed in most areas of a mine. Untrained people could cause a serious accident, if not a fatality.

Liability—BLM and mine operators could incur liability for injury or death of public or BLM personnel resulting from untrained people being allowed on mining sites. There could be BLM liability for public claims of exposure to toxic chemicals while at mine or mill sites. Increased risk to BLM personnel could also occur because of such personnel being responsible for untrained accompanying public. One commenter asserted that ''[i]t is unreasonable to require the company to carry liability insurance for the public at large on-site. It is also unfair to the BLM employee. There is no place for the public on a mine site unless the company provides the tour and is able to set access limits. It is unreasonable for the federal government to establish regulations that create unnecessary risk to the industry and the public, unless the government is willing to assume all liability created by this action.''

Authority—Commenters asserted the ''BLM does not have the authority to allow citizen inspections and therefore, the citizen inspection provision should be deleted. FLPMA is silent on this issue and cannot be cited as providing

such authority. * * * . In fact, FLPMA prohibits such citizen inspections. * * * Citizens cannot be permitted to accompany BLM inspectors without the specific consent of the mine operator.'' A commenter asserted that allowing members of the public to accompany BLM officials when they make inspections would be a Government authorization of trespass.

Confidentiality—Allowing a member of the public to accompany BLM officials during a site inspection raises serious issues of confidentiality. ''There is nothing in the proposal to constrain citizens from disseminating and disclosing information about the confidential business materials and processes they may encounter during an inspection. Nothing could stop a potential competitor from accompanying BLM as a ruse to obtain such information, and due to the difficulty in proving disclosure of confidential information, it would be hard to rewrite this provision in a manner that would allow meaningful policing of a nondisclosure agreement.'' A company whose shares are traded on any stock exchange cannot allow member(s) of the public to gain insider information that would affect the trading of the company's stock. This issue is of critical importance during the initial exploration stages when a mineral discovery is being made.

Vandalism and Theft—Small miners have a lot of supplies and small equipment at their remote mining camps. If non-BLM people visit the claims, it may result in loss of equipment, vandalism, or both. Citizens entering a mining operation could learn where each piece of equipment is located and what is vulnerable to acts of destruction.

Workload—Public participation in field inspections could be a cumbersome task if multiple people show up at some remote site and need to be transported. ''BLM should also consider how the presence of the public may affect the conduct of an inspection. Certainly, a trained inspector who is familiar with a mine site will be considerably slowed by the presence of untrained members of the public. Longer inspections will require more inspectors or fewer inspections will be completed.''

Comments also questioned how citizen involvement in inspections would work. For instance, if the BLM visits the site, is this the point when the proposed citizen inspector accompanies the BLM inspector? Will the operator be told that citizen inspectors are coming, and under what circumstances will the inspection be done?

Support for Public Participation in Inspections

Some commenters supported public participation in inspection and monitoring. They noted that citizens should have access to public lands and that the BLM should allow citizens to accompany BLM employees on mine inspections to ensure that no violations of regulations occurs. One commenter asserted that public involvement in the inspections of mines is merely an extension of open government and should be part of the privilege of operating on the public lands. ''The land the mining companies use are public lands, which the public should be allowed to visit, especially during these inspections, because the mining company is present during these inspections. * * * to balance that 'undue influence' on the inspectors from the mining companies, the public should have their own people present too. This would create a balance among the miners, the public, and the government caught in between.'' A commenter supporting the BLM proposal agreed that public involvement in mine inspections must depend upon the caveat that there are no significant safety concerns.

A commenter agreed that the public should be kept away from any potentially dangerous situations such as underground mines, but asserted there are safe opportunities for the public to view what is going on. Allowing inspections may have to be considered on a case-by-case basis rather than opening everything up to inspections as was proposed. The commenter asserted that the public should be allowed to see what's happening, with some restrictions, and the mining industry should be willing to go along with that, especially since they are always complaining about the public not understanding the industry.

BLM Conclusion

BLM has carefully considered all of the comments concerning members of the public accompanying BLM inspectors on inspections, as well as its own experience on those few occasions when members of the public did accompany BLM inspectors. BLM has decided not to finalize the provision as proposed. Many of the objections and risks pointed out by the commenters have merit. In addition, BLM's experience with allowing members of the public to accompany inspectors is that the site visits typically become more of a tour than an actual inspection, and that the inspector has to reinspect the operation to perform his or her job properly. Thus, BLM has concluded that the provision as proposed would not be workable.

Section 3809.900 Public Visits to Mines

On the other hand, BLM firmly believes that the public should be able to observe activities on the public land, including mining operations. BLM has thus adopted a provision, to be codified as § 3809.900, designed to allow public *visits* to mines once each year, but not in such a way to interfere with BLM or operator activities or to compromise safety or confidentiality. This provision is intended to respond to many of the objections raised by commenters. A visit will effectively be a mine tour, not an inspection, and operators can specify areas that will not be available, and limit the nature of the visit.

Specifically, final § 3809.900 provides that if requested by a member of the public, BLM may sponsor and schedule a public visit to a mine on public land once each year. The purpose of the visit is to give the public an opportunity to view the mine site and associated facilities. Visits will be limited to surface areas and surface facilities ordinarily made available to visitors on public tours. BLM will schedule visits during normal BLM business hours at the convenience of the operator to avoid disruption of operations. Under the final provision, operators must allow the visit and must not exclude persons whose participation BLM authorizes. BLM may limit the size of a group for safety reasons. An operator's representative must accompany the group on the visit. Operators must make available any necessary safety training that they provide to other visitors. BLM will provide the necessary safety equipment if the operator is unable to do so. Members of the public must provide their own transportation to the mine site, unless provided by BLM. Operators don't have to provide transportation within the project area, but if they don't, they must provide access for BLM-sponsored transportation.

BLM believes that a once a year visit sponsored by BLM will not impose unreasonable burdens on operators, who typically already provide limited mine tours, or interfere with operators' rights to develop minerals under the mining laws. The provision is authorized by FLPMA sections 302(b), 303(a), and 310 (43 U.S.C. 1732, 1733, and 1740), as well as by the mining laws, 30 U.S.C. 22 (R.S. 2319).

Enforcement

BLM is adopting its enforcement provisions generally as proposed. Each

section of the final rule is discussed below, together with comments received relating to the specific sections. First, however, BLM discusses the general enforcement comments and issues raised by commenters.

General Comments Received

Commenters supporting the proposal stated that strengthening BLM's administrative enforcement mechanisms and penalties for enforcing its surface mining regulations will help to prevent unnecessary or undue degradation of public land resources by mining operations, and wanted particularly to endorse the enforcement and penalty provisions in §§ 3809.600 and 3809.700. If BLM does not strengthen its administrative sanctions, the commenters asserted, it sends a message that BLM does not care about the health and welfare of the citizens and of the environment . Commenters stated that all of BLM's proposed changes are for naught if enforcement is not strengthened, and that stiff fines and the real threat of losing the right to mine are necessary to prevent harm to the taxpayer, environment, and local community. Commenters stated that if mining companies can't meet these standards they shouldn't be permitted to mine. Some commenters stated that mining companies have shown through the years that they will not conduct environmentally responsible operations unless forced to by law. Therefore, it is extremely important that enforcement be strong.

BLM agrees that it is important that BLM have strong enforcement remedies available to assist in preventing unnecessary or undue degradation of the public lands. BLM recognizes that many operators conduct operations in a responsible manner in compliance with regulatory standards. These final rules will not impede such operators in continuing their lawful conduct. On the other hand, violations do occur, and BLM must be able to deal with those in a firm, but fair manner. The rules provide the flexibility for BLM to take enforcement action when warranted, or to defer such action if violations will otherwise be timely corrected.

Commenters opposing the proposal asserted that BLM misled the public in the draft EIS by stating, as a ''gap'' not adequately covered in the existing 3809 regulations, that ''BLM lacks provisions for suspending or nullifying operations that disregard enforcement actions or pose an imminent danger to human safety or the environment.'' In support of its assertion, the commenter stated that previous 3809 regulations adequately addressed the issue of enforcement, and referred to previous § 3809 .3–2 ''Noncompliance,'' which provided that mining operations that were issued a notice of noncompliance pursuant to the regulations may be enjoined by a court order from continuing such operations, and may be liable for damages for unlawful acts. Other commenters pointed out that earlier BLM changes to its ''use and occupancy'' rules in 43 CFR part 3710 addressed the only enforcement needs BLM identified in 1992. Commenters also asserted that the BLM also fails to consider authority under RCRA, or authority delegated from the President of the United States to use the tools of CERCLA to address noncompliance and ''imminent dangers.''

BLM disagrees with the comments. BLM's previous rules did not provide adequate enforcement authority. Notices of non-compliance were not self-enforcing, and BLM was unable to compel compliance without seeking to invoke the aid of the Federal courts, in what could be a lengthy and uncertain process, which usually did not mean immediate compliance. The NRC Report discussed this problem at some length and made a specific recommendation for strengthening BLM policy on the subject. See the NRC Report at pp. 102–04. These final rules will increase the incentives for operators to correct violations in a timely manner.

Although BLM's ''use and occupancy'' rules adopted in 1996 (43 CFR subpart 3715) addressed certain abuses occurring on the public lands, those rules were somewhat limited in as to the types of activities regulated, focusing in large part on whether activities are ''reasonably incident'' to mining. The enforcement rules adopted today are broader than the 1996 rules and cover all activities the operator engages in, and in particular whether unnecessary or undue degradation occurs.

BLM acknowledges that RCRA and CERCLA provide a basis for enforcement of certain activities, and will work with EPA, as appropriate, so as not to duplicate enforcement actions, but BLM needs its own enforcement provisions as the land manager of the public lands.

Some commenters asserted that other enforcement mechanisms exist. For instance, operations that pose an imminent danger to human safety on public lands, are under the Federal jurisdiction of the U.S. Department of Labor, Mine Safety and Health Administration, whose regulations at 30 CFR 57.1800 ''Safety Program,'' require operators to inspect each working place at least once each shift for conditions that may adversely affect safety or health, and promptly initiate appropriate action to correct such conditions. In addition, conditions that may present an imminent danger, require the operator to withdraw all persons from the area affected until the danger is abated. These inspections are required to be recorded, and are available to the Secretary of Labor, or his authorized representative. Others asserted that State regulatory inspection and enforcement are sufficient.

BLM recognizes that other Federal and State enforcement agencies share the responsibility for regulating mining operations on the public lands, and that with respect to certain matters, other agencies will have the lead responsibility. BLM will work with the other agencies so as not to duplicate enforcement, and will refer violations to other agencies in appropriate cases. Notwithstanding this coordination, BLM believes it important to have its own enforcement actions available to use to assure the prevention of unnecessary or undue degradation of the public lands.

Other commenters urged a program based on cooperation: Cooperate with the obviously good operators, enlist their support and help, create a feeling of trust, and follow through with a positive program. Some felt that current rules were not adequately enforced until recent years and that there was little effort to take serious violators to task. Some commenters thought that it is inappropriate to dwell on the one or two ''bad apples'' of mining, such as the Summitville situation in Colorado and the Zortman-Landusky situation in Montana. The commenter asserted that both of these were in States that have very stringent environmental laws and that if these laws had been enforced and monitored, the environmental problems probably would not have occurred.

BLM agrees that it is important for BLM to cooperate with the industry, and vice versa. BLM intends to work with the industry to assure compliance with its rules, but is adopting the new rules to provide more effective, and a wider array, of remedies for use where needed. Although the high-visibility problems mentioned by the commenters perhaps could have been limited through better enforcement of existing authorities, these problems, as well as the recent overflow of a tailings dam at a gold mine in Romania, do show that mining operations sometimes carry a risk of serious environmental harm that is very expensive, or even impossible to repair. Stronger enforcement tools will allow more effective BLM intervention if other agencies need BLM assistance.

A commenter stated that if BLM proceeds with this final rulemaking, BLM will indeed change the way the surface management regulations are working on the public lands. It will change the regulatory system from one which encourages cooperation between mine operators and regulatory agencies into one which relies upon confrontational enforcement authorities.

BLM disagrees with the comment. BLM will continue to encourage cooperation between the regulated community and the regulators. Cooperation and seeking voluntary compliance will remain the top priority, but BLM must have, as the NRC Report has underscored, better access to an array of enforcement tools, for use when cooperation and voluntary compliance don't work.

A commenter concluded that the information provided to the public in the draft EIS and preamble was misleading, self-serving, and violates the conditions of several court rulings, NEPA, Department of Interior policy and regulations, and the Administrative Procedure Act.

BLM disagrees with this comment. BLM perceived a need to strengthen its enforcement remedies and so informed the public in the draft EIS and the proposed rule. The NRC Report also recognized the need for better enforcement mechanisms.

Some commenters stated that BLM could make better use of the enforcement tools it currently possesses through improved implementation and training. BLM agrees that improved implementation and training are useful, but that does not negate the need for better enforcement tools.

For consistency in enforcement, one commenter thought the same definitions and standards should be applied for all Federal lands, regardless of which agency managed the lands (for example, BLM, Forest Service), referring as an example, the 5-acre limitation on disturbance. A number of commenters repeated the theme that the BLM and the Forest Service should have comparable provisions and definitions.

The goal of having BLM and the Forest Service use the same definitions and standards is laudable. However, it must be recognized that the two agencies operate under different organic statutes and have different management responsibilities. BLM will continue to work with the Forest Service to use common standards and procedures wherever practicable.

Some commenters asserted that it is premature to conclude that additional enforcement and penalty provisions are needed in the absence of information (other than anecdotal) demonstrating whether existing authorities are being applied in a consistent and uniform manner.

BLM disagrees that it should wait for further information before updating its enforcement regulations. The NRC Report did not indicate that action in this area was premature. The enforcement provisions adopted today provide practical methods for BLM to assure compliance with its rules. We hope that BLM will not have widespread need to use enforcement actions to compel compliance, but the availability of such remedies should help to prevent unnecessary or undue degradation of the public lands.

NRC Report Recommendation 6

Recommendation 6 of the NRC Report stated that BLM should have both (1) authority to issue administrative penalties for violations of the hard rock mining regulations, subject to appropriate due process, and (2) clear procedures for referring activities to other Federal and State agencies for enforcement. NRC Report at p. 102. The committee found that administrative penalty authority should be added to the array of enforcement tools in order to make the notice of noncompliance a credible and expeditious means to secure compliance. NRC Report at p. 103.

Commenters asserted that the NRC concluded BLM does not have administrative penalty authority under current law. One State agreed that Congressional action would be necessary to give BLM authority to issue administrative penalties. Therefore, it considered NRC Report Recommendation 6 as a proposal for legislative change, not a change in the regulations. In addition, the commenter noted that the NRC Report endorsed only administrative penalty authority. The commenter concluded that proposed revisions to the 3809 regulations include broad new inspection and enforcement authority for BLM which it characterized as neither authorized by statute nor required to administer an effective program.

BLM disagrees with the commenters' assertion that the NRC Report concluded that BLM did not have authority to establish administrative penalty authority. The NRC was neutral on the issue of BLM authority to establish administrative penalty authority. It expressly stated that BLM should seek additional authority from Congress only ''if statutory authorization is necessary'' NRC Report at p. 104. BLM also disagrees with the characterization of the recommendation as solely a proposal for legislative change. The NRC Report discussion made clear that, assuming BLM found that authority already existed for it, BLM should revise and expand the existing enforcement provisions in the 3809 regulations to include administrative penalty authority for violations of the regulations. NRC Report at p. 104.

Commenters concluded that because the NRC Report recommended no changes in regulatory provisions regarding inspections and enforcement apart from the administrative penalty recommendation, the proposed enforcement revisions are inconsistent with the recommendations of the NRC Report. Commenters suggested that in order to remain consistent with the recommendations of the NRC Report, BLM should defer any proposed changes in the inspection and enforcement provisions of the regulations until it has implemented those measures recommended by the NRC Report to improve efficiency and the use of staff and resources to implement the existing inspection and enforcement requirements.

BLM disagrees that the final enforcement rules are inconsistent with the NRC Report recommendations. BLM construes the term ''administrative penalty'' as used by the NRC to encompass the full range of proposed administrative sanctions, including suspension and revocation orders, as well as monetary penalties. Recommendation 6 was intended to make notices of noncompliance a credible and expeditious means of securing compliance (NRC Report at p. 103), and the NRC Report stated in connection with the Recommendation that an operator should be given the opportunity to rectify the circumstance of noncompliance (NRC Report at p. 104). This applies equally to suspension and revocation orders, as to monetary penalties. To the extent that the NRC Report recommendations simply do not address certain provisions of the final rule, such as inspection, no inconsistency exists with regard to the recommendations. Therefore, there is no need to defer changes to the inspection and enforcement rules for purposes of consistency.

At the other end of the spectrum, some commenters asserted that the NRC Report supported establishing a ''mandatory'' enforcement program for regulating mining on Federal lands. They stated that the NRC Report affirms that a clear and effective enforcement is needed to replace the existing enforcement mechanisms, and DOI's

proposed rules need to be strengthened to achieve the goals of this recommendation. The commenters stated that this recommendation makes clear that BLM enforcement on the ground is imperative to protecting against unnecessary or undue degradation. The commenters focused on a passage of the NRC Report that states, ''[f]ield-level BLM and Forest Service personnel told the committee that they have experienced difficulty, in some cases, in enforcing compliance with regulations and the requirements of notices and plans of operations.'' NRC Report at p. 102.

The commenters concluded that the best way to ensure that BLM field personnel take the required measures to ensure compliance with the regulations is to make such enforcement mandatory, *i.e.* require BLM to take enforcement action and to assess fines against all observed violations. For instance, a commenter stated that operations that are clearly hazardous to the environment and to human health and public safety should be closed down until brought into compliance. Others suggested that any and all violations should be documented and, when the health of the watershed is threatened, operations ordered to cease until the operator can show compliance. Others urged enforcement to protect groundwater from violations. Without mandatory enforcement, commenters asserted BLM field personnel will experience the same ambiguity and confusion as to what degree of enforcement is appropriate.

Commenters objected that the discretionary enforcement system proposed by BLM will be rendered meaningless by what they say are poorly trained agency staff who are more likely to ''try to work things out'' with representatives of the mining industry when conflicts over land regulations exist, rather than take action that would compel compliance with the regulations. In the commenters' view, even in the event of gross abuse of public resources at a mine site, BLM will not mandate that enforcement actions be taken. The commenters state that this approach to enforcing the proposed regulations fails to create a climate in which effective regulation is likely to take place. Thus, some commenters conclude, allowing wholly discretionary enforcement of violations out in the field would be inconsistent with the NRC Report recommendations.

Commenters representing State regulatory authorities urged BLM to make enforcement discretionary, so that BLM and the States do not get caught up in unnecessary disputes as to what constitutes a violation and to avoid suits to compel compliance with duties established by the rules. Commenters supporting discretionary enforcement asserted that there are numerous ways to gain compliance, and issuing violations with associated civil penalties should be looked at as only one possible tool. Some stated that coordination on enforcement activities with State regulatory agencies is an absolute necessity, and States should be allowed to take the lead on enforcement. These commenters asserted that State enforcement can usually occur in a more timely manner, resulting in improved on the ground compliance.

BLM agrees that a firmly administered enforcement program will improve compliance, but concludes such a program is possible without mandatory enforcement. Under the final rules, trained professional BLM inspectors will exercise their judgment and take enforcement actions when necessary. BLM has been concerned that mandating enforcement action for every violation, no matter how small, would clog the system with unnecessary administrative proceedings and delays, and tend to create the confrontational atmosphere that BLM, the States, and the regulated community wish to avoid. BLM certainly intends to coordinate with State regulators and, where appropriate to assure timely compliance, allow other Federal agencies and States to take the enforcement lead. What BLM has tried to do in these regulations is to make enforcement tools available to BLM inspectors so they will not be hamstrung by the lack of administrative remedies. Providing these tools will strengthen BLM enforcement, without requiring operators be cited for every violation. BLM also disagrees that the NRC Report recommends that BLM enforcement be mandatory rather than discretionary. To the contrary, the NRC Report suggests that BLM acknowledge and rely on enforcement authorities of other Federal, State, and local agencies as much as possible. NRC Report at p. 104.

Authority

One theme addressed repeatedly by the comments is BLM's authority to promulgate the administrative enforcement rules. Some commenters agreed that enforcement is a necessary part of any regulatory program, but opposed the proposed enforcement rules as exceeding the BLM's legal authority under FLPMA. The commenters reasoned that FLPMA provides express enforcement authorities, both civil and criminal, and BLM is limited to the bounds of the statutory provisions. These commenters asserted that when Congress intends to grant administrative enforcement and penalty mechanisms, it provides specific statutory authority, which does not appear in FLPMA. For example, in the context of regulation of the mining industry, it has done so in the Federal Mine Safety and Health Act of 1977 and in SMCRA. Specific proposals that commenters asserted go beyond the BLM's authority include: Suspension and revocation orders, administrative civil penalties, and criminal penalties.

Multiple provisions of FLPMA, and one under the mining laws, authorize the establishment of administrative sanctions, including suspension and revocation orders and monetary civil penalties. These include the first and last sentences of 43 U.S.C. 1732(b), 43 U.S.C. 1732(c), the first sentence of 43 U.S.C. 1733, 43 U.S.C. 1740, and the authority to prescribe regulations under 30 U.S.C. 22 (R.S. § 2319). Section 302(b) provides the Secretary the authority to publish rules to regulate the use, occupancy, and development of the public lands. The last sentence of section 302(b) directs the Secretary to take any action necessary to prevent unnecessary or undue degradation of the public lands. Section 302(c) provides for the suspension and revocation of instruments providing for the use, occupancy, and development of the public lands. The first sentence of 43 U.S.C. 1733 directs the Secretary to issue regulations with respect to the management, use, and protection of the public lands. The use of suspension and revocation orders and administrative civil penalties are an integral part of a regulatory scheme to manage and protect the public lands. Administrative enforcement orders and monetary penalties establish more immediate and tangible consequences than the possibility of future judicial enforcement after a referral to the Attorney General. All of these sanctions will help achieve compliance with subpart 3809, and will help prevent continuing unnecessary or undue degradation of the public lands when violations occur.

BLM disagrees with the commenters' assertion that the provision allowing the Attorney General to seek the judicial imposition of injunctive or other judicial relief, 43 U.S.C. 1733(b), limits the Secretary's administrative authority. That section, together with a portion of 43 U.S.C. 1733(a) establishing criminal violations, provides affirmative authority for judicial enforcement. They do not, however, address or limit the scope of the Secretary's authority to regulate activities on the public lands

under other provisions of FLPMA and to establish administrative enforcement remedies.

Commenters stated that BLM's previous subpart 3809 regulations reflect the correct interpretation of FLPMA's enforcement authorities, and discussed the history of the previous enforcement rules. In the Subpart 3809 regulations as originally proposed (41 Fed. Reg. 53428 (Dec. 6, 1976)), § 3809.2–5(b) would have authorized initiation of suspension of operations if BLM ascertained the existence of ''significant disturbance of * * * surface resources * * * unforeseen at the time of filing the Plan of Operations.'' *Id.* at 53431. Suspension would have been obligatory for operations, or parts thereof, which were ''unnecessarily or unreasonably causing irreparable damage to the environment.'' *Id.* See also proposed §§ 3809.4–1 and 3809.4–2. *Id.* at 53432. These provisions were not included, however, when BLM reproposed the Subpart 3809 rules on March 3, 1980. 45 FR 13956, explaining: ''After further examination of the authority of the Secretary to issue these regulations, it has been decided that [BLM] will not unilaterally suspend operations without first obtaining a court order enjoining operations which are determined to be in violation of the regulations.'' *Id.* at 13958. Thus, the commenters concluded the Interior Department's contemporaneous interpretation of FLPMA was that the Department lacked administrative authority to suspend operations associated with mining claims without first obtaining injunctive relief pursuant to section 303(b) of FLPMA, 43 U.S.C. 1733(b).

BLM acknowledges that the previous rules reflected a permissible implementation of FLPMA, but not the only permissible one. The Department of the Interior did not state in 1980 that it had concluded the Secretary lacked legal authority to suspend mining operations by administrative order; it concluded only that it would not assert such authority in its subpart 3809 regulations. BLM's earlier policy approach was to ask the Attorney General to initiate a civil action under 43 U.S.C. 1733(b) for failure to comply with a notice of noncompliance, without the intermediate step of BLM issuance of an administrative order, for instance, directing an operator to suspend its operations. Section 1733(b), however, does not circumscribe the Secretary's actions before he or she asks that a civil action be initiated.

The current rule takes a different approach from the previous rules, one that is also consistent with section 1733(b). Under these final rules, before seeking judicial enforcement BLM may issue enforcement orders in addition to issuing a notice of noncompliance, including issuance of suspension orders, plan revocations, or monetary penalties. If an operator does not comply with any of these administrative orders, the Secretary may then seek judicial enforcement under section 1733(b).

Commenters also asserted that Congress apparently limited BLM's enforcement authority because it authorized the Secretary of the Interior to achieve ''maximum feasible reliance'' upon State and local law enforcement officials in enforcing the Federal laws and regulations ''relating to the public lands or their resources.'' 43 U.S.C. at 1733(c)(1).

BLM disagrees with the commenter's interpretation of FLPMA. Section 1733(c)(1) authorizes the Secretary of the Interior to enter into contracts for the assistance of and use appropriate local officials in enforcing Federal laws and regulations relating to the public lands or their resources. That section does not constrain the Secretary from establishing necessary enforcement regulations.

Commenters asserted that BLM's reliance on section 302(c) of FLPMA, 43 U.S.C. 1732(c), to justify suspensions or revocations of plans is misplaced. FLPMA section 302(c) provides suspension and revocation authority for ''instrument[s] providing for the use, occupancy or development of the public lands.'' The commenter asserted that a plan of operations under the 3809 regulations is not ''an instrument providing for the use, occupancy, or development of the public lands * * *,'' because the mining laws already authorize the ''use, occupancy, or development of the public lands.'' In the commenter's view, the plan of operations is simply an administrative means of regulating that development activity to prevent unnecessary or undue degradation of the public lands as addressed by FLPMA. A commenter asserted, moreover, that Section 302(c) is inapplicable to mining operations because section 302(b) provides that no provision of the Act shall ''in any way'' amend the mining laws unless that provision is specifically cited.

BLM disagrees with the assertion that plans of operations are not instruments providing for the use, occupancy, or development of the public lands, and that suspension or revocation of a plan of operations under FLPMA section 302(c) interferes with an operator's rights under the mining laws. Rights under the mining laws are subject to the FLPMA section 302(b) requirement to prevent unnecessary or undue degradation of the public lands. Approval of the plan of operations is the key to allowing use, occupancy, and development in a manner that will prevent unnecessary or undue degradation. Until BLM approves a plan of operations, an operator cannot use, occupy or develop its mineral interests in the public lands even if it has rights under the mining laws. The next-to-last sentence of section 302(b) of FLPMA makes this clear when it says, in pertinent part, that ''except as provided * * * in the last sentence of this paragraph,'' nothing in FLPMA amends the 1872 Mining Law or impairs the ''rights of any locators or claims under that Act.'' The ''last sentence of this paragraph'' it refers to sets out the Secretary's duty to protect the public lands from unnecessary or undue degradation. A plan of operations is the instrument allowing an operator to proceed with its use, occupancy or development of public lands consistent with the duty not to unnecessarily or unduly degrade the lands.[6] Suspension or revocation doesn't interfere with operator rights under the mining laws because such rights are dependent upon operator compliance with the approved plan. Accordingly, section 302(c) is a statutory basis for the sections providing for suspension and revocation of plans of operation.

A commenter requested that the new regulations clearly identify when BLM will refer a documented noncompliance to the Department of Justice for initiation of judicial action. The commenter stated that this information should also describe and evaluate the consequences of any differences between the various Department of Justice units having jurisdiction over mining and how these differences can be resolved to assure that all similar documented noncompliances are treated in a similar manner.

The standards for referral to the Department of Justice for judicial enforcement are not covered by subpart 3809. This will either be handled on a case-by-case basis or be the subject of BLM guidance.

A number of comments supported BLM's proposed enforcement rules. For instance, EPA supported BLM's

[6] The Interior Board of Land Appeals has held that the requirements of 43 U.S.C. section 1732(c) are not restricted to instruments issued by BLM under section 1732(b). ''Inclusion of the fourth proviso [of 43 U.S.C. section 1732(c)] makes it clear that Congress intended this requirement to extend to all land use authorizations issued by the Department under any law for lands managed by BLM.'' *James C. Mackay,* 96 IBLA 356 at 365.

proposed regulations at §§ 3809.601 and 3809.602, including the authority for BLM to suspend operations, and at §§ 3809.702 and 3809.703 to issue administrative civil penalties based on non-compliance with the subpart. Commenters stated that BLM clearly needs to have the tools available to shut down a ''renegade'' mining operation or jail a ''renegade'' operator. One commenter pointed out that when the BLM issues a Record of Decision based on a final EIS, the operator is responsible for carrying out the Plan as specified, and if the operator makes changes without BLM analysis and approval, the BLM should have the authority to levy fines and suspend operations. BLM agrees with these comments.

Permit Blocks

A number of commenters recommended adoption of a rule which would prevent BLM from approving future plans of operation for operators with unresolved noncompliances until the violations are corrected. A commenter stated that the new BLM rules—while certainly an improvement—do not allow the agency to reject an operation outright. These commenters asserted that BLM needs the ability to block historically irresponsible operators, as well as parent and subsidiary companies, from obtaining new mining permits. These commenters believed that denial of plans of operations is an important tool to protect public lands and waters from environmental damage. One State suggested language preventing the operator from obtaining a permit anywhere on public lands until all compliance issues have been resolved to the satisfaction of the BLM. That State said it uses a permit block section, and has found it to be useful, especially in addressing the repeat offender issue.

BLM has decided not to institute such a system at this time. The improvements in the enforcement mechanisms contained in this final rule have the promise, BLM believes, to satisfactorily address all enforcement issues. They should be given the chance to work before something as administratively complex and cumbersome as a ''permit block'' system is considered further.

Citizen Petitions and Suits

A commenter suggested that citizens and tribes should have the right to petition for inspection and enforcement in order to spur the BLM into fully implementing its FLPMA obligations.

BLM disagrees that a rule is needed to address the commenter's concerns. Individuals can presently request BLM conduct an inspection and can obtain copies of inspection reports. The commenter did not show that BLM is not adequately responding to citizen or tribal requests to inspect. As explained earlier in this preamble, BLM has decided that enforcement should remain discretionary.

A number of comments supported a provision providing citizens the right to sue to correct violations. Such a provision is beyond BLM authority and would require a legislative change.

Additional Definitions Requested

Commenters suggested that BLM define a number of the terms used in the enforcement context. These include ''noncompliance order'' as used in final § 3809.601(a), ''suspension orders'' as used in final § 3809.601.(b), ''immediate, temporary suspension'' as used in final § 3809.601(b), ''imminent danger or harm'' as used in final § 3809.601(b)(2)(ii), ''violation'' as used in final § 3809.702, and ''pattern of violations'' as used in final § 3809.602(a)(2). Specifically, the commenter stated that the BLM standard or threshold must be included to avoid ambiguity and arbitrary and capricious application by the responsible BLM field official.

BLM declines to add the suggested definitions. The meaning of many of the terms are apparent from their context. Implementation will occur on a case-by-case basis. Where necessary BLM will issue guidance to assure consistent application of the enforcement provisions.

Section-Specific Issues and Comments

Section 3809.601 What Type of Enforcement Action May BLM Take if I Do Not Meet the Requirements of This Subpart?

Final § 3809.601 specifies the kinds of enforcement orders BLM may issue, when they can be issued, the contents of such orders, and when they will be terminated. For the most part, the final rule tracks the proposal. Final § 3809.601(a) allows the issuance of noncompliance orders for operations that do not comply with provisions of a notice, plan of operations, or requirement of subpart 3809. Final § 3809.601(b)(l)(i) provides that the BLM may order suspension of operations if the operator fails to timely comply with a noncompliance order for a significant violation. A significant violation is one that causes or may result in environmental or other harm or danger or that substantially deviates from the complete notice or approved plan of operations. Thus, unless the violation may result in harm or danger or substantially departs from the notice or plan, BLM cannot suspend operations. Before issuance of a suspension order, BLM is required to notify the recipient of its intent to issue a suspension order; and to provide an opportunity for an informal hearing before the BLM State Director to object to a suspension. These latter procedures are intended to satisfy the procedural requirements of FLPMA section 302(c).

Final § 3809.601(b)(2) provides that BLM may order an immediate, temporary suspension of all or any part of operations for noncompliance without issuing a noncompliance order, advance notification, or providing an opportunity for an informal hearing if an immediate, temporary suspension is necessary to protect health, safety, or the environment from imminent danger or harm. This provision implements the third proviso of FLPMA section 302(c). Being mindful of the importance of an advance opportunity to object, the final rule limits temporary immediate suspensions to situations involving imminent danger, that is, situations where the harm could occur before a hearing would be held and a decision issued.

The final rule establishes one presumption. BLM may presume that an immediate suspension is necessary if a person conducts notice- or plan-level operations without having an approved plan of operations or having submitted a complete notice, as applicable. BLM believes that operations that have not undergone the required BLM review and approval, including operator preparation and submittal of detailed plans, are presumed to be operating without the care necessary to operate properly, and thus constitute an imminent danger to the environment. In a clarifying change from the proposal, the final rule references the sections requiring plan approvals and notice submittals.

Final § 3809.601(b)(3) provides that BLM will terminate a suspension order when BLM determines the violation has been corrected. The proposed rule would have had BLM terminate the suspension order no later than the date a person corrects the violation, but unless BLM is present, it would not be able to terminate the suspension on that date. Thus, the final rule bases the termination on the date BLM determines the correction has occurred.

Final § 3809.601(c) specifies the contents of enforcement orders, including: (1) How an operator failed to comply with the requirements of subpart 3809; (2) the portions of operations, if any, that must cease; (3)

the corrective actions to be taken, and the time, not to exceed 30 calendar days, to begin such actions; and (4) the time to complete corrective action. A minor change from the proposal clarifies that the 30 days to begin corrective action are calendar days.

Commenters stated that for the mainstream mining industry, a notice of noncompliance will almost invariably resolve the problem without protracted controversy. These commenters asserted that mine operators have enormous incentives to maintain positive and cooperative relations with the Federal land management agencies, and that judicial enforcement is pursued in rare instances of recalcitrant operators, usually where individuals are engaging in sham operations. The commenters conclude that the rare use of judicial enforcement authorities in the past attests to the lack of need for new enforcement authorities today.

BLM agrees that in many instances notices of noncompliance will lead to successful resolution and abatement of violations. There will be instances, however, where notices of noncompliance will not completely resolve the issue, and the danger of harm will continue. That is when the other remedies can prove useful. The rare use of judicial enforcement in the past may be attributed to the difficulty in successfully initiating civil actions rather than the lack of need for such actions.

Commenters asserted that in both subparagraphs of § 3809.601(b), BLM officials should not be authorized to shut down operations unless there is a significant violation that both may result in environmental harm and that substantially deviates from the completed notice or approved plan of operations.

BLM disagrees with the comment. BLM believes that a suspension is warranted under § 3809.601(b)(2) in either situation when an operator fails to correct the significant violation within the allotted time. The danger of environmental or other harm from an unabated violation justifies a suspension. BLM also believes that it should be authorized to direct an operator to suspend activities that substantially deviate from what was approved.

A commenter stated that although FLPMA allows BLM to use specific enforcement mechanisms in cases when the operator is noncompliant, the proposed regulations exceeded BLM authority by giving BLM the power to suspend and nullify operations. The commenter asserted FLPMA intended to limit BLM's enforcement capability in order to specifically promote the dissemination of information and to advise the public and to use administrative resolution rather than prosecution for violation.

BLM disagrees with the comment. BLM has a duty to take any action needed to prevent unnecessary or undue degradation as stated in section 302(b) of FLPMA. Suspending operators that are causing unnecessary or undue degradation is within BLM's authority.

Commenters stated that the proposed rules are entirely too vague and leave too much power in the hands of a few BLM employees. For instance, the rules would leave to the BLM inspector's discretion just what is imminent danger or harm to the public health, safety or environment. Commenters asserted that no business should be shut down without a ruling by a Federal judge.

BLM disagrees with the comment. In implementing the procedure contemplated by FLPMA section 302(c), trained professional BLM inspectors will exercise their judgment carefully. In the absence of imminent danger, an operator will have the opportunity to raise objections to the State Director. And operators will be able to immediately appeal temporary immediate suspensions to the Interior Board of Land Appeals. Although judicial rulings may ultimately occur, the BLM has the initial responsibility to administer the provisions of FLPMA, including section 302(c).

Commenters asserted that the proposed rule allowing BLM to order a temporary suspension without issuing a noncompliance order violates the principle of due process to which all individuals and companies are entitled to under United States Law. Commenters also asserted that suspension and revocation orders indefinitely shutting down entire mine operations would ''impair the rights of'' locators under the mining laws. These commenters stated that such enforcement authorities cannot reasonably be implied from the general mandate to ''prevent unnecessary or undue degradation'' of the public lands. Furthermore, the commenters stated that if finalized as proposed, a temporary suspension order presumably would be considered final agency action since there exist no provisions for a hearing either prior to or within a reasonable time after the suspension. Thus, the party adversely affected by such action may seek review and relief from a Federal District Court pursuant to the APA.

BLM disagrees with the comment. It is well established that due process may be, as here, satisfied through an administrative appellate process. Any BLM enforcement order may be appealed to the Interior Board of Land Appeals, and a stay may be requested under the provisions of 43 CFR 4.21. Thus a temporary suspension is not final agency action, for which review is available in Federal Court. Rights of claimants under the mining laws are not impaired by BLM enforcement actions because such rights do not include the right to operate in a manner that causes unnecessary or undue degradation.

Commenters suggested that BLM revise proposed § 3809.601(b) to substitute the term ''unnecessary or undue degradation'' for language like ''imminent danger or harm to the environment.'' The commenters stated that there is only one primary authority for BLM to issue a noncompliance finding or temporary suspension—the approved plan of operations is not being followed and BLM has determined that the variance is significant.

BLM declines to accept the suggestion. Although BLM recognizes that failure to comply with the regulations and an approved plan of operations constitutes unnecessary or undue degradation, the suspension rules implement FLPMA section 302(c) as well as FLPMA section 302(b). BLM believes that the terminology of the final rule provides a better sense of when suspension orders can be issued than the use of the phrase ''unnecessary or undue degradation.''

The commenters also asked that BLM and the Forest Service use comparable standards for non-compliance and temporary suspension. BLM declines because the two agencies' regulations are based on different authority.

A commenter requested that BLM revise proposed § 3809.601 to identify the responsible BLM official for issuing noncompliance and suspension orders, and to include the place and time of any appeal so [that] there is a clear understanding of the DOI administrative appeal process. The commenter stated that because the appeal process varies according to the level of the BLM official signing the order, it is important for everyone to know that process.

BLM declines to modify the rules as suggested. In addition to subpart 3809 specifying appeal procedures in final § 3809.800, each enforcement order ordinarily will inform the recipient of his or her appeal rights.

One commenter asserted that the suspension order process proposed by § 3809.601 is too cumbersome for a declining BLM workforce. The commenter requested that BLM clarify that the BLM notification of its intent to issue a suspension order

(§ 3809.601(b)(1)(ii)) can be combined with notification of the opportunity for an informal hearing (§ 3809.601(b)(1)(iii)).

The process set forth in final § 3809.601(b) is necessary to implement the notice and hearing requirement of FLPMA section 302(c). BLM agrees with the commenter that the BLM notification of its intent to issue a suspension order (§ 3809.601(b)(1)(ii)) can be combined with notification of the opportunity for an informal hearing (§ 3809.601(b)(1)(iii)).

One commenter recommended that once an operator files bankruptcy, the operation should automatically receive a record of non-compliance subjecting all notices and plans of operations to a higher level of compliance enforcement (more frequent inspections), bonding, and penalties. Another commenter suggested the rule include a provision for EPA or a State environmental agency to petition BLM to suspend operations or withdraw an operating plan if there is a continued history of non-compliance with environmental regulations.

BLM agrees that the operations of an entity that files for bankruptcy should be subject to continual scrutiny to assure that regulatory obligations are satisfied. BLM also agrees with the commenter that it is important to assure the adequacy of the financial guarantee of an operator in bankruptcy. BLM believes, however, that enforcement action should await the occurrence of violations, and that a bankruptcy filing does not necessarily represent the existence of violations. Once a violation occurs, BLM will take whatever action is best to assure that the violation will be corrected.

A commenter stated that under 43 U.S.C. 1732(c), an immediate temporary suspension is separate from, rather than a subtype of, a suspension. The commenter recommended that, for the sake of more clearly distinguishing between the two types of suspension orders, change the labeling in § 3809.601 to the following: (a) Noncompliance order; (b) Suspension order; (c) Immediate temporary suspension order; and (d) Contents of enforcement orders. These proposed subdivisions would more faithfully represent the intent of 43 U.S.C. 1732(c) and also make this section more understandable to the public by clearly differentiating between a suspension order and an immediate temporary suspension order, which is one of the goals of rewriting these regulations in plain language. In addition, this proposed labeling would allow for a complete one-to-one correlation with the set of orders identified in 43 CFR 3715.7–1, with the exception of the suspension order being called a cessation order in § 3715.7–1.

BLM has chosen not to make these suggested changes because the suggested reordering does not appear to be much different from the final and proposed rules, and even with the changes there would not be a complete correlation with subpart 3715.

A commenter requested that BLM revise proposed § 3809.601 to provide that BLM is liable for all owner/operator documented costs from an arbitrary and capricious suspension order that is overturned during the administrative appeal process or from litigation.

BLM does not intend to take enforcement actions in an arbitrary and capricious manner. Furthermore, it is not authorized to assume monetary liability in such circumstances. There are situations in which, either through Congressional statute or court-evolved common law, the regulated community may sometimes recover their costs or attorneys fees if they are successful in overturning an agency regulatory decision. But agencies may not make commitments to spend money or provide compensation that has not been authorized or appropriated by Congress.

A commenter objected that the feature of the proposed rule that would authorize BLM to issue temporary immediate suspensions without first holding an informal hearing violates an operator's due process rights. BLM disagrees. Section 302(c) of FLPMA, 43 U.S.C. 1732(c), specifically provides for the issuance of temporary immediate suspensions prior to a hearing. Final § 3809.601(b)(2) carries out the statutory provision. The statute and the implementing regulation are limited to situations where BLM determines that such action is necessary to protect health, safety or the environment. The rule adds the further gloss that temporary immediate suspensions not occur unless imminent danger or harm exists. Thus, temporary immediate suspensions are intended to address those situations where a delay in making the suspension effective could exacerbate existing or imminent harm. Under such circumstances and well-established case law, an operator's due process rights are fully satisfied by the operator's ability to seek administrative review of the temporary suspension from the Interior Board of Land Appeals, including the right to request a stay of the BLM action under IBLA procedures set forth at 43 CFR 4.21.

Section 3809.602—Can BLM Revoke My Plan of Operations or Nullify My Notice?

Final § 3809.602 tracks the proposed rule and implements the revocation portion of FLPMA section 302(c). It provides that BLM may revoke a plan of operations or nullify a notice upon finding that—(1) a violation exists of any provision of the notice, plan of operation, or subpart 3809, and the violation was not corrected within the time specified in an enforcement order issued under § 3809.601; or (2) a pattern of violations exists at the operations. The finding is not effective until BLM notifies the operator of its intent to revoke the plan or nullify the notice, and BLM provides an opportunity for an informal hearing before the BLM State Director. The final rule also provides that if BLM nullifies a notice or revokes a plan of operations, the operator must not conduct operations on the public lands in the project area, except for reclamation and other measures specified by BLM.

A commenter asserted that although revocation of a plan of operations is the last step in the enforcement process, it must be used in those circumstances in which other enforcement orders have failed to compel compliance with the regulations governing mining on public lands. The commenter stated that BLM must be willing to stop an operation in which major environmental damage is occurring, or other impacts are taking place, and all other efforts to stop the problem have failed. The commenter requested that proposed § 3809.602(a) should be revised to change the ''may'' to ''shall'', to make permit revocation mandatory. The commenter stated that BLM's mandate to prevent ''unnecessary or undue degradation'' is not discretionary—it is a mandatory duty, and cited *Sierra Club* v. *Hodel,* 848 F.2d 1068 (10th Cir. 1988). According to the commenter, this revision would also be consistent with the NRC Report recommendations.

BLM declines to make permit revocation mandatory. BLM agrees that it is important to achieve operator compliance with BLM regulations, and has provided a range of actions it can take, including administrative enforcement orders, such as suspension and revocation, administrative penalties, and judicial intervention. The appropriate remedy may differ in individual cases and the rules provide flexibility for BLM to use whichever one will cause the violations to be corrected. BLM agrees that it is required to prevent unnecessary or undue degradation of the public lands, but concludes that it

has some discretion in how to achieve that goal, and the final rule is a sound exercise of that discretion.

A commenter suggested that BLM revise proposed § 3809.602 to inform operators expressly that the BLM will revoke their plan of operations or nullify their notice if the financial guarantee is not properly maintained.

BLM does not accept the suggestion. As mentioned in the previous response, BLM will do what is necessary to achieve compliance, but BLM has a variety of means to do so. Plan revocation is but one such means.

Among those objecting to the policies embodied in the proposal, commenters asserted that it is too harsh for BLM to be able to revoke a plan of operations for a single violation.

BLM generally agrees that a plan of operations should not be revoked on the basis of one violation. If the violation is significant enough, however, with the potential to cause serious harm, and the operator refuses to correct the violation, BLM needs to have the option to consider whatever remedy-including revocation-that it believes will best achieve compliance.

A commenter suggested that BLM revise proposed § 3809.602(c) to clarify that operators continue to be authorized to use equipment and perform necessary reclamation following the suspension or revocation of a plan of operations. The commenter questioned what form of authorization BLM will use, who is the responsible BLM official to issue that authorization, and the extent, if any, for public and other Federal, State, local, native, and private surface ownership input to the new BLM authorization.

Revocation of a plan of operations does not terminate an operator's obligation to satisfy outstanding obligations. The authorization to perform the activities to fulfill such obligations can derive from the original plan, or be part of the order revoking the plan. Because this would be a continuation of existing obligations, BLM does not contemplate formal public participation. On the other hand, BLM intends to coordinate with State and other interested Federal agencies before revoking a plan of operations.

Section 3809.603 How Does BLM Serve Me With an Enforcement Action?

Final § 3809.603 deals with the means by which BLM will serve a noncompliance order, a notification of intent to issue a suspension order, a suspension order, or other enforcement order. The previous service provision appeared in § 3809.3–2(b)(1).

Under the final rule, service will be made on the person to whom it is directed or his or her designated agent by different methods. Service could occur by sending a copy of the notification or order by certified mail or by hand to the operator or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service is complete upon offer of the notification or order or of the certified mail.

Service could also occur by offering a copy at the project area to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the project area, BLM may offer a copy to any individual at the project area who appears to be an employee or agent of the person to whom the notification or order is issued. Service would be complete when the notice or order is offered and would not be incomplete because of refusal to accept. In response to a comment, the final rule requires that if service occurs at the project area, BLM will send an information copy by certified mail to the operator or the operator's designated agent. This will assure that regardless of who receives the copy of the order at the project area, operator management will receive a copy.

The service rules recognize that mining claimants, as well as operators, are responsible for activities on a mining claim or mill site and provide that BLM may serve a mining claimant in the same manner an operator is served.

The final rule allows a mining claimant or operator to designate an agent for service of notifications and orders. A written designation has to be provided in writing to the local BLM field office having jurisdiction over the lands involved.

Commenters objected to proposed § 3809.603(a)(1), which provided that BLM may serve an enforcement action on ''an individual at the project area who appears to be an employee or agent of the operator.'' Commenters asserted that this method of service, particularly considering the seriousness of enforcement actions under these regulations, does not comply with fundamental principles of due process. These commenters recommended that this section be revised to require BLM to serve notices by certified mail or personally on the person the operator designates as authorized to accept service.

BLM agrees in part. The final rule will continue to allow service to be complete based on actions at the project area because persons conducting activities at the site of an operation will ordinarily be responsible. BLM agrees, however, that an information copy should be promptly mailed to the operator or his or her agent to assure that responsible management persons not located at the mining site are notified of the BLM actions.

Commenters also suggested that BLM revise proposed § 3809.603 to require BLM to provide a copy of any noncompliance or suspension order to all other Federal, State, and local entities that have permits or authorizations and Native entities and private landowners of the surfaces that are directly linked with the BLM-approved plan of operations.

BLM declines to accept the suggestion to put such a requirement into its rules. BLM intends to consult with other regulators, both State and Federal, when it takes enforcement action. Private entities, however, will not ordinarily be party to enforcement actions and will not necessarily receive copies of enforcement orders.

Section 3809.604 What Happens if I Do Not Comply With a BLM Order?

Final § 3809.604 is adopted as proposed. Final § 3809.604(a) provides that if a person does not comply with a BLM order issued under §§ 3809.601 or 3809.602, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce its order, prevent an operator from conducting operations on the public lands in violation of this subpart, and collect damages resulting from unlawful acts. This reflects the judicial remedies provided in 43 U.S.C. 1733(b), and informs the regulated community of the tie between BLM administrative enforcement and subsequent judicial actions.

The final rule makes clear that judicial relief may be sought in addition to the enforcement actions described in §§ 3809.601 and 3809.602 and the penalties described in §§ 3809.700 and 3809.702.

A commenter recommended that civil actions be brought by States rather than in Federal Court as specified in proposed § 3809.604 because State procedures tend to be quicker, more cost-effective, and more outcome-based than Federal actions, and that implementation of Federal enforcement will be delayed by the existing DOI appeals process.

Final § 3809.604(a) identifies the availability of civil actions in United States District Courts, as provided in FLPMA section 303(b). It does not

preclude States from enforcing their programs in State courts. BLM will work with State regulators to determine which entity, State or Federal, should have the enforcement lead, and the appropriate judicial forum to initiate any required civil action.

Final § 3809.604(b) specifies that if a person fails to timely comply with a noncompliance order issued under § 3809.601(a), and remains in noncompliance, BLM may order that person to submit plans of operations under § 3809.401 for current and future notice-level operations. This paragraph continues the requirement contained in previous § 3809.3–2(e).

Section 3809.605 What Are Prohibited Acts Under This Subpart?

Final § 3809.605 is a new section that lists certain prohibited acts under subpart 3809. The list includes the most significant and most commonly violated prohibitions, but is not intended to be exhaustive. BLM reserves the right to take enforcement action on other violations of the requirements of this subpart that are not specifically listed in this section. None of the items on the list are new requirements; all were included in the proposed rule.

We added this section in response to comments. Some commenters suggested that a list of prohibited acts would be beneficial to regulated parties by alerting them to potential pitfalls. Other commenters suggested that the list would be helpful to those engaged in carrying out the enforcement program under this subpart, such as BLM rangers, U.S. District Attorneys, and judges, by providing an easily referenced and clearly stated list of the most common violations on which to base enforcement actions, prosecutorial decisions, and judgments.

Sections 3809.700 Through 3809.703 Penalties

Section 3809.700 What Criminal Penalties Apply to Violations of This Subpart?

Final § 3809.700 tracks the proposal and describes criminal penalties associated with violations of subpart 3809. Final § 3809.700 identifies the criminal penalties established by statute for individuals and organizations for violations of subpart 3809. It was previously included in § 3809.3–2(f) of the rules that were remanded in May 1998. This regulation is intended to inform the public of existing criminal statutory provisions. These statutes exist independent of subpart 3809, and persons can be prosecuted, and have been prosecuted, regardless of whether BLM promulgates this section. Such prosecutions can occur regardless of whether BLM identifies specific prohibited acts, as some commenters urge. The necessary element of a ''knowing and willful'' violation can be satisfied in a specific case regardless of a regulatory listing of such acts by BLM. Such a listing is not required by 43 U.S.C. 1733(a).

Final § 3809.700(a) specifies that individuals who knowingly and willfully violate the requirements of subpart 3809 may be subject to arrest and trial under section 303(a) of FLPMA. 43 U.S.C. 1733(a). Individuals convicted are subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense.

Final § 3809.700(b) specifies that organizations or corporations that knowingly or willfully violate the requirements of subpart 3809 are subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

Many of the comments supporting strengthened enforcement also supported the criminal sanctions described in proposed § 3809.700. BLM received a considerable number of comments, however, objecting to the criminal sanctions provision, proposed § 3809.700. Commenters asserted that provision is beyond the scope of BLM's FLPMA authority and would unintentionally criminalize actions that are not appropriately subject to prosecution. Commenters stated that these are rules and not laws, so no criminal penalties should be assigned by these rules. Under no circumstances should the BLM or the Department of the Interior be given authority to file criminal charges against a citizen of this country.

These rules do not establish new criminal sanctions, and BLM itself does not file criminal charges; only the Department of Justice may do that on behalf of the United States. These rules are intended to bring existing criminal provisions to the attention of the regulated community, and for that reason are included in subpart 3809. The conduct that is criminal is exactly that provided for in 43 U.S.C. 1733(a)

Some commenters objected to the establishment of ''across the board'' criminal penalties for any knowing and willful violations of the requirements of subpart 3809. Commenters stated that this is unjustified overkill, and that in no other public land management program does BLM establish that it is a crime to violate any provision of an entire subpart. Rather, commenters asserted, in other public land management programs, BLM has taken the essential effort of distilling those substantive violations that will be subject to criminal sanctions. Commenters asked that the agency specifically identify and list in the rule those actions by operators which are so serious as to justify criminal sanctions, or else delete the entire section. The commenters asserted that the preamble must state the basis for BLM's conclusion that it needs, to assure compliance, to have the threat of criminal penalties for such ''crimes'' as: submitting an incomplete plan of operations; holding financial guarantees that BLM has determined (in its revision of an estimate of reclamation costs under § 3809.552(b)) is no longer adequate; failing to modify a notice under § 3809.331(a)(2) that BLM thinks (and the operator does not think) constitutes a ''material change'' to the operations. The commenter stated that the list of ''violations'' of the rules is endless, and most ''violations'' are minutiae. The commenter stated that if a plan is incomplete, this is not a crime; the plan must be completed before processing can occur.

As discussed above, BLM has not accepted the commenters' suggestion and has published a list providing examples of the more common prohibited acts under subpart 3809. It is impractical, and probably not possible, to catalog all the violations of the regulations that could warrant criminal prosecution, and the list is not intended to be exhaustive. FLPMA establishes that knowing and willful violations of the regulations can be prosecuted under section 303(a). 43 U.S.C. 1733(a). BLM does not expect or advocate that minor violations be prosecuted. BLM expects that United States Attorneys will continue to exercise their prosecutorial discretion in determining when to bring criminal prosecutions.

A commenter stated that if proposed § 3809.700 is just informational, criminal enforcement cannot occur until 43 CFR part 9260 is changed. Those rules provide ''in a single part a compilation of all criminal violations relating to public lands that appear throughout title 43.'' 43 CFR 9260.0–2. There were and are no provisions of 43 CFR 3809 listed there. In fact, ''Subpart 9263-Minerals Management'' is ''Reserved.'' Thus, the unrevised part 9260 remains the controlling, effective criminal penalty rule, and the absence of any provisions in that subpart pertaining to hardrock mining operations means there are none.

Although BLM disagrees with the assertion that prosecutions cannot occur under 43 U.S.C. 1733(a) until BLM changes 43 CFR part 9260, BLM agrees that to avoid confusion subpart 9263 should contain a cross-reference to subpart 3809. Thus, this final rule incorporates such a cross-reference in subpart 9263. Again, the statute controls, regardless of what is contained in either subpart 3809 or subpart 9263 of BLM's regulations. The absence of such a cross-reference would not invalidate any properly obtained conviction under 43 U.S.C. 1733(a).

Commenters objected to the criminal enforcement provisions as violating the mining laws. One commenter stated that section 302(b) of FLPMA indicates that, unless specified otherwise, FLPMA does not amend the mining laws. FLPMA section 303 is not listed in section 302(b). The commenter asserted that there were no criminal penalty provisions in the 1980 3809 regulations for this reason. The Secretary's authority to prevent unnecessary and undue degradation must exercised by other, lawful means, not by means that Congress specifically established would not apply to ''locators or claims'' under the mining laws.

BLM disagrees with these comments. Criminal enforcement under 43 U.S.C. 1733(a) neither amends the mining laws, nor impairs rights established under that law. The mining laws create no right in any person to violate BLM's lawfully promulgated regulations, particularly those implementing the unnecessary or undue degradation standard of FLPMA section 302(b), which does amend the mining laws.

A commenter requested that BLM define the term ''knowingly and willingly'' as used in proposed § 3809.700. The commenter stated that this is especially important since BLM has chosen to include this section only for information purposes.

BLM does not accept this suggestion. The Congress defines, and the courts apply, the elements of such generic criminal statutes.

A commenter asked that BLM revise proposed § 3809.700 to make it clear the extent, if any, this section applies to existing approved mining operations on public lands.

As stated earlier, 43 U.S.C. 1733(a) applies by its own terms to any person who knowingly and willfully violates a regulation issued under FLPMA. There is no exception for existing approved operations. To the degree, however, that subpart 3809 excepts existing approved operations from certain new regulatory requirements, such requirements cannot form the basis for criminal conduct.

Section 3809.701 What Happens if I Make False Statements to BLM?

Final § 3809.701 tracks the proposed rule. It informs the regulated community of the existing criminal sanctions for making false statements to BLM. Under Federal statute (18 U.S.C. 1001), persons are subject to arrest and trial before a United States District Court if, in any matter under this subpart, they knowingly and willfully falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry. If a person is so convicted, he or she will be subject to a fine of not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment of not more than 5 years, or both. As with final § 3809.700, BLM is not establishing any criminal sanctions by promulgating final § 3809.701.

Some commenters thought that proposed §§ 3809.700 and 3809.701 provide excessively severe penalties of from $100,000 to $250,000 fines and/or imprisonment for five years for violations of the regulations or making of false statements.

BLM is simply providing, as a matter of information to the regulated community, pertinent information about the existing statutes. The penalties the commenters object to cannot be changed by BLM regulation.

Commenters asked: What does the BLM consider to be a false statement? Will the BLM include false statements or accusation made by private parties against operators during comment period for bonding or other NEPA processes? What standards will the BLM use to determine if the statements are false?

U.S. Attorneys initiate prosecutions under 18 U.S.C. 1001. The courts interpret that law, and a body of case law exists interpreting 18 U.S.C. 1001. BLM defers interpretation of the statute to appropriate officials with responsibility to enforce that statute.

Section 3809.702 What Civil Penalties Apply to Violations of This Subpart?

Final § 3809.702 adopts the civil penalty provision that was proposed. This is consistent with NRC Report Recommendation 6 by providing administrative civil penalties, subject to appropriate due process. Administrative penalties are described in the NRC Report as necessary ''to make the notice of noncompliance a credible and expeditious means to secure compliance.'' NRC Report at p. 103.

The final rule provides that following issuance of an order under § 3809.601, BLM may assess a proposed civil penalty of up to $5,000 for each violation against a person who (1) violates any term or condition of a plan of operations or fail to conform with operations described in a notice; (2) violates any provision of subpart 3809; or (3) fails to comply with an order issued under § 3809.601. The rule provides that BLM may consider each day of continuing violation a separate violation for purposes of penalty assessments. In determining the amount of the penalty, BLM will consider the violator's history of previous violations at the particular mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether negligence is involved; and whether the violator demonstrates good faith in attempting to achieve rapid compliance after notification of the violation. BLM will also accommodate small entities and will, under appropriate circumstances, consider reducing or waiving a civil penalty and may consider ability to pay in determining a penalty assessment.

To afford due process of law, the rule specifies that a final administrative assessment of a civil penalty occurs only after BLM has notified the violator of the assessment and provided a 30-day opportunity to request a hearing by the Office of Hearings and Appeals (OHA). BLM may extend the time to request a hearing during settlement discussions. If the violator requests a hearing, OHA will issue a decision on the penalty assessment. If BLM issues a proposed civil penalty and the recipient fails to request a hearing on a timely basis, the proposed assessment becomes a final order of the Department, and the penalty assessed becomes due upon expiration of the time allowed to request a hearing.

The proposed rules allowing BLM to assess monetary penalties drew many comments. Many commenters stated that BLM enforcement should allow for the assessment of administrative civil penalties against mining operators. Commenters stated that civil penalties will play a vital role in providing an incentive that operators understand. Commenters asserted that enforcement only works if the penalties for being ''caught'' are far more expensive than the profits to be made through non-performance. EPA supported the authority for BLM to issue civil administrative penalties based on non-

compliance with subpart 3809. BLM agrees with the comments supporting the use of administrative penalties.

A commenter suggested that the penalties BLM collects be put into a fund for reclaiming mine lands and not go into the U.S. Treasury or some general Department of the Interior fund. The proper disposition of penalties collected is, however, determined by Congress and may not be changed by BLM regulation.

Commenters asserted that FLPMA is quite specific about the enforcement authorities provided to BLM by Congress, stating 43 U.S.C. 1733(b) expressly allows only the Attorney General to institute civil penalties for violations of regulations promulgated by the Secretary of Interior pursuant to FLPMA, The commenter asserts that the absence of express administrative civil penalty provisions in FLPMA confirms the Congressional intent that BLM not impose civil penalties.

BLM disagrees with the commenters' assertion that the provision allowing the Attorney General to seek the judicial imposition of injunctive or other judicial relief limits the Secretary's administrative authority. That section, together with a portion of 43 U.S.C. 1733(a) establishing criminal violations, provides affirmative authority for judicial activity. As discussed earlier, neither provision addresses the scope of the Secretary's authority to establish civil penalties under other provisions of law.

Commenters stated that although they recognize that BLM wants new civil penalty authorities to address ''bad actors,'' recalcitrant operators would continue to flout any new BLM administrative authorities, and that civil or criminal court action would ultimately be necessary to resolve such problems as in the case now. The commenters asserted that BLM's proposed new bonding authorities will help make such cases of noncompliance more clear-cut and render easier the task of persuading a U.S. Attorney to pursue such actions.

BLM disagrees with the comment. Although BLM cannot assure that the imposition of civil penalties will always cause entities to come into compliance, the additional administrative sanctions will provide greater incentive for operators to do so. A person may decide to delay correcting a violation to see whether a court will issue injunctive relief, but that person may decide to abate a violation in the face of a Federal administrative order directing him or her to suspend operations or a continually accruing monetary penalty. BLM also is not persuaded that the existence of new bonding authorities will lead to greater success in bringing civil actions for injunctive relief.

A commenter emphasized the NRC Report statement that ''federal land management agencies need to acknowledge and to rely on the enforcement authorities of other federal, State, and local agencies as much as possible'' (NRC Report at p. 103) and suggested that the regulations should incorporate the requirement that BLM defer to enforcement by Federal or State agencies with primary jurisdiction over environmental requirements. The commenter suggested the regulations should also incorporate the NRC Report statement that BLM develop formal understandings or memoranda of understanding with State and Federal permitting agencies to prevent duplication and promote efficiency (NRC Report at p. 104). The commenter stated that the NRC Report intended that the BLM use the new administrative penalty authority only where the agency ''needs to act immediately to protect public lands or resources, or in cases where the other agency is unable or unwilling to act with appropriate speed'' (NRC Report at p. 104) and suggested that these limitations should be written directly into the regulations.

BLM agrees with the policies embodied in the NRC Report, to the extent reliance on other agencies will achieve compliance with BLM regulations and public lands and resources will be adequately protected. Inclusion of the suggested limits in the regulations, however, could be construed to establish jurisdictional bars to BLM enforcement. Such limits would complicate individual enforcement actions with issues related to matters such as the extent of BLM reliance on other agencies. These types of issues can lead to disputes between BLM and the States, as is evidenced by the experience of the Office of Surface Mining in implementing 30 U.S.C. 1271. BLM believes it preferable, instead, to develop understandings and agreements with States and other agencies to exercise its discretion appropriately to defer to other agencies, without including jurisdictional bars in the BLM regulations.

Other commenters asserted that the administration of a civil penalty system will impose new and unjustified resource and personnel requirements on the agency, not to mention the States. Commenters stated that from a practical perspective, BLM should also consider the procedural issues and complexities associated with the civil penalty policies and the implementation of similar programs by other agencies, such as EPA. For example, the commenter stated that BLM's penalty assessments would likely be the subject of innumerable appeals. That reality should be considered in light of the fact that the Interior Board of Land Appeals is already staggering under a multi-year backlog. Appeals stemming from BLM penalty assessments would have the potential to bring the system to a complete halt. The commenter also stated that BLM assumption of civil penalty responsibilities would impair the agency's capacity to perform its land management responsibilities.

Although the use of civil penalties could increase BLM's workload and add additional appellate cases, BLM disagrees that the additional resource needs will be as dramatic as the commenters assert. BLM does not expect that a great number of civil penalties will be issued, particularly if States and other Federal agencies take the enforcement lead in many instances.

Final § 3809.702 provides civil penalties of up to $5,000 per day for violation of the regulations, violation of a plan of operations, or failure to comply with an order of the BLM. Commenters stated that the draft penalties section is extremely stringent and excessive considering that a single violation of one of the new performance standards could likely occur even if the operator was diligent, prudent and acting in good faith. One commenter suggested the maximum penalty should be $1,000 per day, a noncompliance order be issued first, together with an opportunity to cure the violation, and appeals of penalty assessments be heard, in the first instance, by BLM State Directors.

BLM believes that the administrative civil penalty system is fair. The issuance of monetary penalties in any amount is discretionary. In many instances, BLM will not issue any monetary penalty. The $5,000 per day maximum amount of a penalty is just that, a maximum. BLM does not expect that penalty amounts will always approach the maximum, particularly if a violation is an isolated incident and an operator is diligent, prudent, and acting in good faith. The rule contains criteria for assessing penalties, with appropriate reductions for small entities. Setting a maximum amount of less than $5,000 per day may be inadequate to reflect the harm caused by serious violations.

Before any penalty becomes final, the recipient may seek a settlement agreement with the BLM State Director under final § 3809.703, discussed below. The recipient may also petition OHA for a hearing under final § 3809.702(b). A hearing gives the person assessed a

penalty the opportunity to explain extenuating circumstances and seek a reduction in the penalty amount or a determination that the violation did not occur. The Hearings Division of OHA has extensive experience with monetary penalty hearings. BLM agrees that generally penalties will not be assessed until a noncompliance order has been issued and there has been a failure to comply, but occasionally a serious violation may warrant the issuance of monetary penalty, or another agency may have issued the enforcement order and BLM would not wish to duplicate that order.

Instead of penalties, a commenter asserted that compliance through financial guarantees should be adequate. BLM disagrees with the comment. BLM would prefer that an operator correct violations that occur. Administrative enforcement orders and civil penalties provide an incentive for operator action that does not exist through the financial guarantee. In addition, forfeiting and collecting on a financial guarantee can be a lengthy process and may not be warranted for individual violations.

A commenter suggested the BLM should use the judicial system for the assessment of civil penalties, as the only fair way to administer penalties. The commenter felt that if a violation is serious enough to warrant a penalty, then the judicial system should administer it. The commenter was concerned about the impartiality of BLM and the Interior Board of Land Appeals. Another commenter suggested that the BLM should provide a fair appeal process from civil penalties, which includes a committee composed of representatives of both government and industry.

BLM disagrees with the comment. The same difficulties and uncertainties exist with obtaining judicial imposition of civil penalties under 43 U.S.C. as with getting injunctive relief under that section. Persons who believe they are treated unfairly by the Department may appeal an IBLA ruling to Federal District Court. BLM also disagrees with the suggested use of multi-interest appeal boards. The appeal of a civil penalty involves an individual factual dispute involving a specific application of the regulations. This is not the type of proceeding where a committee composed of multiple interests would add value, such as in making recommendations on policy issues.

A commenter asked that BLM define the term ''small entity'' as used in proposed § 3809.702(a)(3). In the commenter's view, the current interpretation of the term conflicts with the term ''small business'' as used by BLM in 1998 legal briefs defending its earlier bonding rules. BLM will interpret the term ''small entity'' consistent with the definition of that term established by the Small Business Administration in its regulations at 13 CFR 121.201.

A commenter asked whether the 30-day appeal period specified in proposed § 3809.702(b) referred to calendar days or business days. The final rule includes the phrase ''calendar days'' to clarify this.

A commenter recommended that a system of positive incentives be developed in lieu of administrative penalties to encourage environmental stewardship, keeping in mind that financial assurance in the form of reclamation bonds will still be in place to ensure compliance. The commenter was also concerned that the rules do not provide enough guidance to provide for consistent application of the administrative civil penalty provisions without imposing personal biases of individual regulators. Although BLM encourages environmental stewardship and positive incentives (such as reclamation awards to operators who provide environmentally superior reclamation), it also needs to have administrative sanctions available. These rules provide such sanctions, while providing opportunities for appeals and review that will guard against enforcement biases.

Section 3809.703 Can BLM Settle a Proposed Civil Penalty?

Final § 3809.703 clarifies that BLM may negotiate a settlement of civil penalties, in which case BLM will prepare a settlement agreement. The BLM State Director or his or her designee must sign the agreement. This section is unchanged from the proposal.

Sections 3809.800 Through 3809.809 Appeals

Proposed § 3809.800 addressed appeals of BLM decisions, but also said that State Director review would occur if consistent with 43 CFR part 1840, anticipating BLM publication of revised BLM State Director review rules. The October 26, 1999 supplemental proposed rule elaborated and sought comments on BLM's State Director review provisions for subpart 3809 because separate BLM State Director review regulations were not published at that time and part 1840 did not allow State Director review. See 64 FR 57613, 57618.

These final rules finalize in modified form the February 9, 1999 proposal for appeals to the Office of Hearings and Appeals (OHA), and also adopt in modified form the State Director review provisions proposed in October 1999. BLM has revised final § 3809.800 and added §§ 3809.801 through 3809.809 to account for the two processes for seeking review.

Section 3809.800 Who May Appeal BLM Decisions Under This Subpart?

Final § 3809.800 establishes the two review processes. Portions of proposed § 3809.800 are contained in final §§ 3809.801, 3809.802 and 3809.803, discussed below.

Final § 3809.800(a) provides that a party adversely affected by a decision under subpart 3809 may ask the State Director of the appropriate BLM State Office to review the decision. Final § 3809.800(b) provides that an adversely affected party may bypass State Director review, and directly appeal a BLM decision under subpart 3809 to OHA under 43 CFR part 4. In other words, a party may elect to ask for State Director review or may appeal to OHA.

Providing a choice of appealing either to OHA or seeking State Director review is consistent with the October 1999 proposal. It is a change from the previous rule which required operators to appeal to the State Director before being able to file an appeal with OHA, and did not allow other parties to seek State Director review. This choice may allow issues to be resolved at the State Director review level without the necessity of a potentially more complex IBLA appeal. In addition, operators may decide to proceed directly with an appeal to the IBLA, thus reducing the State Director review workload.

One change from the proposal made in response to comments is to limit appeal rights to an adversely affected ''party,'' as was set forth both in previous § 3809.4 and in the current OHA appellate rules at 43 CFR 4.410(a), rather than to allow any adversely affected ''person'' to file an appeal. The word ''party'' is intended to include a person who previously participated in the BLM proceeding, such as by filing comments or objections with BLM.

Commenters objected to the granting of appeal rights to an ''undefined and open-ended'' class of ''persons adversely affected by a decision made under this subpart.'' Commenters stated that the preamble to the proposal contains no rationale whatsoever for this ''wholly unauthorized expansion of rights.'' Another commenter suggested that BLM should adopt the Alaska standard that administrative appeals and litigation can be initiated only by persons that meaningfully participated in the public participation elements of the decision process. A commenter

pointed out the difference in language between proposed § 3809.800(a) which authorized any ''person'' adversely affected by a BLM decision to appeal the decision under 43 CFR parts 4 and 1840, and the wording of 43 CFR section 4.410 which states: ''Any *party* to a case which is adversely affected * * *'' shall have a right to appeal'' (emphasis added). The commenter correctly observed that a potential appellant may be adversely affected by a BLM decision, but not be a party to the BLM proceeding. A commenter requested that BLM clarify the discrepancy between these sections by providing for appeal by parties which can show they are adversely affected or have a legitimate interest in the effects of the action either on or off-site.

As noted above, the final rule limits appeals to ''parties.'' BLM agrees that it is helpful for potentially adversely affected persons to participate meaningfully in the BLM proceeding, and to raise objections or concerns before BLM makes a decision. In the absence of comments or objections, BLM will not necessarily be aware of particular issues and its decision will be reasonable based on the information before it. Although persons who do not participate in a BLM proceeding could be aggrieved by either the on- or off-site effects of a decision, BLM does not think it burdensome for those persons to have voiced their concerns to BLM before BLM makes a decision. In most instances BLM expects that persons who will be adversely affected will inform BLM of their objections, particularly in light of the opportunity to submit public comments under final § 3809.411(c). Finally, BLM has concluded that the issue of who has standing to file an appeal to OHA should be resolved consistently for all of BLM's programs, and BLM should not create an exception for an individual program, such as for subpart 3809.

Section 3809.801 When May I File an Appeal of the BLM Decision With OHA?

Final § 3809.801 describes when an appeal can be filed with OHA. Final § 3809.801(a) describes the various scenarios when an appeal may be filed with OHA, taking the State Director review process into account. These are as follows:

Under final § 3809.801(a)(1), if a party does not request State Director review, the party has 30 calendar days from receipt of the original BLM decision to file an OHA appeal. This is consistent with the February proposal, and the OHA regulations.

Under final § 3809.801(a)(2), if a party requests State Director review and the State Director declines to accept the request for review, the party may file with OHA an appeal of the original decision within 30 calendar days of the date the party receives the State Director's decision not to review. Thus a party seeking third party review will not be prejudiced and lose his or her appeal rights to OHA if the State Director declines to accept the request for review.

Under final § 3809.801(a)(3), if a party requests State Director review and the State Director has agreed to accept the request for review, a party may file with OHA an appeal of the original decision before the State Director makes a decision. This allows a party to change his or her mind and appeal to OHA if, for instance, he or she does not receive a timely decision from the State Director.

Under final § 3809.801(a)(4), if a person requests State Director review and the State Director makes a decision, a person may file with OHA an appeal of the new decision within 30 calendar days of the date the person receives or is notified of the State Director's decision.

Under final § 3809.801(b), and as provided in the February proposal, a person must file a notice of appeal in writing with the BLM office where the decision was made in order for OHA to consider an appeal of a BLM decision.

Section 3809.802 What Must I Include in My Appeal to OHA?

Final § 3809.802 addresses the contents of appeals to OHA, and includes the material proposed as § 3809.800(c). It provides that a written appeal must contain the appellant's name and address, and the BLM serial number of the notice or plan of operations that is the subject of the appeal. The person must also submit a statement of reasons for the appeal and any arguments the appellant wishes to present that would justify reversal or modification of the decision within the time frame specified in 43 CFR part 4 (usually within 30 calendar days after filing the appeal). The word ''calendar'' was added as a clarification.

Section 3809.803 Will the BLM Decision Go Into Effect During an Appeal to OHA?

Under final § 3809.803, and also as provided in proposed § 3809.800(b), all BLM decisions under subpart 3809 go into effect immediately and remain in effect while appeals are pending before OHA, unless a stay is granted under 43 CFR § 4.21(b). This derives from previous § 3809.4(f).

Comments Related to Appeals to the IBLA

A commenter on the February proposal stated that it thought that the intent of proposed § 3809.800(a) is to have both the operator and affected third parties appeal directly to IBLA. It stated the sentence about the BLM State Director review and the reference in part 1840 is rather confusing and does not clearly state when the BLM State Director would or would not review an appeal. Therefore, the commenter stated BLM should remove the last sentence about the BLM State Director review, since all appeals are going to be sent to IBLA.

BLM attempted to clarify its intent in the October 1999 supplemental proposed rule. The confusing sentence has been removed. The final rule allows operators and adversely affected third parties the choice of seeking State Director review or appealing to the IBLA. The final rules clarifies when appeals may be made.

Commenters stated that BLM should carefully weigh the impacts of additional appeals on the agency and its resources. A number of comments focused on the increased workload and delays that would be caused by the appeal process of proposed § 3809.800. Commenters stated that the detailed new permitting requirements contained in the 3809 proposal will greatly increase the number of BLM decisions that ultimately will be subject to administrative appeals to the Interior Board of Land Appeals (''IBLA''), as well as increase the potential grounds for such appeals. Commenters asserted that an appeal to the IBLA is relatively simple and inexpensive for opponents to a mining project because opponents can simply repackage their NEPA comments as a statement of reasons, and obtain an administrative rehearing on all of their claims, regardless of whether they have merit. But, the commenters continued, the burden of an appeal on BLM is substantial. Regulations require that the agency assemble and transmit the entire administrative record to the IBLA and the agency must respond to an appellant's statement of reasons. Responding to an appeal can require a substantial amount of time from field office personnel, time that is lost from permit processing, compliance inspections or enforcement, or other duties. Commenters stated that BLM cannot ignore an appeal, because if BLM does not respond adequately, the decision will likely be remanded, imposing an additional burden on the agency and its employees. BLM's draft EIS acknowledges that the ''current

backlog in IBLA for a routine appeal is about three years.'' Commenters asserted that adoption of the proposed rules will increase the backlog beyond already intolerable levels. The commenter concluded that protracted administrative appeals and litigation over permitting decisions compound the delays and uncertainties in the permitting process.

Commenters also asserted that vague regulatory standards governing BLM's discretionary judgments will make the appeals that are filed more complex. Exercise of agency judgment and discretion will ultimately be judged by the standards written into the regulations. Such standards, the commenters pointed out, include determinations of MATP, the application of the performance standards, the completeness of plans of operations, adequacy of reclamation plans, the amount of financial guarantees, and innumerable enforcement decisions (including the decision whether to allow a member of the public to accompany a BLM inspector). BLM's intent about the way particular provisions should be implemented will be meaningless if that intent is not clearly stated in the regulatory language. The commenter stated that because many of the provisions in the proposed rule, particularly the ''performance standards,'' are written in absolute terms, the potential for legal challenges is a source of great concern to the industry, and should be of great concern to BLM.

Although BLM agrees that appeals to the IBLA of BLM decisions under subpart 3809 use BLM resources, BLM concludes such appeals need to be available to provide basic procedural fairness to parties who may be aggrieved by the decision. Under the previous rules, parties could appeal to the IBLA (although operators were required to go through the State Director review process before appealing to the IBLA). As noted, many commenters objected not to the appeal process as much as to the revised rules leading to the underlying decisions that are appealed. The potential consequences from an increased number and greater complexity of appeals, however, does not dissuade BLM from promulgating needed standards and procedures.

Commenters pointed out that allowing operators to appeal both a noncompliance order and a subsequent suspension order would also be time-consuming and costly to both the BLM and IBLA. Moreover, BLM proposes that it may eliminate certain appeals to the State Director, which will further increase appeals to IBLA.

BLM recognizes that each enforcement action may have separate appeals, but it may not be necessary to relitigate issues that the same parties have already litigated. Persons who previously requested State Director review can do so under these final rules, plus the State Director review process has been made available to any aggrieved person. To the extent issues are resolved before the State Director, appeals may not have to be taken to the IBLA.

A commenter asked that BLM revise proposed § 3809.800(b) to require the decision to indicate the appropriate next level of appeal. The commenter supported having appeals from local decision to go directly to the State Director, as a time-saving mechanism. The commenter suggested that the appeal process would be further streamlined if the next level above the BLM State Director is the Secretary of the Interior.

BLM agrees in part. The process BLM adopts in these final rules allow a party to seek review by the State Director (to save time or for some other reason) or to appeal directly to the IBLA. Ordinarily, appeal rights are specified in BLM decisions. The Interior Department's Office of Hearings and Appeals is the Secretary's representative for handling appeals from BLM decisions, and OHA decisions are ordinarily final decisions of the Department which can be appealed to an appropriate court.

Some commenters suggested a streamlined appeals process under which an appeal from a field-level operation can only be reviewed timely (suggesting seven calendar days for each of the two reviews) by the Office Manager and State Director responsible for public land management in the area of the proposed mining operation. Under this suggested procedure, appeals would immediately be taken to Federal District Court as litigation. The commenter stated that this modification would be similar to an existing U.S. Forest Service appeal process. The commenter asserted that since the Secretary of the Interior is the ultimate policy setter for IBLA and the Solicitor and has ultimate hiring/firing authority over the Assistant Secretary, BLM Director, and the BLM State Directors, the proposed appeals would be futile and a waste of time. The commenter concluded that this is a major modification that would be a step to effectively implement NRC Report Recommendations 15 and 16.

BLM declines to accept the suggestion. One level of review within the State should be sufficient, and BLM doubts that seven days for each review would allow for meaningful review. Based on past experience, BLM disagrees that appeals to the IBLA are futile. The IBLA assures that there will be national consistency to the interpretation and implementation of BLM rules, and does not always support local BLM decisions as the commenter asserts. BLM also disagrees that the commenter's suggestions would be an effective step to implement the NRC Report recommendations.

Industry commenters stated that because the NRC Report made no recommendation that previous appeals procedures be changed, and BLM is limited to promulgating rules that are consistent with the NRC Report recommendations, BLM is not authorized to modify the current appeals provisions in the previous 3809 regulations. The commenters recommended that the previous regulations, which allow operators to appeal to the BLM State Director in certain circumstances, but direct other appeals to the IBLA, should be retained.

BLM disagrees with the comments. The legislative standard is that the BLM final rule not be inconsistent with the NRC Report recommendations. Recommendation 6 specifically states that BLM administrative penalties be subject to appropriate due process. The BLM appeal procedures and State Director review procedures are intended to assure that BLM enforcement decisions, as well as its other decisions, are subject to due process of law. Thus, the appeals rules are clearly not inconsistent with the NRC Report recommendations.

A commenter stated that the proposed rule contains no mechanism (nor did its cross-referenced citations) which provide for public notice of the submittal of a plan of operations or notice under the proposed regulations. The commenter stated that without notice how is a person who may be adversely affected aware of the plan of operations or notice activity? The commenter recommended that a public notice procedure should be established for concerned individuals, adjoining property owners, and the public at large of the submittal of a plan of operations or notice so that they can participate in the process.

As discussed above, BLM agrees (although not solely for the reasons raised by the commenter) and has modified final § 3809.411(c) to establish a public participation provision.

Sections 3809.804 Through 3809.809 State Director Review

Final §§ 3809.804 through 3809.809 flesh out the mechanics of the State Director review process, and generally follow the process described in the October 1999 supplemental proposal.

Section 3809.804 When May I Ask the BLM State Director To Review a BLM Decision?

Final § 3809.804 establishes the time frame for requesting State Director review. It provides that the State Director must receive a request for State Director review no later than 30 calendar days after a person receives or is notified of the BLM decision sought to be reviewed. The supplemental proposed rule did not detail the time frame for requesting State Director review, and the 30-day period is consistent with the period specified in previous § 3809.4(b) for requesting State Director review. Thus, an adversely affected party has 30 days to request State Director review or to file an OHA appeal.

Section 3809.805 What Must I Send BLM To Request State Director Review?

Final § 3809.805 specifies what a person must send BLM to request State Director review. It provides that a State Director review request must be a single package that includes a brief written statement explaining why BLM should change its decision and any documents that support the written statement. The envelope should be marked ''State Director Review,'' and a telephone or fax number should be provided. These requirements are consistent with those previously found in § 3809.4(c). A person may accompany his or her request for State Director review with a request for a meeting with the State Director. Holding a meeting is discretionary, but the State Director will notify the person seeking review as soon as possible if he or she can accommodate the meeting request.

Section 3809.806 Will the State Director Review the Original BLM Decision if I Request State Director Review?

Final § 3809.806(a) provides that the State Director may, but is not obliged to accept requests for State Director review. Based on factors such as workload or complexity of the issues, the State Director may conclude that it is appropriate for appeals to be heard directly by OHA rather than at the BLM State Director level. The October proposal stated that the State Director would have seven days to decide whether to accept a request for review. BLM has revisited this and has concluded that seven days may not be sufficient for the State Director to determine whether to conduct the review of an earlier decision and thus has provided 21 days to make that determination.

Final §§ 3809.806(b) and (c) describe address possible overlapping OHA appeals and State Director review proceedings. Final § 3809.806(b) provides that a State Director will not begin a review, and will end an ongoing review if the party who requested State Director review or another party files an appeal of the original BLM decision with OHA under § 3809.801 before the State Director issues a decision, unless OHA defers consideration of the appeal pending the State Director decision.

Final § 3809.806(c) provides that a party filing an appeal with OHA after requesting State Director review must notify the State Director. After receiving such a notice, the State Director may request OHA to defer consideration of the appeal. Final § 3809.806(d) provides that if a party who requested State Director review fails to notify the State Director of his or her appeal to OHA, any decision issued by the State Director may be voided by a subsequent OHA decision.

Section 3809.807 What Happens Once the State Director Agrees to My Request for a Review of a Decision?

Final § 3809.807(a) directs the State Director to promptly send the requester a written decision. BLM intends to act promptly on requests for State Director review. This is consistent with previous § 3809.4(d). Although there is no consequence if the State Director does not issue the decision promptly, the party may choose to appeal the original BLM decision to OHA at any time before the State Director issues the decision.

Under the final rule, the State Director's decision may be based on any of the following: the information the requester submits; the original BLM decision and any information BLM relied on for that decision; and any additional information, including information obtained from a meeting the requester held with the State Director. The State Director may affirm, reverse, or modify the original BLM decision, and the State Director's decision may incorporate any part of the original BLM decision. If the original BLM decision was published in the **Federal Register**, the State Director will also publish his or her decision in the **Federal Register**.

Section 3809.808 How Will Decisions Go into Effect When I Request State Director Review?

Final § 3809.808 describes how decisions go into effect when a person requests State Director review. Under final § 3809.808(a), the original BLM decision remains in effect while State Director review is pending, except that the State Director may stay the decision during the pendency of his or her review. This is consistent with previous § 3809.4(b) and (f). Under final § 3809.808(b), the State Director's decision will be effective immediately and remain in effect, unless a stay is granted by OHA under 43 CFR 4.21.

Section 3809.809 May I Appeal a Decision Made by the State Director?

Final § 3809.809 addresses whether a party may appeal a decision made by the State Director. Final § 3809.809(a) provides that an adversely affected party may appeal the State Director's decision to OHA under 43 CFR part 4 except that a party may not appeal a denial of his or her request for State Director review or for a meeting with the State Director. This is consistent with previous § 3809.4(e). Persons who did not participate in the State Director review process, but who participated in the underlying BLM proceeding that was appealed are considered parties and may appeal State Director review decisions.

Final § 3809.809(b) provides that once the State Director issues a decision on the review, only the State Director's decision can be appealed, and not the original BLM decision. This is because when the State Director issues a decision, it replaces the original BLM decision, which is no longer in effect.

Comments on State Director Review

Some commenters supported having the opportunity to appeal BLM field office decisions to BLM State Directors. Some stated that they favored State Director review as a mechanism to save time on appeal. Others favored the development of an appeals process that involves and emphasizes the input of local and State managers. Others objected to State Director review. BLM agrees that it is useful to have a process whereby the appeals can be resolved in a timely manner in the State where the decision was made.

A commenter interpreted the proposed regulations as allowing each BLM State Director to grant a stay on a positive Record of Decision for a mining operation. The commenter stated that this power is currently reserved to the Interior Board of Land Appeals,

comprised of a group of judges, and that allowing a decision whether to grant a stay to be determined by one person is contrary to the intent of Congress.

The commenter is correct that under the final rules the BLM State Director may stay a BLM field office or other decision that approves a plan of operation. The commenter is not correct, however, in asserting that this is a new feature. Previous § 3809.4(b) specifically provided that a request for a stay could accompany an appeal to the State Director.

Section 3809.900 Will BLM Allow the Public To Visit Mines on Public Lands?

The discussion of final § 3809.900 appears earlier in this preamble under the discussion of comments received on the proposed requirement to allow citizens to accompany BLM inspectors to mine sites, proposed § 3809.600(b).

Section 9263.1 Operations Conducted Under the Mining Law of 1872

The discussion of final § 9263.1 appears earlier in this preamble under the discussion of comments received on the proposed penalty provisions at § 3809.700.

III. How Did BLM Fulfill Its Procedural Obligations?

Executive Order 12866, Regulatory Planning and Review

These regulations are a ''significant regulatory action,'' as defined in section 3(f) of Executive Order 12866, and require an assessment of potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions. As a ''significant regulatory action,'' the regulations are subject to review by the Office of Management and Budget.

In accordance with E.O. 12866, BLM performed a benefit-cost analysis for the proposed action. We used as a baseline the existing regulation and current BLM administrative costs. The potential costs associated with the regulation are increased operating costs for miners and increased administrative costs for BLM. The potential benefits are environmental improvements. Both benefits and costs are difficult to quantify because many of the possible impacts associated with the regulation will be site- or mining-operation-specific.

The intent of the benefit/cost/Unfunded Mandate Act analysis and the Regulatory Flexibility Act analysis is to satisfy the requirements of E.O. 12866, the Unfunded Mandates Reform Act (UMRA), and the Small Business and Regulatory Enforcement Flexibility Act (SBREFA). E.O. 12866 and UMRA require agencies to undertake benefit-cost analysis for regulatory actions. The material presented below summarizes the analyses that have been conducted.

Background and Need for the Regulation

The need for the regulation is associated with both a compelling public need and market failures. Congress, the General Accounting Office, and the public have increasingly recognized the need for improving BLM's surface management program under the subpart 3809 regulations. Since the original subpart 3809 regulations were issued in 1980, mining technology and processes have changed considerably. The following list of issues related to the 1980 regulations suggests that revisions are warranted:

- Plan-level operations are not required to have financial guarantees; BLM has discretion whether to require a financial guarantee. The regulations do not allow BLM to require financial guarantees for notice-level operations. A large number of operations have gone unreclaimed, causing environmental damage and imposing reclamation costs on taxpayers as a whole. A 1999 survey of BLM field offices found more than 500 operations that operators had abandoned and left BLM with the reclamation responsibility. Many of these were small mining operations conducted under notices. The NRC Report recommended that secure financial assurances be required for reclamation of all disturbances beyond casual use, including notice-level activity and that all mining and milling operations be conducted under plans of operations, and that notices be used only for exploration.
- Some small mining operations with high environmental risks, such as cyanide use or acid drainage potential, can proceed without NEPA review or BLM approval, simply because they disturb less than 5 acres and qualify as a notice.
- The lack of clarity in the types of activities permissible under ''casual use'' has led to inconsistencies and environmental damage in some instances.
- BLM has no official way of clearing records for notices. Notice-level activities are often never completed, or in some cases never started. Without a reclamation bond, or an expiration term, notices are often left open for years with no incentive for the operator to complete the reclamation, notify BLM, and get the notice closed.
- BLM lacks clear, consistent standards for environmental protection in the existing regulations. As the NRC noted, although mining operations are regulated under a variety of environmental protection laws implemented by Federal and State agencies, these laws may not adequately protect all the valuable environmental resources at a particular location proposed for mining development. Furthermore, the existing definition of ''unnecessary or undue degradation'' does not explicitly provide authority to protect all valuable resources.
- Mitigation is not defined in BLM regulations to allow BLM to compensate for impacts offsite where disturbed areas cannot be reclaimed to the point of giving plants, animals, and people the same benefits that existed before disturbance. This fact has resulted in an overall decrease in productivity around the area of operations.
- BLM cannot suspend or nullify operations that disregard enforcement actions or pose a imminent danger to human safety or the environment. Criminal penalties under the existing regulations have often proven ineffective. The existing regulations do not allow BLM to use civil penalties as an enforcement tool. The NRC Report recommended that BLM have the authority to issue administrative penalties for violations of the regulations.
- BLM can require modifications to plans of operations only after review by the State Director concludes that the event could not have reasonably been foreseen in the original approval. The NRC Report recommended that this ''looking backward'' process should be abandoned in favor of one that focuses on what may be needed in the future to correct the environmental harm and that the regulations be revised to provide more effective criteria for BLM to require plan modifications where needed to protect Federal land.
- The existing regulations do not distinguish between temporarily idle mines and abandoned operations. This distinction is needed to determine which mines need just to be stabilized, if idle, or reclaimed, if abandoned. The NRC Report recommended that the regulations be changed to define the temporary versus abandoned conditions and to require interim management plans for operations that are only temporarily closed.
- The existing regulations do not provide for long-term site maintenance, water treatment, or protection of

reclaimed surfaces. The NRC Report recommended BLM plan for and assure the long-term post-closure management of mine sites.

• The lack of clarity in the types of activities permissible under ''casual use'' has led to inconsistencies and, occasionally, environmental damage. Damage results mostly when many people concentrated in a small area engage in casual use. The cumulative impacts of such groups often exceeds the ''negligible disturbance'' in the existing definition of casual use.

• In some operations proposed under the 1980 regulations, the legal status of the material to be mined is in dispute as to locatable under the mining laws or saleable as a common variety mineral. BLM needs regulations to resolve disputes without unreasonably delaying mining operations.

• The 1980 regulations have no requirement for preventing disturbances in areas closed to mineral entry until a discovery is determined to be valid or not. In areas closed to the operation of the mining laws, surface disturbance should be allowed only where the right to mine predates the segregation or withdrawal.

Absent a regulatory intervention, the market alone would be unlikely to ensure that sufficient and timely reclamation occurred or that society had sufficient information to minimize environmental damages and determine appropriate reclamation activities. Without requirements for financial guarantees, firms would have weaker incentives to reclaim disturbed lands. The costs associated with offsite damages would be particularly difficult to internalize absent some type of market intervention. The extent to which the parties could resolve these situations themselves is limited due to the high transaction costs and the unequal bargaining power of the entities involved. Currently, a large class of operators on public lands are not required to provide financial guarantees. These operators have little incentive to restore mined lands to a state where they will be able to provide a pre-mining level of ecosystem services. Absent revisions to the regulations, operators would have fewer incentives to undertake sufficient baseline environmental studies, disclose the nature and extent of their activities to the public, and monitor environmental conditions during and after mining.

Description of Regulation and Alternatives Considered

The alternatives we considered are described in detail in the Final EIS and elsewhere in the preamble. Briefly, they include the following:

Alternative 1: Current regulations. The 1980 regulations would be retained.

Alternative 2: State Management. Under this alternative, BLM would rescind the 1980 regulations and return to the prior surface management program strategy, under which State or other Federal regulations governed locatable mineral operations on public land.

Alternative 3: Proposed Regulations. This final rule would replace the regulations at 43 CFR 3809.

Alternative 4: Maximum Protection. Under Alternative 4, the 3809 regulations would contain prescriptive design requirements for resource protection. These requirements would increase the level of environmental protection and give BLM very broad discretion in determining the acceptability of proposed operations. Major changes from the current regulations include the following:

• Expanded application to public lands with any mineral or surface interest.

• Numerical performance standards for mineral operations.

• Required pit backfilling.

• Elimination of notices so that all disturbances greater than casual use require plans of operations.

• Required conformance with land-use plans.

• Prohibitions against causing irreparable harm or having to permanently treat water.

Alternative 5: NRC Recommendations. Alternative 5 would change the existing regulations only where specifically recommended by the NRC Report. Under Alternative 5, the definition of ''unnecessary or undue degradation'' would remain same as the current regulations. The prudent operator standard would be retained, and operators would have to follow ''usual, customary, and proficient'' measures, mitigate impacts, comply with all environmental laws, perform reclamation, and not create a nuisance.

Disturbance categories and thresholds would be the same as under Alternative 3, but Alternative 5 would not expand the types of special status lands. The change threshold would be based on the division between exploration and mining. All mining, milling, and bulk sampling involving more than 1,000 tons would require a plan. Exploration disturbing less than 5 acres would still require a notice unless occurring on special status lands. Actual-cost bonding would be required for all notices and plans.

Summary of the Benefit/Cost Analysis

In response to comments on the initial benefit/cost analysis, BLM attempted to account for the economic value of any foregone minerals production that might result from the regulations. This value can change over time, depending on the time path of prices, interest rates, and extraction costs. Estimating these values is also complex due to uncertainty about timing effects, technology changes, and future commodity prices.

Information from mine cost models was used with other data collected by BLM to develop estimates of the annual cost of the regulation. Given the limitations of the models, the uncertainty about the magnitude of permitting costs, the extent to which delays can be attributed to the regulations, and the wide variety of mining activity occurring on public lands, these estimates should be interpreted with some caution. In particular, the baseline cost information best applies to the operations modeled and may not accurately describe the cost conditions associated with operations of different size or commodities. To account for the fact that the cost models may not be representative of the types of mining activity occurring on public land, sensitivity analysis was done by varying the baseline costs by plus or minus 20%.

The economic cost of the permitting/compliance components regulation were developed by estimating the annual cost changes associated with the regulation for new and existing plans of operation and for new and existing notices. This manner in which this was done is described in detail in the benefit/cost analysis. The analysis incorporates a number of behavioral assumptions concerning the extent to which the regulation might affect the number and distribution of future notices and plans. These assumptions parallel those used in the final EIS to project minerals activity.

New plans of operations: For new plans of operations, the estimated number of plans was multiplied by the appropriate cost increase for each mine model. This total was then adjusted to account for the fact that only 20% of the plans would be affected by the regulation, given that an estimated 80% of the operators are already complying with the requirements of the regulation. Permitting costs were assumed to increase from $600,000 to $900,000 for the open pit model; from $100,000 to $125,000 for the strip/industrial model; from $50,000 to $80,000 for the medium placer model; from $10,000 to $100,000 for the underground model; and from

$50,000 to $75,000 for the medium exploration model. The maximum protection model assumed that permitting costs increased from $600,000 to $1 million for the open pit model; from $100,000 to $150,000 for the strip/industrial model; from $10,000 to $150,000 for the underground model; from $50,000 to $80,000 for the medium placer model; and from $50,000 to $80,000 for the medium exploration model. For these models, permitting costs are annualized over the life of the model mine using a 7% discount rate. Permitting costs for exploration activities were not annualized, but were included as a lump sum.

Under this final rule, some mining and explorations activities that would have operated under notices previously would now have to operate under plans of operations. For the preferred alternative, BLM assumed that 90% of the new open pit, industrial/strip, exploration, and underground operations that would have operated previously under notices would file plans; 70% of the new placer operations would file plans; and 10% of the exploration operations would file plans. The remaining new notices would be composed only of exploration activities. Notices are not allowed under the maximum protection alternative. The maximum protection alternative assumed that: 70% of the open pit, industrial/strip, exploration, and underground notices would file plans; 60% of the placer notices would file plans; and 80% of the exploration notices would file plans. These assumptions are consistent with the final EIS.

For the preferred alternative, it was assumed that close to 45% of the total number of new notices submitted annually would be required to file plans of operation under the regulation regardless of the type of mining activity. This implies that 270 notices out of the annual baseline number of 600 would be required to submit plans. Adjusting for the estimated reduction in the number choosing to submit plans (10% reduction for open pit, strip, and underground; 30% reduction for placer) gives an estimate of 210 new plans (that formerly would have been notices). Each new plan would bear permitting, reclamation, and bonding costs. For the NRC alternative, the parameters are largely the same, except that the estimated reductions in the number choosing to submit plans are smaller (5% reduction for open pit, strip, and underground; 20% reduction for placer). The cost associated with ''converting'' to a plan vary widely.

For mining activities, permitting costs were assumed to average about $60,000 per plan; permitting costs for exploration activities were assumed to average about $33,000. Sensitivity analysis also examined the implications of conversion costs (for all notices regardless of type of activity) of $100,000 and $20,000. The analysis assumes that the regulation increases reclamation costs for the average 2.5 acre notice by $500 and $1,500 per acre, respectively for exploration and mining activities. Bonding costs were assumed to be $500 per notice. For the purposes of developing a cost estimate, it was assumed that the activities included in the these new plans would occur for 5 years. It was also assumed that given that mining would be conducted under a plan, the acreage disturbed would be somewhat larger than if this class of notices had remained notices. Bonding and reclamation costs were increased 30% to account for this.

Existing exploration notices: For the purpose of developing a cost estimate, the following assumptions were used. For exploration notices, in year 1 it was assumed that 5% of the notices were modified or extended and 5% dropped out; in year 2, 10% of the remaining notices modified or extended and 10% dropped out; and in year 3, 25% modified or extended, 25% dropped out, and 3% became plans. In years 4 to 10, 1% of the remaining notices become plans and 5% drop out each year. Over the 10-year period of analysis, this implies that about 4% of the total existing stock of notices become plans and about 40% drop out. Once a notice converts to a plan or modifies/extends, it incurs permitting, reclamation, and bonding costs. It was assumed that all permitting costs were incurred in the year in which the conversion occurred (permitting costs were not annualized); that the duration of all mining activities was 5 years and that reclamation costs were incurred in equal annual increments over this period; and that bonding costs were incurred over the 5-year period during which mining was occurring.

Existing placer mining notices: About 20% of the stock of existing notices are associated with placer mining. To estimate the cost of the regulation, the following assumptions were used: in year 1, 5% of the existing notices drop out; in year 2, 10% drop out; in year 3, 20% (or 225) of the remaining placer notices convert into plans and 80% drop out. During years 4–8 these 225 plans continued to operate; however, they ceased to operate beginning in year 9. The placer plans incurred permitting costs of $20,000 per plan in year 3, and bonding ($1,000 per plan) and reclamation costs (an increase of $1,500 per acre relative to the baseline for each plan) in each year they operated. Bonding and reclamation costs were also increased 20% to account for the fact that the placer plans might disturb somewhat larger acreage than if they had remained notices. All other existing notices: 10% were assumed to drop out in year 1; 20% were assumed to drop out in year 2; and in year 3, 50% of the remainder were assumed to drop out and 50% converted into plans. It was assumed that permitting costs were $40,000 per plan and that reclamation costs increased by $1,500 per acre over the existing baseline. Bonding and reclamation costs were also increased 20% to account for the fact that the plans might disturb somewhat larger acreage than if they had remained notices. The parameters for NRC alternative are similar. The maximum protection alternative assumed similar permitting costs, annual bonding costs of $1,500 per ''small'' plan, and a cost increase factor of 30% to account for the fact that plans might disturb somewhat larger acreage.

The net benefits of the alternatives considered cannot be quantified because information on site-specific and other operation-specific factors is not readily available. Implementation of the SIH standard also introduces a substantial degree of uncertainty in estimates of net benefits. At the same time, however, the fact that this standard could be applied to unique resources implies that it may be associated with substantial economic benefits. Costs are somewhat more amenable to analysis, though still subject to considerable uncertainty due to the extent to which prices, production, technology, and costs may change over time. Table 21 in the benefit/cost analysis, reproduced below, summarizes the estimated costs of the alternatives.

Table 21. Estimated Change in the Cost of the New Regulation Relative to the Existing Regulation [a]

	Annualized Cost ($ mil)			NPV Cost ($ mil)		
TYPE OF ACTIVITY	Preferred	NRC	Max protect	Preferred	NRC	Max protect
PLANS						
New and existing Plans	1.6	0.3	4.8	11.5	2.0	33.5
New Notices required to be Plans	4.9	4.1	21.6	34.1	29.0	151.6
Existing Notices required to be Plans	5.1	4.9	6.2	35.9	34.4	43.4
Casual use required to be Plans [suction dredge]	0.6	0.6	0.5	4.4	4.4	3.5
Subtotal	12.2	9.9	33.0	85.9	69.7	232.0
NOTICES						
New notices	0.4	0.43	0	2.6	2.9	0
Existing notices that remain Notices (or "small" plans)	1.0	1.03	1.6	7.2	7.2	11.3
Subtotal	1.4	1.5	1.6	9.8	10.2	11.3
BLM ADMIN COSTS	3.0	3.3	8.5	20.4	23.2	60.0
TOTAL PERMITTING/ COMPLIANCE	16.5	14.3	43.2	116.2	100.4	303.4
Total less BLM Admin	13.6	11.4	34.7	95.8	79.9	243.4
Value of forgone prod	0 - 133	0 - 31.7	175.2 - 413.8	0 - 934.5	0 - 222.5	934.5 - 2,610
TOTAL COST						
Low forgone production	16.5	14.3	209.9	116.2	100.4	1,237.9
High forgone production	149.6	46.0	457.0	1,050.7	322.9	2,913.4
Sensitivity Analysis - compliance costs						
+20%	19.9	17.1	51.8	139.5	120.4	364.0
-20%	13.3	11.4	34.6	93.0	80.3	242.7

[a] Costs discounted at 7%.

As discussed in the analysis, in response to many comments concerning the quantification of benefits, BLM's final analysis does not attempt to quantify the net benefits of the regulation. However, it should be noted that a commenter on BLM's initial benefit-cost analysis revised BLM's initial analysis and calculated that the total npv costs ranged from $106 million to $649 million; benefits were recalculated to range from $11 million to $161 million. Even though this commenter was critical of BLM's analysis, their own results suggest that there is a substantial range where there may be positive net benefits. For example, if the costs were at the low end of the range of costs ($106 million) and the benefits at the upper end of the range of benefits ($161 million), then the net benefits would be $55 million.

Because both the costs and benefits vary across the alternatives, it is not possible to compare the cost effectiveness of the alternatives. Some comparisons, however, can be made between the preferred alternative and the NRC alternative.

The results of the analysis suggest that the annual compliance/permitting cost of the preferred and NRC alternatives is about $15–20 million (giving a ±20% range of about $12 million to $24 million). In present value terms (over 10 years and using a 7% discount rate), these annual costs are equivalent to $105–141 million. The annual cost of forgone production for the preferred alternative is estimated to range from $0 to $133 million; for the NRC alternative forgone production is estimated to be $0–$32 million. Note that these values may overstate actual losses because a number of factors will act to mitigate any production losses and because they are calculated using a base of total U.S. gold production, not production originating from public lands. Simply adjusting for production originating on public lands could reduce the value of forgone production by half. Other mitigating factors could include: increasing production from existing mines, shifting production to non-Federal lands, technologic change, the ability to increase recycling, and sales of gold from existing stocks. Similarly, it is expected that both BLM and operators will become more efficient at administering and meeting the requirements of the regulation as time progresses. Assuming that most of the forgone production would be due to the application of the SIH standard, not including this element in the regulation

would leave the preferred and NRC alternatives as providing roughly equivalent levels of net benefits. On this basis, the NRC alternative would appear to have slightly lower costs to attain the same level of benefits as provided by the preferred alternative.

Including the SIH standard could result in substantially higher benefits (if it results in the preservation of unique resources), but it is also likely to have production effects. The opportunity cost associated with preserving these resources is the forgone production. These values could be quite large, but one would need to account for the probability of occurrence (*i.e.,* the probability the SIH standard would be invoked and result in the preservation of a unique resource) and for timing effects. These probability and timing effects are very difficult to evaluate.

The net benefits associated with the maximum protection alternative cannot be easily compared to the other alternatives because both the costs and benefits differ. However, the economic benefits would have to be substantially larger than those associated with the other alternatives to offset the higher estimated costs.

As stated above, it is difficult to quantify the net benefits of the alternatives. However, if the costs are relatively low (as in the preferred and NRC alternatives in the case of low forgone production which have estimated annual costs of about $15–20 million), the benefits would not have to be large to equal or exceed the costs.

Table 26 in the benefit-cost analysis, reproduced below, summarizes the estimated cost of the regulation on a per-capita and per-acre basis. Based on the population and number of households in the study area, the estimated annual cost per capita of the preferred alternative ranges from about $0.23–$2.70. Based on the estimated population residing within 5 miles of a mine, the annual costs per capita range from $5.3–$61; based on the number of households within 5 miles, the annual per household costs range from about $13–$153. Annual cost per acre for the preferred alternative, based on the estimated reduction in the number of acres disturbed could range up to about $2,500 per acre, depending on the change in acreage disturbed. On a per-capita basis, the magnitude of environmental benefits associated with the regulation could be quite small and still offset the estimated costs. Also, in some locations mining has the potential to impact unique resources. The potential environmental benefits of protecting even a small number of unique resources over time could easily offset the costs of the regulation.

Table 26. Per Capita and Per Acre Estimated Economic Costs

Category		Preferred [a]		NRC [b]		Max protection [c]	
		Compliance cost	Including forgone production	Compliance cost	Including forgone production	Compliance cost	Including forgone production
Population [d]	Pop or hh	($ per capita or $ per household)					
Est. total study area pop	57,300,000	0.23 - 0.35	up to 2.7	0.2 - 0.3	up to 0.85	0.6 - 0.9	up to 3.2
Est. no. households in study area	27,285,714	0.5 - 0.74	up to 5.6	0.42 - 0.63	up to 1.79	1.3 - 1.9	up to 6.8
Est. pop w/in 5 mi of mines	2,500,000	5.3 - 7.9	up to 61	4.6 - 6.9	up to 19.5	13.8 - 20.7	up to 74.0
Est. households w/in 5 mi. of mines	1,002,440	13.2 - 19.8	up to 153	11.4 - 17.1	up to 48.7	34.5 - 51.7	up to 184.4
Estimated change in acres disturbed due to regulation [d]							
Total reduction in acres disturbed over 10 yrs	Acres disturbed	($ per acre)					
Low estimate	100,000	930 - 1,395	up to 2,493	803 - 1,204	up to 1,320	2,227-3,640	up to 4,364
Medium estimate	300,000	310 - 465	up to 831	268 - 401	up to 440	809-1,213	up to 1,455
High estimate	500,000	186 - 279	up to 499	161 - 241	up to 264	485 - 728	up to 873

[a] Based on annual permitting/compliance costs ranging from $14 million to $20 million. Annual forgone production estimated at 20%; annual value of production reduction estimated to be $0 - 133 million.

[b] Based on annual permitting/compliance costs ranging from $12 - 18 million. Annual forgone production ranges from 0% - 5%; annual value of production reduction estimated to be $0 - 32 million.

[c] Based on annual permitting/compliance costs ranging from $38 - 57 million. Annual forgone production estimated at 20%; annual value of production reduction estimated to be $133 million.

[d] The per capita and per household costs are based on annual costs; the per acre estimates are based on total acreage disturbed over 10 years and npv costs.

BLM is placing the full benefit/cost analysis on file in the BLM Administrative Record at the Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, or you may contact BLM's Regulatory Affairs Group at 202/452–5030.

National Environmental Policy Act

These proposed regulations constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has prepared a final environmental impact statement (EIS), which will be on file and available to the public in the BLM Administrative Record at the Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, and on BLM's home page at www.blm.gov.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The purpose of the final RFA analysis is to estimate the number of entities potentially impacted, the magnitude of the impacts, summarize the significant issues raised in public comment on the proposed rule, and identify the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of the applicable statutes. The final RFA analysis also fulfills the requirements of the Small Business and Regulatory Enforcement Flexibility Act (SBREFA) analysis. SBREFA requires agencies to analyze the impact of regulatory actions on small entities; to prepare and publish an initial regulatory flexibility analysis when proposing a regulation; and a final analysis when issuing a final rule for each rule that will have a significant

economic impact on a substantial number of small entities. The Small Business Administration (SBA) has determined that the size standard for businesses engaged in mining of metals and non-metallic minerals, except fuels, is 500 employees. See 13 CFR 121.201. Thus, any business employing 500 or fewer employees is considered ''small'' for the purposes of this analysis. We believe that virtually all businesses currently engaged in mining on public lands could be considered ''small'' under the SBA 500-employee standard.

In February 1999 BLM published a proposed rule for regulating mining activities on public lands. BLM also prepared and made available for comment an initial RFA analysis. BLM published a summary of the initial RFA analysis along with the proposed rule, made the full initial RFA analysis available along with the proposed rule, and sought public comment on its findings. BLM received about 2,500 public comments on the proposed regulation and associated documents. BLM has undertaken a substantial effort to both consider and disclose the potential implications of the regulation for small entities. The final RFA analysis also summarizes the significant public comments received on the initial RFA analysis and responses to these comments.

The public comments we received enabled us to refine and revise our analysis of the potential impact of subpart 3809 on small entities. BLM has concluded that the final regulation will have a significant economic impact on a substantial number of small entities.

BLM notes that one of the primary differences between the proposed and final rule is the inclusion of the ''significant irreparable harm'' standard. In the interest of informing the public about the impacts of the rule on small entities, the implications of including this provision are summarized below and discussed in more detail in section X of the Final RFA.

You can find detailed information on the alternatives considered in the summary of the benefit/cost analysis above, the preamble, the Final EIS, and the benefit/cost analysis. The alternative selected was judged to be the best in terms of not being inconsistent with the recommendations in the NRC report, being responsive to public comments, maximizing net economic benefits, and minimizing the impacts on small entities while still achieving the desired objectives.

Comments on the Proposed Rule

This section summarizes the significant public comments received on the initial RFA analysis and responses to these comments. More detailed responses to comments are found in Appendix A to the final RFA analysis.

Many commenters asserted that the proposed regulation would substantially reduce profits in the mining industry. BLM agrees that the new regulations could reduce profits, but that the extent to which this occurs and which firms are affected depends on a variety of factors that include commodity prices, management expertise and firm capitalization, technological changes over time, location and type of activities, other Federal and non-Federal regulations, as well as any BLM regulation-driven operating and permitting cost changes. BLM also notes that evaluating profit changes is difficult in many situations where small entities are involved due the discretion these entities often have in the treatment of certain costs.

Commenters stated that BLM did not adequately consider what constituted a ''significant impact'' on a small entity. BLM considered these comments and believes its approach is reasonable. The initial RFA analysis specifically identified what BLM considered to be a ''significant impact.'' The final RFA analysis evaluates ''significance'' based on both cost and profit changes. The definition of ''significant impact'' used in this analysis is an impact that causes a 3% or more impact on estimated annual operating costs or on the ratio of the annualized compliance costs to annual gross revenues or a greater than 10% reduction in annual profits.

As with the other concepts, ''significance'' is a relative measure. The criteria used to evaluate ''significant'' are similar to that adopted by other agencies. NOAA defines a ''significant impact'' as: a regulation that is likely to result in a reduction in gross revenues by more than 5%; a regulation that increases total costs of production by more than 5%; a regulation that causes small entities to incur compliance costs that are 10% more than the compliance costs of large entities; or a regulation that causes 2% of small entities to cease business operations. See, for example, 64 FR 6869–75, Feb. 11, 1999 and 64 FR 28143–51, May 25, 1999. EPA defines ''significant'' as an impact of more than 3% on small business sales, cash flow, or profit (Small Business Administration (SBA), undated; EPA, 1997). The SBA (The Regulatory Flexibility Act: An Implementation Guide for Federal Agencies, 1998, p. 17–18) discusses the use of criteria to determine ''significance.'' SBA identifies several examples where Federal agencies have used cost-based criteria. SBA goes on to state, ''Moreover, over 60 percent of small businesses do not claim a profit and do not pay taxes; therefore, an agency would not be able to apply a profit-based criterion to these firms.'' This point is particularly relevant for exploration activities and for small miners who may not be involved in commercial scale activities. As recommended by the SBA in their comments on the proposed rule, the revised analysis also shows estimated impacts based on changes in estimated annual profits for the mine models. In commenting on a proposed BLM rule dealing with onshore oil and gas leasing operations, SBA asserted that a 10% impact on a business's profits is the threshold for determining significance (See comments submitted by SBA's Office of Advocacy on proposed rule ''Onshore Oil and Gas Leasing Operations''). SBA did not, however, state whether the 10% threshold is on an annual basis, on a net present value basis over the period of analysis, or whether it represents an average over some period. SBA also did not discuss how it arrived at its estimate of ''significant.'' BLM views the 10% threshold as a percentage that would be considered significant under any terms. Finally, the significance threshold is important in situations where determinations are made that a rule will not have a significant impact on a substantial number of small entities. In this case, as discussed above, BLM has determined that the final rule will have a significant impact.

Commenters stated that BLM did not adequately evaluate the impact of the proposed bonding requirements on small entities. BLM believes that the initial RFA analysis adequately analyzed the bonding requirements in the proposed rule. However, the final RFA analysis includes results from additional mine models that have bonding requirements that vary somewhat depending on the type of mining activity. The final rule has also adopted a number of measures that will mitigate the impact of bonding on small entities. See section IX of the final RFA analysis. Given that bonding for all mining operations is a specific NRC recommendation, BLM's ability to mitigate potential the impacts of bonding requirements on notices is limited (this of course would not preclude non-Federal entities from developing mechanisms to facilitate small entities obtaining appropriate financial guarantees). If small mining entities were not required to have financial guarantees, BLM would not be

in compliance with the direction of Congress not to be inconsistent with the NRC Report recommendations, and the objectives of the rule could not be achieved. BLM also notes that in some States bond pools are available for entities that can't otherwise obtain bonds.

Commenters stated that BLM did little to minimize the compliance burden on small entities. BLM has taken a number of steps in the final rule to minimize the impacts of the rule on small entities. The preamble to the regulation has an extensive discussion on how the rule was changed in response to comments. Section IX highlights some of the specific changes that mitigate the impact of the regulation on small entities.

Commenters stated that the proposed regulation would result in severe reductions in gold production from Alaska. BLM's analysis suggests that the final regulation is unlikely to be the major determinant of any changes in total gold production in Alaska. The regulations may, however, affect which entities produce mineral commodities, with relatively less being produced by small entities.

Commenters stated that BLM used 1992 data in the initial RFA analysis. BLM has used 1997 Census data in the Final RFA analysis, as well as the most recent BLM data available. BLM has also included additional references to the modeling assumptions used. These references are found in the Appendix E of the Final EIS and in the benefit/cost analysis.

Commenters stated that the initial RFA analysis didn't contain a discussion of significant alternatives to the proposed rule. The initial RFA analysis did contain a discussion of the alternatives considered. The final benefit/cost analysis, the final EIS, the preamble to the rule, and Section III of the final RFA contain additional discussion and analysis of the alternatives.

The Number of Potentially Affected Entities

Table 9 (reproduced below) from the final RFA analysis summarizes the universe of potentially affected small entities. Estimates are presented using both BLM and Census data. Based on BLM's data and using the SBA's definition of small mining entity, the universe of potentially affected entities would essentially be all existing notices and plans of operation and all new notices and plans. Assuming that each notice and plan of operations represents a unique small entity provides an upper bound estimate for the number of potentially affected entities. A lower bound would be the number of individual operations with plans and notices. Because all operations under subpart 3809 involve ''small'' entities, that is, operations with less than 500 employees, BLM also examined a subset of the industry, operations with fewer than 20 employees, to get a more complete understanding of the impacts of the rule.

TABLE 9.—ESTIMATED NUMBER OF SMALL ENTITIES POTENTIALLY AFFECTED BY THE REGULATION

Employment category	BLM data		Census data	
	Notices [b]	Plans [b]	Est. number of firms	Estimated percent of companies [d]
500 or fewer employees	All: 6,213 existing; an estimated 350–850 submitted annually by individual operations.	All: 900 existing; an estimated 110–190 submitted annually by individual operations. In addition, 200 existing suchtion dredgers plus 50 submitted annually in the future.	Approx. 700 [c]	15
Fewer than 20 employees [a]	About 2,604 existing; 350–850 submitted annually.	342 existing; about 40–70 of the those submitted annually. In addition, 250 existing suction dredgers plus 50 submitted annually in the future.	Approx. 520 [d]	16

[a] Notices—calculated by assuming that all notices have fewer than 20 employees, but that 50% of notices are small in terms of company assets, production, and cash flows; plans—calculated by assuming that 75% of the plans are associated with less than 20 employees and that of these, 50% have sufficient assets, production, and cash flows such as to be relatively unimpacted by the proposed rule.

[b] Annual number of notices and plans: the range represents the approx. 1999 figure (600 notices, 150 plans) plus/minus one standard deviation based on the 1996–99 average.

[c] 1997 Census data indicate that there were a total of 629 metal mining and 3,746 non-metallic mining firms. Assume that 50% of the metal mining activity and 10% of the non-metallic mineral mining occurs on public lands. This suggests that the total number of firms potentially impacted might be 315 + 375 = 690. Percentage based on total number of metal mining and non-metal mining firms.

[d] 1997 Census data indicate that there were 487 metal mining and 2,754 non-metallic mining firms with 0–19 employees. Assume that 50% of the metal mining activity and 10% of the non-metallic mineral mining occurs on public lands. This suggests that the total number of firms potentially impacted might be 244 + 275 = 519. Percentage based on total number of metal mining and non-metal mining firms with 0–19 employees.

Source: BLM; www.sbaonline.sba.gov/advo/stats.

Estimated Impacts

We developed cost models for the following types of mines: a small and medium size placer mine; an open pit mine; an industrial/strip mine; an underground mine; and a small and large exploration operation. These models were selected because they capture, in general terms, the wide range of mining activities that occur on public lands. The assumptions used in the models also were designed to represent a wide range of potential costs across the alternatives considered. Additional details on the mine cost models is included in Appendix B of the benefit/cost analysis and in Appendix E of the final EIS. Models do not include estimates for SIH which could not be easily modeled. The impacts of the SIH provision were captured through analysis of potential production declines described below.

Table 24 (reproduced below) from the final RFA analysis summarizes the estimated range of compliance/permitting cost impacts based on the mine models. These impacts vary substantially across the different types of mines modeled. Impacts on some types of entities are significant. Additional detailed information about

the mine models and assumptions used, as well as about the IMPLAN analysis, can be found in Appendix E of the Final EIS and in the benefit/cost analysis.

The IMPLAN analysis offers some indication of the distribution of the costs potentially facing small entities of the regulation across the study area. Direct annual regional economic impacts could vary widely, ranging from $0 to $900 million. However, the degree of impact would vary by State depending primarily on the dominant types of mining and/or commodities mined in each State. For example, in States with relatively little metal mining (Oregon, Washington, and Wyoming), the estimated decrease in value of production would be lower (−5% to −15% in Oregon and Wyoming; −5% to −20% in Washington) than for those States with relatively greater amounts of metal mining (−10% to −30% in Arizona, Colorado, Montana, Nevada, New Mexico, and Utah; −10% to −20% in Alaska; and −10% to −25% in California).

TABLE 25.—SUMMARY OF ESTIMATED IMPACTS FROM THE MINE MODELS [a]

Mine model	Estimated annual percentage		Comment
	Cost change	Profit reduction	
Small and medium placer	11–13	2.6–20.4	Does not include permitting cost; in worst case scenario (low gold prices-low ore grades), permit costs of $10,000–$20,000 could cause estimated profits to decline to $0.
Open pit	0–6	0–13.5	Results depend on: extent of delay—if any—in mining caused by the regulation; the magnitude of any permit cost increases; and the price of gold. The higher estimates of profit reductions reflect a 1 year delay in mining, permitting costs that increase from $1 million to $1.5 million, and a gold price of $250/ounce.
Industrial/strip	5.8–9.3	8.5–15.3	Results reflect varying increases in permitting costs; price of gypsum = $7/ton.
Underground	0–3.0	2.4–62	Results depend on: the length—if any—of delays in mining caused by the regulation; gold prices; and permitting costs. The higher estimates of profit reductions reflect a 2 year delay in mining, a gold price of $250/ounce, and permitting costs that increase from $10,000 to $100,000.
Exploration			Results depend on baseline permit costs and the extent of any increases in these costs; whether validity exam is required and who bears this cost; and whether notice is required to convert to a plan.
Medium	0–48	Not applicable	
Small	6–100+		

[a] Given that the rule has ''significant'' impacts, the impacts for each alternative are not shown. The table summerize results for models under alternatives 3 and 5. The upper end of the range of costs associated with the alternative 4 models would be higher the upper end for the alternatives 3 and 5 models.

For most types of smaller exploration and mining operations (*i.e.* less than five acres), the main components of the proposed regulations affecting mining would be new administrative requirements designed to increase resource protection. The degree to which these factors (workload, time, and cost) would increase would depend on the type of operation and the reason a plan would be required instead of a notice.

Current corporate guarantees will not be affected, but will not be allowed in the future. This will increase the cost of bonding to those operations who use corporate guarantees. This impact would be concentrated in Nevada where corporate guarantees are currently allowed and there are a number of large mining companies using them.

The performance standards under the proposed regulations are expected to have a relatively larger impact on future large operations (*i.e.* greater than five acres) than the administrative-type provisions. Of the performance standards, the requirement to avoid substantial irreparable harm (SIH) to significant resource values which cannot be effectively mitigated has the greatest potential for affecting mining activities (both large and small). In some cases, this provision could preclude operations altogether. It is expected that the substantial irreparable harm standard would preclude exploration or mining only in exceptional circumstances.

The SIH standard has the potential to impact operators who might otherwise engage in mineral exploration and/or development activities. The impacts are site specific and difficult to quantify. The magnitude of the impacts, the incidence of the costs, the potentially affected entities (and their employment size class), and the timing of the impacts are also difficult to determine. All of these factors could affect the costs. We gain some sense of the relative magnitude of the gross costs across the alternatives by comparing the IMPLAN results for alternatives 3 and 5 (for additional discussion of the IMPLAN results see the discussion above and the Final EIS). The gross direct costs associated with alternative 3 were estimated to be $305 million—$877 million; the gross direct costs associated with alternative 5 were estimated to be $22 million—$182 million. However, it should be kept in mind that these costs need to be weighted by their probability of occurrence. It is not possible to estimate this probability.

The performance standard related to pit backfilling is another provision which could affect small and large open pit operations. However, the proposed backfilling provision is similar to existing requirements in Nevada, and is thus expected to have little effect on operations in that State. Other performance standards are also expected to affect operations, although not to the same degree as pit backfilling. Standards for revegetation and protection and restoration of fish and wildlife habitat are expected to have their greatest impact on small exploration projects and small placer mining.

The IMPLAN analysis estimates that the value of mine production originating from public lands under the proposed action will decrease by 10% to 30%, or $169 million to $484 million across the study area. This level of decreased production is associated with the following decreases across the study area: 2,100 to 6,050 jobs, $305 million to $877 million in total industry output, $138 million to $396 million in total personal income (of which $76 million to $218 million is employee compensation), and $157 million to $453 million in value-added. For the study areas's total current value-added as measured by gross state product (GSP), this $157 to $453 million would represent a 2%—6% decrease in GSP-related value in the metals and nonmetallic sectors.

Most States would see decreased levels of mining on public lands, ranging from $101,000 to $302,000 thousand in Oregon to $117 million to $351 million in Nevada. Nevada's share of the loss would be 70% of the loss for the study area as a whole. However, with the exception of the substantial irreparable harm standard, Nevada's existing regulations already incorporate most of the provisions of the proposed action, so the estimated 10%—30% decline in that State's production is likely to be overstated. On the other hand, the impacts in Nevada are based only on the portion of production coming from public lands. To the extent that the affected portion coming from public lands may negatively affect a larger portion of production coming from non-BLM lands, the impacts to Nevada may be understated; conversely, if it leads to more production from non-BLM lands, the impacts may be overstated.

A 10%–30% decline overall in mineral production from current levels would result from a variety of responses by the mining industry. Some potential future operations would now be considered uneconomic and therefore would not be developed. Future operations might have shorter mine lives. Or current operations that might expand under these new regulations might close sooner than they otherwise would, holding constant other factors (*e.g.* technology, commodity prices, and political and economic conditions for mining in other countries). A lower level of exploration due to more restrictions would also tend to decrease opportunities for future development, so some deposits would not even be found.

This analysis is based on BLM's best estimates of potential overall reductions in the level of production of mineral commodities and estimates of increased costs borne by firms. But aggregate levels of output might not change, given more efficient mining and reclamation techniques, a possible shift in production to non-Federal lands, or other changes in market conditions. Total quantity produced could remain unchanged. Alternatively, the regulatory cost burden imposed by the proposed regulations could be overwhelmed by other market forces—such as commodity prices—that might play a relatively more important role in miners' production decisions.

Further, the regulations would not be implemented in a static environment. Both miners and BLM would probably become more efficient in meeting the requirements of the regulations over time. In the long run, the regulations might even create incentives for firms to seek new lower cost approaches to mining and reclamation. This is a reasonable assumption given the inclination most firms have to constantly seek least-cost technology and business practices. This assumption implies that the costs of the regulations could decline over time.

Rural communities might or might not be affected, depending on a variety of factors: the current local level of activity; the degree of dependency or ''specialization'' a community may have in mining subject to proposed regulations; and the size of the community, its isolation, and other factors. Except possibly in Nevada, small rural communities in most States would lose only a small number of jobs and output relative to overall employment and output levels. And some or all of this decrease might be due to forgone future mining rather than current operations shutting down, or closing earlier than originally planned due to a reduction in economic reserves. In other words, there might be no impact to current mining in these communities, but new operations in the future might not be developed.

In Nevada, impacts to rural communities might be greater than in other States due to the greater estimated decrease in activity (1,050 to 3,200 jobs and $181 to 543 million in industry output). But the impact to any particular community in the State would depend on whether it results from existing mines closing prematurely or potential future operations not being developed. Any impacts at the community level would not likely occur in the short term while the proposed regulations are being implemented because mines with existing permits would not be affected unless they submit amendments to their plans of operations. But, as previously stated, Nevada's existing regulations already incorporate most of the provisions of the proposed action, so the estimated 10%–30% decline in production might be overstated.

The conclusion of this analysis is that the regulation would affect a substantial number of small entities in significant manner. The magnitude of the impacts will vary considerably depending on the nature and location of the activities, site specific factors, the particular financial and managerial characteristics of the operations, the presence (and content) of any agreements with States, and when the operation would be subject, if at all, to the new regulations. Given these uncertainties, it is not possible to estimate specifically which entities would be affected, the magnitude of the impacts, or the average impacts on the potentially affected entities. The modeling undertaken suggests that the largest cost impacts would be felt by exploration activities; however, all of the other modeled mines also have the potential to experience significant profit reductions.

Description of Projected Record Keeping and Other Compliance Requirements

Final §§ 3809.301 and 3809.401 identify the specific information that must be included in a notice or a plan of operations. The level of detail for specific notices and plans of operations will vary depending upon the type of operation, the local environmental setting, and the issues of concern. Often the information provided for an analogous State requirement would be adequate. The general types of skills that might be required includes mining engineering, geology, hydrology, and other natural resource specialties. Not all notices and plans would require these skills. BLM will assist operators in preparing notices or plans when necessary.

In response to comments stating that plan content requirements were too detailed or were too open-ended, BLM has revised the regulations to specify that the level of detail must be sufficient for BLM to determine that the plan of operations would prevent unnecessary or undue degradation. BLM recognizes that the level of detail required will be determined by the needs of the individual review process.

Minimizing the Impacts on Small Entities

This rule is a major rule under SBREFA (5 U.S.C. 804(2)). This rule may have an annual effect on the economy of $100 million or more. See the discussion under E.O. 12866 above. In accordance with SBREFA, BLM has taken steps to minimize the compliance

burden on small miners. During the scoping process for the development of the proposed regulation, BLM actively sought comments from small miners. BLM's activities associated with soliciting comments from interested parties is described in more detail in this final rule preamble.

The following components of the regulation have been explicitly developed to mitigate the potential impacts on small entities. This preamble contains considerable additional detail on changes to the regulation that mitigate the impacts on small entities. Examples include:

• *Plan content and information requirements:* BLM has revised proposed § 3809.401 to specify that the level of detail must be sufficient for BLM to determine that the plan of operations would prevent unnecessary or undue degradation. BLM has also deleted ''fully'' from the paragraph and instead will have the level of detail be driven by the needs of the individual review process. The required level of detail will vary greatly by both type of activity proposed and environmental resources in the project area. On large EIS-level projects scoping may actually start before a plan of operations is submitted through discussion with BLM staff on the anticipated issues and level of details expected. A certain level of detail is needed to begin public scoping. In the initial plan submission it is up to the operator to determine what level of detail to include in the plan. BLM will then advise the operator if more detail is required, concurrent with conducting the scoping under NEPA. BLM has also revised the final regulations to eliminate the ''detailed'' requirement from descriptions of operations and reclamation in order to let the issues of a specific plan of operations determine the appropriate level of detail.

• *Phase in for financial guarantees:* Final § 3809.503 provides that miners do not need to provide a financial guarantee if their existing notice is not changed. Final § 3809.505 provides that miners have 180 days to provide financial guarantee for plans.

• The final regulation does not include contingency bonding because of the uncertainty it might create.

• The final regulation does not prevent BLM field managers from implementing a financial guarantee program on a standard per acre basis as long as the operator posts a financial guarantee covering the full cost of reclamation that is acceptable to BLM.

• *Existing terms and conditions:* Operators can continue to operate under the terms and conditions for existing plans.

• *Pending plans:* If a plan is pending at time regulations are issued, then the pre-existing plan content and performance standards apply.

• *Modifications/extensions:* No changes are required for notices that are not modified or extended.

• *Economically and technically feasible:* The term ''economically and technically feasible'' has been inserted in a number of places in the regulation. For example, requirements to return disturbed wetlands and riparian areas to properly functioning conditions are only required when economically and technically feasible (final § 3809.415); the same ''economically and technically feasible'' standard applies to minimizing surface disturbance associated with roads and structures.

• *Pit backfilling:* Pit backfilling is based on site-specific factors, taking into account ''economic, environmental, and safety concerns'' (section 3809.415). We have removed the proposed presumption from the final rule.

• *Demonstration that implementation is not practical:* Additional site- and operation-specific flexibility in the context of plan modifications is included by providing operators an opportunity to demonstrate to BLM that application of the regulation is ''not practical'' (final § 4809.433).

• *Corporate guarantees:* Existing corporate guarantees can continue to be used (final § 3809.571).

• *Minimize the potential for delays:* The final rule requires to review a notice application within 15 calendar days.

• *Performance standards:* Proposed § 3809.420 was modified in response to comments mainly by providing added flexibility to operators. Requirements to prevent the introduction of noxious weeds, and prevent erosion, siltation and air pollution were replaced with a requirement to minimize introduction of noxious weeds and minimize erosion, siltation, and air pollution. This was done in response to public comments that pointed out an operator cannot always prevent impacts from occurring.

• *Existing State agreements:* Final § 3809.204 provides that portions of existing Federal/State agreements or MOAS that are inconsistent with this final rule can remain in effect for up to three years. For these situations, the implementation of the rule could be delayed for up to three years.

• *State administration:* When requested, BLM must give states the lead where the State program is at least as stringent as BLM requirements. This will allow the surface management program to be tailored to State-specific conditions.

• *State Director appeal:* The regulations provide that individuals who believe a BLM decision adversely affects their interests can appeal to BLM State Directors.

• *Joint and several liability:* BLM revised the final rule (§ 3809.116) to clarify the joint and several liability provisions. The final rule provides that mining claimants are responsible only for obligations arising from activities or conditions on their mining claims or millsites.

• *ESA:* In the final rule, BLM clarified that the reference to ''threatened or endangered species or their critical habitat'' in the proposed rule means Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat.

• *Waiver of penalties:* BLM is allowed to waive and consider ability to pay in civil penalty situations (final § 3809.702).

• *Plain language:* The regulation uses clear and simple language which allows the rule to be easily understood by small entities that do not have access to legal staff or extensive legal experience.

BLM recognized that the requirement to provide a portion of the financial guarantee in a form that would be ''immediately redeemable'' by BLM could impose a cost on operators, particularly small operators. Thus, BLM has deleted this requirement from the final rule.

BLM also has existing procedures in place to mitigate the requirements of the regulation on small entities. These procedures have been used in locations such as the California Desert Conservation Area (CDCA), part of the California Desert District (CDD), where the FLPMA requires stricter permitting requirements. The CDCA area provides an indication of how the regulation will be implemented BLM-wide. The goal in the CDD is to mitigate the burden of the permitting requirements on small entities.

The CDD covers about 12.5 million acres, of which about 11 million are within the CDCA. About 40% of the acreage within the CDCA is classified such that all mineral activity above casual use requires a plan of operation. Recently, CDD averaged about 40–50 plans per year. For a plan that would be a notice in other locations, the information that the operator must submit is not as extensive as that required for a large-scale mining operation. The compliance burdens on small entities are minimized because BLM conducted a programmatic assessment to address most formal ESA section 7 consultation requirements.

Another example of how BLM is likely to undertake program-wide measures to implement the regulation is from Arizona, where BLM prepared a programmatic environmental assessment for processing notices where there are use and occupancy issues (See 43 CFR subpart 3715). Similar programmatic efforts are likely to be undertaken for subpart 3809 in selected areas. This will reduce the burden on small entities. The extent to which this occurs will depend on the nature and extent of the specific activities. One possible case is in locations where known and predictable levels of suction dredging occur.

The final regulation provides substantial opportunities to mitigate the impacts of the regulation on small entities. The elements of the regulation that mitigate the impacts on small entities were identified and discussed above. As required by the Regulatory Flexibility Act, BLM will publish a small entity compliance guide and make the guide readily available.

For additional information, see the final RFA analysis on file in the BLM Administrative Record at the Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, or contact BLM's Regulatory Affairs Group at 202/452–5030.

Unfunded Mandates Reform Act

These regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these proposed regulations have a significant or unique effect on State, local, or tribal governments or the private sector.

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The final rule does not have significant takings implications. It doesn't affect property rights or interests in property, such as mining claims; it governs how an individual or corporation exercises those rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

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

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

If BLM complies by consulting, E.O. 13132 requires BLM to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement. The summary impact statement must include a description of the extent of BLM's prior consultation with State and local officials, a summary of the nature of their concerns and BLM's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when BLM transmits a draft final rule with federalism implications to OMB for review pursuant to E. O. 12866, BLM must include a certification from the agency's Federalism Official stating that BLM has met the requirements of E. O. 13132 in a meaningful and timely manner.

This final rule does have federalism implications in that in certain circumstances it may preempt State law. It 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. The final rule will provide States greater opportunities to administer the mining regulatory program on public lands. The following paragraphs contain a description of the extent of BLM's prior consultation with State and local officials, a summary of the nature of their concerns and BLM's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met.

Extent of Consultation

In the development of this final rule, BLM engaged in a comprehensive consultation process with the States. BLM recognizes that the States are its primary partners in regulating mining activities on public lands. Throughout the process, BLM solicited the States' views, both collectively and individually, on how best to avoid duplication and encourage cooperation. BLM met with the representatives of State agencies under the auspices of the Western Governors Association (WGA) in April 1997, March 1998, September 1998, and January 2000. We also posted two successive drafts of regulatory provisions on the Internet for public information purposes in February and August 1998. We received and considered many comments from a variety of interested parties, including States, as a result of both the WGA meetings and the Internet postings.

In addition to the meetings sponsored by the Western Governors Association, BLM conducted numerous meetings with representatives of individual States. These meetings typically involved BLM State Directors or their staff members briefing representatives of State legislatures and State agencies. As an example of this activity, we are including the following list of meetings conducted in Nevada, the major hardrock mining State:

March 10, 1999
- BLM public briefing for Nevada and California agencies and State mining associations

March 26, 1999
- BLM public briefing for Nevada Department of Conservation and Natural Resources, Advisory Board on Natural Resources

September 9, 1999
- Public briefing for Nevada Legislative Committee on Public Lands

September 13, 1999
- Public briefing for Nevada State Land-Use Planning Advisory Council meeting

October 1, 1999
- Public briefing for Nevada State Land-Use Planning Advisory Council meeting

January 26, 2000
- Public briefing for Nevada Legislative Committee on Public Lands.

Nature of State Concerns and BLM's Response to the Concerns

During the three and one-half years that we have been developing this final rule and throughout the consultation process we have conducted with the

States, we have heard many concerns expressed, both of a general and a specific nature. One general concern expressed by the States in the early stages of our consultation is that BLM must demonstrate a need for any regulatory changes, and in this case, had not demonstrated the need for the 3809 rulemaking. BLM agrees that, in general, a regulatory change should be based on an effort to address a real-world problem. BLM doesn't enter into the lengthy and expensive rulemaking process without sufficient reason. In this case, we responded to the States' concern about the need for the rulemaking by setting forth in detail our reasons for undertaking this rulemaking in the proposed rule preamble. In pertinent part, we said:

''Both the authority and the need exist for this rulemaking. This rulemaking is based upon BLM's non-delegable and independent responsibility under FLPMA to manage the public lands to prevent unnecessary or undue degradation of the public lands, and a recognition that BLM's current rules may not be adequate to assure this result. In enacting FLPMA, Congress intended that the Secretary of the Interior determine what constitutes unnecessary or undue degradation and not that the States would do so on a State-by-State basis. Sections 302(b), 303(a), and 310 of FLPMA reflect this responsibility. This rulemaking, therefore, reflects the Secretary's judgment of the regulations required to prevent unnecessary or undue degradation.

''BLM recognizes that many of the States have upgraded their regulation of locatable minerals mining since 1980. It is clear, however, the Federal rules need upgrading, regardless of State law. Areas where the existing rules require upgrading include financial guarantees (to require financial guarantees for all operations greater than casual use, thereby ensuring the availability of resources for the completion of reclamation); enforcement (to implement section 302(c) of FLPMA and provide administrative enforcement tools and penalties); threshold for notice operations (to require plans of operations for operations more likely to pollute the land and those in sensitive areas); withdrawn areas (to require validity exams before allowing plans of operations to be approved in such areas); casual use (to clarify which activities do or do not constitute casual use); performance standards and the definition of unnecessary or undue degradation (to establish objective standards to reflect current mining technology); and others. As mentioned earlier in this preamble, many of these shortcomings have been pointed out since 1986 in a series of Congressional hearings, General Accounting Office reports, and Departmental Inspector General reports.''

64 FR 6422, 6424, Feb. 9, 1999. After we published the proposed rule, the NRC Report bolstered our view that regulatory changes are necessary by recommending specific actions to address regulatory ''gaps'' (pp. 7–9). A recent communication from the Western Governors Association confirms that they have changed their original view that there is no need for any regulatory changes. A letter to Secretary of the Interior Babbitt, dated February 23, 2000, and signed by 10 Western Governors, states:

''The NRC's report did identify a few regulatory gaps in the current system. We suggest BLM refocus its efforts on addressing those gaps. We recommend that the BLM coordinate with the states to identify any gaps, which may be different for each state, and develop solutions that are state specific. Closing the gaps in each state could involve a combination of policy and rule development at the state and/or federal level.''

A related general concern expressed by the States in the course of the consultation process is that revising BLM's existing regulations would cause duplication of existing State programs. BLM, too, wants to avoid duplication and has carefully designed this final rule to achieve that purpose. The Secretary's January 6, 1997, memorandum, which re-initiated this rulemaking, specifically directed BLM to carefully address coordination with State regulatory programs to prevent unnecessary or undue degradation while minimizing duplication and promoting cooperation among regulators. Following the Secretary's directive, we have designed a set of regulations under which BLM and a State can have an agreement to divide program responsibilities (final § 3809.200(a)) or an agreement under which BLM defers to State administration of some or all of the requirements of this subpart (final § 3809.200(b)). Under the previous rules, BLM only had the authority for the former agreement (previous § 3809.3–1(c)). Thus, in our view, we have created under this final rule greater opportunities for the States to assume control over the surface management program, subject only to BLM oversight or, in the case of approving plans of operations, BLM concurrence.

Another State concern expressed during the consultation process was whether BLM would provide funding for States who elected to operate the regulatory program under a § 3809.200(b) agreement. Some State representatives felt that BLM should turn over to the State a portion of BLM's budget along with the program management responsibility under a § 3809.200(b) agreement. BLM is sensitive to the funding issue and the impact that BLM's deferral to a State of all or part of a program could have on State-level resources. At the same time, we recognize and have explained to the States that BLM does not have the authority to provide funding to States under a § 3809.200(b) agreement. Only Congress can do that.

Early in the consultation process, before the 3809 task force had developed a written proposal, we met with State representatives under the auspices of the Western Governors Association to discuss at a conceptual level the areas the rulemaking should address. At that meeting, which took place in April 1997, the States expressed views on a number of specific issues. For example, several States shared the view that the rulemaking should avoid prescriptive national reclamation standards. The States believe that the regulations have to take into account the differences between the types of minerals sought, the types of mines, climate, topography, and the nature of various mineral processing activities. There should be no one-size-fits-all design or operating blueprint required by the regulations because it could never take into account the inherent variation of mining operations across the West. Other views expressed by the States include the following:

- A regulatory approach that requires best available control technology (BACT) is not effective since it stifles innovative approaches and doesn't take into account differences in geology and climate.
- BLM should not duplicate or supersede Federally delegated or State-legislated environmental authority.
- Specified time frames for BLM to process notices, plans of operations, and other required documents are an important component of regulatory processes.
- Bonding is an integral part of the regulatory and reclamation process.
- BLM should continue to focus its performance standards on outcomes on the ground.
- BLM should examine implementation of existing tools, recognize legitimacy of different approaches, examine claims carefully and avoid extreme or out-of-date examples.
- The revised regulations should focus on interagency and intergovernmental cooperation.

BLM took these views into account in developing our first draft of proposed regulations. We posted this draft on the Internet in February 1998 for public information. In response to the States' concerns, this first draft retained the time frames for BLM to process notices and plans of operations, reinstated the remanded financial guarantee (bonding)

requirement for notices and plans of operations, included an expanded series of outcome-based performance standards, and, as discussed above, added the opportunity for BLM to defer to States to administer the surface management program.

Shortly after releasing our first draft, we again met with State representatives under the auspices of the Western Governors Association to discuss any concerns related to the first draft. This meeting took place in March 1998. Some of the general concerns expressed by the State representatives at this meeting included whether the regulations would preempt more stringent State law; would BLM pay for States to assume some or all of program responsibilities; that the regulations should specify that BLM would ''concur with'' State approval of plans not ''approve'' them; exactly how would a State receive BLM's approval to administer all or part of the surface management program in a State; the regulations should base inspection frequency on risk associated with each operation; and the definition of ''operator'' may extend liability for a site to stockholders in a corporation, an action that may supersede principles of corporate law. There were also a number of specific comments on the February draft.

Following this meeting, the 3809 task force made changes to the working draft of the regulations and posted a revised version on the Internet in August 1988 for public information. In response to the general comments, we clarified that there would be no conflict between the 3809 regulations and State law or regulations if the State law or regulations require a higher standard of protection for public lands than 3809. We changed the draft to require only that BLM ''concur'' with a State approval of a plan of operations, deleting the requirement that BLM ''approve'' the State approval. We added provisions specifying the process that BLM would follow in approving a State request to administer all or part of the surface management program in a State. We also changed the proposed definition of ''operator'' to avoid inadvertently assigning liability to stockholders by requiring material participation in the management, direction, or conduct of a mining operation as a prerequisite for liability.

After the 3809 task force posted a second revised draft on the Internet in August 1998, we met with State representatives in Denver in September. The purpose of the meeting was to get the States' reaction to the changes we had made in response to their comments from the March meeting. The questions and concerns raised by the State representatives at the meeting include the following:

- Would third parties be able to appeal or sue over a BLM State Director decision to defer to State administration of a program?
- One year may not be enough time to complete the review of existing Federal/State memoranda of understanding.
- BLM should look for a pattern of performance in evaluating State operation of a program, as opposed to focusing on individual actions.
- Concurrence by BLM on plans may be interpreted differently by different BLM offices.
- The definition of ''minimize,'' when equated to prevention implies that disturbance can be prevented. When BLM means ''prevent,'' it should say ''prevent,'' not ''minimize.''
- Will existing operations have to comply with bond release provisions?
- Citizens accompanying inspectors will cause problems with joint State/BLM inspections.
- Could an operator be subject to both State and Federal enforcement for a violation?
- BLM shouldn't require a detailed monitoring plan at the time of plan submittal. The monitoring plan should be conceptual at that point.
- BLM shouldn't require public comment on bond amount.
- BLM shouldn't require operators to comply with standards that are the responsibility of other agencies to enforce.

The task force took the comments from this meeting into account in developing the proposed rule that was published on February 9, 1999 (64 FR 6422). Some of the changes we made to the proposed rule as a result of this meeting include asking in the proposed rule preamble for views on whether one year would be enough time to review existing Federal/State agreements for consistency with the 3809 regulations. In the final rule, we are adopting provisions that allow up to 3 years for the review to be completed. BLM responded to another State comment by clarifying in the preamble to the proposed rule that BLM would not look at isolated incidents in determining that a State is not in compliance with a Federal/State agreement. BLM would consider patterns, trends, and programmatic issues more important indicators of State performance. We also changed the proposed definition of ''minimize'' to accommodate the States' concern about the use of the word ''prevent.'' In response to the States' concern about monitoring plans, we explained in the proposed rule preamble that we recognize that in the initial phase of developing a mining operation, complete and detailed designs and plans are not always available.

After we published the proposed rule and the 120-day comment period had closed, Congress directed that BLM pay for a NRC study of the existing regulations. Congress subsequently directed BLM to reopen the comment period for 120 days to give the public an opportunity to comment on the proposed rule in light of the NRC Report. As described earlier in this preamble, BLM published the reopening notice on October 26, 1999 (64 FR 57613). The comment period extended from October 26, 1999 to February 23, 2000. During the comment period, the 3809 task force again met with State representatives under the auspices of the Western Governors' Association. The purpose of the meeting was primarily to get comments on the proposed rule in light of the NRC Report. The meeting took place in Denver in January 2000. The thrust of the States' comments at that meeting was agreement with the conclusions of the NRC Report—that the current regulatory system is working well, and there is no need for sweeping changes. Also, BLM should focus its rulemaking efforts strictly on addressing NRC-identified gaps. And, BLM and the Forest Service should pursue non-regulatory approaches identified in the NRC Report.

Based on the sequence of events summarized above, BLM believes that we have fully complied with the requirement of the Executive Order to consult with State and local officials early in the process of developing the proposed regulation. BLM also believes that we have addressed the concerns expressed by State representatives to the extent possible given the Secretary of the Interior's independent and non-delegable responsibility to determine what constitutes unnecessary or undue degradation of the public lands.

Paperwork Reduction Act

This final rule requires collection of information from 10 or more persons. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), BLM submitted an information collection approval package (OMB Form 83–I) to the Office of Management and Budget (OMB) for review when we published the proposed rule in February 1999. We received numerous comments on the approval package and, as a result, re-examined the information collection

burden that these rules would impose. We discussed this matter in our October 26, 1999, supplemental proposed rule. See 64 FR 57618–9. We have now prepared a revised OMB Form 83–I and submitted it to OMB for review. Our responses to the comments we received on the original approval package are part of the revised package, and we have concluded that it is unnecessary for BLM to seek further public comment at this time. OMB has approved the information collections contained in this final rule and has assigned them OMB Clearance Number 1004–0194.

BLM intends to collect information under this final rule to ensure that persons conducting exploration or mining activities on public land conduct only necessary and timely surface-disturbing activities, determine that proposed exploration or mining will meet the performance standards of subpart 3809, determine appropriate mitigation and reclamation measures for the site, ensure compliance with environmental laws, and comply with NEPA, the Endangered Species Act, and section 106 of the National Historic Preservation Act. A response is mandatory and required to obtain the benefit of conducting exploration or mining activities on public land. BLM estimates the total annual burden for subpart 3809 is 306,536 hours.

Authors

The principal authors of this final rule are the members of the Departmental 3809 Task Force, chaired by Robert M. Anderson; Deputy Assistant Director, Minerals, Realty, and Resource Protection; Bureau of Land Management; (202) 208–4201.

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians-lands, Public lands, Public lands-classification, Public lands-mineral resources, Public lands-withdrawal, Seashores.

43 CFR Part 2200

Administrative practice and procedure, Antitrust, Coal, National forests, Public lands.

43 CFR Part 2710

Administrative practice and procedure, Public lands-mineral resources, Public lands-sale.

43 CFR Part 2740

Intergovernmental relations, Public lands-sale, Recreation and recreation areas, Reporting and recordkeeping requirements.

43 CFR Part 3800

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Land Management Bureau, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 9260

Continental shelf, Forests and forest products, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, wildlife.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

Accordingly, BLM is amending 43 CFR parts 2090, 2200, 2710, 2740, 3800 and 9260 as set forth below:

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 continues to read as follows:

Authority: 16 U.S.C. 3124; 30 U.S.C. 189; and 43 U.S.C. 322, 641, 1201, 1624, and 1740.

Subpart 2091—Segregation and Opening of Lands

§ 2091.2–2 [Amended]

2. In § 2091.2–2, remove and reserve paragraph (b).

§ 2091.3–2 [Amended]

3. In § 2091.3–2, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

PART 2200—EXCHANGES: GENERAL PROCEDURES

4. The authority citation for part 2200 continues to read as follows:

Authority: 43 U.S.C. 1716 and 1740.

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1–2 [Amended]

5. In § 2201.1–2, remove paragraph (d) and redesignate paragraph (e) as paragraph (d).

PART 2710—SALES: FEDERAL LAND POLICY AND MANAGEMENT ACT

6. The authority citation for part 2710 continues to read as follows:

Authority: 43 U.S.C. 1713 and 1740.

Subpart 2711—Sales: Procedures

§ 2711.5–1 [Removed]

7. Remove § 2711.5–1.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

8. The authority citation for part 2740 continues to read as follows:

Authority: 43 U.S.C. 869 *et seq.*, 43 U.S.C. 1701 *et seq.*, and 31 U.S.C. 9701.

Subpart 2741—Recreation and Public Purposes Act: Requirements

§ 2741.7 [Amended]

9. In § 2741.7, remove paragraph (d).

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

10. BLM is amending part 3800 by revising subpart 3809 to read as follows:

Subpart 3809—Surface Management

Sec.

General Information

Federal/State Agreements

Operations Conducted Under Notices

Subpart 3809—Surface Management

Authority: 16 U.S.C. 1280; 30 U.S.C. 22; 30 U.S.C. 612; 43 U.S.C. 1201; and 43 U.S.C. 1732, 1733, 1740, 1781, and 1782.

General Information

§ 3809.1 What are the purposes of this subpart?

The purposes of this subpart are to:

(a) Prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws. Anyone intending to develop mineral resources on the public lands must prevent unnecessary or undue degradation of the land and reclaim disturbed areas. This subpart establishes procedures and standards to ensure that operators and mining claimants meet this responsibility; and

(b) Provide for maximum possible coordination with appropriate State agencies to avoid duplication and to ensure that operators prevent unnecessary or undue degradation of public lands.

§ 3809.2 What is the scope of this subpart?

(a) This subpart applies to all operations authorized by the mining laws on public lands where the mineral interest is reserved to the United States, including Stock Raising Homestead

lands as provided in § 3809.31(c). When public lands are sold or exchanged under 43 U.S.C. 682(b) (Small Tracts Act), 43 U.S.C. 869 (Recreation and Public Purposes Act), 43 U.S.C. 1713 (sales) or 43 U.S.C. 1716 (exchanges), minerals reserved to the United States continue to be removed from the operation of the mining laws unless a subsequent land-use planning decision expressly restores the land to mineral entry, and BLM publishes a notice to inform the public.

(b) This subpart does not apply to lands in the National Park System, National Forest System, and the National Wildlife Refuge System; acquired lands; or lands administered by BLM that are under wilderness review, which are subject to subpart 3802 of this part.

(c) This subpart applies to all patents issued after October 21, 1976 for mining claims in the California Desert Conservation Area, except for any patent for which a right to the patent vested before that date.

(d) This subpart does not apply to private land except as provided in paragraphs (a) and (c) of this section. For purposes of analysis under the National Environmental Policy Act of 1969, BLM may collect information about private land that is near to, or may be affected by, operations authorized under this subpart.

(e) This subpart applies to operations that involve locatable minerals, including metallic minerals; some industrial minerals, such as gypsum; and a number of other non-metallic minerals that have a unique property which gives the deposit a distinct and special value. This subpart does not apply to leasable and salable minerals. Leasable minerals, such as coal, phosphate, sodium, and potassium; and salable minerals, such as common varieties of sand, gravel, stone, and pumice, are not subject to location under the mining laws. Parts 3400, 3500 and 3600 of this title govern mining operations for leasable and salable minerals.

§ 3809.3 What rules must I follow if State law conflicts with this subpart?

If State laws or regulations conflict with this subpart regarding operations on public lands, you must follow the requirements of this subpart. However, there is no conflict if the State law or regulation requires a higher standard of protection for public lands than this subpart.

§ 3809.5 How does BLM define certain terms used in this subpart?

As used in this subpart, the term:

Casual use means activities ordinarily resulting in no or negligible disturbance of the public lands or resources. For example—

(1) Casual use generally includes the collection of geochemical, rock, soil, or mineral specimens using hand tools; hand panning; or non-motorized sluicing. It may include use of small portable suction dredges. It also generally includes use of metal detectors, gold spears and other battery-operated devices for sensing the presence of minerals, and hand and battery-operated drywashers. Operators may use motorized vehicles for casual use activities provided the use is consistent with the regulations governing such use (part 8340 of this title), off-road vehicle use designations contained in BLM land-use plans, and the terms of temporary closures ordered by BLM.

(2) Casual use does not include use of mechanized earth-moving equipment, truck-mounted drilling equipment, motorized vehicles in areas when designated as closed to ''off-road vehicles'' as defined in § 8340.0–5 of this title, chemicals, or explosives. It also does not include ''occupancy'' as defined in § 3715.0–5 of this title or operations in areas where the cumulative effects of the activities result in more than negligible disturbance.

Exploration means creating surface disturbance greater than casual use that includes sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present. Exploration does not include activities where material is extracted for commercial use or sale.

Minimize means to reduce the adverse impact of an operation to the lowest practical level. During review of operations, BLM may determine that it is practical to avoid or eliminate particular impacts.

Mining claim means any unpatented mining claim, millsite, or tunnel site located under the mining laws. The term also applies to those mining claims and millsites located in the California Desert Conservation Area that were patented after the enactment of the Federal Land Policy and Management Act of October 21, 1976. Mining ''claimant'' is defined in § 3833.0–5 of this title.

Mining laws means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); as well as all laws supplementing and amending those laws, including the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); the Saline Placer Act of January 31, 1901 (31 Stat. 745); the Surface Resources Act of 1955 (30 U.S.C. 611–614); and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Mitigation, as defined in 40 CFR 1508.20, may include one or more of the following:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and

(5) Compensating for the impact by replacing, or providing substitute, resources or environments.

Operations means all functions, work, facilities, and activities on public lands in connection with prospecting, exploration, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws; reclamation of disturbed areas; and all other reasonably incident uses, whether on a mining claim or not, including the construction of roads, transmission lines, pipelines, and other means of access across public lands for support facilities.

Operator means any person who manages, directs, or conducts operations at a project area under this subpart, including a parent entity or an affiliate who materially participates in such management, direction, or conduct. An operator on a particular mining claim may also be the mining claimant.

Person means any individual, firm, corporation, association, partnership, trust, consortium, joint venture, or any other entity conducting operations on public lands.

Project area means the area of land upon which the operator conducts operations, including the area required for construction or maintenance of roads, transmission lines, pipelines, or other means of access by the operator.

Public lands, as defined in 43 U.S.C. 1702, means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the BLM, without regard to how the United States acquired ownership, except—

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

Reclamation means taking measures required by this subpart following disturbance of public lands caused by operations to meet applicable performance standards and achieve conditions required by BLM at the conclusion of operations. For a definition of ''reclamation'' applicable to operations conducted under the mining laws on Stock Raising Homestead Act lands, see part 3810, subpart 3814 of this title. Components of reclamation include, where applicable:

(1) Isolation, control, or removal of acid-forming, toxic, or deleterious substances;

(2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;

(3) Rehabilitation of fisheries or wildlife habitat;

(4) Placement of growth medium and establishment of self-sustaining revegetation;

(5) Removal or stabilization of buildings, structures, or other support facilities;

(6) Plugging of drill holes and closure of underground workings; and

(7) Providing for post-mining monitoring, maintenance, or treatment.

Riparian area is a form of wetland transition between permanently saturated wetlands and upland areas. These areas exhibit vegetation or physical characteristics reflective of permanent surface or subsurface water influence. Typical riparian areas include lands along, adjacent to, or contiguous with perennially and intermittently flowing rivers and streams, glacial potholes, and the shores of lakes and reservoirs with stable water levels. Excluded are areas such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil.

Tribe means, and *Tribal* refers to, a Federally recognized Indian tribe.

Unnecessary or undue degradation means conditions, activities, or practices that:

(1) Fail to comply with one or more of the following: The performance standards in § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and State laws related to environmental protection and protection of cultural resources;

(2) Are not ''reasonably incident'' to prospecting, mining, or processing operations as defined in § 3715.0–5 of this title;

(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas; or

(4) Occur on mining claims or millsites located after October 21, 1976 (or on unclaimed lands) and result in substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated.

§ 3809.10 How does BLM classify operations?

BLM classifies operations as—

(a) Casual use, for which an operator need not notify BLM. (You must reclaim any casual-use disturbance that you create. If your operations do not qualify as casual use, you must submit a notice or plan of operations, whichever is applicable. See §§ 3809.11 and 3809.21.);

(b) Notice-level operations, for which an operator must submit a notice (except for certain suction-dredging operations covered by § 3809.31(b)); and

(c) Plan-level operations, for which an operator must submit a plan of operations and obtain BLM's approval.

§ 3809.11 When do I have to submit a plan of operations?

(a) You must submit a plan of operations and obtain BLM's approval before beginning operations greater than casual use, except as described in § 3809.21. Also see §§ 3809.31 and 3809.400 through 3809.434.

(b) You must submit a plan of operations for any bulk sampling in which you will remove 1,000 tons or more of presumed ore for testing.

(c) You must submit a plan of operations for any operations causing surface disturbance greater than casual use in the following special status areas where § 3809.21 does not apply:

(1) Lands in the California Desert Conservation Area (CDCA) designated by the CDCA plan as ''controlled'' or ''limited'' use areas;

(2) Areas in the National Wild and Scenic Rivers System, and areas designated for potential addition to the system;

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by BLM;

(5) Areas designated as ''closed'' to off-road vehicle use, as defined in § 8340.0–5 of this title;

(6) Any lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat, unless BLM allows for other action under a formal land-use plan or threatened or endangered species recovery plan; and

(7) National Monuments and National Conservation Areas administered by BLM.

§ 3809.21 When do I have to submit a notice?

(a) You must submit a complete notice of your operations 15 calendar days before you commence exploration causing surface disturbance of 5 acres or less of public lands on which reclamation has not been completed. See § 3809.301 for information on what you must include in your notice.

(b) You must not segment a project area by filing a series of notices for the purpose of avoiding filing a plan of operations. See §§ 3809.300 through 3809.336 for regulations applicable to notice-level operations.

§ 3809.31 Are there any special situations that affect what submittals I must make before I conduct operations?

(a) Where the cumulative effects of casual use by individuals or groups have resulted in, or are reasonably expected to result in, more than negligible disturbance, the State Director may establish specific areas as he/she deems necessary where any individual or group intending to conduct activities under the mining laws must contact BLM 15 calendar days before beginning activities to determine whether the individual or group must submit a notice or plan of operations. (See § 3809.300 through 3809.336 and § 3809.400 through 3809.434.) BLM will notify the public via publication in the **Federal Register** of the boundaries of such specific areas, as well as through posting in each local BLM office having jurisdiction over the lands.

(b) *Suction dredges.* (1) If your operations involve the use of a suction dredge, the State requires an authorization for its use, and BLM and the State have an agreement under § 3809.200 addressing suction dredging, then you need not submit to BLM a notice or plan of operations, unless otherwise provided in the agreement between BLM and the State.

(2) For all uses of a suction dredge not covered by paragraph (b)(1) of this section, you must contact BLM before beginning such use to determine whether you need to submit a notice or a plan to BLM, or whether your activities constitute casual use. If your proposed suction dredging is located

within any lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat, regardless of the level of disturbance, you must not begin operations until BLM completes consultation the Endangered Species Act requires.

(c) If your operations require you to occupy or use a site for activities ''reasonably incident'' to mining, as defined in § 3715.0–5 of this title, whether you are operating under a notice or a plan of operations, you must also comply with part 3710, subpart 3715, of this title.

(d) If your operations are located on lands patented under the Stock Raising Homestead Act and you do not have the written consent of the surface owner, then you must submit a plan of operations and obtain BLM's approval. Where you have surface-owner consent, you do not need a notice or a plan of operations under this subpart. See part 3810, subpart 3814, of this title.

(e) If your proposed operations are located on lands conveyed by the United States which contain minerals reserved to the United States, then you must submit a plan of operations under § 3809.11 and obtain BLM's approval or a notice under § 3809.21.

§ 3809.100 What special provisions apply to operations on segregated or withdrawn lands?

(a) *Mineral examination report.* After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid. BLM may require preparation of a mineral examination report before approving a plan of operations or allowing notice-level operations to proceed on segregated lands. If the report concludes that the mining claim is invalid, BLM will not approve operations or allow notice-level operations on the mining claim. BLM will also promptly initiate contest proceedings.

(b) *Allowable operations.* If BLM has not completed the mineral examination report under paragraph (a) of this section, if the mineral examination report for proposed operations concludes that a mining claim is invalid, or if there is a pending contest proceeding for the mining claim,

(1) BLM may—

(i) Approve a plan of operations for the disputed mining claim proposing operations that are limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier; and

(ii) Approve a plan of operations for the operator to perform the minimum necessary annual assessment work under § 3851.1 of this title; or

(2) A person may only conduct exploration under a notice that is limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim before the segregation or withdrawal date, whichever is earlier.

(c) *Time limits.* While BLM prepares a mineral examination report under paragraph (a) of this section, it may suspend the time limit for responding to a notice or acting on a plan of operations. See §§ 3809.311 and 3809.411, respectively.

(d) *Final decision.* If a final departmental decision declares a mining claim to be null and void, the operator must cease all operations, except required reclamation.

§ 3809.101 What special provisions apply to minerals that may be common variety minerals, such as sand, gravel, and building stone?

(a) *Mineral examination report.* On mining claims located on or after July 23, 1955, you must not initiate operations for minerals that may be ''common variety'' minerals, as defined in § 3711.1(b) of this title, until BLM has prepared a mineral examination report, except as provided in paragraph (b) of this section.

(b) *Interim authorization.* Until the mineral examination report described in paragraph (a) of this section is prepared, BLM will allow notice-level operations or approve a plan of operations for the disputed mining claim for—

(1) Operations limited to taking samples to confirm or corroborate mineral exposures that are physically disclosed and existing on the mining claim;

(2) Performance of the minimum necessary annual assessment work under § 3851.1 of this title; or

(3) Operations to remove possible common variety minerals if you establish an escrow account in a form acceptable to BLM. You must make regular payments to the escrow account for the appraised value of possible common variety minerals removed under a payment schedule approved by BLM. The funds in the escrow account must not be disbursed to the operator or to the U.S. Treasury until a final determination of whether the mineral is a common variety and therefore salable under part 3600 of this title.

(c) *Determination of common variety.* If the mineral examination report under paragraph (a) of this section concludes that the minerals are common variety minerals, you may either relinquish your mining claim(s) or BLM will initiate contest proceedings. Upon relinquishment or final departmental determination that the mining claim(s) is null and void, you must promptly close and reclaim your operations unless you are authorized to proceed under parts 3600 and 3610 of this title.

(d) *Disposal.* BLM may dispose of common variety minerals from an unpatented mining claim with a written waiver from the mining claimant.

§ 3809.111 Will BLM disclose to the public the information I submit under this subpart?

Part 2 of this title applies to all information and data you submit under this subpart. If you submit information or data under this subpart that you believe is exempt from disclosure, you must mark each page clearly ''CONFIDENTIAL INFORMATION.'' You must also separate it from other materials you submit to BLM. BLM will keep confidential information or data marked in this manner to the extent required by part 2 of this title. If you do not mark the information as confidential, BLM, without notifying you, may disclose the information to the public to the full extent allowed under part 2 of this title.

§ 3809.115 Can BLM collect information under this subpart?

Yes, the Office of Management and Budget has approved the collections of information contained in this subpart under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0194. BLM will use this information to regulate and monitor mining and exploration operations on public lands.

§ 3809.116 As a mining claimant or operator, what are my responsibilities under this subpart for my project area?

(a)(1) Mining claimants and operators (if other than the mining claimant) are jointly and severally liable for obligations under this subpart that accrue while they hold their interests. Joint and several liability, in this context, means that the mining claimants and operators are responsible together and individually for obligations, such as reclamation, resulting from activities or conditions in the areas in which the mining claimants hold mining claims or mill sites or the

operators have operational responsibilities.

Example 1. Mining claimant A holds mining claims totaling 100 acres. Mining claimant B holds adjoining mining claims totaling 100 acres and mill sites totaling 25 acres. Operator C conducts mining operations on a project area that includes both claimant A's mining claims and claimant B's mining claims and millsites. Mining claimant A and operator C are each 100 percent responsible for obligations arising from activities on mining claimant A's mining claims. Mining claimant B has no responsibility for such obligations. Mining claimant B and operator C are each 100 percent responsible for obligations arising from activities on mining claimant B's mining claims and millsites. Mining claimant A has no responsibility for such obligations.

Example 2. Mining claimant L holds mining claims totaling 100 acres on which operators M and N conduct activities. Operator M conducts operations on 50 acres. Operator N conducts operations on the other 50 acres. Operators M and N are independent of each other and their operations do not overlap. Mining claimant L and operator M are each 100 percent responsible for obligations arising from activities on the 50 acres on which operator M conducts activities. Mining claimant L and operator N are each 100 percent responsible for obligations arising from activities on the 50 acres on which operator N conducts activities. Operator M has no responsibility for the obligations arising from operator N's activities.

Example 3. Mining claimant X holds mining claims totaling 100 acres on which operators Y and Z conduct activities. Operators Y and Z each engage in activities on the entire 100 acres. Mining claimant X, operator Y, and operator Z are each 100 percent responsible for obligations arising from all operations on the entire 100 acres.

(2) In the event obligations are not met, BLM may take any action authorized under this subpart against either the mining claimants or the operators, or both.

(b) Relinquishment, forfeiture, or abandonment of a mining claim does not relieve a mining claimant's or operator's responsibility under this subpart for obligations that accrued or conditions that were created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area.

(c) Transfer of a mining claim or operation does not relieve a mining claimant's or operator's responsibility under this subpart for obligations that accrued or conditions that were created while the mining claimant or operator was responsible for operations conducted on that mining claim or in the project area until—

(1) BLM receives documentation that a transferee accepts responsibility for the transferor's previously accrued obligations, and

(2) BLM accepts an adequate replacement financial guarantee adequate to cover such previously accrued obligations and the transferee's new obligations.

Federal/State Agreements

§ 3809.200 What kinds of agreements may BLM and a State make under this subpart?

To prevent unnecessary administrative delay and to avoid duplication of administration and enforcement, BLM and a State may make the following kinds of agreements:

(a) An agreement to provide for a joint Federal/State program; and

(b) An agreement under § 3809.202 which provides that, in place of BLM administration, BLM defers to State administration of some or all of the requirements of this subpart subject to the limitations in § 3809.203.

§ 3809.201 What should these agreements address?

(a) The agreements should provide for maximum possible coordination with the State to avoid duplication and to ensure that operators prevent unnecessary or undue degradation of public lands. Agreements should cover any or all sections of this subpart and should consider, at a minimum, common approaches to review of plans of operations, including effective cooperation regarding the National Environmental Policy Act; performance standards; interim management of temporary closure; financial guarantees; inspections; and enforcement actions, including referrals to enforcement authorities. BLM and the State should also include provisions for the regular review or audit of these agreements.

(b) To satisfy the requirements of § 3809.31(b), if BLM and the State elect to address suction dredge activities in the agreement, the agreement must require a State to notify BLM of each application to conduct suction dredge activities within 15 calendar days of receipt of the application by the State. BLM will inform the State whether Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat may be affected by the proposed activities and any necessary mitigating measures. Operations must not begin until BLM completes consultation or conferencing under the Endangered Species Act.

§ 3809.202 Under what conditions will BLM defer to State regulation of operations?

(a) *State request.* A State may request BLM enter into an agreement for State regulation of operations on public lands in place of BLM administration of some or all of the requirements of this subpart. The State must send the request to the BLM State Director with jurisdiction over public lands in the State.

(b) *BLM review.* (1) When the State Director receives the State's request, he/she will notify the public and provide an opportunity for comment. The State Director will then review the request and determine whether the State's requirements are consistent with the requirements of this subpart, and whether the State has necessary legal authorities, resources, and funding for an agreement. The State requirements may be contained in laws, regulations, guidelines, policy manuals, and demonstrated permitting practices.

(2) For the purposes of this subpart, BLM will determine consistency with the requirements of this subpart by comparing this subpart and State standards on a provision-by-provision basis to determine—

(i) Whether non-numerical State standards are functionally equivalent to BLM counterparts; and

(ii) Whether numerical State standards are the same as corresponding numerical BLM standards, except that State review and approval time frames do not have to be the same as the corresponding Federal time frames.

(3) A State environmental protection standard that exceeds a corresponding Federal standard is consistent with the requirements of this subpart.

(c) *State Director decision.* The BLM State Director will notify the State in writing of his/her decision regarding the State's request. The State Director will address whether the State requirements are consistent with the requirements of this subpart, and whether the State has necessary legal authorities, resources, and funding to implement any agreement. If BLM determines that the State's requirements are consistent with the requirements of this subpart and the State has the necessary legal authorities, resources, and funding, BLM must enter into an agreement with the State so that the State will regulate some or all of the operations on public lands, as described in the State request.

(d) *Appeal of State Director decision.* The BLM State Director's decision will be a final decision of BLM and may be appealed to the Assistant Secretary for Land and Minerals Management, but not to the Department of the Interior Office of Hearings and Appeals. See § 3809.800(c) for the items you should include in the appeal.

§ 3809.203 What are the limitations on BLM deferral to State regulation of operations?

Any agreement between BLM and a State in which BLM defers to State regulation of some or all operations on public lands is subject to the following limitations:

(a) *Plans of Operations.* BLM must concur with each State decision approving a plan of operations to assure compliance with this subpart, and BLM retains responsibility for compliance with the National Environmental Policy Act (NEPA). The State and BLM may decide who will be the lead agency in the plan review process, including preparation of NEPA documents.

(b) *Federal land-use planning and other Federal laws.* BLM will continue to be responsible for all land-use planning on public lands and for implementing other Federal laws relating to the public lands for which BLM is responsible.

(c) *Federal enforcement.* BLM may take any authorized action to enforce the requirements of this subpart or any term, condition, or limitation of a notice or an approved plan of operations. BLM may take this action regardless of the nature of its agreement with a State, or actions taken by a State.

(d) *Financial guarantee.* The amount of the financial guarantee must be calculated based on the completion of both Federal and State reclamation requirements, but may be held as one instrument. If the financial guarantee is held as one instrument, it must be redeemable by both the Secretary and the State. BLM must concur in the approval, release, or forfeiture of a financial guarantee for public lands.

(e) *State performance.* If BLM determines that a State is not in compliance with all or part of its Federal/State agreement, BLM will notify the State and provide a reasonable time for the State to comply.

(f) *Termination.* (1) If a State does not comply after being notified under paragraph (e) of this section, BLM will take appropriate action, which may include termination of all or part of the agreement.

(2) A State may terminate its agreement by notifying BLM 60 calendar days in advance.

§ 3809.204 Does this subpart cancel an existing agreement between BLM and a State?

(a) No, this subpart doesn't cancel a Federal/State agreement or memorandum of understanding in effect on January 20, 2001. A Federal/State agreement or memorandum of understanding will continue while BLM and the State perform a review to determine whether revisions are required under this subpart. BLM and the State must complete the review and make necessary revisions no later than one year from January 20, 2001.

(b) The BLM State Director may extend the review period described in paragraph (a) of this section for one more year upon the written request of the Governor of the State or the delegated representative of the Governor, and if necessary, for a third year upon another written request. The existing agreement or memorandum of understanding terminates no later than one year after January 20, 2001 if this review and any necessary revision does not occur, unless extended under this paragraph.

(c) This subpart applies during the review period described in paragraphs (a) and (b) of this section. Where a portion of a Federal/State agreement or memorandum of understanding existing on January 20, 2001 is inconsistent with this subpart, that portion continues in effect until the agreement or memorandum of understanding is revised under this subpart or terminated.

Operations Conducted Under Notices

§ 3809.300 Does this subpart apply to my existing notice-level operations?

To see how this subpart applies to your operations conducted under a notice and existing on January 20, 2001, follow this table:

If BLM has received your complete notice before January 20, 2001—	Then—
(a) You are the operator identified in the notice on file with BLM on January 20, 2001.	You may conduct operations for 2 years after January 20, 2001 under the terms of your existing notice and the regulations in effect immediately before that date. (See 43 CFR parts 1000-end, revised as of Oct. 1, 1999.) After 2 years, you may extend your notice under § 3809.333. BLM may require a modification under § 3809.331(a)(1). See § 3809.503 for financial guarantee requirements applicable to notices.
(b) You are a new operator, that is, you were not the operator identified in the notice on file with BLM on January 20, 2001.	The provisions of this subpart, including § 3809.320, govern your operations for 2 years after January 20, 2001, unless you extend your notice under § 3809.333.
(c) You later modify your notice	(1) You may conduct operations on the original acreage for 2 years after January 20, 2001 under the terms of your existing notice and the regulations in effect immediately before that date (See 43 CFR parts 1000-end, revised as of Oct. 1, 2000.) After 2 years, you may extend your notice under § 3809.333. BLM may require a modification under § 3809.331(a)(1). See § 3809.503(b) for financial guarantee requirements applicable to notices. (2) Your operations on any additional acreage come under the provisions of this subpart, including §§ 3809.11 and 3809.21, and may require approval of a plan of operations before the additional surface disturbance may.
(d) Your notice has expired	You may not conduct operations under an expired notice. You must promptly submit either a new notice under § 3809.301 or a plan of operations under § 3809.401, whichever is applicable, or immediately begin to reclaim your project area. See §§ 3809.11 and 3809.21.

§ 3809.301 Where do I file my notice and what information must I include in it?

(a) If you qualify under § 3809.21, you must file your notice with the local BLM office with jurisdiction over the lands involved. BLM does not require that the notice be on a particular form.

(b) To be complete, your notice must include the following information:

(1) *Operator Information.* The name, mailing address, phone number, taxpayer identification number of the operator(s), and the BLM serial number(s) of any unpatented mining claim(s) where the disturbance would occur. If the operator is a corporation, you must identify one individual as the point of contact;

(2) *Activity Description, Map, and Schedule of Activities.* A description of the proposed activity with a level of detail appropriate to the type, size, and location of the activity. The description must include the following:

(i) The measures that you will take to prevent unnecessary or undue degradation during operations;

(ii) A map showing the location of your project area in sufficient detail for BLM to be able to find it and the location of access routes you intend to use, improve, or construct;

(iii) A description of the type of equipment you intend to use; and

(iv) A schedule of activities, including the date when you expect to begin operations and the date you expect to complete reclamation;

(3) *Reclamation Plan.* A description of how you will complete reclamation to the standards described in § 3809.420; and

(4) *Reclamation cost estimate.* An estimate of the cost to fully reclaim your operations as required by § 3809.552.

(c) BLM may require you to provide additional information, if necessary to ensure that your operations will comply with this subpart.

(d) You must notify BLM in writing within 30 calendar days of any change of operator or corporate point of contact, or of the mailing address of the operator or corporate point of contact.

§ 3809.311 What action does BLM take when it receives my notice?

(a) Upon receipt of your notice, BLM will review it within 15 calendar days to see if it is complete under § 3809.301.

(b) If your notice is incomplete, BLM will inform you in writing of the additional information you must submit. BLM may also take the actions described in § 3809.313.

(c) BLM will review your additional information within 15 calendar days to ensure it is complete. BLM will repeat this process until your notice is complete, or until we determine that you may not conduct operations because of your inability to prevent unnecessary or undue degradation.

§ 3809.312 When may I begin operations after filing a complete notice?

(a) If BLM does not take any of the actions described in § 3908.313, you may begin operations no sooner than 15 calendar days after the appropriate BLM office receives your complete notice. BLM may send you an acknowledgement that indicates the date we received your notice. If you don't receive an acknowledgement or have any doubt about the date we received your notice, contact the office to which you sent the notice. This subpart does not require BLM to approve your notice or inform you that your notice is complete.

(b) If BLM completes our review sooner than 15 calendar days after receiving your complete notice, we may notify you that you may begin operations.

(c) You must provide to BLM a financial guarantee that meets the requirements of this subpart before beginning operations.

(d) Your operations may be subject to BLM approval under part 3710, subpart 3715, of this title relating to use or occupancy of unpatented mining claims.

§ 3809.313 Under what circumstances may I not begin operations 15 calendar days after filing my notice?

To see when you may not begin operations 15 calendar days after filing your notice, follow this table:

If BLM reviews your notice and, within 15 calendar days—	Then—
(a) Notifies you that BLM needs additional time, not to exceed 15 calendar days, to complete its review.	You must not begin operations until the additional review time period ends.
(b) Notifies you that you must modify your notice to prevent unnecessary or undue degradation.	You must not begin operations until you modify your notice to ensure that your operations prevent unnecessary or undue degradation.
(c) Requires you to consult with BLM about the location of existing or proposed access routes.	You must not begin operations until you consult with BLM and satisfy BLM's concerns about access.
(d) Determines that an on-site visit is necessary	You must not begin operations until BLM visits the site, and you satisfy any concerns arising from the visit. BLM will notify you if we will not conduct the site visit within 15 calendar days of determining that a visit is necessary, including the reason(s) for the delay.
(e) BLM determines you don't qualify under § 3809.11 as a notice-level operation.	You must file a plan of operations before beginning operations. See §§ 3809.400 through 3809.420.

§ 3809.320 Which performance standards apply to my notice-level operations?

Your notice-level operations must meet all applicable performance standards of § 3809.420.

§ 3809.330 May I modify my notice?

(a) Yes, you may submit a notice modification at any time during operations under a notice.

(b) BLM will review your notice modification the same way it reviewed your initial notice under §§ 3809.311 and 3809.313.

§ 3809.331 Under what conditions must I modify my notice?

(a) You must modify your notice—

(1) If BLM requires you to do so to prevent unnecessary or undue degradation; or

(2) If you plan to make material changes to your operations. Material changes are changes that disturb areas not described in the existing notice; change your reclamation plan; or result in impacts of a different kind, degree, or extent than those described in the existing notice.

(b) You must submit your notice modification 15 calendar days before

making any material changes. If BLM determines your notice modification is complete before the 15-day period has elapsed, BLM may notify you to proceed. When BLM requires you to modify your notice, we may also notify you to proceed before the 15-day period has elapsed to prevent unnecessary or undue degradation.

§ 3809.332 How long does my notice remain in effect?

If you filed your complete notice on or after January 20, 2001, it remains in effect for 2 years, unless extended under § 3809.333, or unless you notify BLM beforehand that operations have ceased and reclamation is complete. BLM will conduct an inspection to verify whether you have met your obligations, will notify you promptly in writing, and terminate your notice, if appropriate.

§ 3809.333 May I extend my notice, and, if so, how?

Yes, if you wish to conduct operations for 2 additional years after the expiration date of your notice, you must notify BLM in writing on or before the expiration date and meet the financial guarantee requirements of § 3809.503. You may extend your notice more than once.

§ 3809.334 What if I temporarily stop conducting operations under a notice?

(a) If you stop conducting operations for any period of time, you must—

(1) Maintain public lands within the project area, including structures, in a safe and clean condition;

(2) Take all steps necessary to prevent unnecessary or undue degradation; and

(3) Maintain an adequate financial guarantee.

(b) If the period of non-operation is likely to cause unnecessary or undue degradation, BLM, in writing, will—

(1) Require you to take all steps necessary to prevent unnecessary or undue degradation; and

(2) Require you, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment, and other facilities and reclaim the project area.

§ 3809.335 What happens when my notice expires?

(a) When your notice expires, you must—

(1) Cease operations, except reclamation; and

(2) Complete reclamation promptly according to your notice.

(b) Your reclamation obligations continue beyond the expiration or any termination of your notice until you satisfy them.

§ 3809.336 What if I abandon my notice-level operations?

(a) BLM may consider your operations to be abandoned if, for example, you leave inoperable or non-mining related equipment in the project area, remove equipment and facilities from the project area other than for purposes of completing reclamation according to your reclamation plan, do not maintain the project area, discharge local workers, or there is no sign of activity in the project area over time.

(b) If BLM determines that you abandoned your operations without completing reclamation, BLM may initiate forfeiture under § 3809.595. If the amount of the financial guarantee is inadequate to cover the cost of reclamation, BLM may complete the reclamation, and the operator and all other responsible persons are liable for the cost of reclamation.

Operations Conducted Under Plans of Operations

§ 3809.400 Does this subpart apply to my existing or pending plan of operations?

(a) You may continue to operate under the terms and conditions of a plan of operations that BLM approved before January 20, 2001. All provisions of this subpart except plan content (§ 3809.401) and performance standards (§§ 3809.415 and 3809.420) apply to such plan of operations. See § 3809.505 for the applicability of financial guarantee requirements.

(b) If your unapproved plan of operations is pending on January 20, 2001, then the plan content requirements and performance standards that were in effect immediately before that date apply to your pending plan of operations. (See 43 CFR parts 1000–end, revised as of Oct. 1, 1999.) All other provisions of this subpart apply.

(c) If you want this subpart to apply to any existing or pending plan of operations, where not otherwise required, you may choose to have this subpart apply.

§ 3809.401 Where do I file my plan of operations and what information must I include with it?

(a) If you are required to file a plan of operations under § 3809.11, you must file it with the local BLM field office with jurisdiction over the lands involved. BLM does not require that the plan be on a particular form. Your plan of operations must demonstrate that the proposed operations would not result in unnecessary or undue degradation of public lands.

(b) Your plan of operations must contain the following information and describe the proposed operations at a level of detail sufficient for BLM to determine that the plan of operations prevents unnecessary or undue degradation:

(1) *Operator Information.* The name, mailing address, phone number, taxpayer identification number of the operator(s), and the BLM serial number(s) of any unpatented mining claim(s) where disturbance would occur. If the operator is a corporation, you must identify one individual as the point of contact. You must notify BLM in writing within 30 calendar days of any change of operator or corporate point of contact or in the mailing address of the operator or corporate point of contact;

(2) *Description of Operations.* A description of the equipment, devices, or practices you propose to use during operations including, where applicable—

(i) Maps of the project area at an appropriate scale showing the location of exploration activities, drill sites, mining activities, processing facilities, waste rock and tailing disposal areas, support facilities, structures, buildings, and access routes;

(ii) Preliminary or conceptual designs, cross sections, and operating plans for mining areas, processing facilities, and waste rock and tailing disposal facilities;

(iii) Water management plans;

(iv) Rock characterization and handling plans;

(v) Quality assurance plans;

(vi) Spill contingency plans;

(vii) A general schedule of operations from start through closure; and

(viii) Plans for all access roads, water supply pipelines, and power or utility services;

(3) *Reclamation Plan.* A plan for reclamation to meet the standards in § 3809.420, with a description of the equipment, devices, or practices you propose to use including, where applicable, plans for—

(i) Drill-hole plugging;

(ii) Regrading and reshaping;

(iii) Mine reclamation, including information on the feasibility of pit backfilling that details economic, environmental, and safety factors;

(iv) Riparian mitigation;

(v) Wildlife habitat rehabilitation;

(vi) Topsoil handling;

(vii) Revegetation;

(viii) Isolation and control of acid-forming, toxic, or deleterious materials;

(ix) Removal or stabilization of buildings, structures and support facilities; and

(x) Post-closure management;

(4) *Monitoring Plan.* A proposed plan for monitoring the effect of your

operations. You must design monitoring plans to meet the following objectives: To demonstrate compliance with the approved plan of operations and other Federal or State environmental laws and regulations, to provide early detection of potential problems, and to supply information that will assist in directing corrective actions should they become necessary. Where applicable, you must include in monitoring plans details on type and location of monitoring devices, sampling parameters and frequency, analytical methods, reporting procedures, and procedures to respond to adverse monitoring results. Monitoring plans may incorporate existing State or other Federal monitoring requirements to avoid duplication. Examples of monitoring programs which may be necessary include surface- and ground-water quality and quantity, air quality, revegetation, stability, noise levels, and wildlife mortality; and

(5) *Interim management plan.* A plan to manage the project area during periods of temporary closure (including periods of seasonal closure) to prevent unnecessary or undue degradation. The interim management plan must include, where applicable, the following:

(i) Measures to stabilize excavations and workings;

(ii) Measures to isolate or control toxic or deleterious materials (See also the requirements in § 3809.420(c)(4)(vii).);

(iii) Provisions for the storage or removal of equipment, supplies and structures;

(iv) Measures to maintain the project area in a safe and clean condition;

(v) Plans for monitoring site conditions during periods of non-operation; and

(vi) A schedule of anticipated periods of temporary closure during which you would implement the interim management plan, including provisions for notifying BLM of unplanned or extended temporary closures.

(c) In addition to the requirements of paragraph (b) of this section, BLM may require you to supply—

(1) Operational and baseline environmental information for BLM to analyze potential environmental impacts as required by the National Environmental Policy Act and to determine if your plan of operations will prevent unnecessary or undue degradation. This could include information on public and non-public lands needed to characterize the geology, paleontological resources, cave resources, hydrology, soils, vegetation, wildlife, air quality, cultural resources, and socioeconomic conditions in and around the project area, as well as information that may require you to conduct static and kinetic testing to characterize the potential for your operations to produce acid drainage or other leachate. BLM is available to advise you on the exact type of information and level of detail needed to meet these requirements; and

(2) Other information, if necessary to ensure that your operations will comply with this subpart.

(d) *Reclamation cost estimate.* At a time specified by BLM, you must submit an estimate of the cost to fully reclaim your operations as required by § 3809.552. BLM will review your reclamation cost estimate and notify you of any deficiencies or additional information that must be submitted in order to determine a final reclamation cost. BLM will notify you when we have determined the final amount for which you must provide financial assurance.

§ 3809.411 What action will BLM take when it receives my plan of operations?

(a) BLM will review your plan of operations within 30 calendar days and will notify you that—

(1) Your plan of operations is complete, that is, it meets the content requirements of § 3809.401(b);

(2) Your plan does not contain a complete description of the proposed operations under § 3809.401(b). BLM will identify deficiencies that you must address before BLM can continue processing your plan of operations. If necessary, BLM may repeat this process until your plan of operations is complete; or

(3) The description of the proposed operations is complete, but BLM cannot approve the plan until certain additional steps are completed, including one or more of the following:

(i) You collect adequate baseline data;

(ii) BLM completes the environmental review required under the National Environmental Policy Act;

(iii) BLM completes any consultation required under the National Historic Preservation Act, the Endangered Species Act, or the Magnuson-Stevens Fishery Conservation and Management Act;

(iv) BLM or the Department of the Interior completes other Federal responsibilities, such as Native American consultation;

(v) BLM conducts an on-site visit;

(vi) BLM completes review of public comments on the plan of operations;

(vii) For public lands where BLM does not have responsibility for managing the surface, BLM consults with the surface-managing agency;

(viii) In cases where the surface is owned by a non-Federal entity, BLM consults with the surface owner; and

(ix) BLM completes consultation with the State to ensure your operations will be consistent with State water quality requirements.

(b) Pending final approval of your plan of operations, BLM may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) Following receipt of your complete plan of operations and before BLM acts on it, we will publish a notice of the availability of the plan in either a local newspaper of general circulation or a NEPA document and will accept public comment for at least 30 calendar days on your plan of operations.

(d) Upon completion of the review of your plan of operations, including analysis under NEPA and public comment, BLM will notify you that—

(1) BLM approves your plan of operations as submitted (See part 3810, subpart 3814 of this title for specific plan-related requirements applicable to operations on Stock Raising Homestead Act lands.);

(2) BLM approves your plan of operations subject to changes or conditions that are necessary to meet the performance standards of § 3809.420 and to prevent unnecessary or undue degradation. BLM may require you to incorporate into your plan of operations other agency permits, final approved engineering designs and plans, or other conditions of approval from the review of the plan of operations filed under § 3809.401(b); or

(3) BLM disapproves, or is withholding approval of your plan of operations because the plan:

(i) Does not meet the applicable content requirements of § 3809.401;

(ii) Proposes operations that are in an area segregated or withdrawn from the operation of the mining laws, unless the requirements of § 3809.100 are met; or

(iii) Proposes operations that would result in unnecessary or undue degradation of public lands. If BLM disapproves your plan of operations based on paragraph (4) of the definition of ''unnecessary or undue degradation'' in § 3809.5,BLM must include written findings supported by a record clearly demonstrating each element of paragraph (4), including—

(A) That approval of the plan of operations would create irreparable harm;

(B) How the irreparable harm is substantial in extent or duration;

(C) That the resources substantially irreparably harmed constitute significant scientific, cultural, or environmental resources; and

(D) How mitigation would not be effective in reducing the level of harm below the substantial or irreparable threshold.

§ 3809.412 When may I operate under a plan of operations?

You must not begin operations until BLM approves your plan of operations and you provide the financial guarantee required under § 3809.551.

§ 3809.415 How do I prevent unnecessary or undue degradation while conducting operations on public lands?

You prevent unnecessary or undue degradation while conducting operations on public lands by—

(a) Complying with § 3809.420, as applicable; the terms and conditions of your notice or approved plan of operations; and other Federal and State laws related to environmental protection and protection of cultural resources;

(b) Assuring that your operations are ''reasonably incident'' to prospecting, mining, or processing operations and uses as defined in § 3715.0–5 of this title; and

(c) Attaining the stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

(d) Avoiding substantial irreparable harm to significant scientific, cultural, or environmental resource values of the public lands that cannot be effectively mitigated.

§ 3809.420 What performance standards apply to my notice or plan of operations?

The following performance standards apply to your notice or plan of operations:

(a) *General performance standards.*

(1) *Technology and practices.* You must use equipment, devices, and practices that will meet the performance standards of this subpart.

(2) *Sequence of operations.* You must avoid unnecessary impacts and facilitate reclamation by following a reasonable and customary mineral exploration, development, mining and reclamation sequence.

(3) *Land-use plans.* Consistent with the mining laws, your operations and post-mining land use must comply with the applicable BLM land-use plans and activity plans, and with coastal zone management plans under 16 U.S.C. 1451, as appropriate.

(4) *Mitigation.* You must take mitigation measures specified by BLM to protect public lands.

(5) *Concurrent reclamation.* You must initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that you will not disturb further.

(b) *Environmental performance standards.*

(1) *Air quality.* Your operations must comply with applicable Federal, Tribal, State, and, where delegated by the State, local government laws and requirements.

(2) *Water.* You must conduct operations to minimize water pollution (source control) in preference to water treatment. You must conduct operations to minimize changes in water quantity in preference to water supply replacement. Your operations must comply with State water law with respect to water use and water quality.

(i) *Surface water.* (A) Releases to surface waters must comply with applicable Federal, Tribal, State, interstate, and, where delegated by the State, local government laws and requirements.

(B) You must conduct operations to prevent or control the discharge of pollutants into surface waters.

(ii) *Ground water.* (A) You must comply with State standards and other applicable requirements if your operations affect ground water.

(B) You must conduct operations to minimize the discharge of pollutants into ground water.

(C) You must conduct operations affecting ground water, such as dewatering, pumping, and injecting, to minimize impacts on surface and other natural resources, such as wetlands, riparian areas, aquatic habitat, and other features that are dependent on ground water.

(3) *Wetlands and riparian areas.* (i) You must avoid locating operations in wetlands and riparian areas where possible, minimize impacts on wetlands and riparian areas that your operations cannot avoid, and mitigate damage to wetlands and riparian areas that your operations impact.

(ii) Where economically and technically feasible, you must return disturbed wetlands and riparian areas to a properly functioning condition. Wetlands and riparian areas are functioning properly when adequate vegetation, land form, or large woody debris is present to dissipate stream energy associated with high water flows, thereby reducing erosion and improving water quality; filter sediment, capture bedload, and aid floodplain development; improve floodwater retention and ground-water recharge; develop root masses that stabilize streambanks against cutting action; develop diverse ponding and channel characteristics to provide the habitat and water depth, duration, and temperature necessary for fish production, waterfowl breeding, and other uses, and support greater biodiversity.

(iii) You must mitigate impacts to wetlands under the jurisdiction of the U.S. Army Corps of Engineers (COE) and other waters of the United States in accord with COE requirements.

(iv) You must take appropriate mitigation measures, such as restoration or replacement, if your operations cause the loss of nonjurisdictional wetland or riparian areas or the diminishment of their proper functioning condition.

(4) *Soil and growth material.* (i) You must remove, segregate, and preserve topsoil or other suitable growth material to minimize erosion and sustain revegetation when reclamation begins.

(ii) To preserve soil viability and promote concurrent reclamation, you must directly transport topsoil from its original location to the point of reclamation without intermediate stockpiling, where economically and technically feasible.

(5) *Revegetation.* You must—

(i) Revegetate disturbed lands by establishing a stable and long-lasting vegetative cover that is self-sustaining and, considering successional stages, will result in cover that is—

(A) Comparable in both diversity and density to pre-existing natural vegetation of the surrounding area; or

(B) Compatible with the approved BLM land-use plan or activity plan;

(ii) Take all reasonable steps to minimize the introduction of noxious weeds and to limit any existing infestations;

(iii) Use native species, when available, to the extent technically feasible. If you use non-native species, they must not inhibit re-establishment of native species;

(iv) Achieve success over the time frame approved by BLM; and

(v) Where you demonstrate revegetation is not achievable under this paragraph, you must use other techniques to minimize erosion and stabilize the project area, subject to BLM approval.

(6) *Fish, wildlife, and plants.* (i) You must minimize disturbances and adverse impacts on fish, wildlife, and related environmental values.

(ii) You must take any necessary measures to protect Federally proposed or listed threatened or endangered species, both plants and animals, or their proposed or designated critical habitat as required by the Endangered Species Act.

(iii) You must take any necessary action to minimize the adverse effects of your operations, including access, on BLM-defined special status species.

(iv) You must rehabilitate fisheries and wildlife habitat affected by your operations.

(7) *Cultural, paleontologic, and cave resources.* (i) You must not knowingly disturb, alter, injure, or destroy any scientifically important paleontologic remains or any historic, archaeologic, or cave-related site, structure, building, resource, or object unless —

(A) You identify the resource in your notice or plan of operations;

(B) You propose action to protect, remove or preserve the resource; and (C) BLM specifically authorizes such action in your plan of operations, or does not prohibit such action under your notice.

(ii) You must immediately bring to BLM's attention any previously unidentified historic, archaeologic, cave-related, or scientifically important paleontologic resources that might be altered or destroyed by your operations. You must leave the discovery intact until BLM authorizes you to proceed. BLM will evaluate the discovery and take action to protect, remove, or preserve the resource within 30 calendar days after you notify BLM of the discovery, unless otherwise agreed to by the operator and BLM, or unless otherwise provided by law.

(iii) BLM has the responsibility for determining who bears the cost of the investigation, recovery, and preservation of discovered historic, archaeologic, cave-related, and paleontologic resources, or of any human remains and associated funerary objects. If BLM incurs costs associated with investigation and recovery, BLM will recover the costs from the operator on a case-by-case basis, after an evaluation of the factors set forth in section 304(b) of FLPMA.

(c) *Operational performance standards.*

(1) *Roads and structures.* (i) You must design, construct, and maintain roads and structures to minimize erosion, siltation, air pollution and impacts to resources.

(ii) Where it is economically and technically feasible, you must use existing access and follow the natural contour of the land to minimize surface disturbance, including cut and fill, and to maintain safe design.

(iii) When commercial hauling on an existing BLM road is involved, BLM may require you to make appropriate arrangements for use, maintenance, and safety.

(iv) You must remove and reclaim roads and structures according to BLM land-use plans and activity plans, unless retention is approved by BLM.

(2) *Drill holes.* (i) You must not allow drilling fluids and cuttings to flow off the drill site.

(ii) You must plug all exploration drill holes to prevent mixing of waters from aquifers, impacts to beneficial uses, downward water loss, or upward water loss from artesian conditions.

(iii) You must conduct surface plugging to prevent direct inflow of surface water into the drill hole and to eliminate the open hole as a hazard.

(3) *Acid-forming, toxic, or other deleterious materials.* You must incorporate identification, handling, and placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, reclamation, and environmental monitoring programs to minimize the formation and impacts of acidic, alkaline, metal-bearing, or other deleterious leachate, including the following:

(i) You must handle, place, or treat potentially acid-forming, toxic, or other deleterious materials in a manner that minimizes the likelihood of acid formation and toxic and other deleterious leachate generation (source control);

(ii) If you cannot prevent the formation of acid, toxic, or other deleterious drainage, you must minimize uncontrolled migration of leachate; and

(iii) You must capture and treat acid drainage, or other undesirable effluent, to the applicable standard if source controls and migration controls do not prove effective. You are responsible for any costs associated with water treatment or facility maintenance after project closure. Long-term, or post-mining, effluent capture and treatment are not acceptable substitutes for source and migration control, and you may rely on them only after all reasonable source and migration control methods have been employed.

(4) *Leaching Operations and Impoundments.* (i) You must design, construct, and operate all leach pads, tailings impoundments, ponds, and solution-holding facilities according to standard engineering practices to achieve and maintain stability and facilitate reclamation.

(ii) You must construct a low-permeability liner or containment system that will minimize the release of leaching solutions to the environment. You must monitor to detect potential releases of contaminants from heaps, process ponds, tailings impoundments, and other structures and remediate environmental impacts if leakage occurs.

(iii) You must design, construct, and operate cyanide or other leaching facilities and impoundments to contain precipitation from the local 100-year, 24-hour storm event in addition to the maximum process solution inventory. Your design must also include allowances for snowmelt events and draindown from heaps during power outages in the design.

(iv) You must construct a secondary containment system around vats, tanks, or recovery circuits adequate to prevent the release of toxic solutions to the environment in the event of primary containment failure.

(v) You must exclude access by the public, wildlife, or livestock to solution containment and transfer structures that contain lethal levels of cyanide or other solutions.

(vi) During closure and at final reclamation, you must detoxify leaching solutions and heaps and manage tailings or other process waste to minimize impacts to the environment from contact with toxic materials or leachate. Acceptable practices to detoxify solutions and materials include natural degradation, rinsing, chemical treatment, or equally successful alternative methods. Upon completion of reclamation, all materials and discharges must meet applicable standards.

(vii) In cases of temporary or seasonal closure, you must provide adequate maintenance, monitoring, security, and financial guarantee, and BLM may require you to detoxify process solutions.

(5) *Waste rock, tailings, and leach pads.* You must locate, design, construct, operate, and reclaim waste rock, tailings, and leach pads to minimize infiltration and contamination of surface water and ground water; achieve stability; and, to the extent economically and technically feasible, blend with pre-mining, natural topography.

(6) *Stability, grading and erosion control.* (i) You must grade or otherwise engineer all disturbed areas to a stable condition to minimize erosion and facilitate revegetation.

(ii) You must recontour all areas to blend with pre-mining, natural topography to the extent economically and technically feasible. You may temporarily retain a highwall or other

mine workings in a stable condition to preserve evidence of mineralization.

(iii) You must minimize erosion during all phases of operations.

(7) *Pit reclamation.* (i) Based on the site-specific review required in § 3809.401and the environmental analysis of the plan of operations, BLM will determine the amount of pit backfilling required, if any, taking into consideration economic, environmental, and safety factors.

(ii) You must apply mitigation measures to minimize the impacts created by any pits or disturbances that are not completely backfilled .

(iii) Water quality in pits and other water impoundments must comply with applicable Federal, State, and where appropriate, local government water quality standards. Where no standards exist, you must take measures to protect wildlife, domestic livestock, and public water supplies and users.

(8) *Solid waste.* (i) You must comply with applicable Federal, State, and where delegated by the State, local government standards for the disposal and treatment of solid waste, including regulations issued under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*).

(ii) You must remove from the project area, dispose of, or treat all non-mine garbage, refuse, or waste to minimize their impact.

(9) *Fire prevention and control.* You must comply with all applicable Federal and State fire laws and regulations, and take all reasonable measures to prevent and suppress fires in the project area.

(10) *Maintenance and public safety.* During all operations and after mining—

(i) You must maintain structures, equipment, and other facilities in a safe and orderly manner;

(ii) You must mark by signs or fences, or otherwise identify hazardous sites or conditions resulting from your operations to alert the public in accord with applicable Federal and State laws and regulations; and

(iii) You must restrict unaccompanied public access to portions of your operations that present a hazard to the public, consistent with §§ 3809.600 and 3712.1 of this title.

(11) *Protection of survey monuments.* (i) To the extent economically and technically feasible, you must protect all survey monuments, witness corners, reference monuments, bearing trees, and line trees against damage or destruction.

(ii) If you damage or destroy a monument, corner, or accessory, you must immediately report the matter to BLM. BLM will tell you in writing how to restore or re-establish a damaged or destroyed monument, corner, or accessory.

§ 3809.423 How long does my plan of operations remain in effect?

Your plan of operations remains in effect as long as you are conducting operations, unless BLM suspends or revokes your plan of operations for failure to comply with this subpart.

§ 3809.424 What are my obligations if I stop conducting operations?

(a) To see what you must do if you stop conducting operations, follow this table:

If—	Then—
(1) You stop conducting operations for any period of time	(1) You must follow your approved interim management plan submitted under § 3809.401(b)(5); (ii) You must submit a modification to your interim management plan to BLM within 30 calendar days if it does not cover the circumstances of your temporary closure per § 3809.431(a); (iii) You must take all necessary actions to assure that unnecessary or undue degradation does not occur; and (iv) You must maintain an adequate financial guarantee.
(2) The period of non-operation is likely to cause unnecessary or undue degradation.	The BLM will require you to take all necessary actions to assure that unnecessary or undue degradation does not occur, including requiring you, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment, and other facilities and reclaim the project area.
(3) Your operations are inactive for 5 consecutive years	BLM will review your operations and determine whether BLM should terminate your plan of operations and direct final reclamation and closure.
(4) BLM determines that you abandoned your operations	BLM may initiate forfeiture under § 3809.595. If the amount of the financial guarantee is inadequate to cover the costs of reclamation, BLM may complete the reclamation, and the operator and all other responsible persons are liable for the costs of such reclamation. See § 3809.336(a) for indicators of abandonment.

(b) Your reclamation and closure obligations continue until satisfied.

Modifications of Plans of Operations

§ 3809.430 May I modify my plan of operations?

Yes, you may request a modification of the plan at any time during operations under an approved plan of operations.

§ 3809.431 When must I modify my plan of operations?

You must modify your plan of operations when any of the following apply:

(a) Before making any changes to the operations described in your approved plan of operations;

(b) When BLM requires you to do so to prevent unnecessary or undue degradation; and

(c) Before final closure, to address impacts from unanticipated events or conditions or newly discovered circumstances or information, including the following:

(1) Development of acid or toxic drainage;

(2) Loss of surface springs or water supplies;

(3) The need for long-term water treatment and site maintenance;

(4) Repair of reclamation failures;

(5) Plans for assuring the adequacy of containment structures and the integrity of closed waste units;

(6) Providing for post-closure management; and (7) Eliminating hazards to public safety.

§ 3809.432 What process will BLM follow in reviewing a modification of my plan of operations?

(a) BLM will review and approve a modification of your plan of operations in the same manner as it reviewed and approved your initial plan under §§ 3809.401 through 3809.420; or

(b) BLM will accept a minor modification without formal approval if it is consistent with the approved plan of operations and does not constitute a substantive change that requires additional analysis under the National Environmental Policy Act.

§ 3809.433 Does this subpart apply to a new modification of my plan of operations?

To see how this subpart applies to a modification of your plan of operations that you submit to BLM after January 20, 2001, refer to the following table.

If you have an approved plan of operations on January 20, 2001	Then—
(a) *New facility.* You subsequently propose to modify your plan of operations by constructing a new facility, such as waste rock repository, leach pad, impoundment, drill site, or road.	The plan contents requirements (§ 3809.401) and performance standards (§ 3809.420) of this subpart apply to the new facility. Those facilities and areas not included in the modification may continue to operate under the terms of your existing plan of operations.
(b) *Existing facility.* You subsequently propose to modify your plan of operations by modifying an existing facility, such as expansion of a waste rock repository, leach pad, or impoundment; layback of a mine pit; or widening of a road.	The plan contents requirements (§ 3809.401) and performance standards (§ 3809.420) of this subpart apply to the modified portion of the facility, unless you demonstrate to BLM's satisfaction it is not practical to apply them for economic environmental, safety, or technical reasons. If you make the demonstration, the plan content requirements (43 CFR 3809.1–5) and performance standards (43 CFR 3809.1–3(d) and 3809.2–2) that were in effect immediately before January 20, 2001 apply to your modified facility. (See 43 CFR parts 1000–end, revised as of Oct. 1, 2000.)

§ 3809.434 How does this subpart apply to pending modifications for new or existing facilities?

(a) This subpart applies to modifications pending before BLM on January 20, 2001 to construct a new facility, such as a waste rock repository, leach pad, drill site, or access road; or to modify an existing mine facility such as expansion of a waste rock repository or leach pad.

(b) All provisions of this subpart, except plan content (§ 3809.401) and performance standards (§§ 3809.415 and 3809.420) apply to any modification of a plan of operations that was pending on January 20, 2001. See § 3809.505 for applicability of financial guarantee requirements.

(c) If your unapproved modification of a plan of operations is pending on January 20, 2001, then the plan content requirements (§ 3809.1–5) and the performance standards (§§ 3809.1–3(d) and 3809.2–2) that were in effect immediately before January 20, 2001 apply to your modification of a plan of operations. (See 43 CFR parts 1000–end, revised as of Oct. 1, 2000).

(d) If you want this subpart to apply to your pending modification of a plan of operations, where not otherwise required, you may choose to have this subpart apply.

Financial Guarantee Requirements—General

§ 3809.500 In general, what are BLM's financial guarantee requirements?

To see generally what BLM's financial guarantee requirements are, follow this table:

If—	Then—
(a) Your operations constitute casual use,	You do not have to provide any financial guarantee.
(b) You conduct operations under a notice or a plan of operations	You must provide BLM or the State a financial guarantee that meets the requirements of this subpart before starting operations operations. For more information, see §§ 3809.551 through under a 3809.573.

§ 3809.503 When must I provide a financial guarantee for my notice-level operations?

To see how this subpart applies to your notice, follow this table:

If—	Then—
(a) Your notice was on file with BLM on January 20, 2001	You do not need to provide a financial guarantee unless you modify the notice or extend the notice under § 3809.333.
(b) Your notice was on file with BLM before January 20, 2001 and you choose to modify your notice as required by this subpart on or after that date.	You must provide a financial guarantee before you can begin operations under the modified notice. If you modify your notice, you must post a finacial guarantee for the entire notice.
(c) You file a new notice on or after January 20, 2001	You must provide a financial guarantee before you can begin operations under the notice.

§ 3809.505 How do the financial guarantee requirements of this subpart apply to my existing plan of operations?

For each plan of operations approved before January 20, 2001, you must post a financial guarantee according to the requirements of this subpart no later than July 19, 2001 at the local BLM office with jurisdiction over the lands involved. You do not need to post a new financial guarantee if your existing financial guarantee satisfies this subpart.

§ 3809.551 What are my choices for providing BLM with a financial guarantee?

You must provide BLM with a financial guarantee using any of the 3 options in the following table:

If—	Then—
(a) You have only one notice or plan of operations, or wish to provide a financial guarantee for a single notice or plan of operations.	You may provide an individual financial guarantee that covers only the cost of reclaiming areas disturbed under the single notice or plan of operations. See §§ 3809.552 through 3809.556 for more information.
(b) You are currently operating under more than one notice or plan of operations.	You may provide a blanket financial guarantee covering statewide or nationwide operations. See § 3809.560 for more information.
(c) You do not choose one of the options in paragraphs (a) and (b) of this section.	You may provide evidence of an existing financial guarantee under State law or regulations. See §§ 3809.570 through 3809.573 for more information.

Individual Financial Guarantee

§ 3809.552 What must my individual financial guarantee cover?

(a) If you conduct operations under a notice or a plan of operations and you provide an individual financial guarantee, it must cover the estimated cost as if BLM were to contract with a third party to reclaim your operations according to the reclamation plan, including construction and maintenance costs for any treatment facilities necessary to meet Federal and State environmental standards. The financial guarantee must also cover any interim stabilization and infrastructure maintenance costs needed to maintain the area of operations in compliance with applicable environmental requirements while third-party contracts are developed and executed.

(b) BLM will periodically review the estimated cost of reclamation and the adequacy of any funding mechanism established under paragraph (c) of this section and require increased coverage, if necessary.

(c) When BLM identifies a need for it, you must establish a trust fund or other funding mechanism available to BLM to ensure the continuation of long-term treatment to achieve water quality standards and for other long term, post-mining maintenance requirements. The funding must be adequate to provide for construction, long-term operation, maintenance, or replacement of any treatment facilities and infrastructure, for as long as the treatment and facilities are needed after mine closure. BLM may identify the need for a trust fund or other funding mechanism during plan review or later.

§ 3809.553 May I post a financial guarantee for a part of my operations?

(a) Yes, BLM may authorize you to provide a financial guarantee covering a part of your operations if—

(1) Your operations do not go beyond what is specifically covered by the partial financial guarantee; and

(2) The partial financial guarantee covers all reclamation costs within the incremental area of operations.

(b) BLM will review the amount and terms of the financial guarantee for each increment of your operations at least annually.

§ 3809.554 How do I estimate the cost to reclaim my operations?

(a) You must estimate the cost to reclaim your operations as if BLM were hiring a third-party contractor to perform reclamation of your operations after you have vacated the project area. Your estimate must include BLM's cost to administer the reclamation contract. Contact BLM to obtain this administrative cost information.

(b) Your estimate of the cost to reclaim your operations must be acceptable to BLM.

§ 3809.555 What forms of individual financial guarantee are acceptable to BLM?

You may use any of the following instruments for an individual financial guarantee, provided that the BLM State Director has determined that it is an acceptable financial instrument within the State where the operations are proposed:

(a) Surety bonds that meet the requirements of Treasury Department Circular 570, including surety bonds arranged or paid for by third parties;

(b) Cash in an amount equal to the required dollar amount of the financial guarantee, to be deposited and maintained in a Federal depository account of the United States Treasury by BLM;

(c) Irrevocable letters of credit from a bank or financial institution organized or authorized to transact business in the United States;

(d) Certificates of deposit or savings accounts not in excess of the maximum insurable amount as set by the Federal Deposit Insurance Corporation; and

(e) Either of the following instruments having a market value of not less than the required dollar amount of the financial guarantee and maintained in a Securities Investors Protection Corporation insured trust account by a licensed securities brokerage firm for the benefit of the Secretary of the Interior, acting by and through BLM:

(1) Negotiable United States Government, State and Municipal securities or bonds; or

(2) Investment-grade rated securities having a Standard and Poor's rating of AAA or AA or an equivalent rating from a nationally recognized securities rating service.

(f) Insurance, if its form and function is such that the funding or enforceable pledges of funding are used to guarantee performance of regulatory obligations in the event of default on such obligations by the operator. Insurance must have an A.M. Best rating of ''superior'' or an equivalent rating from a nationally recognized insurance rating service.

§ 3809.556 What special requirements apply to financial guarantees described in § 3809.555(e)?

(a) If you choose to use the instruments permitted under § 3809.555(e) in satisfaction of financial guarantee requirements, you must provide BLM, before you begin operations and by the end of each calendar year thereafter, a certified statement describing the nature and

market value of the instruments maintained in that account, and including any current statements or reports furnished by the brokerage firm to the operator or mining claimant concerning the asset value of the account.

(b) You must review the market value of the account instruments by December 31 of each year to ensure that their market value continues to be not less than the required dollar amount of the financial guarantee. When the market value of the account instruments has declined by more than 10 percent of the required dollar amount of the financial guarantee, you must, within 10 calendar days after its annual review or at any time upon the written request of BLM, provide additional instruments, as defined in § 3809.555(e), to the trust account so that the total market value of all account instruments is not less than the required dollar amount of the financial guarantee. You must send a certified statement to BLM within 45 calendar days thereafter describing your actions to raise the market value of its account instruments to the required dollar amount of the financial guarantee. You must include copies of any statements or reports furnished by the brokerage firm to you documenting such an increase.

(c) If your review under paragraph (b) of this section demonstrates that the total market value of trust account instruments exceeds 110 percent of the required dollar amount of the financial guarantee, you may ask BLM to authorize a written release of that portion of the account that exceeds 110 percent of the required financial guarantee. BLM will approve your request only if you are in compliance with the terms and conditions of your notice or approved plan of operations.

Blanket Financial Guarantee

§ 3809.560 Under what circumstances may I provide a blanket financial guarantee?

(a) If you have more than one notice- or plan-level operation underway, you may provide a blanket financial guarantee covering statewide or nationwide operations instead of individual financial guarantees for each operation.

(b) BLM will accept a blanket financial guarantee if we determine that its terms and conditions are sufficient to comply with the regulations of this subpart.

State-Approved Financial Guarantee

§ 3809.570 Under what circumstances may I provide a State-approved financial guarantee?

When you provide evidence of an existing financial guarantee under State law or regulations that covers your operations, you are not required to provide a separate financial guarantee under this subpart if—

(a) The existing financial guarantee is redeemable by the Secretary, acting by and through BLM;

(b) It is held or approved by a State agency for the same operations covered by your notice(s) or plan(s) of operations; and

(c) It provides at least the same amount of financial guarantee as required by this subpart.

§ 3809.571 What forms of State-approved financial guarantee are acceptable to BLM?

You may provide a State-approved financial guarantee in any of the following forms, subject to the conditions in §§ 3809.570 and 3809.574:

(a) The kinds of individual financial guarantees specified under § 3809.555;

(b) Participation in a State bond pool, if—

(1) The State agrees that, upon BLM's request, the State will use part of the pool to meet reclamation obligations on public lands; and

(2) The BLM State Director determines that the State bond pool provides the equivalent level of protection as that required by this subpart; or

(c) A corporate guarantee that existed on January 20, 2001, subject to the restrictions on corporate guarantees in § 3809.574.

§ 3809.572 What happens if BLM rejects a financial instrument in my State-approved financial guarantee?

If BLM rejects a submitted financial instrument in an existing State-approved financial guarantee, BLM will notify you and the State in writing, with a complete explanation of the reasons for the rejection within 30 calendar days of BLM's receipt of the evidence of State-approved financial guarantee. You must provide BLM with a financial guarantee acceptable under this subpart at least equal to the amount of the rejected financial instrument.

§ 3809.573 What happens if the State makes a demand against my financial guarantee?

When the State makes a demand against your financial guarantee, thereby reducing the available balance, you must do both of the following:

(a) Notify BLM within 15 calendar days; and

(b) Replace or augment the financial guarantee within 30 calendar days if the available balance is insufficient to cover the remaining reclamation cost.

§ 3809.574 What happens if I have an existing corporate guarantee?

(a) If you have an existing corporate guarantee on January 20, 2001 that applies to public lands under an approved BLM and State agreement, your corporate guarantee will continue in effect. BLM will not accept any new corporate guarantees or increases to existing corporate guarantees. You may not transfer your existing corporate guarantee to another operator.

(b) If the State revises existing corporate guarantee criteria or requirements that apply to a corporate guarantee existing on January 20, 2001, the BLM State Director will review the revisions to ensure that adequate financial coverage continues. If the BLM State Director determines it is in the public interest to do so, the State Director may terminate a revised corporate guarantee and require an acceptable replacement financial guarantee after due notice and a reasonable time to obtain a replacement.

Modification or Replacement of a Financial Guarantee

§ 3809.580 What happens if I modify my notice or approved plan of operations?

(a) If you modify a notice or an approved plan of operations under § 3809.331 or § 3809.431 respectively, and your estimated reclamation cost increases, you must increase the amount of the financial guarantee to cover any estimated additional cost of reclamation and long-term treatment in compliance with § 3809.552.

(b) If you modify a notice or an approved plan of operations under § 3809.331 or § 3809.431 respectively, and your estimated reclamation cost decreases, you may request BLM decrease the amount of the financial guarantee for your operations.

§ 3809.581 Will BLM accept a replacement financial instrument?

(a) Yes, if you or a new operator have an approved financial guarantee, you may request BLM to accept a replacement financial instrument at any time after the approval of an initial instrument. BLM will review the offered instrument for adequacy and may reject any offered instrument, but will do so by a decision in writing, with a complete explanation of the reasons for the rejection, within 30 calendar days of the offering.

(b) A surety is not released from an obligation that accrued while the surety

bond was in effect unless the replacement financial guarantee covers such obligations to BLM's satisfaction.

§ 3809.582 How long must I maintain my financial guarantee?

You must maintain your financial guarantee until you or a new operator replace it with another adequate financial guarantee, subject to BLM's written concurrence, or until BLM releases the requirement to maintain your financial guarantee after you have completed reclamation of your operation according to the requirements of § 3809.320 (for notices), including any measures identified as the result of consultation with BLM under § 3809.313, or § 3809.420 (for plans of operations).

Release of Financial Guarantee

§ 3809.590 When will BLM release or reduce the financial guarantee for my notice or plan of operations?

(a) When you (the mining claimant or operator) have completed all or any portion of the reclamation of your operations in accordance with your notice or approved plan of operations, you may notify BLM that the reclamation has occurred and request a reduction in the financial guarantee or BLM approval of the adequacy of the reclamation, or both.

(b) BLM will then promptly inspect the reclaimed area. We encourage you to accompany the BLM inspector.

(c) For your plan of operations, BLM will either post in the local BLM office or publish notice of final financial guarantee release in a local newspaper of general circulation and accept comments for 30 calendar days. Subsequently, BLM will notify you, in writing, whether you may reduce the financial guarantee under § 3809.591, or the reclamation is acceptable, or both.

§ 3809.591 What are the limitations on the amount by which BLM may reduce my financial guarantee?

(a) This section applies to your financial guarantee, but not to any funding mechanism established under § 3809.552(c) to pay for long-term treatment of effluent or site maintenance. Calculation of bond percentages in paragraphs (b) and (c) of this section does not include any funds held in that kind of funding mechanism.

(b) BLM may release up to 60 percent of your financial guarantee for a portion of your project area when BLM determines that you have successfully completed backfilling; regrading; establishment of drainage control; and stabilization and detoxification of leaching solutions, heaps, tailings, and similar facilities on that portion of the project area.

(c) BLM may release the remainder of your financial guarantee for the same portion of the project area when—

(1) BLM determines that you have successfully completed reclamation, including revegetating the area disturbed by operations; and

(2) Any effluent discharged from the area has met applicable effluent limitations and water quality standards for one year without needing additional treatment, or you have established a funding mechanism under § 3809.552(c) to pay for long-term treatment, and any effluent discharged from the area has met applicable effluent limitations and water quality standards water for one year with or without treatment.

§ 3809.592 Does release of my financial guarantee relieve me of all responsibility for my project area?

(a) Release of your financial guarantee under this subpart does not release you (the mining claimant or operator) from responsibility for reclamation of your operations should reclamation fail to meet the standards of this subpart.

(b) Any release of your financial guarantee under this subpart does not release or waive any claim BLM or other persons may have against any person under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, or under any other applicable statutes or regulations.

§ 3809.593 What happens to my financial guarantee if I transfer my operations?

You remain responsible for obligations or conditions created while you conducted operations unless a transferee accepts responsibility under § 3809.116, and BLM accepts an adequate replacement financial guarantee. Therefore, your financial guarantee must remain in effect until BLM determines that you are no longer responsible for all or part of the operation. BLM can release your financial guarantee on an incremental basis. The new operator must provide a financial guarantee before BLM will allow the new operator to conduct operations.

§ 3809.594 What happens to my financial guarantee when my mining claim or millsite is patented?

(a) When your mining claim or millsite is patented, BLM will release the portion of the financial guarantee that applies to operations within the boundaries of the patented land. This paragraph does not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area.

(b) BLM will release the remainder of the financial guarantee, including the portion covering approved access outside the boundaries of the mining claim, when you have completed reclamation to the standards of this subpart.

Forfeiture of Financial Guarantee

§ 3809.595 When may BLM initiate forfeiture of my financial guarantee?

BLM may initiate forfeiture of all or part of your financial guarantee for any project area or portion of a project area if—

(a) You (the operator or mining claimant) refuse or are unable to conduct reclamation as provided in the reclamation measures incorporated into your notice or approved plan of operations or the regulations in this subpart;

(b) You fail to meet the terms of your notice or your approved plan of operations; or

(c) You default on any of the conditions under which you obtained the financial guarantee.

§ 3809.596 How does BLM initiate forfeiture of my financial guarantee?

When BLM decides to require the forfeiture of all or part of your financial guarantee, BLM will notify you (the operator or mining claimant) by certified mail, return receipt requested; the surety on the financial guarantee, if any; and the State agency holding the financial guarantee, if any, informing you and them of the following:

(a) BLM's decision to require the forfeiture of all or part of the financial guarantee;

(b) The reasons for the forfeiture;

(c) The amount that you will forfeit based on the estimated total cost of achieving the reclamation plan requirements for the project area or portion of the project area affected, including BLM's administrative costs; and

(d) How you may avoid forfeiture, including—

(1) Providing a written agreement under which you or another person will perform reclamation operations in accordance with a compliance schedule which meets the conditions of your notice or your approved plan of operations and the reclamation plan, and a demonstration that such other person has the ability to satisfy the conditions; and

(2) Obtaining written permission from BLM for a surety to complete the reclamation, or the portion of the reclamation applicable to the bonded

phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the reclamation measures incorporated in your notice or approved plan of operations.

§ 3809.597 What if I do not comply with BLM's forfeiture decision?

If you fail to meet the requirements of BLM's forfeiture decision provided under § 3809.596, and you fail to appeal the forfeiture decision under §§ 3809.800 to 3809.807, or the Interior Board of Land Appeals does not grant a stay under 43 CFR 4.321, or the decision appealed is affirmed, BLM will—

(a) Immediately collect the forfeited amount as provided by applicable laws for the collection of defaulted financial guarantees, other debts, or State bond pools; and

(b) Use funds collected from financial guarantee forfeiture to implement the reclamation plan, or portion thereof, on the area or portion of the area to which financial guarantee coverage applies.

§ 3809.598 What if the amount forfeited will not cover the cost of reclamation?

If the amount forfeited is insufficient to pay for the full cost of reclamation, the operators and mining claimants are jointly and severally liable for the remaining costs. BLM may complete or authorize completion of reclamation of the area covered by the financial guarantee and may recover from responsible persons all costs of reclamation in excess of the amount forfeited.

§ 3809.599 What if the amount forfeited exceeds the cost of reclamation?

If the amount of financial guarantee forfeited is more than the amount necessary to complete reclamation, BLM will return the unused funds within a reasonable amount of time to the party from whom they were collected.

Inspection and Enforcement

§ 3809.600 With what frequency will BLM inspect my operations?

(a) At any time, BLM may inspect your operations, including all structures, equipment, workings, and uses located on the public lands. The inspection may include verification that your operations comply with this subpart. See § 3715.7 of this title for special provisions governing inspection of the inside of structures used solely for residential purposes.

(b) At least 4 times each year, BLM will inspect your operations if you use cyanide or other leachate or where there is significant potential for acid drainage.

§ 3809.601 What types of enforcement action may BLM take if I do not meet the requirements of this subpart?

BLM may issue various types of enforcement orders, including the following:

(a) *Noncompliance order.* If your operations do not comply with any provision of your notice, plan of operations, or requirement of this subpart, BLM may issue you a noncompliance order; and

(b) *Suspension orders.* (1) BLM may order a suspension of all or any part of your operations after—

(i) You fail to timely comply with a noncompliance order for a significant violation issued under paragraph (a) of this section. A significant violation is one that causes or may result in environmental or other harm or danger or that substantially deviates from the complete notice or approved plan of operations;

(ii) BLM notifies you of its intent to issue a suspension order; and

(iii) BLM provides you an opportunity for an informal hearing before the BLM State Director to object to a suspension.

(2) BLM may order an immediate, temporary suspension of all or any part of your operations without issuing a noncompliance order, notifying you in advance, or providing you an opportunity for an informal hearing if—

(i) You do not comply with any provision of your notice, plan of operations, or this subpart; and

(ii) An immediate, temporary suspension is necessary to protect health, safety, or the environment from imminent danger or harm. BLM may presume that an immediate suspension is necessary if you conduct plan-level operations without an approved plan of operations or conduct notice-level operations without submitting a complete notice.

(3) BLM will terminate a suspension order under paragraph (b)(1) or (b)(2) of this section when BLM determines you have corrected the violation.

(c) *Contents of enforcement orders.* Enforcement orders will specify—

(1) How you are failing or have failed to comply with the requirements of this subpart;

(2) The portions of your operations, if any, that you must cease or suspend;

(3) The actions you must take to correct the noncompliance and the time, not to exceed 30 calendar days, within which you must start corrective action; and

(4) The time within which you must complete corrective action.

§ 3809.602 Can BLM revoke my plan of operations or nullify my notice?

(a) BLM may revoke your plan of operations or nullify your notice upon finding that—

(1) A violation exists of any provision of your notice, plan of operation, or this subpart, and you have failed to correct the violation within the time specified in the enforcement order issued under § 3809.601; or

(2) a pattern of violations exists at your operations.

(b) The finding is not effective until BLM notifies you of its intent to revoke your plan or nullify your notice, and BLM provides you an opportunity for an informal hearing before the BLM State Director.

(c) If BLM nullifies your notice or revokes your plan of operations, you must not conduct operations on the public lands in the project area, except for reclamation and other measures specified by BLM.

§ 3809.603 How does BLM serve me with an enforcement action?

(a) BLM will serve a noncompliance order, a notification of intent to issue a suspension order, a suspension order, or other enforcement order on the person to whom it is directed or his or her designated agent, either by—

(1) Sending a copy of the notification or order by certified mail or by hand to the operator or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service is complete upon offer of the notification or order or of the certified mail and is not incomplete because of refusal to accept; or

(2) Offering a copy at the project area to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the project area, BLM may offer a copy to any individual at the project area who appears to be an employee or agent of the person to whom the notification or order is issued. Service is complete when the notice or order is offered and is not incomplete because of refusal to accept. Following service at the project area, BLM will send an information copy by certified mail to the operator or the operator's designated agent.

(b) BLM may serve a mining claimant in the same manner an operator is served under paragraph (a)(1) of this section.

(c) The mining claimant or operator may designate an agent for service of notifications and orders. You must provide the designation in writing to the

local BLM field office having jurisdiction over the lands involved.

§ 3809.604 What happens if I do not comply with a BLM order?

(a) If you do not comply with a BLM order issued under §§ 3809.601 or 3809.602, the Department of the Interior may request the United States Attorney to institute a civil action in United States District Court for an injunction or order to enforce its order, prevent you from conducting operations on the public lands in violation of this subpart, and collect damages resulting from unlawful acts. This relief may be in addition to the enforcement actions described in §§ 3809.601 and 3809.602 and the penalties described in §§ 3809.700 and 3809.702.

(b) If you fail to timely comply with a noncompliance order issued under § 3809.601(a), and remain in noncompliance, BLM may order you to submit plans of operations under § 3809.401 for current and future notice-level operations.

§ 3809.605 What are prohibited acts under this subpart?

Prohibited acts include, but are not limited to, the following:

(a) Causing any unnecessary or undue degradation;

(b) Beginning any operations, other than casual use, before you file a notice as required by § 3809.21 or receive an approved plan of operations as required by § 3809.412;

(c) Conducting any operations outside the scope of your notice or approved plan of operations;

(d) Beginning operations prior to providing a financial guarantee that meets the requirements of this subpart;

(e) Failing to meet the requirements of this subpart when you stop conducting operations under a notice (§ 3809.334), when your notice expires (§ 3809.335), or when you stop conducting operations under an approved plan of operations (§ 3809.424);

(f) Failing to comply with any applicable performance standards in § 3809.420;

(g) Failing to comply with any enforcement actions provided for in § 3809.601; or

(h) Abandoning any operation prior to complying with any reclamation required by this subpart or any order provided for in § 3809.601.

Penalties

§ 3809.700 What criminal penalties apply to violations of this subpart?

The criminal penalties established by statute for individuals and organizations are as follows:

(a) *Individuals.* If you knowingly and willfully violate the requirements of this subpart, you may be subject to arrest and trial under section 303(a) of FLPMA (43 U.S.C. 1733(a)). If you are convicted, you will be subject to a fine of not more than $100,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571, or imprisonment not to exceed 12 months, or both, for each offense; and

(b) *Organizations.* If an organization or corporation knowingly and willfully violates the requirements of this subpart, it is subject to trial and, if convicted, will be subject to a fine of not more than $200,000, or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571.

§ 3809.701 What happens if I make false statements to BLM?

Under Federal statute (18 U.S.C. 1001), you are subject to arrest and trial before a United States District Court if, in any matter under this subpart, you knowingly and willfully falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any false writings or document knowing the same to contain any false, fictitious, or fraudulent statement or entry. If you are convicted, you will be subject to a fine of not more than $250,000 or the alternative fine provided for in the applicable provisions of 18 U.S.C. 3571 or imprisonment for not more than 5 years, or both.

§ 3809.702 What civil penalties apply to violations of this subpart?

(a)(1) Following issuance of an order under § 3809.601, BLM may assess a proposed civil penalty of up to $5,000 for each violation against you if you—

(i) Violate any term or condition of a plan of operations or fail to conform with operations described in your notice;

(ii) Violate any provision of this subpart; or

(iii) Fail to comply with an order issued under § 3809.601.

(2) BLM may consider each day of continuing violation a separate violation for purposes of penalty assessments.

(3) In determining the amount of the penalty, BLM must consider your history of previous violations at the particular mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether you were negligent; and whether you demonstrate good faith in attempting to achieve rapid compliance after notification of the violation.

(4) If you are a small entity, BLM will, under appropriate circumstances including those described in paragraph (a)(3) of this section, consider reducing or waiving a civil penalty and may consider ability to pay in determining a penalty assessment.

(b) A final administrative assessment of a civil penalty occurs only after BLM has notified you of the assessment and given you opportunity to request within 30 calendar days a hearing by the Office of Hearings and Appeals. BLM may extend the time to request a hearing during settlement discussions. If you request a hearing, the Office of Hearings and Appeals will issue a decision on the penalty assessment.

(c) If BLM issues you a proposed civil penalty and you fail to request a hearing as provided in paragraph (b), the proposed assessment becomes a final order of the Department, and the penalty assessed becomes due upon expiration of the time allowed to request a hearing.

§ 3809.703 Can BLM settle a proposed civil penalty?

Yes, BLM may negotiate a settlement of civil penalties, in which case BLM will prepare a settlement agreement. The BLM State Director or his or her designee must sign the agreement.

Appeals

§ 3809.800 Who may appeal BLM decisions under this subpart?

(a) A party adversely affected by a decision under this subpart may ask the State Director of the appropriate BLM State Office to review the decision.

(b) An adversely affected party may bypass State Director review and directly appeal a BLM decision under this subpart to the Office of Hearings and Appeals (OHA) under part 4 of this title. See § 3809.801.

§ 3809.801 When may I file an appeal of the BLM decision with OHA?

(a) If you intend to appeal a BLM decision under this subpart, use the following table to see when you must file a notice of appeal with OHA:

If—	And—	Then if you intend to appeal, you must file a notice of appeal with OHA—
(1) You do not request State Director review	.....	Within 30 calendar days after the date you receive the original decision.
(2) You request State Director review	The State Director does not accept your request for review.	On the original decision within 30 calendar days of the date you receive the State Director's decision not to review.
(3) You request State Director review	The State Director has accepted your request for review, but has not made a decision on the merits of the appeal.	On the original decision before the State Director issues a decision.
(4) You request State Director review	The State Director makes a decision on the merits of the appeal.	On the State Director's decision within 30 calendar days of the date you receive, or are notified of, the State Director's decision.

(b) In order for OHA to consider your appeal of a decision, you must file a notice of appeal in writing with the BLM office where the decision was made.

§ 3809.802 What must I include in my appeal to OHA?

(a) Your written appeal must contain:

(1) Your name and address; and

(2) The BLM serial number of the notice or plan of operations that is the subject of the appeal.

(b) You must submit a statement of your reasons for the appeal and any arguments you wish to present that would justify reversal or modification of the decision within the time frame specified in part 4 of this chapter (usually within 30 calendar days after filing your appeal).

§ 3809.803 Will the BLM decision go into effect during an appeal to OHA?

All decisions under this subpart go into effect immediately and remain in effect while appeals are pending before OHA unless OHA grants a stay under § 4.21(b) of this title.

§ 3809.804 When may I ask the BLM State Director to review a BLM decision?

The State Director must receive your request for State Director review no later than 30 calendar days after you receive or are notified of the BLM decision you seek to have reviewed.

§ 3809.805 What must I send BLM to request State Director review?

(a) Your request for State Director review must be a single package that includes a brief written statement explaining why BLM should change its decision and any documents that support your written statement. Mark your envelope ''State Director Review.'' You must also provide a telephone or fax number for the State Director to contact you.

(b) When you submit your request for State Director review, you may also request a meeting with the State Director. The State Director will notify you as soon as possible if he or she can accommodate your meeting request.

§ 3809.806 Will the State Director review the original BLM decision if I request State Director review?

(a) The State Director may accept your request and review a decision made under this subpart. The State director will decide within 21 days of a timely filed request whether to accept your request and review the original BLM decision. If the State Director does not make a decision within 21 days on whether to accept your request for review, you should consider your request for State Director review declined, and you may appeal the original BLM decision to OHA.

(b) The State Director will not begin a review and will end an ongoing review if you or another affected party files an appeal of the original BLM decision with OHA under section § 3809.801 before the State Director issues a decision under this subpart, unless OHA agrees to defer consideration of the appeal pending a State Director decision.

(c) If you file an appeal with OHA after requesting State Director review, you must notify the State Director who, after receiving your notice, may request OHA to defer considering the appeal.

(d) If you fail to notify the State Director of your appeal to OHA, any decision issued by the State Director may be voided by a subsequent OHA decision.

§ 3809.807 What happens once the State Director agrees to my request for a review of a decision?

(a) The State Director will promptly send you a written decision, which may be based on any of the following:

(1) The information you submit;

(2) The original BLM decision and any information BLM relied on for that decision;

(3) Any additional information, including information obtained from your meeting, if any, with the State Director.

(b) Any decision issued by the State Director under this subpart may affirm the original BLM decision, reverse it completely, or modify it in part. The State Director's decision may incorporate any part of the original BLM decision.

(c) If the original BLM decision was published in the **Federal Register**, the State Director will also publish his or her decision in the **Federal Register**.

§ 3809.808 How will decisions go into effect when I request State Director review?

(a) The original BLM decision remains in effect while State Director review is pending, except that the State Director may stay the decision during the pendency of his or her review.

(b) The State Director's decision will be effective immediately and remain in effect, unless a stay is granted by OHA under § 4.21 of this title.

§ 3809.809 May I appeal a decision made by the State Director?

(a) An adversely affected party may appeal the State Director's decision to OHA under part 4 of this title, except that you may not appeal a denial of your request for State Director review or a denial of your request for a meeting with the State Director.

(b) Once the State Director issues a decision under this subpart, it replaces the original BLM decision, which is no longer in effect, and you may appeal only the State Director's decision.

Public Visits to Mines

§ 3809.900 Will BLM allow the public to visit mines on public lands?

(a) If requested by any member of the public, BLM may sponsor and schedule a public visit to a mine on public land once each year. The purpose of the visit is to give the public an opportunity to view the mine site and associated facilities. Visits will include surface areas and surface facilities ordinarily made available to visitors on public tours. BLM will schedule visits during normal BLM business hours at the

convenience of the operator to avoid disruption of operations.

(b) Operators must allow the visit and must not exclude persons whose participation BLM authorizes. BLM may limit the size of a group for safety reasons. An operator's representative must accompany the group on the visit. Operators must make available any necessary safety training that they provide to other visitors. BLM will provide the necessary safety equipment if the operator is unable to do so.

(c) Members of the public must provide their own transportation to the mine site, unless provided by BLM. Operators don't have to provide transportation within the project area, but if they don't, they must provide access for BLM-sponsored transportation.

PART 9260—LAW ENFORCEMENT—CRIMINAL

11. The authority citation for part 9260 continues to read as follows:

Authority: 16 U.S.C. 433; 16 U.S.C. 460l–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 18 U.S.C. 3551 *et seq.*; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

12. BLM is amending part 9260 by adding the text of subpart 9263 consisting of § 9263.1 to read as follows:

Subpart 9263—Minerals Management

§ 9263.1 Operations conducted under the 1872 Mining Law.

See subpart 3809 of this title for law enforcement provisions applicable to operations conducted on public lands under the 1872 Mining Law.

[FR Doc. 00–29472 Filed 11–20–00; 8:45 am]

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Federal Register

Tuesday,

November 21, 2000

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 272 et al.

Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104–193, as Amended by Public Laws 104–208, 105–33 and 105–185; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 274, and 277

[Amendment No. 388]

RIN 0584–AC40

Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of Pub. L. 104–193, as Amended by Public Laws 104–208, 105–33 and 105–185

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes a proposed rule published February 29, 2000, amending Food Stamp Program (Program) regulations to implement several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and subsequent amendments to these provisions made by the Omnibus Consolidated Appropriations Act of 1996 (OCAA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA). This action finalizes options related to matching activities, fair hearings and recipient services. This action finalizes provisions which would increase State agency flexibility in processing applications for the Program and allow greater use of standard amounts for determining deductions and self-employment expenses. This action also finalizes revisions to the requirements for determining alien eligibility and the eligibility and benefits of sponsored aliens, and requires certain transitional housing payments and most State and local energy assistance to be counted as income, excludes the earnings of students under age 18 from income, and requires proration of benefits following any break in certification.

Other provisions of this final action establish ground rules for implementing the Simplified Food Stamp Program, allow State agencies options to issue partial allotments for households in treatment centers, count all, part, or, in some cases, none of the income of an ineligible alien in determining the benefits of the rest of the household, issue combined allotments to certain expedited service households, and certify elderly or disabled households up to 24 months and other households up to 12 months. The action also finalizes several changes to existing regulations in response to the President's reform initiative to remove overly prescriptive, outdated, and unnecessary regulatory provisions.

The rule also makes final the proposals to add vehicles to the assets which may be covered under the inaccessible resources provisions of the Food Stamp Act of 1977, clarifies the procedures for shortening or lengthening a certification period, and makes a change to exclude from income on-the-job training payments received under the Summer Youth Employment and Training Program as required by Section 702 of the Workforce Investment Act (Pub. L. 102–367, originally known as the Job Training Reform Amendments of 1992).

DATES: *Effective Date:* This final rule is effective January 20, 2001, except for the amendment to § 273.2(b)(4)(iv) which is effective August 1, 2001, and the amendments specified in items 2 and 3 below which are not effective until Office of Management and Budget (OMB) approval of an associated information collection burden. The Food and Nutrition Service will publish a document in the **Federal Register** announcing the effective date of these amendments after approval of the information collection requirements by OMB.

Implementation Dates:

1. State agencies may implement the following amendments at their discretion at any time on or after the effective date: § 272.8; § 272.11(a); § 273.2(f)(9)(i); § 273.2(f)(10); § 273.2(j)(2)(ii); § 273.9(d)(6)(i); § 273.9(d)(6)(iii)(E); § 273.11(a)(3)(v); § 273.12(a)(1)(vii); § 273.25; and § 277.4(b).

2. State agencies may implement the following amendment at their discretion at any time on or after the effective date established by OMB approval of the associated information collection burden: § 273.12(f)(4).

3. State agencies must implement the following amendments no later than 180 days after the effective date established by OMB approval of the associated information collection burden for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date: § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); and § 273.12(c)(3).

4. State agencies must implement the amendment to § 273.2(b)(4)(iv) no later than August 1, 2001, for all households newly applying for Program benefits.

5. State agencies must implement all other amendments no later than June 1, 2001, for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date.

FOR FURTHER INFORMATION CONTACT: Patrick Waldron, Program Analyst, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 800, Alexandria, Virginia, 22302, (703) 305–2805 or e-mail at Patrick.Waldron@fns.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 13132

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. FNS has considered the impact on State agencies. For the most part, this rule deals with changes required by law, and implemented by law in 1996. However, the Department has made discretionary changes to preserve client protections that existed in the regulations prior to the effective date of this rule and to facilitate the participation of eligible low-income households, particularly households with wage earners. These changes primarily affect food stamp recipients. The effects on State agencies are moderate. In some instances, the changes relieve State agencies of administrative burdens. In other instances, the changes result in modest increases in administrative burdens. However, we balanced these increases in State agency burden against the need to preserve and enhance Program access to eligible low-income families and individuals. This rule is intended to have preemptive effect on any State law that conflicts with its provisions or that would otherwise impede its full implementation. Generally, PRWORA and other federal statutes required many of the changes made in this rule, and made most of them effective on enactment and all of them effective prior to the publication of this rule. FNS is not aware of any case where the discretionary provisions of the rule would preempt State law.

Prior Consultation With State Officials

Before drafting this rule, we received input from State agencies at various times. Because the Program is a State-administered, federally funded program,

our regional offices have formal and informal discussions with State and local officials on an ongoing basis. These discussions involve implementation and policy issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other Program rules. In addition, FNS officials attend regional, national, and professional conferences to discuss issues and receive feedback from State officials at all levels. Lastly, the comments on the proposed rule from State officials were carefully considered in drafting this final rule.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

The information collection requirements affected by the issuance of this final rule are or will be contained within the following OMB numbers, 0584–0064, 0584–0083, and 0584–0496. Some requirements are already approved. There are others about which we are seeking comment. Those will not become effective until approved by OMB.

Current Information Burden (ICB) Approval

The information collection requirements governing State agency administration and management described in the final rule at Part 272 have been eliminated, made optional or significantly modified as a result of implementation of certain provisions of the PRWORA amending the Program. Therefore, current reporting and record keeping burden associated with Part 272, previously approved by OMB and assigned control numbers 0584–0064 and 0584–0083, either remains the same or there is no longer an information collection burden associated with the provisions discussed in the preamble to this rule. OMB 0584–0064 also includes information collection burden associated with Part 273.

The information collection requirements described in § 273.2, § 273.12, § 273.14(b), and § 273.21 of this final rule governing the application, certification, and ongoing eligibility of food stamp households have been approved under OMB No. 0584–0064. The information collection requirements described in § 273.9(d) and § 273.11(b) of this final rule governing administration of the homeless shelter deduction, establishing and reviewing standard utility allowances, and establishing methodologies for offsetting the cost of producing self-employment income have been approved under OMB No. 0584–0496.

Results From 60 Day Comment Period

FNS has submitted the above-noted ICB packages to OMB for renewal and they will remain in effect until further notice. We received no comments on the ICB mentioned in the proposed rule. As discussed below, the final rule contains additional reporting burden which must receive OMB approval before the regulatory amendments become effective. The associated amendments are § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); § 273.12(c)(3), and § 273.12(f)(4).

Additional Burden

As a result of the numerous public comments on the proposed rule, proposals to Part 273 in the rule were either modified or withdrawn. These changes affect the ICB approved under OMB No. 0584–0064 and add new collection burdens not previously published. The additional ICB identified as a result of this final rule includes: (1) Notice of Missed Interview; (2) the determination of indigence for eligible sponsored aliens subject to deeming of sponsor income; (3) the notification of households about face-to-face interview waivers; (4) notifications to households that apply to both food stamps and TANF that (A) time limits of other programs do not apply to the Food Stamp Program; and (B) households are encouraged to continue the food stamp application process even if the application for TANF benefits is withdrawn; (5) the State agency's responsibility to forward misfiled applications; (6) the Transition Notice for use in States electing to provide the Transitional Benefits Alternative; and (7) the Request for Contact. The number of initial food stamp applications and recertifications received in 1999 according to the FNS National Databank (8,139,774 and 9,992,025 respectively) will be used for these estimates. The combined total of the received applications is therefore 18,131,799 for 1999.

In accordance with the Paperwork Reduction Act of 1995, FNS is submitting for public comment the change in the ICB that results from the adoption of the rule associated with the application, certification, and ongoing eligibility of food stamp households. FNS is incorporating the additional data collection activities governing the application, certification, and ongoing eligibility of food stamp households in OMB No. 0584–0064.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and the information to be collected; and (c) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send one copy of comments and/or request for copies of this information collection to: Patrick Waldron, Program Analyst, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302–1594, 703.305–2805. Comments may also be faxed to Mr. Waldron at 703.305.2486. FNS prefers to receive comments in the electronic medium. Our Internet address is *FSPHQ-WEB@fns.usda.gov.* In the subject box, please indicate ''NCEP ICB comments''. Only comments received prior to 5:00 p.m. EST on January 19, 2001, will be given consideration.

Title: Notice of Missed Interview.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: Current rules require State agencies to reschedule missed interviews. We are removing the requirement that the State agency reschedule a missed interview. However, we are adding a requirement to § 273.2(e)(3) that the State agency must send a notice to a household that misses its interview appointment indicating that it missed the scheduled interview and informing the household that it is responsible for rescheduling the interview.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding the number of missed interviews in any given time frame. Our initial inclination was to suggest that 25 percent of all initial applications and recertifications miss an interview. Comments and/or

data regarding this estimated percentage are encouraged.

Estimated Number of Responses per Respondent: We are asking that States provide reasonable estimates regarding this burden estimate. We also assume that the same 25 percent receive one response per respondent per year.

Estimate of Burden: Household burden—It is difficult to estimate the burden to the household, since the manner in which the household responds to the notice will vary considerably. The household may call the local food stamp office to reschedule, arrive in person at the office to reschedule, write a reply or send an e-mail. The amount of burden time on the household depends on the manner in which the household responds and the manner in which the State will accept responses to the Notice of Missed Interview (NOMI). Therefore, we estimated the household burden at approximately 10 minutes per notice. In addition, some households will not respond to the notice of a missed interview. We estimate that 25 percent will not respond to the notice. We request that States provide information regarding the approximate number of missed interviews per month or per year. State burden—due to the automation of most State agencies, we assume the estimated burden to issue a NOMI will be 15 seconds per notice plus a one-time adjustment of forms, which is estimated at 20 hours per form.

Estimated Total Annual Burden on Respondents: Household burden—We estimate that the total annual burden will be 75,575 hours (1,813,799 total applications × 0.25 × 10 min/60 min = 75,575 hours). State burden—Since we do not know the estimated number of missed interviews per State, we are requesting comments from the State agencies to provide a better picture of the burden such a notice will cause. To issue a notice, we are calculating the 10 seconds to equal 0.00277 hours. (10 seconds = 10 sec/60 sec per min = 0.16667 min/60 min per hour = 0.00277 hours). The estimated total annual burden on the States would be 1,256 hours (1,813,799 total applications × 0.25 × 0.00277 hours = 1,256 hours).

In addition, we anticipate a one-time adjustment of forms for the State agencies. Due to computerized systems, we anticipate each State agency will require an additional 20 work hours to revise the forms. The total burden would then be 1060 hours (20 hours × 53 State agencies = 1,060 hours).

The anticipated total burden on the State agencies would then be 2,316 hours (1,256 + 1,060 = 2,316).

Title: Determination of Indigence.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: Under the final rule, § 273.4(c)(3)(iv) exempts certain eligible sponsored aliens from the provisions requiring deeming of sponsor income and resources if the sponsored alien is indigent. Under the final rule, an eligible sponsored alien is indigent if the sum of all the sponsored alien's household's income and any assistance the sponsor or others provide (cash or in-kind) is less than or equal to 130 percent of the poverty income guideline. To comply with the statute, and unlike a normal determination of income for food stamp eligibility purposes, the indigence determination includes an estimation of the value of in-kind assistance the sponsor and others provide. The State agency would determine the amount of income and other in-kind assistance provided in the month of application. Each indigence determination is good for 12 months and is renewable for additional 12-month periods. If the sponsored alien is indigent, then the normal food stamp budgeting process would begin. The State agency counts in the food stamp budget whatever actual cash contributions the sponsor and others provide.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding the number of indigent sponsored aliens in any given time frame. The Department believes this is a small group and data have not been collected to determine the exact number of individuals involved. We believe that only eligible lawful permanent residents who are Hmong or Highland Laotians or individuals who have a U.S. military connection are potentially subject to the sponsor deeming provisions of the Program. In as much as the provision applies only to sponsored aliens who are sponsored by an individual, and not an organization, and for whom an affidavit of support was executed on or after December 19, 1997, we believe there may be less than 500 individuals who are subject to this provision and who are food stamp eligible.

Estimated Number of Responses per Respondent: We anticipate only one response per respondent per year.

Estimate of Burden: Household burden—We believe that the burden on the household will not change. State burden—We estimate the burden on the State to be approximately 10 minutes for collecting additional information to determine the value of in-kind assistance provided by the sponsor and/or others and to determine the indigence of the applicant household.

Estimated Total Annual Burden on Respondents: Household burden—We believe no additional burden is added to the household. State burden—We estimate the total burden to be (10 min/60 min × 500 × 1/year) 83 additional burden hours per year. Comments and/or data regarding this estimated percentage are encouraged.

Title: The Notification of Households About Face-to-Face Interview Waivers.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: One time requirement to modify forms.

Abstract: Under the final rule the eligibility worker must advise each applicant of the possibility waiving a face-to-face interview for a telephone interview. Under the previous rule, applicant households had to request information on the possibility of waiving the face-to-face interview.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding this burden. Comments and/or data regarding this estimated percentage are encouraged. We are initially estimating that each household that applies for food stamps or applies for recertification will be affected. In 1999, there were 8,139,774 initial applications and 9,992,025 recertification applications. Combined, the total number of applications in 1999 was 18,131,799. Therefore, our initial estimate in the number of respondents affected is 18,131,799.

Estimated Number of Responses per Respondent: We estimate one response per application, for a total estimate of 18,131,799 per year.

Estimate of Burden: Household burden—We believe this does not affect the burden on the household. State burden: We estimate 10 seconds to notify each applicant household.

Estimated Total Annual Burden on Respondents: Household burden:—We believe this will not affect the burden on the applying households. State burden—This totals to 50,366 hours per year for the States [(10 seconds/60)/60 × 18,131,799].

Title: Notification of Households That Apply for Both Food Stamp Benefits and TANF That: Time Limits of Other Programs do not Apply to the Food Stamp Program; and the Encouragement of Households To Continue the Food Stamp Application Process Despite Requirements for Other Programs and/or Actions of Other Programs.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from approval date.

Type of request: New data collection.

Abstract: Time limits—The final rule requires the State agency to inform households that receiving food stamps will have no bearing on any other program's time limits. The interviewer must advise households that are also applying for or receiving PA benefits that time limits and other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits; and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. Encouragement—The final rule provides that if the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall in no way try to discourage households from applying for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

Number of Additional Respondents: This provision applies only to applicants who apply for both TANF and food stamps.

Estimated Number of Responses per Respondent: We estimate one response per household that applies for both Food Stamp benefits and TANF.

Estimate of Burden: Household burden—We believe there is no burden to the household for this provision. State burden—We estimate 10 seconds to notify of the two issues to each applicant household that has applied to both TANF and food stamps.

Estimated Total Annual Burden on Respondents: Household burden—We believe there is no burden to the household in this provision. State burden—We are requesting comments from the State agencies on the burden this provision imposes on the State agencies. The National Databank indicated 2.8 million households were receiving food stamp benefits and PA benefits in January 1999. Therefore, we estimate that the total annual burden is 7,917 hours (2,800,000 × .00277 hours + 7,917) [10/60 = .16667 min. = .16667/60 = .00277 hours].

Title: The State Agency Responsibilities for Misfiled Food Stamp Applications.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New responsibility.

Abstract: This provision of the final rule would: (1) Continue to allow the State agency to require households to file an application at a specific certification office or allow them to file an application at any certification office within the State or project are; (2) require that if an application is received at an incorrect office, the State agency advise the household of the address and telephone number of the correct office (3) require the State agency to forward an application received at an incorrect office to the correct office not later than the next business day; and (4) remove the requirement currently located in the third sentence of § 273.2(c)(2)(ii) that the State agency inform the household that its application will not be considered filed and the processing standards must not begin until the application is received by the appropriate office.

Number of Additional Respondents: We are asking that States provide reasonable estimates regarding this burden. Comments and/or data regarding this estimated percentage are encouraged. Since most project areas have only one office, we believe the new rule will affect only large project areas with multiple offices. Further, within that group of project areas, only those which limit applications taken to a specific geographic area or a specific caseload characteristic will come under the rule. Therefore, we are estimating approximately 30 misfiled applications per month in each of the 100 counties. This totals approximately 36,000 misfiled applications per year.

Estimated Number of Responses per Respondent: We believe this occurs once per year per misfiled application.

Estimate of Burden: Household burden—We do not believe this incurs additional burden on the household. State burden—This burden time is dependent on the method in which the misfiled application is forwarded. We believe this burden would take the State approximately 10 minutes per misfiled application if the State agency faxed the application one page at a time.

Estimated Total Annual Burden on Respondents: Household burden—We believe there is no burden to the household for this provision. State burden—This would take an additional 6,000 burden hours per year (10 min/60 min × 36,000 = 6000 hours).

Title: The Transition Notice.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: The final rule provides an optional procedure for providing TANF leavers with ''transitional food stamp benefits,'' much in the same way families receive transitional Medicaid after leaving TANF rolls. Under the new policy the State agency would freeze food stamp benefits of households leaving TANF rolls for up to 3 months, depending on the period of time since the household's last certification. Near the close of the transition period, the State agency would act on information collected from the household, either adjusting the benefit level, or closing the household's food stamp case because it is no longer eligible or it has failed to provide sufficient information to continue its eligibility for the Program. In some cases, the State agency would have to conduct a full recertification of eligibility, if it was not possible to extend the household's certification period beyond the statutory maximum for its circumstances. This provision in the final rule will require State agencies to develop a new form; however, State agencies may modify existing forms to comply with the requirement.

Number of Respondents: This provision in the final rule only affect families leaving TANF. Those affected households would receive a ''Transition Notice'' (TN) advising the household that due to the closure of cash assistance, the food stamp allotment is frozen at the pre-TANF closure amount. In addition, the TN must advise the household that to continue participating in the Program, they must report changes to the State agency within a specified time frame, or report to a recertification interview, as directed in the TN.

Estimated Number of Responses per Respondent: Household burden—We believe there is no additional burden to the household for this provision. State burden—We do not anticipate additional burden on the State agencies in issuing this Transitional Notice since this burden replaces that of the Notice of Expiration (NOE) in such cases.

We estimate that about 15 State agencies will implement TBA in the next 3 years. The total annual burden on the State for developing the form is estimated to be a one-time adjustment of 20 hours to develop the form and process. This totals 300 hours (20 × 15 State agencies = 300.

Title: The Request for Contact.

OMB Number: 0584–0064.

Expiration Date: Three (3) years from date of approval.

Type of request: New data collection.

Abstract: Another new provision in the final rule requires the State agency

to obtain information or clarify information from the household during the certification period. The new form, request for contact (RFC), is necessary in situations where the household has reported a change, but the information is so unclear that the State agency cannot readily determine its effect on the household's benefit amount. The final rule places the burden of clarifying an issue on the household. The RFC informs the household of the information needed to continue its current certification. Since the State agency cannot readily determine a household's benefit amount without the clarification or missing information, then the information is considered necessary. The State agency must issue a written RFC that clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances. The RFC affords the household at least 10 days to respond, either by telephone or by correspondence, as the State agency directs. The RFC also indicates the consequences if the household fails to respond to the RFC. Depending on the household's response to the RFC, the State agency must take appropriate action, if necessary, to close the household's case or adjust the household's benefit amount. This is a new form and will be added to the burden package calculation.

Number of Additional Respondents: We estimate that 25 percent of the change reports (12,375,185 × 0.25 = 343,796) will result in a request for contact.

Estimated Number of Responses per Respondent: We also estimate that on average, one request for contact will be issued in a 12-motnth period.

Estimate of Burden: Household burden—It is difficult to estimate the burden to the household, since the manner in which the household responds to the RFC varies. The household may call the local food stamp office to report information, arrive in person at the office to report, write a reply or send an email. The amount of burden time on the household depends on the manner in which the household responds and the manner in which the State will accept. Therefore, we estimated the household burden at approximately 10 minutes per notice. In addition, some households will not respond to the RFC. We estimate 25 percent will not respond to the notice. State burden—Due to the automation capabilities of most State agencies, we estimate the burden on the State to issue the RFC approximately 2 minutes per request. We do not anticipate additional burden on the State agencies in issuing this RFC since this burden is already calculated as part of the NOAA process.

The total annual burden on the State for developing the form is estimated at a one-time adjustment of 20 hours to develop the form and process.

Estimated Total Annual Burden on Respondents: Household burden—We estimate that 25 percent of the change reports (1,375,185 × 0.25 = 343,796) will result in a request for contact. Since we believe 25 percent will not respond to the RFC, the remaining households who do respond are anticipated to be approximately 75 percent of the RFCs issued. We calculate the estimated total annual burden to the households will be 42,975 hours (343,796 RFC/year × 0.75 × 10 min/60 min per hour = 42,975 hours). State burden—We estimate the annual burden would be 11,460 hours (343,796 × 1 × 2/60) to issue the RFC, assuming that it will take on average 2 minutes or 0.0333 hours to issue the RFC.

Added to the annual burden are the 20 hours per form for each State agency to create the forms. This totals 1,060 hours (20 × 53 = 1,060 hours). Therefore, the combined total of the annual burden on the State totals 12,520 hours (1,060 + 11,460 = 12,520 hours).

Executive Order 12988

We have reviewed this rule under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. We do not intend this rule to have retroactive effect unless so specified in the ''Dates'' paragraph of this preamble. Challengers must exhaust all applicable administrative procedures, prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, or to the private sector in the aggregate of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) which impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the URMA.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individuals participants, FNS has determined that there is no way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes required to be implemented by law, have been implemented.

All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs.'' Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (Food Stamp Act or the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints must be processed in accordance with 7 CFR part 15. Where State agencies have

options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Regulatory Impact Analysis

Need for Action

We need to take this action with respect to the Program to implement provisions of Pub. L. 104–193 (PRWORA) and subsequent amendments, which would: (1) Remove specific requirements for State agency processing of food stamp applications; (2) revise requirements for determining the eligibility of aliens; (3) count as income certain State and local energy assistance; (4) allow State agencies to count all or part, or none of an alien's income in determining the benefits of the rest of the household; (5) allow State agencies to certify households consisting entirely of elderly or disabled members up to 24 months; (6) exclude the earnings of students under age 18; (7) make use of a homeless shelter deduction optional; (8) allow State agencies to mandate use of a standard utility allowance if they have at least one standard that includes heating and cooling costs and one that does not; (9) eliminate the exclusion for vendored transitional housing payments for homeless households; (10) allow use of standard amounts in determining self-employment expenses; (11) make optional the issuance of combined allotments to expedited service households that apply after the 15th of the month; (12) allow State agencies to issue partial allotments to households in treatment centers; (13) require proration of benefits following any break in certification; (14) allow State agencies to accept an oral withdrawal from the household for a fair hearing; (15) revise requirements for producing or displaying nutritional education materials; (16) eliminate mandated training standards; (17) eliminate the requirement for reviewing and reporting on office hours; (18) revise mail issuance requirements in rural areas; (19) prohibit Federal reimbursement for recruitment activities from being approved as part of a State agency's optional Outreach plan; (20) make optional rather than mandatory the use of the Income Eligibility and Verification System and the Systematic Alien Verification for Entitlements match programs; and (21) establish ground rules for implementing the Simplified Food Stamp Program (SFSP). In addition, we need to take this action to implement Departmental initiatives to revise the policy for counting the resource value of licensed vehicles, to provide an optional transitional benefit for TANF leavers, to provide an optional alternative reporting system of semi-annual reporting for households with earnings, and to make a change to exclude from income on-the-job training payments received under the Summer Youth Employment and Training Program as required by Section 702 of the Workforce Investment Act.

Legislative Provisions

Budget Impact

This rule implements provisions from two laws, PRWORA and AREERA. Using assumptions from the 2001 Budget Agency Mid-session estimate, we estimate the total Food Stamp Program budget impact of this rule in Fiscal Year (FY) 2000 to be −$617 million. We estimate the 5 year budget impact for FY 2000 through FY 2004 to be −$1.932 billion.

The legislative provisions have a budget impact in FY 2000 of −$622 million and a 5 year budget impact for FY 2000 through FY 2004 of −$3.002 billion.

The legislative savings primarily stem from the provisions of PRWORA that make many aliens ineligible to participate (section 402) and the provision that requires counting as income for food stamp purposes most State and local energy assistance (section 808). The Program realizes smaller savings from the following provisions of PRWORA: section 807, earnings of children; section 809, standard utility allowances; section 811, transitional housing payments; and section 827, proration of benefits at recertification. The SFSP authorized under section 854 may result in savings or increased Program costs with respect to individual households; however, the net impact of SFSP implementation must be cost neutral.

Provisions in the rule that have negligible budget impact are not discussed in this analysis.

Section 402—Alien Eligibility

Section 402 of the PRWORA significantly reduces the number of legal aliens who are eligible for food stamps. Effective August 22, 1996, for applicants and August 22, 1997, for current recipients, many aliens legally admitted for permanent residence who were previously eligible became ineligible. The exceptions are those admitted as refugees, asylees, Cubans, Haitians, Amerasians, and those who have had removal withheld who retain eligibility for the first 5 years (later changed to 7 years by AREERA) after admission; lawful permanent residents who have earned or been credited with at least 40 quarters of coverage as defined by the Social Security Administration; and those who are serving or have served in the U.S. armed forces and their spouses and children. Effective November 1, 1998, AREERA made certain Hmong, Highland Laotians, and American Indians born outside of the U.S. eligible for food stamps. It also made aliens who were lawfully living in the U.S. on August 22, 1996, eligible for food stamps if they are under 18, or are disabled, or were age 65 or older on August 22, 1996.

Those aliens who lost eligibility will contribute to smaller State agency caseloads. However, determining the eligibility of individuals will be more complicated. For certain categories of aliens, State agencies will have to determine when the individuals were admitted. For other categories, State agencies will have to obtain information regarding the applicant's work history. Thus, there may be no significant savings in caseworker time.

In FY 2000, without taking into account the cost of restoring benefits to selected aliens through AREERA, we estimate that the budget impact would have been −$440 million. The budget impact for the 5-year period FY 2000–FY 2004 is −$2.275 billion. We estimate that in 1998, approximately 838,000 participants lost eligibility with an average benefit loss of $23 a month and another 950,000 people remained eligible but lost an average of $31 a month. About 80,000 people living in households with ineligible aliens received a slightly larger per person benefit for those still eligible and participating in the Program, on average $12 per month. This is because of economies of scale in the allotment tables which are by household size, *i.e.,* a two-person household based on no income would receive a larger per person allotment than a three-person household based on no income. It is important to realize that all of these ''gainers'' lived in households where the total food stamp benefit available to the household declined.

Based on information from a simulation model using 1996 Food Stamp Quality Control data, together with information from the Immigration and Naturalization Service (INS) on immigration and naturalization patterns and the Survey of Income and Program Participation (SIPP) on the work histories of aliens, we estimate that 20 percent of permanent residents meet the 40-quarters work exemption. Using information from the Current Population Survey on the veteran status

of aliens, we estimate that less than 1 percent meet the veteran's exemption. Moreover, because applications for naturalization have increased dramatically over the last 2 years, we anticipate that naturalizations will increase through FY 2001, reducing somewhat the number of persons losing eligibility and benefits through that time period compared to FY 1998.

The enactment of AREERA on November 1, 1998 restored benefits to an estimated 175,000 legal immigrants when fully implemented in FY 2002, with a budget impact of $85 million in 2000 and $665 million for the five-year period 2000–2004. At the time of AREERA's passage, the estimate of immigrants that would receive restored benefits was higher (225,000), but changes in the economy have caused us to revise those estimates downward.

PRWORA does not address how or whether to count the income or resources of the aliens made ineligible by PRWORA for purposes of determining eligibility or allotment amounts for the rest of the household. Alternatives were considered including counting ineligible aliens' resources and all income; counting resources and a pro-rated share of income; not counting the ineligible aliens' income, but capping the resulting allotment for the eligible members at the allotment a similarly situated all citizen household would receive; or counting neither income nor resources. The alternative chosen under the proposed rule would be to allow the State agency to pick one State-wide option for determining the eligibility and benefit level of households with members who are aliens made ineligible under PRWORA. State agencies may either: (1) Count the resources and a pro-rated share of the ineligible aliens' income; or (2) count the resources, not count the ineligible aliens' income, but cap the resulting allotment for the eligible members at the allotment amount the household would receive were it not for the PRWORA eligibility restrictions.

Using a simulation based on the 2000 baseline version of the 1996 QC Minimodel, we estimate that the option of excluding the income of PRWORA-ineligible aliens increases costs by an estimated $2 million for FY 2001 and $23 million for FY 2000 through FY 2004. (This cost is included in the total for Departmental initiatives.) These estimates take into account current State practices and an expected shift of some States from the first option.

Section 807—Earnings of Children

This provision revises the current exclusion from income of the earnings of elementary or secondary school students under age 22 to exclude the earnings of these students only if they are under 18. Based on the 1996 Quality Control data, it is estimated that the benefits of approximately 2,700 students will be reduced an average of $62 per month. FY 2000 budget impact is estimated at −$2 million and a 5-year budget impact of −$12 million.

Section 808—Energy Assistance

This provision eliminates the exclusion from income of most State and local energy assistance payments. Federal, State, or local one-time payments for weatherization and replacement or repair of heating or cooling devices are excluded. All federal energy assistance payments are excluded, except those provided under Title IV–A of the Social Security Act. State agencies are required to count as income the portion of the public assistance grant previously excluded as energy assistance. Using 1996 food stamp QC data on the number of AFDC/FSP households in each State and 1996 Green Book data on the average AFDC disregard for state-provided energy assistance, we estimated that benefits for approximately 3.959 million participants will be reduced, with each person losing an average of $4.42 a month. This results in a budget impact of −$210 million for FY 2000 and a 5-year budget impact of −$1.05 billion.

Section 811—Transitional Housing Payments

This provision removes the statutory exclusion from consideration as household income any State PA or GA payments made to a third party on behalf of a household residing in transitional housing for the homeless. State agencies may continue to exclude PA housing payments from income if they are emergency or special payments over and above the regular grant or are provided for migrant or seasonal farmworker households while they are in the job stream. GA housing payments may be excluded if they are provided by a State or local housing authority, are emergency or special payments, or the assistance is provided under a program in a State in which no GA payments may be made directly to the household in the form of cash. State agencies will have to notify affected households that their benefits will be reduced.

Several States had been renting hotels to house PA households and the additional value of this ''welfare hotel'' benefit was being excluded from income in determining food stamp benefits. Based on estimates derived from data on AFDC and shelter payments made to the number of food stamp households estimated to be living in welfare hotels, approximately 76,000 recipients will lose benefits, for a budget impact of −$10 million in FY 2000 and a 5-year budget impact of −$50 million. The average benefit loss per person is about $11 a month.

Section 809—Standard Utility Allowances

This provision allows State agencies to mandate use of a standard utility allowance that includes heating or cooling costs, provided the State agency has another standard allowance that does not include heating or cooling costs and the mandatory standards will not increase Program costs. The PRWORA also provides that in a State that does not choose to make standards mandatory, households are allowed to switch between actual expenses and a standard only at recertification.

The rule provides requirements for a nonheating/cooling standard and would require State agencies to provide FNS with sufficient data to determine whether or not the State agency's proposed standards are cost-neutral. The rule also provides that elderly or disabled households certified for 24 months may switch at the 12-month point when the State agency is required to contact the household. The State agency would be required to allow households a choice between using actual expenses or a standard when they move and incur shelter expenses. The rule also would allow households in private rental housing to use a standard allowance that includes heating or cooling costs if they incur an expense for heating or cooling separately from their rent. Many of these households are currently entitled to the standard because they receive Low-Income Home Energy Assistance (LIHEAP) payments. Households in public rental housing that incur only the cost of excess usage are prohibited by the Food Stamp Act from receiving a heating or cooling standard.

The provision of the PRWORA allowing mandatory utility standards would increase State agency flexibility and reduce the time needed to calculate the shelter expenses of households which previously claimed actual costs. Savings result from two factors: (1) If a State mandates a standard, households with shelter costs higher than the SUA would no longer be allowed to claim actual costs; and (2) households will no longer be allowed to switch between the SUA and actual costs one additional time during each 12-month period.

Using a simulation model based on 1994 data from the Survey of Income

and Program Participation (SIPP), and adjusting for the fact that only five States (Delaware, Louisiana, Michigan, North Dakota, and Wyoming) with only seven percent of the caseload initially implemented this option, we estimate that the benefits of approximately 141,000 people were reduced in 1998 for an average loss of a little more than $5 a month, and 833 people lost eligibility for an average monthly loss of a little more than $11. We estimated the total budget impact for these States to be −$10 million.

We assume that more States will implement this provision, once they turn their attention from implementing TANF. We estimate that in 5 years, States that account for 28 percent of total benefit issuance will have opted for required use of the SUA. Under these assumptions, the total budget impact is −$20 million in FY 2000 and −$155 million over 5 years. By FY 2004, slightly over 3,000 people may lose eligibility.

Section 818—Treatment of the Income of Ineligible Aliens

This rule would implement the provision which allows State agencies to elect to count either all or part of an ineligible alien's income if the alien is in a category that was ineligible *prior* to PRWORA when calculating the eligibility and benefits of the other individuals in the household. These aliens are primarily aliens admitted under color of law, those without documentation to establish eligible status, and those temporarily residing in the country legally, such as diplomats and students. (Treatment of the income and resources of the classes of aliens made ineligible by PRWORA is different, and it is discussed above.)

In order not to give preferential treatment to households with ineligible aliens in classes that were ineligible prior to PRWORA over citizen households, the rule allows State agencies a further option to count all of the income for purposes of applying the gross income test, but use a prorated share to determine eligibility and level of benefits. For example, a household consisting of an undocumented alien and a citizen may have an income which would place the household over the maximum income limit if all of it is counted. However, if the undocumented alien is excluded from the household and only a prorated share of his or her income is counted, the remaining citizen member could be eligible. This option would allow the State agency to count all of the undocumented alien's income for purposes of determining if the household's gross income is below the gross income limit but only counting a prorated share for determining the household's allotment level. The State agency will need to consider if the number of cases affected will warrant two different income computations. Whatever option the States selects will have to be applied to all ineligible aliens in the same class.

Prior to the enactment of PRWORA, States were required to prorate only a share of the ineligible alien's income to the household. For example if a household consisted of one ineligible alien and two eligible participants, under prorating, two-thirds of the income of the ineligible alien would be counted as income available to the food stamp household. Under the 100 percent option, all of that ineligible alien's income would be counted.

Of the two States electing to count 100 percent of the income of ineligible aliens, only one State has continued this policy. The budget assumes only that one State will continue to opt for the 100 percent option. Deeming 100 percent of the income of an ineligible household member increases the countable income of food stamp households. Some households lose eligibility if deeming 100 percent of the ineligible aliens' income causes their countable income to exceed the thresholds. Other households remain eligible, but with a higher net income, qualify for smaller benefits.

Using a simulation based on 1996 Food Stamp Quality Control data adjusted to reflect rules in place in FY 1999, we estimate that under the provision allowing States to count 100 percent of the income of aliens ineligible prior to enactment of PRWORA, approximately 1,000 people remained eligible but lost an average of $95 a month in benefits and 1,000 recipients became ineligible losing $190 a month in benefits. We estimate the budget impact at −$5 million for FY 2000 and −$25 million for FY 2000 through FY 2004.

Section 827—Proration of Benefits at Recertification

This provision requires that provisions for prorating benefits at recertification revert to those in place before enactment of the Mickey Leland Childhood Hunger Relief Act of 1993. Except for migrant and seasonal farmworker households, State agencies must prorate benefits if there is any break in certification. The law affects State agencies to the extent that they have to reprogram computers and revise guidance to staff. Based on a 1989 GAO study on recertification, entitled *Participants Temporarily Terminated for Procedural Noncompliance,* we estimate that the benefits of approximately 1.23 million people will be reduced, for a budget impact of −$20 million in FY 2000 and −$100 million over 5 years. Those losing benefits lose an estimated average of less than $1.50 a month.

Departmental Initiatives

Budget Impact

The Departmental initiatives to revise the policy for counting the resource value of licensed vehicles, revise somewhat the treatment of some income, to provide an optional transitional benefit for TANF leavers, and to provide an optional alternative reporting system of semi-annual reporting for households with earnings produce a cost which slightly lowers the total savings from this rule. The cost of the Departmental initiatives is $5 million in FY 2000 and sums to $1.070 billion for the 5-year period FY 2000–FY2004.

Inaccessible Resources and Vehicles

The final rule allows some households with licensed vehicles of moderate value to participate in the program, if they are otherwise eligible and have little equity in the vehicle. The amendment to 7 CFR 273.8(e)(18) expands the list of inaccessible resources to include vehicles which if sold, would realize the seller a net proceed of no more than $1,500. Moreover, we are greatly simplifying the vehicle resource determination for households by eliminating the equity test for most vehicles. We will completely exclude vehicles used to produce income, used as a home, used to transport a disabled household member, used to carry fuel or water, or unlikely to produce a return exceeding $1,500. For each adult household member, we will exempt from the equity test one licensed vehicle not totally excluded and count that vehicle to the extent that the fair market value exceeds $4,650. For each household member under 18 years of age, we will exempt from the equity test one licensed vehicle not totally excluded which the minor drives to work, school or training, or to look for work. Any vehicles not exempted from the equity test are subject to resource evaluation at the higher of the excess fair market value or the equity value.

The proposed rule set the limit on inaccessible resources for most households at $1,000. With publication of the proposed rule, FNS granted waivers to States to implement that policy. As a result, the FY 2000 cost for

inaccessible resources, which reflects a $1,000 limit and the number of States which requested and received waiver authority, rounds to less than $5 million. Comments received on this provision urged FNS to increase the limit to $1,500, which FNS has accepted. This new policy will take effect in FY 2001 and, therefore, the FY 2001 through FY 2004 costs reflect a $1,500 limit.

State agencies are affected by this provision because it greatly simplifies the treatment of vehicles. It is expected to reduce payment errors based on incorrect application of the resource tests.

Expanding the definition of inaccessible resources costs $5 million in fiscal year 2000, $85 million in fiscal year 2001, $170 million in fiscal year 2002, $165 million in fiscal year 2003, $145 million in fiscal year 2004, with a five year total of $570 million. In fiscal year 2001, when the $1,500 limit goes into effect, 80,000 people gain, with an average monthly benefit of $88.78.

Also, eliminating the equity test for most, but not all, vehicles costs $0 million in fiscal year 2000, $30 million in fiscal year 2001, $55 million in fiscal year 2002, $40 million in fiscal year 2003, and $25 million in fiscal year 2004, with a five year total of $150 million. In fiscal year 2001, 27,000 people gain, with an average benefit of $92.65.

On October 28, 2000, the President signed the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act of 2001 (Public Law 106–387). This law includes a provision to allow States to substitute their TANF vehicle rules for the food stamp vehicle rules, where doing so would result in a lower attribution of resources. The cost of the vehicle changes in this regulation, described above, capture the additional budgetary impact that these regulatory changes have in broadening food stamp eligibility after allowing for the expected impact of the new law.

Optional Transitional Benefits for TANF Leavers

Several advocacy groups put forth a suggestion for providing TANF leavers ''transitional food stamp benefits,'' much in the same way families receive transitional Medicaid after leaving TANF rolls. The new policy allows State agencies to freeze food stamp benefits of households leaving TANF rolls for up to 3 months, depending on the period of time since the household's last certification. Near the close of the transition period, the State agency would act on information collected from the household, either adjusting the benefit level, or closing the household's food stamp case because it is no longer eligible or it has failed to provide sufficient information to continue its eligibility for the Program. In some cases, the State agency would have to conduct a full recertification of eligibility if it is not possible to extend the household's certification period due to the statutory limitation on the length of certification periods. As the household would have no reporting requirement during the transitional period, the State agency would incur no QC liability for unreported changes in household circumstances during the period of time benefits are frozen.

While the Department encourages State agencies to offer the Transitional Benefits Alternative (TBA) to households leaving the TANF rolls, in order to ease the transition from PA, serve as an important transitional work support, and reinforce the fact that food stamps are not dependent upon eligibility for TANF, we did not offer this procedure in the NPRM. State agencies had no opportunity to comment, either to raise objections or to provide suggestions. For this reason, the final rule establishes TBA as a State agency option, not a mandatory provision of the regulations.

Families generally leave TANF when they go to work, exceed the income or asset limit (due to employment or other factors), fail to comply with the behavioral or procedural requirements of TANF, reach the Federally or State-defined time limit, lose technical eligibility, or leave voluntarily to ''bank'' their TANF months. For State agencies electing the TBA, the Department has structured the final rule to allow maximum flexibility in deciding which families leaving TANF would be eligible for TBA. The final rule requires such State agencies, at a minimum, to provide TBA to all families with earnings who leave TANF. If the household is losing income as a result of leaving TANF, the State agency must adjust the food stamp benefit amount *before* freezing the benefit amount. For example, such treatment might be appropriate when a TANF family leaves cash assistance because it has reached the time limit for such assistance and has gained no source of income which would replace the lost cash assistance. On the other hand, under the final rule State agencies may not provide TBA to households which are leaving TANF because: a household member has violated a TANF provision and the State is imposing a concomitant food stamp sanction in accordance with sections 819, 829, or 911 of PWRORA; a household member has violated a food stamp work requirement; a household member has committed an intentional Program violation; or the TANF case is closing because the State agency is taking action in response to information indicating the household failed to comply with Food Stamp reporting requirements, *e.g.,* the State agency discovered unreported income or assets through computer matching indicating noncompliance with Food Stamp reporting requirements.

Using data on TANF caseloads from the Department of Health and Human Services and data from TANF research by many sources, we derived estimates of the number of cases expected to leave TANF.

Using 1998 QC data, an average FSP benefit for TANF households was inflated to 2001 and beyond. In general, the transitional benefit policy provides two additional months of benefits to each case that leaves (the current system provides one month due to the processing requirements and the requirement to issue a notice of adverse action). We then multiply the monthly number of eligible leavers by the average benefit by 2 months of additional benefits by 12 monthly sets of leavers in a year to get the cost.

Further reductions to this cost were made to account for: (1) The likelihood that some of these cases would return to the TANF program within the transition period, thereby reducing the cost of transitional benefits because they no longer are eligible for them, (2) the fact that many households with TANF have 12 month certification periods, and (3) the fact that some households are not eligible for transitional food stamps, including households sanctioned off of TANF that receive a comparable Food Stamp sanction in accordance with sections 812, 829 and 911 of PRWORA. Current FSP law states that households may not receive benefits beyond 12 months without recertification, so those households in the 10th, 11th, or 12th month of their certification periods do not receive benefits for the entire transition period.

Finally, we apply a phase-in to account for State take-up rates. We begin with the cost if all States were to adopt the option, and then estimate that States will take up this option such that 5 percent of the cost is incurred in fiscal year 2001, 10 percent in fiscal year 2002, 15 percent in fiscal year 2003, and 25 percent in fiscal year 2004. Ultimately we expect that up to 60 percent of the benefits that could be issued via TBA will be issued by fiscal year 2007, based on assumptions regarding how many States will

implement this policy. We adopt these phase-in assumptions based on what has been learned thus far from the State response to the quarterly reporting option, and the fact that States will need to implement computer systems changes, which take time. As a result, we expect in fiscal year 2001 about 3,000 cases each month to leave TANF and receive two additional months of transitional food stamp benefits of about $226 per month (this is the weighted average for all types of cases) for a total cost of $15 million. By fiscal year 2004 the cost will rise to $73 million, affecting 14,000 cases per month, with a total cost for fiscal years 2001 to 2004 of $162 million.

Optional Semi-annual Reporting for Households with Earnings

Because the Department is aware that State agencies are reluctant to assign working households long certification periods because of potential vulnerability for quality control errors resulting from unreported changes, the Department is adopting in this final rule an optional reporting system for these households. Under this option, households with earned income assigned a six-month certification period may be required to report changes in income that result in their gross monthly income exceeding 130 percent of the poverty level a month, in lieu of the requirement to report changes in the amount of gross monthly income that exceed $25. These households would not be subject to the remaining reporting requirements in 7 CFR 273.12(a)(1). The State agency shall act on changes reported by the household that increase benefits in accordance with 7 CFR 273.12(c) and on changes in public assistance and general assistance grants and other sources that are considered verified upon receipt by the State agency. In order to adopt this option, State agencies must assign these households certification periods of 6 months or longer. State agencies may opt to waive every face-to-face interview in accordance with 7 CFR 273.2(e).

Using SIPP data covering one year, a simulation was run which counted all income changes (minus TANF changes, since it is assumed the State would know and act upon all of these changes) and how many times a household changed composition during the first six months of the year and all of the changes during the last six months of the year. All of the income increases were summed together and all of the income decreases were summed together and a net figure was calculated. This income figure was changed to a benefit figure by applying the average benefit reduction rate and by adjusting for the impact of household composition changes on benefit levels. Using the total benefits from QC data, the percent of monthly benefits not captured during the 6 month certification period was calculated.

To get the cost of this policy, this percentage was multiplied by the FY 2001 Mid-Session baseline benefits. Several adjustments were made to incorporate assumptions on reporting behavior and the policy requirements for when States must act on reported changes.

Finally, a State phase-in rate is applied. This rate is based on expectations of what States will select given all reporting options. We believe that the phase-in will be low in the first year (4 percent, for a FY 2001 cost of $3 million) as States decide which option to implement, but that it will increase rapidly and reach the maximum of 70 percent by 2005.

The cost in FY 2001 is $3 million and rises to $51 million in FY 2004, with a total cost from FY 2000 to FY 2004 of $105 million. When fully implemented it will affect nearly 1.5 million households per month.

Allow the Self-Employed to Deduct the Principal on Capital Expenditures

Current policy precludes allowing the cost of capital assets in determining self-employment income. We are revising this policy to allow capital costs in determining self-employment income. We believe that this change recognizes that capital costs are a legitimate expense in producing self-employment income and that the change will support the self-employed working poor.

We turned to Internal Revenue Service statistics to determine the potential size of the new deduction. We obtained information on the size of the depreciation deduction taken by all non-farm industries and the size of net income after all deductions for these industries. The depreciation deduction is 16 percent net income. Using this as a proxy for the size of the new food stamp deduction, we multiplied it times the average monthly self-employed income in the 1998 Characteristics of Food Stamp Households ($336). Next we adjusted it for the earned income deduction and the 30 percent benefit reduction. On average, food stamp benefits will increase by $13 per month. Multiplying by the expected number of households with self-employment income (about 100,000) produces an estimate of $15 million as the cost in each year. The sum from FY 2001 to FY 2004 is $60 million.

Plain Language

We have written this rule under the plain language guidelines to make it clearer and easier to read. We have edited wording that we preserved from the proposed rule to comply with those guidelines, using simpler words and phrases where appropriate, and changing sentences from passive to active voice. We did not change the meaning of any of the language brought from the proposed rule.

Part 272—Requirements for Participating State Agencies

Bilingual Requirements—Access to Households With Language Barriers—7 CFR 272.4 and 7 CFR 272.6

Legal aid organizations, advocacy groups, and State agencies commented on the current bilingual standards at 7 CFR 272.4(b). As prescribed by Section 11(e)(1)(B) of the Food Stamp Act (7. U.S.C. 2020(e)(1)(B)), the current rules require State agencies to use appropriate bilingual personnel and printed materials in areas in the State in which a substantial number of members of low-income households speak a language other than English. To determine if a substantial number of non-English speaking household resides in an area, the current rules specify the methodology for estimating the size of non-English speaking households and thresholds that trigger mandatory bilingual services. Bilingual services also must be provided during periods of seasonal influx, such as the influx of migrant or seasonal workers into project areas for a short period of time.

While most comments indicate general support for the current standards at 7 CFR 272.4(b), many commenters recommended additional regulatory controls to ensure State agencies are in compliance with Title VI of the Civil Rights Act of 1964, Section 11(c) of the Food Stamp Act (7 U.S.C. 2020 11(c)) and corresponding Food Stamp Program regulations at 7 CFR 272.6. Specifically, these commenters recommended that the regulations be amended to ensure non-English speaking households have access to the FSP by requiring State agencies to provide bilingual services to all non-English speaking households seeking food stamp assistance, regardless of the size of the low-income non-English speaking population in the service area or of how obscure the language may be.

Conversely, a State agency commenting on current bilingual standards asserts that PRWORA amendments under Section 835 provide State agencies with flexibility in establishing appropriate bilingual

standards and that the Department was remiss in not proposing amendments that would either remove or substantially reduce requirements at 7 CFR 272.4(b). The State agency further stated that revision of the current regulatory bilingual standards is required by the President's reform initiative to remove overly prescriptive, outdated and unnecessary regulations.

Even though Section 835 of PRWORA amends Section 11(e)(2) of the Food Stamp Act to provide State agencies with flexibility to determine certain processes that best serve eligible households within the State, it does not extend this flexibility to services required by law, such as bilingual services.

The Department appreciates the comments received on both sides of this issue. However, because of the strongly divergent views offered by commenters, the Department has decided to make no changes at this time to the current regulations. Although no regulatory changes will be made at this time, we would like to advise the public through this preamble of the August 11, 2000 Executive Order 13166 entitled, *Improving Access to Services For Person With Limited English Proficiency.*

Executive Order 13166 directs Federal agencies to ensure that recipients of Federal financial assistance, such as the State agencies administering the Food Stamp Program, are providing persons with limited English proficiency (LEP) a meaningful opportunity to participate in Federal programs and activities. Providing a meaningful opportunity to LEP persons to participate in the Food Stamp Program ensures that State agencies are in compliance with Title VI of the Civil Rights Acts of 1964. State agencies failing to provide meaningful access would be in violation of Title VI of the Civil Rights Act, which prohibits discrimination on the basis of national origin.

The Department of Justice (DOJ) has issued guidance setting forth the standards that Federal agencies and the recipients of Federal funds must follow to ensure that LEP persons have meaningful access. Each Federal Agency, in consultation with the DOJ, must develop and implement guidance. USDA is working to develop guidelines in accordance with E.O. 13166 and the Department of Justice Guidance.

State Employee Training—7 CFR 272.4(d)

Section 836 of PRWORA deleted all Federal requirements for State employee training. To reflect this change in the law, the Department proposed to delete all the mandatory training requirements at 7 CFR 272.4(d). State agencies commenting on this section support the change. Some advocate and legal organizations requested that the Department withdraw the proposal and retain current standards to ensure that State agencies properly train employees, especially those making eligibility determinations, or rendering fair hearing decisions.

The final rule adopts the proposed rule at 7 CFR 272.4(d) as written. By eliminating training requirements, we are signaling our greater concern with the outcome of training, that is, high quality administration. However, we strongly encourage states to continue to provide quality training to their employees. Quality training strengthens Program administration and communicates a strong message to employees about the importance of a well run Food Stamp Program. Where program reviews indicate program problems caused by deficiencies in staff skills, we would expect State agencies to upgrade training efforts.

Hours of Operation—7 CFR 272.4(g)

Section 848 of PRWORA deleted previously designated Section 16(b) of the Food Stamp Act. That section required the Secretary of Agriculture to establish standards for the periodic review of food stamp office hours to ensure that employed individuals were adequately served by the FSP. It also required State agencies to submit regular reports specifying the administrative actions that the State planned to take to meet the standards prescribed in that section.

To implement Section 848 of PRWORA, the proposed rule specified that State agencies would be responsible for setting the hours of operation for their food stamp offices. However, in deciding the office hours to be offered, State agencies would be required to consider section 11(e)(2) of the Food Stamp Act, as amended by section 835 of PRWORA. The amendments made by section 835 of PRWORA require States to accommodate households with special needs, such as the elderly, working poor or households residing on Indian reservations. Finally, the proposed provision no longer required State agencies to assess or report on office hours.

In the preamble to the proposed rule, we requested suggestions for best serving or providing program access to eligible or potentially eligible working individuals. Commenters most often recommended expanded office hours. One State agency, the Ohio Department of Human Services, noted that State law requires each county department of human services to have hours of operation outside the county department's normal hours of operation. During these hours, the County department will accept applications from employed individuals for the programs administered by the County department and assist employed program applicants and participants with matters related to the programs. Another State agency stated that it improved its service accessibility by using the option of a quarterly reporting waiver for households with earnings. As of July 1999, FNS extended to all State agencies the option of requiring households with earnings to submit quarterly reports. Quarterly reporting is viewed as a method for simplifying reporting requirements and reducing contacts by working households to their local certification office.

We strongly support policies establishing office hours or other accommodations designed to facilitate working families and to ensure that working families have access to the FSP. Extended office hours are very successful in improving Program access and enhancing a household's ability to succeed in work because it allows working households to schedule appointments and complete the application process without missing work. Also, State agencies that establish alternate or extended hours may benefit by receiving bonus awards from the Department of Health and Humans Services (HHS). Under HHS final rules (65 FR 52814, August 30, 2000) entitled, *Bonus to Reward States for High Performance Under the TANF Program,* a portion of the TANF bonus funding to States will be based on their performances in providing food stamps to low-income working families.

Accordingly, the Department is adopting in this final rule the proposal at § 272.4(f) that requires State agencies to consider the special accommodation needs of populations they serve, including households containing a working person. Our regulatory focus is on the desired outcome rather than the means of achieving it. Recent data indicate the FSP is vital in helping families move to self-sufficiency and that participation in the FSP is crucial in ensuring that people working for low wages have the help they need.

Nutrition Education Materials—7 CFR 272.5(b)

Section 835 of PRWORA deleted section 11(e)(14) of the Food Stamp Act (7 U.S.C. 2020(e)(14)). This section of the Act, and corresponding regulations at 7 CFR 272.5(b), required FNS to supply State agencies with posters and

pamphlets containing information about nutrition and the relationship between diet and health. State agencies were required to display these posters and to make these pamphlets available at all food stamp and public assistance offices.

FNS proposed to implement the PRWORA amendment by removing the requirement that State agencies display USDA materials. As noted in the preamble to the proposed rule, the deletion of this language does not lessen FNS' commitment to nutrition education. The new paragraph shows FNS' commitment by encouraging State agencies to develop optional State Food Stamp Nutrition Education Plans as permitted under 7 CFR 272.2(d)(2) to educate households about the importance of a nutritious diet and the relationship between diet and health. As of FY 2000, 48 State agencies have approved nutrition education plans which call for the expenditure of about $200 million for nutrition education in the FSP, of which 50 percent is financed by Federal funds. Thus, the vast majority of State agencies actively support, promote and provide nutrition education to FSP clients.

Comments received from State agencies and organizations representing States were supportive of the nutrition education proposals at § 272.5. However, one commenter requested that FNS withdraw the proposal and another objected to FNS encouraging States to implement nutrition education plans. Another commenter noted that State agencies have committed millions of dollars in non-federal funds to food stamp program nutrition education.

The final rule adopts the proposed rule at 7 CFR 272.5(b), as written. It is a State option to implement and operate a nutrition education plan. FNS provides State agencies with comprehensive guidance and with broad flexibility in determining how it will provide nutrition education to food stamp recipients. This guidance is updated annually and reinforces FNS' commitment to nutrition education by stressing the relationship of Program regulations and Federal reimbursement of costs for State nutrition education activities that are necessary and reasonable to benefit Program applicants and participants. Finally, the FSP reimburses State agencies with approved Nutrition Education plans for 50 percent of their total allowable costs.

Optional Use of the Income and Eligibility Verification System (IEVS) and the Systematic Alien Verification for Entitlements (SAVE) Program—7 CFR 272.8, 272.11 and 273.2

Section 840 of PRWORA amended Section 11(e)(18) of the Food Stamp Act (7 U.S.C. 2020(e)) to make IEVS and SAVE State options. Thus, the proposed rule removed the requirement that State agencies operate either an IEVS or a SAVE system. For State agencies electing to use IEVS and SAVE, the proposed rule only required that the State agencies observe the requirements of the data exchange agreements with agencies from which data will be obtained or exchanged. The preamble in the proposed rule noted that quality control (QC) reviews would continue to use data obtained from IEVS and SAVE as a case analysis tool.

Numerous State agencies commented on this proposal and are supportive of the option use IEVS and SAVE requirements and of the proposed elimination of IEVS and SAVE requirements. State agencies which use IEVS and SAVE will continue to conduct data exchange agreements with Federal sources. The data exchange agreements, however, will no longer be required as part of the State's Plan of Operation. A number of State agencies objected to the continued use of IEVS and SAVE as part of QC reviews. Two State agencies commented that by using IEVS and SAVE as part of QC, State agencies in effect were not being given the option to use IEVS and SAVE and would need to continue with the matches.

Current rules at 7 CFR 275.12 identify the procedures State agencies and FNS must follow when reviewing active cases included in the QC active sample. Under 7 CFR 273.12(c), a State agency must conduct a full field review for all selected active cases and this investigation must include a review of any information pertinent to a particular case which is available through IEVS. This requirement is consistent with QC review procedures that mandate the verification of all elements affecting the households eligibility and benefit level in the sample month under review.

The Department decided to retain the current rules at 7 CFR 275.12 without change because available data indicate that IEVS data are generally useful means of improving payment accuracy. Their use by QC only reinforces long-standing policy that State adopt methods of administration that secure payment accuracy.

Under Section 840 of PRWORA, State agencies may, but are not required to, use IEVS and/or SAVE as part of their responsibility in determining eligibility and benefit levels for participating households. Those State agencies electing to use either IEVS and/or SAVE are provided flexibility in determining how best the IEVS and/or SAVE data should be used. The use of IEVS as an analysis tool does not diminish a State agency's option to use IEVS or SAVE outside of the QC process.

Accordingly, the Department is adopting the proposed amendments at 7 CFR 272.8, 7 CFR 272.11 and 7 CFR 273.2 in the final rule without change.

Part 273—Certification of Eligible Households

Application Processing—7 CFR 273.2

As explained in the Notice of Proposed Rulemaking (NPRM), section 835 of PRWORA amended sections 11(e)(2) and (e)(3) of the Act, 7 U.S.C. 2020(e)(2) and (e)(3) which govern the food stamp application and certification process. Section 11(e) now provides more flexibility for State agencies to tailor day-to-day operations of the Program to the needs of individual States while ensuring that households continue to receive timely, accurate and fair service. More specifically, section 835 removed the requirement that the Secretary design a uniform national food stamp application form and eliminated dictates concerning what information had to be included on the application form and in what particular location on the form. Section 11(e) of the Act now provides that State agencies must develop their own food stamp application form and establish their own operating procedures for local food stamp offices. States may now use electronic storage of applications and other information, including the use of electronic signatures. States must provide a method of certifying and issuing benefits to eligible homeless individuals.

While the language of amended Section 11(e) encourages personal responsibility and provides more State agency flexibility, it retains key specific provisions to protect a client's right to timely, accurate, and fair service. The Act continues to: (1) Require that applications be processed within 30 days; (2) permit households to apply for participation on the same day they first contact the food stamp office during office hours; (3) consider an application as ''filed'' on the date the applicant submits the application with the applicant's name, address, and signature (benefits are calculated based on the filing date of an application); (4) require that an adult representative certify the

truth of the information on the application, including citizenship or alien status of each member, and that such signature is sufficient to comply with any provision of Federal law requiring applicant signatures; and (5) require that the State agency provide each household, at the time of application, a clear written statement explaining what acts the household must perform to cooperate in obtaining verification and otherwise complete the application process.

In the NPRM, we proposed to amend 7 CFR 273.2, ''Application processing,'' to incorporate the new requirements of Section 11(e) of the Act, as amended by various sections of PRWORA. In addition, we proposed a major streamlining of the current regulations as part of a larger effort to reduce the volume of Federal regulation.

In the NPRM, we sought to achieve a new balance in the regulations between maintaining customer protections in the application process and providing States greater flexibility in administering the program. We received a large volume of comments on our proposed changes. Commenters representing State agencies generally supported the changes, but often requested additional streamlining which would provide even greater flexibility to States in operating the program. Commenters representing the advocacy community, however, strongly objected to many of the proposed changes on the grounds that we were removing important safeguards for applicants. These commenters requested that existing rules be restored and also sought the adoption of new provisions that would strengthen customer rights.

The significant disagreement among commenters over the discretionary provisions of the NPRM have caused us to reconsider the merit of many of the proposed changes. While existing regulations are highly detailed, they do provide a national standard of customer service that promotes the basic statutory purpose of providing timely, accurate and fair service to applicants for, and participants in, the Food Stamp Program. In addition, given the sharp decline in program participation among eligibles since the passage of PRWORA and acknowledged problems with program access in several areas, we must question the desirability at this time of removing many of the protections provided applicants and participants under current regulations. Given these considerations, we have decided not to finalize the discretionary provisions proposed in the NPRM. At this time, we are finalizing only those changes to current regulations necessitated by PRWORA. For the other sections of 7 CFR 273.2, we will be retaining current rules.

Title of Part 273.2

In the NPRM, we proposed to change the title of 7 CFR 273.2 from ''Application processing'' to ''Office operations and application processing.'' We received no comments on the proposal and are adopting it as final.

General Purpose—7 CFR 273.2(a)

In the NPRM, we proposed to replace current paragraph (a), entitled ''General purpose,'' with a new paragraph (a), ''Office operations.'' The new paragraph would incorporate into the regulations the new standards for operating food stamp offices contained in Section 11(e)(2)(a) of the Act, as amended by Section 835 of PRWORA. Specifically, new paragraph (a) would require the following: (1) That State agencies establish their own procedures governing office operations that the State agency determines best serve households in the State, including households with special needs; (2) that State agencies provide timely, accurate, and fair service as required by Section 835 of PRWORA; (3) that State agencies not impose a processing requirement for another assistance program as a condition of food stamp eligibility; and (4) that State agencies have a procedure in place for informing persons who wish to apply for food stamps about the application process and their rights and responsibilities.

The comments received on this proposal were all supportive of the proposed amendment. One commenter did fear that the prohibition on imposing processing requirements for other assistance programs as a condition of food stamp eligibility might prohibit States from utilizing household information obtained under the requirements of another program which may affect the household's food stamp eligibility. This is not correct. The State may consider household information obtained when a household applies for another public assistance program when determining a household's eligibility for food stamps. The State, however, may not require a household that is applying only for food stamps to answer questions on a joint application or submit any information that is not needed to complete a food stamp eligibility determination.

The change to 7 CFR 273.2(a) is necessary to reflect the new standards for operating food stamp offices contained in section 835 of PRWORA, so we are adopting the change as final. However, in the NPRM we had proposed to move many of the sentences in current paragraph (a) to other sections under 7 CFR 273.2. Since we are not finalizing many of the changes to the other parts of 7 CFR 273.2 proposed in the NPRM, we are restoring current paragraph (a) in the regulations. That paragraph will be renumbered (a)(2), and entitled ''Application processing.''

Food Stamp Application—7 CFR 273.2(b)

Current paragraph (b) lists the requirements for the food stamp application form, including the mandatory content for each form and the requirement that deviations from the national application form be approved by FNS. In the NPRM, we proposed to amend paragraph (b) to reflect new requirements related to the food stamp application form in Sections 11(e) of the Act, as revised by section 835 of PRWORA. Section 835 amended section 11(e) of the Act to remove the list of mandatory application content requirements. It also amended Section 11(e)(2) to require that State agencies design their own application forms, and to provide that the application form may include the electronic storage of information and the use of electronic signatures.

Specifically, we proposed to amend 7 CFR 273.2(b) to require that State agencies design their own application forms, provide that the application form may include the electronic storage of information and the use of electronic signatures, and remove the requirement in current paragraph (b)(3) regarding the need for prior FNS approval of State-designed applications which deviate from the Federally designed application. We also proposed to add a new paragraph 7 CFR 273.2(b)(2) entitled ''Application contents,'' which would, among other things, replace the list of mandatory application content requirements with a general requirement that the application must contain all necessary information to comply with the Act and regulations. Finally, we proposed to add a new paragraph 7 CFR 273.2(b)(3) entitled ''Jointly processed cases,'' which would set forth requirements for the processing of joint applications used by States to determine an applicant's eligibility for other assistance programs in addition to the Food Stamp Program.

A number of commenters objected to the proposed changes to 7 CFR 273.2(b). Specifically, many opposed our decision to remove the existing mandatory application contents requirements relating to the right of a household to file an incomplete

application for food stamps. Under current regulations at 7 CFR 273.2(b)(1)(iv) through (vii), each application form must contain: (1) A place on the front page of the form where the applicant can write his/her name, address, and signature; (2) notification on or near the front page of the application of the household's right to immediately file the application as long as it contains his or her name, address and signature; (3) a description on or near the front page of expedited service requirements; and (4) notification on or near the front page of the application that benefits are provided from the date of application. Commenters felt that without these notifications, households may be unaware of their right under Section 11(e)(2)(B)(iv) of the Act to file an incomplete application, and would likely postpone applying for food stamps until they have time to complete the entire application form.

We agree with the commenters that much of the information currently required in 7 CFR 273.2(b) should be retained in the regulations. This information, though no longer specified in the Act, is necessary to meet the standard set by PRWORA for providing timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program. Therefore, we are withdrawing most of our proposals to amend 7 CFR 273.2(b) and will retain current regulations. However, we are making some changes to the existing rules at 7 CFR 273.2(b)(1). In response to comments, we are adding language to 7 CFR 273.2(b)(1)(iii) to make it clear that the applicant is certifying to the citizenship or eligible alien status of only those household members applying for benefits. We are adding a sentence to 273.2(b)(v) that regardless of the type of system a State agency uses (paper or electronic) it must provide a means for the applicant to immediately begin the application process with name, address and signature.

We are adding a new paragraph 273.2(b)(1)(viii) to incorporate the latest nondiscrimination statement appropriate for the Program. USDA Departmental Regulation (DR) 4300–3, Public Notification Policy, dated November 16, 1999, establishes the policy for ensuring positive and continued notification of the USDA equal opportunity policy to the public. DR 4300–3 provides for three nondiscrimination statements. These statements govern: (1) Federally-conducted programs; (2) Food Stamp Program recipient agencies; and (3) Special Nutrition Programs and other recipient agencies. Interested readers may visit the FNS web site (www.fns.usda.gov) and click on ''Civil Rights'' to learn more about FNS' nondiscrimination policy.

Finally, in new paragraph 273.2(b)(1)(ix), we are incorporating language from paragraph 273.2(b)(3) which requires that multi-program application forms clearly afford applicants the option of answering only those questions relevant to the program or programs for which they are applying. We are revising current paragraph (b)(3) in its entirety to incorporate changes necessitated by PRWORA. That paragraph, which requires States to seek prior FNS approval for State-designed applications which deviate from the Federally designed application, is no longer necessary because Section 835 of PRWORA eliminated the requirement that State agencies use a Federally-designed application. However, we are incorporating the language that was proposed at (b)(3) to address comments regarding improving access to the Program.

Several commenters expressed concern that the current practice of asking all household members for information regarding their citizenship, immigration status, and possession of social security numbers was a significant barrier to participation for certain eligible low-income individuals. U.S. citizen and eligible alien members of households containing undocumented aliens or legal aliens whose immigration status does not permit them to work may feel apprehensive about providing the State agency with sensitive information about the lack of documentation or social security numbers of certain household members. On September 21, 2000, this Department and the DHHS issued a letter to all State health and welfare officials, subject: ''Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits'' (the ''Tri-Agency Letter''). Readers may visit the FNS web site (www.fns.usda.gov) and click on ''Food and Nutrition Service'', then ''Food Stamps,'' and then ''Joint Guidance on Citizenship, Immigration & SSNs.'' The Tri-Agency Letter addressed the concerns of the immigrant community by providing an option to State agencies to structure application forms so that households are allowed to declare certain household members to be ''non-applicants,'' if they did not wish to answer questions about citizenship, immigration status, or the possession of a social security number. Any household member so designated would be determined to be an ineligible household member under § 273.11(c) and would not receive Program benefits. Further, such ineligible household members must otherwise cooperate fully by disclosing their income, resources, and any other information the State agency needs to determine the eligibility and benefit amount of the other household members.

If a state decides *not* to permit individual family or household members to decline to provide citizenship, immigration status or SSN information early in the application process, the state must still ensure that their applications forms promote enrollment of eligible families and eliminate the potential for discriminatory impact on eligible applicants based on national origin. Furthermore, even in those states that elect not to offer applicants early opportunity to decline to reveal citizenship, immigration status, or SSN information, long-standing policy directs that when a household member does not disclose his or her citizenship, provide or apply for an SSN, or establish satisfactory immigration status, the State agency must determine that household member ineligible for benefits, but cannot deny benefits to eligible citizen or immigrant household members simply because other household members fail to disclose such information.

Some commenters suggested that the final rule should require State agencies to make early declaration of ''non-applicant'' status available for individuals who know they do not have documents to prove their immigration status, or cannot possess social security numbers. In this regard, the Department is still very concerned that current State agency application forms and processes inadvertently may have the effect of deterring eligible applicants and recipients who live in immigrant households from enjoying equal participation and access to Program benefits based on their national origin, in violation of section 11(c) of the Food Stamp Act and Title VI of the Civil Rights Act of 1964. However, as the NPRM did not address this issue at all, we will not proceed further without consultation with all partners and stakeholders through a future rulemaking. In the meantime, the Department encourages State agencies to adopt the option allowing them to adjust their application forms and processes to accommodate households containing some members who know

they do not have documents to prove their immigration status or who might have difficulty in applying for a social security number.

7 CFR 273.2(c)—Filing an Application

In the NPRM, we proposed to amend paragraph 7 CFR 273.2(c), ''Filing an application.'' We proposed to add a new paragraph 7 CFR 273.2(c)(1) entitled ''Filing process.'' The new paragraph would: (1) Retain the requirement appearing in the first sentence of current paragraph (c)(1) regarding the manner in which applications can be submitted; (2) include new language that clarifies that the application may be submitted by facsimile transmission as well as in person, through an authorized representative, or by mail; (3) include new language that recognizes that some State agencies are using on-line or other types of automated applications that may require the applicant to come into the local office to complete the application; (4) include the requirement appearing in the fifth sentence of current paragraph (c)(1) that allows an applicant to file an incomplete application provided it contains at the least the applicant's name, address, and signature; (5) remove the language appearing in the sixth sentence of current paragraph (c)(1) which requires State agencies to document the date the application was filed by recording on the application the date it was received by the food stamp office; and (6) provide that applications signed through the use of electronic signature techniques and applications containing handwritten signatures which are then transmitted to the appropriate office via fax or other electronic transmission technique are acceptable.

We proposed to add a new paragraph 7 CFR 273.2(c)(2) entitled ''Households right to file.'' The new paragraph would require the State agency to: (1) Make food stamp applications readily accessible to all potentially eligible households or to anyone who requests one; (2) provide an application in person or by mail to anyone who requests one; (3) mail an application by the next business day to anyone who requests an application by mail; (4) allow a household to file an application on the same day it contacts the food stamp office during office hours; (5) post signs or make available other advisory materials explaining a person's right to file an application on the day of their first contact with the food stamp office and the application processing procedures; (6) notify all persons who contact a food stamp office and either request food assistance or express financial and other circumstances which indicate a probable need for food assistance, of their right to file an application and encourage them to do so.

New paragraph (c)(2) would also address the handling of applications filed at the wrong certification office. The new paragraph would: (1) Continue to allow the State agency to require households to file an application at a specific certification office or allow them to file an application at any certification office within the State or project area; (2) require that if an application is received at an incorrect office, the State agency advise the household of the address and telephone number of the correct office; (3) require the State agency to forward an application received at an incorrect office to the correct office not later than the next business day; and (4) remove the requirement currently located in the third sentence of 7 CFR 273.2(c)(2)(ii) that the State agency inform the household that its application will not be considered filed and the processing standards must not begin until the application is received by the appropriate office.

We proposed to add a new paragraph 7 CFR 273.2(c)(4) entitled ''Notice of required verification.'' The new paragraph would require that State agencies: (1) Provide households, at the time of application for certification and recertification, with a clear written statement of what acts the household must perform in cooperating with the application process, and identify potential sources of required verification; and (2) inform special needs households of the State agency's responsibility to assist them in obtaining required verification, providing the household is cooperating with the State agency. Special needs households were defined as including, but not limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, and households in areas in which a substantial number of members of low-income households speak a language other than English.

Finally, we proposed to remove current paragraph (c)(5), and to redesignate current paragraph 273.2(c)(6) ''Withdrawing an application,'' as new paragraph (c)(3).

Numerous commenters objected to some of the proposed changes to 7 CFR 273.2(c) on the grounds that we were removing important safeguards for applicants. For example, one commenter opposed the revision to 7 CFR 273.2(c)(1) which deleted the requirement that States encourage a household to file an application on the same day the household first contacts the food stamp office for assistance. The commenter thought that the language to encourage same day filing should be retained and expanded to prohibit State agencies from suggesting any disadvantages there might be to applying for food stamps and require them to explain that possible disadvantages of applying for other programs do not relate to the Food Stamp Program.

Many commenters also objected to our proposal to repeal the current requirement that the food stamp office document the date an application is filed by recording on the application the date it is received. The commenter thought that, rather than delete the requirement, the Department could make it more flexible to account for the different ways that States may have for recording application filing dates, such as through automated systems.

Many commenters also objected to the proposal to provide States with an extra day for mailing an application to a household that requests one over the telephone and for mailing applications to the correct office when filed at the incorrect office. The commenters noted that the proposed changes will likely result in affected households losing one-thirtieth of their benefits for the month of application. The commenter recommended that the proposed regulations be amended to offer States the option of forwarding a misfiled application by mail the day it is received or by fax the next day. The commenter also recommended that the final rules provide an exception to the current requirement for mailing an application the day it is requested by phone to allow for when the request is made after the last mail collection of the day.

Some commenters believed that the proposed provision did not go far enough in providing flexibility for State agencies, and recommended further simplification to the regulations. One commenter remarked that the proposed regulations at 7 CFR 273.2(c)(2), (c)(3), and (c)(4) appeared to be more prescriptive than required by the Food Stamp Act and Section 835 of PRWORA and should be redrafted in the final rule to allow States the flexibility prescribed by the Act to establish their own procedures in the operation of local offices.

Giving the considerable disagreement on the proposed provisions among commenters, and our commitment to retaining provisions in the regulations that meet the goal of PRWORA to

provide timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program, we have decided to withdraw the proposed changes to 7 CFR 273.2(c). We may consider revising these regulations in a future proposed rulemaking. At this time, we are implementing only those changes to the existing regulations at 7 CFR 273.2(c) that are necessitated by PRWORA.

Current regulations at 7 CFR 273.2(c)(1) require that households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative, or by mail. No provision is made for the electronic submission of applications. As noted above, however, Section 11(e)(2)(C) of the Act, as amended by Section 835 of PRWORA, now allows for the use of signatures provided and maintained electronically, for the storage of records using automated retrieval systems only, and for any other feature of a State agency's application that does not rely exclusively on the collection and retention of paper applications or other records. In accordance with the revised provisions of Section 11(e)(2)(C) of the Act, we had proposed in the NPRM to revise section 7 CFR 273.2(c)(1) to specifically provide that applications signed through the use of electronic signature techniques and applications containing handwritten signatures which are then transmitted to the appropriate office via fax or other electronic transmission technique are acceptable means of filing a food stamp application.

We received several comments in support of the change, and are finalizing the provision at 7 CFR 273.2(c)(1). One commenter thought that the household should be given a paper printout of whatever information is recorded electronically in order to be able to review it and correct errors before the certification process has gone too far. We agree with the commenter that the household should be able to verify the information that has been recorded. However, we believe how that should be done should be left up to the State agency and we are amending the final rule accordingly.

We are making three additional changes to the current regulations in response to comments. The current regulations at 7 CFR 273.(2)(c)(1)(i) provide that the State agency must encourage households to file an application on the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in receiving food stamps. One commenter pointed out that some applicants for assistance may not be aware of the Food Stamp Program, or aware that they might be eligible, so they don't express interest in the specific Program, even though they express concerns about food security. Therefore, in response to comments and to increase access to the Program, we are adding that the State agency must encourage a household to file an application for the Program if it expresses concerns about food insecurity.

Current regulations at 7 CFR 273.2(c)(2)(ii) provide that the certification office shall offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file. One commenter suggested that State agencies may not be able to forward the application on the same day. In order to give the State agencies some flexibility, while at the same time protecting the interests of the applicant, this commenter suggested we allow the State agency to forward it the next day, providing that the State agency ensures it arrives in the appropriate office the day it was forwarded. In other words, it can send it electronically, via fax, or courier, as long as it arrives the day it was forwarded. We agree that this will afford the State agency flexibility and protect the applicant. Therefore, we are modifying 7 CFR 273.2(c)(2)(ii) to provide that the State agency may forward the application the next day by any means that ensure the application arrives at the appropriate office the day it was forwarded.

One commenter expressed concern that in an attempt to divert households from public assistance, the State agency might inadvertently divert a household from applying for food stamps. This commenter suggested that in order to protect applicants rights, we amend 7 CFR 273.2(c)(2)(i) and remind State agencies not to discourage households from applying for food stamps. In response to these comments and in an attempt to increase Program access, and in conformance with changes we are making at 7 CFR 273.2(j) which are discussed later in this preamble, we are providing at 7 CFR 273.2(c)(2)(i) that if the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

Finally, current regulations at 7 CFR 273.2(c)(3) require that State agencies make application forms readily accessible to potentially eligible households and provide an application form to anyone who requests one. One commenter pointed out that many State agencies now use paperless or interactive electronic systems and no longer keep paper applications in stock. Therefore, to accommodate the various types of systems in use by State agencies, and to ensure that applicants receive timely, accurate and fair service, we are modifying the language at 7 CFR 273.2(c)(3) to provide that regardless of the type of system a State agency uses (paper or electronic), the State agency must provide a means for applicants to begin the application process immediately by providing a name, address and signature.

Household Cooperation—7 CFR 273.2(d)

In the NPRM, we proposed to amend current regulations at 7 CFR 273.2(d), which contain provisions related to household cooperation in the application process and quality control reviews. We proposed to retain all of the contents of current paragraph (d)(2), and amend paragraph (d)(1) as follows: (1) Rename the paragraph ''Cooperation with application process''; (2) remove the example of ''refusal to cooperate'' appearing in current paragraph (d)(1); (3) expand on the policy regarding household cooperation with subsequent reviews to provide that a subsequent review can be in the form of an in-office interview; and (4) remove the last two sentences of current paragraph (d)(1), which concern the failure of a person outside of the household to cooperate with a request for verification.

One commenter strongly opposed our amendments to 7 CFR 273.2(d)(1). The commenter believed that in revising the paragraph, we had omitted words and phrases that were critical to preserving the rights of food stamp participants and which may leave the requirements of the paragraph open to misinterpretation. For example, existing regulations require that for a food stamp office to deny a household's application for refusal to cooperate, the household must be able to cooperate but clearly demonstrate that it will not take actions *it can take* that are required to complete the application process. In the proposed rule, we had removed the words ''it can take'' from the sentence, believing them to be unnecessary. The commenter believed, however, that removal of the words *it can take* would leave the

sentence open to new interpretations, including the possibility that a household could be denied food stamps based on its failure to produce a document that has been destroyed or its failure to obtain a note from its estranged landlord.

The commenter also objected to our proposal to remove the example of ''refusal to cooperate'' appearing in current paragraph (d)(1). The example, which is meant to illustrate the difference between a household being unable to cooperate and refusing to cooperate in completing the application process, states that to be denied for refusal to cooperate, a household must refuse to be interviewed and not merely fail to appear for the interview. We proposed removing the example because there are numerous ways that a household could refuse to cooperate, and the example is not definitive. The commenter believed, however, that the example illustrates an important principle—protecting applicants that make good faith efforts to cooperate—which does not exist in many TANF programs, and which, without a concrete example, may not be applied properly by eligibility workers whose primary training has been in AFDC and TANF.

The commenter also objected to our proposal to remove the last two sentences of current paragraph (d)(1), which concern the failure of a person outside of the household to cooperate with a request for verification. The first of these sentences provides that the State agency may not determine a household to be ineligible when a person outside of the household fails to cooperate with a request for verification. Section 835 of PRWORA amended section 11(e)(3) of the Act to remove this requirement. The last sentence of current paragraph (d)(1) describes certain individuals who are not considered ''outside'' the household for the purpose of the existing provision and, because of the change brought about by Section 835 of PRWORA, is no longer necessary. We noted in the proposed rule that removal of these two sentences does not change current policy because refusal to cooperate continues to be defined as refusal by a household member. The commenter argued, however, that without a clear statement in the regulations that a household may not be determined ineligible because of the failure of a person outside the household to cooperate with a request for verification, eligibility workers are likely to fail to apply the principle and incorrectly deny applications.

We agree with the commenter that clarity in the regulations is critical to ensuring that all food stamp applicants and participants receive timely, accurate and fair service. Therefore, we are withdrawing our proposal to amend paragraph 7 CFR 273.2(d)(1) and we are retaining the existing language of the paragraph with one modification. We are reminding State agencies that they must also assist households in obtaining the required verification if the household is cooperating with the State agency as provided for by paragraph 7 CFR 273.2(c)(5).

Interviews—7 CFR 273.2(e)

In the NPRM, we proposed to amend current regulations at 7 CFR 273.2(e), which address interview procedures. Chief among the changes was a proposal to eliminate the requirement that every household have a face-to-face interview at all recertifications. As discussed in the NPRM, prior to PRWORA, the Act did not contain an explicit provision requiring food stamp applicants to be interviewed. Rather, the requirement is inferred. Section 11(e)(2) did provide language which allowed elderly/disabled households to request a waiver of the in-office interview under certain conditions. Section 835 of PRWORA amended section 11(e)(2) of the Act to remove this waiver language, thereby eliminating any reference in the Act to the fact that in-office interviews are conducted. In consideration of the removal of the waiver language and in the spirit of PRWORA, the Department chose to reevaluate current policy and proposed in the NPRM to replace the current interview requirement with the requirement that a face-to-face interview be required at the time of initial certification and at least once every 12 months thereafter unless the household is certified for longer than 12 months or the face-to-face interview is waived by the State agency. This proposal would eliminate the requirement to conduct a face-to-face interview at the time of recertification if it occurs during the 12-month period since the last face-to-face interview.

In addition, we proposed to amend current rules at 7 CFR 273.2(e)(2) which address waivers of the interview requirement. Prior to enactment of PRWORA, the interview could *only* be waived if requested by the household because the household was unable to appoint an authorized representative and had no adult household members able to come to the office because the members were elderly, mentally or physically handicapped, lived in a location not served by a certification office, had transportation difficulties, or had similar hardships as determined by the State agency. Section 835 of PRWORA struck this waiver provision from the Act and amended Section 11(e)(2) of the Act to provide State agencies the authority to waive an interview without first being requested by a household. In the NPRM, we proposed to amend 7 CFR 273.2(e) to require the State agency to waive the in-office face-to-face interview in favor of a telephone interview or announced home visit for household hardship cases. The proposal allowed the State agency to determine what constitutes hardship cases. It also allowed the State agency to waive the in-office interview in favor of a telephone interview or scheduled home visit for households with no earned income if all of its members are elderly or disabled. Under the proposal, the State agency would continue to be required to grant a face-to-face interview to any household that requests one.

Most commenters were supportive of our proposals to revise the face-to-face interview requirements, which were felt to be burdensome on both participants and State agencies. Because of that support and because the changes stem from amendments to the Act made by PRWORA, we are adopting the proposals as final in this rule.

In addition to the above noted changes, we also proposed in the NPRM to further revise 7 CFR 273.2(e) to simplify current provisions and provide more State agency flexibility in the area of scheduling interviews. However, we received mixed remarks on these proposed changes from commenters. Several commenters, while supporting the added flexibility provided to State agencies, thought we did not go far enough in simplifying current rules. For example, several commenters requested that we remove the current requirement that the State agency hold applications pending until the 30th day from the date of application when an applicant misses the scheduled interview or fails to provide requested information or verification within 10 days of the request. This would allow States to take immediate action to deny an application after a missed interview or the expiration of the 10-day period for return of requested information.

Other commenters felt that the proposed regulations did not provide enough safeguards for food stamp applicants and recipients. These commenters thought that the rules should more closely reflect the priority the Administration has given to preserving access to food stamps for low-income families in need, and should be amended to include

additional requirements, such as the following: (1) The food stamp office should routinely notify all applicants about the possibility of waiving the face-to-face interview in cases of hardship and the procedures for requesting such waivers; (2) the food stamp office should notify all applicants that they may send an authorized representative to their interview if they cannot attend personally; (3) the food stamp office should notify the applicant of the date and time of the interview in person, by telephone, or by letter mailed at least seven days in advance of the scheduled interview; (4) the food stamp office should send an applicant that misses a scheduled interview a notice informing him or her of this fact. The notice should ensure that the household has at least 10 days (or, if longer, until the thirtieth day following the date of application) in which to contact the food stamp office to reschedule an interview before the application may be denied and should provide a general telephone number the applicant may call to reschedule the appointment without having to reach any particular eligibility worker; (5) the food stamp office should reschedule the interview for any applicant that visits or calls the office on or before the thirtieth day after filing his or her application if the household indicates a continued interest in receiving food stamps; and (6) the food stamp office should be required to accommodate working families in one of the following three ways: (a) When the office is open during hours the applicant does not work, offer the applicant an interview time that does not conflict with his or her work schedule; (b) if the food stamp office is not open during hours when the applicant is not working, offer the applicant a telephone interview, perhaps during the applicants lunch hour or scheduled break; or (c) attempt to reschedule the first missed interview.

Given the considerable disagreement among commenters on our proposals to amend 7 CFR 273.2(e), and the Department's commitment to ensuring that all food stamp applicants and participants receive timely, accurate and fair service, we have decided to withdraw most of the proposed changes not required by PRWORA and to retain current rules. However, we are taking this opportunity to remind State agencies of current policy: (1) State agencies should take into consideration the needs of the household and accommodate these needs when scheduling interviews as much as possible (such as scheduling interviews for working households when the applicant is not scheduled to work or after hours); (2) State agencies should schedule interviews so that the household has at least 10 days to provide requested verification before the end of the 30 day processing period; (3) State agencies may not request private information from households during a group interview; (4) State agencies may not require households to report for an in-office interview during their certification period, though they may request households to do so. For example, State agencies may not require households to report en masse for an in-office interview during their certification periods simply to review their case files, or for any other reason. The latter reminder is being incorporated into the regulations at 7 CFR 273.2(e).

We are finalizing two proposed changes put forth in the NPRM. Current regulations at 7 CFR 273.2(e)(3) require State agencies to schedule a second interview if a household fails to attend the first scheduled interview. In the NPRM, we proposed to delete that requirement. As noted in the NPRM, some State agencies have found it burdensome to schedule multiple interviews and have found that a household that fails to attend the first scheduled interview frequently does not attend a second scheduled interview. For many years, we have granted State agencies waivers of the requirement to reschedule a missed interview, under the waiver authority in 7 CFR 272.3(c), on the conditions that the State agency notify each household on the application or interview appointment notice that it is the household's responsibility to contact the State agency to reschedule a missed interview, and that the State agency not deny the household's application prior to the 30th day after application.

As with many of our proposals, comments received on our proposal to remove the requirement that State agencies reschedule a missed interview were mixed. Some commenters strongly supported the change, noting that requiring State agencies to schedule a second interview if the applicant fails to attend the first scheduled interview is not only burdensome but unnecessary, because those households that miss the first interview and do not reschedule it on their own, frequently, if not always, do not attend the second scheduled interview either. Other commenters, however, were concerned that changing the policy could result in the denial of food stamps to working families who, unable to attend the first interview due to a work conflict or sick child, may have difficulty reaching the food stamp office or scheduling an interview time they can make before the end of the 30-day period.

We recognize that a household may not be able to attend a scheduled interview. However, in the spirit of PRWORA, which focuses on State agency flexibility in the certification process and household responsibility, we are removing the requirement that the State agency reschedule a missed interview. However, we are adding a requirement to 7 CFR 273.2(e)(3) that the State agency must send a notice to the households that miss their interview appointments indicating that it missed the scheduled interview and informing the household that it is responsible for rescheduling a missed interview. In addition, we are reminding State agencies that if the household contacts the State agency within the 30 day processing period, the State agency must schedule a second interview. We are making a conforming amendment at 273.2(h)(1)(i)(D). We are also adding a statement to the same section that reminds the State agency that it may not deny a household's application prior to the 30th day after application if the household fails to appear for the initial interview.

We proposed at 7 CFR 273.2(e)(1) that interviews may be conducted at the food stamp office or another mutually convenient location of the State agency's choosing, including a household's residence. One commenter suggested we reword the statement to provide that the location be ''mutually acceptable'' as opposed to a ''mutually convenient location of the State agency's choosing.'' The commenter argued that a mutually acceptable location is by definition acceptable to the food stamp office. In addition, this commenter stated that the regulations as written could be read that applicants must be interviewed in their homes. Since home interviews can be viewed as invasive and demeaning, the household should be allowed to suggest another location. If the alternative is inconvenient to the food stamp office, it can always decline. We agree with the commenter that the State agency and the household should agree on a location. Therefore, we are modifying the proposed language and finalizing it to provide that interviews may be conducted at the food stamp office or another mutually acceptable location, including a household's residence. However, we are also reminding State agencies that if the interview is to be conducted in a household's residence, it must be scheduled in advance with the household.

We proposed at 7 CFR 273.2(e)(2) that the State agency must waive the face-to-face interview in favor of a telephone interview on a case-by-case basis because of household hardship situations. One commenter said that since food stamp offices are no longer required to reschedule missed interviews, the opportunity for a waived interview becomes much more important, especially for those applicants for whom coming into the office is a hardship. However, few households are aware of this option. Therefore, this commenter suggested that we require State agencies to notify households of their right to a waiver of the face-to-face interview. We agree with this comment. Therefore, at 7 CFR 273.2(e)(2) we are adding the requirement that State agencies must notify the applicant that it will waive the face-to-face interview for hardship situations as determined by the State agency. In addition, we are retaining current rules which provide that household hardship situations include, but are not limited to: illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview.

We are making an additional change to current regulations at 7 CFR 273.2(e) in response to comments. In their remarks, several commenters objected to the practice in some State offices of scheduling interviews on a ''first-come, first-served'' basis. Typically, a local agency will establish a ''quota'' for the number of applicants that staff can interview during established working hours. Potential applicants will begin to line up in front of the office early in the morning in hopes of getting an interview that day. Once the number of applicants in line reaches the ''quota'', the local agency will accept no more individuals for an interview. The local agency will continue to accept applications, but staff advise any further potential applicants to come back the next working day. Under this procedure, a household may have to return to the food stamp office several times in order to be interviewed for the program. This policy is not acceptable as it clearly presents a barrier to participation for certain groups, such as working families, who cannot afford to take time off repeatedly in an attempt to be interviewed. It also violates the principle implied in 7 CFR 273.2(e) that the State agency schedule a specific date and time for an interview for every applicant household. Therefore, we are amending the regulations at 7 CFR 273.2(e) to clearly require that the State agency must schedule an interview for each applicant that is not interviewed on the day he or she submits an application. To the extent practicable, States should schedule the interview to accommodate the needs of groups with special circumstances, including working families.

Verification—7 CFR 273.2(f)

Current 7 CFR 273.2(f) sets forth the procedures, including the types of documents required, for providing verification to establish the accuracy of statements on the application. In the NPRM, we proposed to amend paragraph (f) to incorporate changes required by PRWORA and to respond to the President's regulatory reform initiative. We received a vast number of comments on our proposed changes to this section. Many commenters thought that while FNS had proposed some useful simplification of requirements related to verification, the agency did not go far enough in streamlining current requirements. These commenters thought that the rules should go further and, among other things, leave verification requirements to be decided by States, which should be given the flexibility to target verification requirements to items most likely to cause payment errors and relax others in the interest of facilitating program access.

Other commenters strongly opposed our decision to remove many of the provisions in the current regulations. The commenters thought that without these provisions clearly stating verification requirements State eligibility workers could misapply policies, effectively discouraging households from following through with their program application. For example, one commenter thought that the Department should reinstate the requirements at current section 273.2(f)(1)(vii) which provide that any documents which reasonably establish the applicant's identity must be accepted and no requirement for a specific type of document, such as a birth certificate, may be imposed. Without this language, the commenter feared that some food stamp offices would insist that a household produce the one form of verification they consider ''best'' even if the applicant lacks that form of identity. The same commenter thought that FNS should reinstate in section 273.2(f)(1)(vi) a cross reference to section 273.3(a), which prohibits States from establishing durational residency requirements. The commenter notes that while section 273.3(a) would continue to prohibit durational residency requirements, without a cross-reference to that provision in the verification rules, it could be missed by many eligibility workers, resulting in improper denials.

Given the considerable disagreement among commenters on our discretionary proposals to amend 7 CFR 273.2(f), we have decided to withdraw those proposed changes and retain current regulations. We may consider again proposing revisions to 7 CFR 273.2(f) in a future rulemaking. At this time, we are adopting into the regulations changes necessitated by PRWORA.

In response to comments, we are retaining one sentence from the NPRM in the final rule. The final rule at 7 CFR 273.2(f) will remind State agencies to give households at least 10 days to provide required verification in accordance with 7 CFR 273.2(h)(1)(i)(C) and refer State agencies to 7 CFR 273.2(i)(4) which contain the verification procedures for expedited service cases.

The regulations at current paragraph (f)(1)(xi) provide the requirements for verifying the shelter costs of homeless households who claim shelter costs greater than the homeless household shelter standard. In the NPRM, we proposed to revise the first sentence of this section to conform with Section 5(e) of the Act, 7 U.S.C. 2015(e)(5), as amended by Section 809 of PRWORA, which establishes an optional homeless household shelter deduction. This PRWORA change is discussed later in this preamble. The revised sentence requires homeless households claiming shelter expenses to provide verification of their shelter expenses in order to qualify for the homeless shelter deduction if the State agency has such a deduction. We also proposed to remove the language currently appearing in the second and third sentences of the paragraph which requires the eligibility worker to use prudent judgment in determining if the homeless household's verification of shelter expenses is adequate and provides an example. These sentences do not provide specific verification requirements and thus, we believed, are not necessary.

One commenter objected to requiring verification of shelter expenses over and above the homeless shelter deduction. The commenter pointed out that under section 5(e)(5) of the Act, States are not required to limit this deduction to households that can verify shelter costs. States may choose not to do so in recognition of the fact that when people pay for temporary shelter, it is

commonly through informal transactions that are impossible to verify. The commenter expressed concern that if the final rules mandate verification of these expenses, they are likely to result in the effective elimination of this deduction: States may find verifying incidental shelter expenses too burdensome and error-prone and drop the deduction, or; in those States that maintain it, few homeless households would produce satisfactory verification. We agree with this commenter. Therefore, we are deleting the requirement at 7 CFR 273.2(f)(1)(xi). We are moving that provision to 7 CFR 273.2(f)(2)(iii) under which States may verify the information if questionable. In addition, several commenters objected to our intention to remove the second and third sentences of paragraph (f)(1)(xi). One commenter thought that eliminating the option of allowing State agencies to use prudent judgment if the household claims shelter expenses but is unable to provide verification places an undue burden upon this very vulnerable population. We agree with the commenters that retaining the last two sentences in current paragraph (f)(xi) may prevent an unnecessary verification burden on homeless households, and we are retaining the two sentences in this rule at 7 CFR 273.2(f)(2)(iii).

Current paragraph (f)(4)(i) and (ii) provide that the State agency may use a collateral contact to verify information provided by an applicant. One commenter expressed concern that collateral contacts impair the confidentiality protections of the statute. This commenter warned that an inquiry from the food stamp office makes it obvious that a household has applied for benefits. This might be an embarrassment to the household. Therefore, to respond to this commenter's concerns, we are revising 7 CFR 273.2(f)(4)(ii) to provide that when talking with a collateral contact, State agencies should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for food stamps, and should not disclose any information supplied by the household, especially information that is protected by 7 CFR 273.1(c). State agencies should also not suggest that the household is suspected of any wrong doing.

Current paragraph (f)(4)(iii) governs use of home visits in the event documentary evidence is insufficient. One commenter expressed concern that some State agencies may justify home visits for the entire caseload or certain segments of the caseload by asserting that certain households are more error-prone. Certainly our intention in this provision is not to sanction universal mandatory home visits or home visits for households that fit error-prone profiling. Certainly rumors of such a policy could have a chilling effect on program participation. We are taking this opportunity to remind State agencies that home visits are to be used only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, and the home visit is announced in advance. In addition, in response to this commenter and to improve Program access, we are amending 7 CFR 273.2(f)(4)(iii) to provide that home visits are to be used on a case-by-case basis where the supplied documentation is insufficient. Simply because a household fits a profile of an error-prone household doesn't mean that it has not provided sufficient verification. In addition, we are reminding State agencies to assist the household in obtaining verification in accordance with 7 CFR 273.2(c)(5). The commenter also suggested that we broaden the prohibition on unannounced investigatory home visits. Such an action is beyond the scope of this rule. However, we are taking this opportunity to suggest that State agencies consult their legal counsel on their authority to stage unannounced home visits that are intended to investigate fraud. Neither the Food Stamp Act nor the Program regulations provide authority for such visits.

Current paragraph (f)(5)(i) requires State agencies to help applicants with verification, allows households to supply documentary evidence in person or through another means, prohibits State agencies from requiring households to present verification in person, and requires the State agency to accept any reasonable documentary evidence provided by households. Section 835 of PRWORA revised section 11(e) of the Act to remove the requirement that State agencies assist households in obtaining verification and the prohibition against requiring households to present additional proof of a matter for which the State agency already possesses current verification. While PRWORA removed the requirement to assist all households in the verification process, there remains a mandate to offer assistance to special needs households.

Although Section 835 of PRWORA did remove several requirements related to verification from the Act, we have decided not to change the substance of the current regulation. We believe that the current, long standing policies at 7 CFR 273.2(f)(5)(i) are a necessary adjunct of the PRWORA requirement that State agencies provide accurate, timely, and fair service. This includes the policy that States assist all applicants in obtaining verification. Although the Act now requires States to assist, at a minimum, households with special needs, we believe that in order to satisfy the Act's standard of timely, accurate and fair service, States must be required to assist all households in obtaining verification. The final rule does amend the current language to allow households to submit documentation by facsimile or other electronic devices.

Current paragraph (f)(9) provides procedures for using IEVS information to verify eligibility and benefits. To conform to the changes we previously discussed under section 272.8, in the final rule, we are amending the title of 7 CFR 273.2(f)(9) and the contents of paragraph (f)(9)(i) to indicate that use of IEVS is now a State option. If State agencies do access IEVS, the procedures contained in the remainder of paragraph (f)(9) are still appropriate and, therefore, we are making no other changes to the section.

Current paragraph (f)(10) provides procedures for verifying alien status through the SAVE system. To conform to the changes we previously discussed under § 272.11, in this final rule, we are amending the introductory paragraph of 7 CFR 273.2(f)(10) to indicate that use of SAVE is now a State option. If State agencies do access SAVE, the procedures contained in the remainder of paragraph (f)(10) are still appropriate and, therefore, we are making no other changes to the section.

We also proposed in the NPRM to make a number of revisions to paragraph (f) to reflect changes in the procedures for verifying alien status in the Food Stamp Program required by PRWORA and other Federal laws. A discussion of those proposed revisions follows in the paragraphs set forth below.

How Must State Agencies Verify Eligible Alien Status?

Section 402 of PRWORA and Sections 503 through 509 of AREERA made extensive changes in requirements for alien eligibility which affect the verification requirements. The changes affecting eligibility are described below under the discussion of alien eligibility at section 273.4 in this final rule. Section 432 of PRWORA also affects the requirements for verification of alien eligibility. Section 432(a) of PRWORA and subsequent amendments required the Attorney General to publish

regulations providing requirements for verifying that a person applying for a Federal public benefit is a qualified alien or is a U.S. citizen or non-citizen national and is eligible to receive the benefit. The Department of Justice (DOJ) developed Interim Guidance, which it published in the **Federal Register** on November 17, 1997 (62 FR 61344). State agencies should also be aware that DOJ will be publishing a final rule on Verification of Eligibility for Public Benefits. DOJ published the proposed rule in the **Federal Register** on August 4, 1998 (63 FR 41662). Our proposed rule referenced the forthcoming final rule. We proposed that the Department would incorporate into the final version of this rule relevant changes to alien verification procedures that DOJ's makes in its final rule. The Interim Guidance provides currently acceptable procedures for the verification of citizenship, alien status, and military connections. Section 432(b) of PRWORA provided that not later than 24 months after the date the verification regulations are adopted, States that administer a program that provides a Federal public benefit must have in effect a verification system that complies with the new regulations. We proposed to remove current paragraphs (f)(1)(ii)(B), (C), and (D), which mandate the types of documents that State agencies must use for verification. State agencies may refer to the DOJ Interim Guidance, Program policy interpretations, and the Social Security Administration (SSA) procedures for obtaining work history information. These sources provide examples of verification, including verification the household provides, which State agencies may use in developing their own verification requirements.

The Department proposed to remove current 7 CFR 273.2(f)(1)(ii)(A), which requires the household to provide verification that each alien is eligible. In the introductory paragraph (f)(1)(iv), we proposed that State agencies must verify the immigration status of all aliens and other factors relevant to the eligibility of individual aliens prior to certification. Other factors relevant to the eligibility of individual aliens could be the date of admission or date status was granted; military connection; 40 qualifying quarters of work coverage; battered status; Indian, Hmong or Highland Laotian status; place of residence on August 22, 1996; or age on August 22, 1996. We also proposed to include in new paragraph (f)(1)(iv) the provision from the first sentence of current paragraph (f)(1)(ii)(G), which provides that an alien whose eligibility is questionable is ineligible until the alien provides acceptable documentation, with two exceptions which would be contained in new paragraphs (f)(1)(ii)(A) and (B). We would remove the last sentence of current paragraph (f)(1)(ii)(G) because the reference to 7 CFR 273.11(c) is unnecessary. These changes, would eliminate current paragraph (f)(1)(ii)(G). In regard to expedited service, State agencies would have determined the eligible status of aliens prior to certification, but could postpone verification in accordance with paragraph (i).

Pursuant to the President's regulatory reform initiative, we proposed to remove the first two sentences and the last sentence of current paragraph (f)(1)(ii)(E) because they do not provide any significant guidance to State agencies and are unnecessary. New paragraph (f)(1)(ii)(A) would include the provisions appearing in the third and fourth sentences of current paragraph (f)(1)(ii)(E), with some changes in wording for clarity. The third sentence of current paragraph (f)(1)(ii)(E) provides that when a State agency accepts a non-INS document from the household as reasonable evidence of alien status, the State agency must send the document to INS for verification. The fourth sentence of current paragraph (f)(1)(ii)(E) provides that the agency must not delay, deny, reduce or terminate an individual's benefits while awaiting such verification. With these changes, current paragraph (f)(1)(ii)(E) would be eliminated.

Several advocacy groups thought that the introductory text of paragraph (f)(1)(iv) (''[t]he immigration status of aliens must be verified.'') would lead State agencies to attempt to verify the immigration status of ineligible aliens. We did not intend such a result. The final rule makes it clear that the Department is authorizing State agencies to verify only the status of aliens claiming eligible immigration status. Moreover, we are retaining the language of the current rule indicating that households must have the option to withdraw the application or participate without an alien who does not wish the State agency to contact INS to verify his or her status. We received only a few comments on the proposal to require State agencies to use the DOJ verification guidance in developing their verification procedures. One State agency thought that the proposal to make use of SAVE optional gave State agencies the authority to verify the immigration status of certain aliens only if questionable. This is clearly not the case. Verification of immigration status is mandatory for all applicant alien household members, whether or not a State agency elects to use SAVE. Another State agency felt that the Department should not adopt by reference unpublished DOJ rules which might impose burdensome verification requirements on State agencies. The Department recognizes the State agency's concerns, and the final rule deletes the reference to a future DOJ final rule. However, as stated previously, PRWORA section 432(a) charges DOJ with the responsibility for publishing rules for verification of alien status and citizenship. PRWORA section 432(b) requires State agencies to comply with such regulations. As of the date of publication of this final rule, DOJ has not published its final rule outlining the verification requirements. However, we understand that DOJ is making changes to the rule in response to the comments it received in the proposed rule. Once DOJ issues its final rule, the Department will review its provisions and determine if further rulemaking is appropriate for the Program.

We proposed a new paragraph (f)(1)(iv)(B) to address verification of alien eligibility when work history is questionable. Section 402(a)(2)(B) of PRWORA provides that aliens lawfully admitted for permanent residence may be eligible for food stamps if they can be credited with 40 qualifying quarters of work. The conforming amendment proposed here would provide that State agencies must obtain verification of eligibility based on 40 qualifying quarters of work before the State agency may certify the alien, unless the State agency or the applicant has submitted a request to SSA regarding the number of quarters of work that can be credited, SSA has responded that the individual has fewer than 40 quarters, and the individual or the State agency has documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. If the State agency can document that SSA is conducting an investigation, the individual may participate for up to 6 months from the date of the first determination that the number of quarters was insufficient for eligibility. This provision is based on an interpretation of the phrase ''has worked 40 qualifying quarters of coverage'' set forth in section 402(a)(2)(B)(ii) of PRWORA. An immigrant, under the express terms of section 402(a)(2)(B), would be eligible for food stamp benefits if the immigrant had actually worked 40 qualifying quarters of coverage, notwithstanding SSA's inaccurate or incomplete recording of the immigrant's work history. Food

stamp eligibility is premised on the immigrant's act of working the 40 quarters rather than SSA's recording of the immigrant's work history. Thus, in keeping with past practice concerning the receipt of benefits pending the completion of Federal government verification, we proposed to permit immigrants to receive food stamp benefits for a maximum period of 6 months. We emphasized that food stamp benefits pending the completion of an SSA investigation are only available to an alien who: (1) Is admitted as a lawful permanent resident under the Immigration and Nationality Act (INA), *i.e.,* an immigrant; (2) SSA has determined has fewer than 40 quarters of coverage; and (3) provides the State agency with documentation produced by SSA indicating SSA is investigating the number of quarters creditable to the alien.

One advocacy group felt that proposed 6-month period for resolution of quarters of coverage disputes with the SSA was arbitrary, unfair, and noncompliant with the SAVE statute. Moreover, they thought the Department should allow participation pending the outcome of any Federal agency's investigation of a matter which bears on the individual's eligible alien status, and the State agency's determination of ''battery or extreme cruelty,'' as long as the alien is cooperating with the investigation. We are partially adopting this suggestion in the final rule. The SAVE statute requires the Department to accept an alien's attestation of ''satisfactory'' alien status until verified through SAVE. However, PRWORA imposed new facets of verification of eligibility factors for aliens which go far beyond the verification of immigration status with the INS which the SAVE statute contemplates. For example, in addition to immigration status, status as a veteran and possession of 40 quarters of Social Security coverage now have a bearing on an alien's eligibility. As Congress did not amend the SAVE statute to provide for attestation of matters beyond those which the State agency can confirm through INS, we find no *mandate* to expand affirmation of status to encompass verification of information held in the files of other Federal agencies. Nor do we believe that Congress intended that we allow an indefinite period for completion of the verification process. After several years of operating under the 6-month limit, the Department is unaware of any instances where SSA was unable to complete a requested investigation within the established time frame. Accordingly, we are preserving this time frame in the final rule. However, the Department is using its discretionary authority to add to the final rule a provision requiring that State agencies certify the individual pending the results of an investigation for up to 6 months when the applicant or the State agency has submitted a request to a Federal agency for verification of information which bears on the individual's eligible alien status. For example, a State agency may find it necessary to contact the Department of Veterans Affairs to confirm an immigrant's veteran status. On the other hand, we are unable to extend the same procedure to an alien who is pursuing qualified alien status based on the outcome of a State agency's determination of battery or extreme cruelty. There is a real distinction between an alien seeking qualified status based on battery and an alien who already possesses an eligible immigration status. An alien cannot legally attest to food stamp eligibility based on an immigration status she does not yet possess. In order to have qualified aliens status, the alien must initiate a claim for such status *and* receive a favorable determination from the State agency. In this respect, such an alien is in the position of an asylum applicant or an applicant for naturalization. Unless and until INS actually grants the alien an eligible immigration status, he or she remains ineligible for the Program.

A commenter thought that State agencies could read the proposed rule to limit the verification of quarters of coverage to information contained in SSA's files. We did not intend such a reading of the rule. The commenter correctly pointed out that SSA records do not show current year earnings and in some cases the last year's earnings, depending on the time of request. Also, in some cases, an applicant may have work from uncovered employment that SSA does not document, but is countable toward the 40 quarters test. In both of these cases, the individual, rather than SSA, would need to provide the evidence need to verify the quarters. While we believe that State agencies are following the SSA guidance for determining 40 quarters of coverage, we did reword the final rule to make these points clear. Finally, the same commenter thought that State agencies lack the resources to correlate 40 quarters of coverage information with the immigrant's possible participation in a Federal means-tested public benefit program during the time the quarters were earned by the immigrant, or by a parent or spouse. Consequently, the burden of verifying that quarters are countable would fall on the immigrant himself. The commenter urged the Department to limit verification of participation in a Federal means-tested public benefit program to those situations where the State agency knows of such participation based on a specific communication from SSA or because the State agency itself provided the federal means-tested public benefit at issue. Otherwise, the Department should permit States agencies to rely conclusively on reports of quarters from SSA and to be immune from subsequent QC scrutiny based on these decisions. The Department is unwilling to adopt this suggestion. First, such a policy likely would defeat the purpose of the statutory ban on counting quarters of Social Security coverage of immigrants who participate in Federal means-tested benefit programs while they are earning the quarters of coverage. Second, we are retaining that requirement that State agencies assist households in providing required verification. Accordingly, State agencies must devote sufficient resources to observe the statutory mandate with due diligence.

We proposed to remove current 7 CFR 273.2(f)(1)(ii)(F). That paragraph specifies that the State agency must provide alien applicants sufficient time (at least 10 days) to provide verification and that the State agency must provide benefits timely. The time period for providing verification would be included in the introductory text of paragraph (f). In as much as the Department is not revising this paragraph in the final rule, we are restoring, but revising, the provision in the final rule to delete the reference to acceptance of non-INS documentation.

How Must State Agencies Verify U.S. Citizenship or Non-Citizen National Status?

Paragraph (f)(2)(ii) currently provides requirements for verification of citizenship if a household's statement that a household member is a U.S. citizen is questionable. We proposed to combine paragraphs (f)(2)(i) and (f)(2)(ii) into a new paragraph (f)(2) and revise the provisions regarding verification of citizenship. We proposed to retain the requirement that State agencies verify citizenship only if it is questionable. We also proposed to retain the provision that participation in another program that requires verification of citizenship is acceptable proof of citizenship, if verification was obtained for the other program. As indicated above under the discussion of verification of alien eligibility, DOJ also has provided guidelines for verification of

citizenship. Therefore, we proposed to remove the verification guidance in current paragraph (f)(2)(ii) and provide in new paragraph (f)(2)(ii) that State agencies must verify citizenship in accordance with the DOJ guidance if a household member's citizenship status is questionable.

State agencies and advocacy groups generally supported the proposal to verify a statement of citizenship only when questionable. Several advocacy groups asked the Department to restore a deleted provision allowing a declaration from a citizen that the household member in question is a citizen. One State agency felt that the Department should not adopt by reference unpublished DOJ rules which might impose burdensome verification requirements on State agencies. The same State agency suggested that the Department allow State agencies to accept statements of parents on behalf of children who as minors obtained derivative citizenship when their parents naturalized. The State agency observes that many individuals cannot produce documentation of this category of derivative citizenship as the INS documents cost $160.

In response to comments, we are modifying the proposed language to add a requirement to verify the non-citizen national status of individuals whose status is questionable, in addition to the existing requirement to verify the U.S. citizenship of individuals whose citizenship is questionable. The addition conforms to the final language of section 273.4(a), as we are adding U.S. non-citizen nationals to the groups of individuals eligible for participation in the Program. We are restoring the language of the current regulations requiring State agencies to accept the written statement of a third party with personal knowledge of the household member's U.S. citizenship or non-citizen national status. We are retaining the requirement in the current regulations, that, absent verification or third party attestation of U.S. citizenship or non-citizen national status, the member whose citizenship is in question is ineligible to participate until the issue is resolved. State agencies must treat such an individual as an ineligible alien and treat the income and resources as set forth in section 273.11(c). Finally, we do not believe it is necessary to include a specific provision relating to verification of the citizenship of children who naturalize with their parents. Under the final rule, a naturalized parent, or other knowledgeable third party, could attest to the citizenship of the child, if the State agency had reason to question the child's citizenship.

Normal Processing—7 CFR 273.2(g)

Delays in Processing—7 CFR 273.2(h)

In the NPRM, we proposed to combine and revise the requirements in 7 CFR 273.2(g) and (h), which currently address the procedures for processing applications and handling delays in processing, respectively, and redesignate the new paragraph as 7 CFR 273.2(h). We proposed to include in new paragraph (g) provisions related to authorized representatives. This section is addressed below. The proposed changes to the requirements for application processing were made to allow State agencies to establish their own operating procedures and to give them more flexibility in processing applications.

In the NPRM, we proposed to amend new 7 CFR 273.2(h) as follows: (1) Retain in (h)(1) the policy contained in current paragraph (g)(1) that State agencies provide eligible households an opportunity to participate within 30 days of the date of application; (2) remove, as unnecessary, the third sentence of current paragraph (g)(1) referring to the special procedures in 7 CFR 273.2(i) for expedited service; add to new paragraph (h)(1) the first sentence of current paragraph (g)(3), which requires that a notice of denial be sent within 30 days if the household is found to be ineligible; and (4) delete the remainder of current paragraph (g)(3) to enhance State agency flexibility.

We also proposed to add a new paragraph (h)(2) which would require State agencies to continue to process cases if the State agency is at fault for not processing the case within the 30-day time period. If the State agency is at fault for delaying the application process, benefits would be restored back to the application filing date. If the household is at fault for the delay, the State agency may either deny the case or hold it pending for an additional period of time to be determined by the State agency but not more than 2 months. If the household is at fault for the delay, benefits would be provided retroactive to the date the household takes the required action.

We also proposed to add a new paragraph (h)(3), which would retain, but consolidate, the current procedures for determining the cause of a delay. Delays that are the fault of the State agency include, but are not limited, to failure to explore and attempt to resolve with the household any unclear and incomplete information provided at the interview; failure to inform the household of the need for one or members to register for work and allow the members at least 10 days to complete work registration; failure to provide the household with a statement of required verification and allow the household at least 10 days to provide the missing verification; and failure to notify the household that it could reschedule a missed interview. Delays that are the fault of the household include, but are not limited to, failure to cooperate with the State agency in resolving any unclear or incomplete information provided at the interview; failure to register household members for work; failure to provide missing verification; and failure to reschedule a missed interview appointment.

Finally, we proposed that 7 CFR 273.2(g)(2), which addresses the issuance of combined allotments for households that apply after the 15th of the month, be redesignated with minor editorial changes as 7 CFR 273.2(h)(4).

As with many of the other provisions in the NPRM, the comments received on our proposed changes to 7 CFR 273.2(h) were mixed. On the one hand, several commenters were very supportive of the proposals, especially our decision to remove much of the prescriptive language regarding handling of applications when the decision is delayed beyond 30 days. Many of these commenters, however, requested further simplification to the regulations. Several commenters again requested that we amend the regulations to allow State agencies to take immediate action to deny an application after a missed interview or the expiration of the 10-day period for return of requested information.

On the other hand, many commenters opposed the Department's proposal to repeal provisions in existing paragraphs (g) and (h) which address client protections. For example, one commenter objected to our proposal to remove the requirement at current 7 CFR 273.2(h)(2)(A) that the State agency reopen a case that has been denied for failure to take a required action if the household takes the required action within 60 days from the date of application. The commenters noted that without this provision, households can be required to submit a new application and restart the application process even though they have produced the verification necessary to determine their eligibility, which may cause some households to be discouraged and abandon their efforts to obtain food stamps. The same commenters opposed the Department's proposed rewording of the current requirement at 273.2(h)(1)(i)(C). This provision provides that where verification is

incomplete, the State agency must provide the household with a statement of required verification, offer to assist the household in obtaining required verification, and allow the household sufficient time to provide the missing verification. Sufficient time is defined as at least 10 days from the date of the State agency's initial request for the ''particular verification'' that was missing. In the NPRM, we dropped the words ''particular verification.'' Although no change in policy was intended, some commenters felt that dropping the words could potentially weaken the principle significantly. For example if the household presents verification that is deemed insufficient by the State agency, the household may not have sufficient time left in the 10-day period to get the specific documentation requested by the State.

Given the considerable disagreement among commenters on our proposals to amend existing paragraphs (g) and (h), and the Department's commitment to ensuring that all food stamp applicants and participants receive timely, accurate and fair service, we have decided to withdraw the proposed changes and retain current rules, with one exception as discussed below.

One commenter pointed out that some States require prolonged job searches prior to registering persons for work in their TANF-funded programs. To avoid confusion, this commenter argued, the rules at 7 CFR 273.2(h)(i)(B) should clarify that households cannot be denied food stamp work registration on that basis. In addition, because some persons with disabilities may feel it would be dishonest to register if they are unable to work, no household should have its application delayed or denied for failure to register unless the food stamp office has reviewed the possibility of an exemption. We agree with this commenter, but believe that program policy has always called for the resolution of work registration status before any food stamp work requirement may be imposed. Therefore, at 7 CFR 273.2(h)(i)(B), we are clarifying that State agencies determine if an individual is exempt from work registration prior to requiring a household member to register.

Authorized Representatives—7 CFR 273.2(g)

In the NPRM, we proposed to redesignate the provisions of current 7 CFR 273.1(f) on authorized representatives as paragraph 7 CFR 273.2(g). We also proposed to move into that new section all of the requirements governing use of authorized representatives that appear in 7 CFR 273.1(f), 7 CFR 273.11(e) and (f), and 7 CFR 274.5, and to condense and revise those requirements. We also proposed to (1) move the provisions for using treatment centers and group homes as authorized representatives currently located at 7 CFR 273.1(f)(2) to 7 CFR 273.11(e) and (f); (2) remove the introductory paragraph of 7 CFR 273.1(f)(2) because it is unnecessary; (3) include the discussion in 7 CFR 273.1(f)(2)(1)(i) regarding drug and alcohol treatment centers in 7 CFR 273.11(e)(1) in place of the reference to 7 CFR 273.1(f)(2); (4) move the first, second, fourth, fifth, and last sentences in current 7 CFR 271.2(f)(2)(ii) regarding group living arrangements into 7 CFR 273.11(f)(1); move the sixth sentence of current 7 CFR 271.2(f)(2)(ii) into 7 CFR 273.11(f)(7); (5) remove the remainder of 7 CFR 271.2(f) because it is unnecessary; (6) add a reference to 7 CFR 273.11(e) and (f) to new paragraph 7 CFR 273.2(g)(1)(iii); and (7) remove 7 CFR 273.1(f) and 7 CFR 274.5.

We proposed to entitle 7 CFR 273.2(g)(1) ''Applying for benefits.'' We proposed to include in new paragraph (g)(1)(i) the provisions of current 7 CFR 273.1(f), (f)(1)(i) and (f)(1)(ii) with minor editorial changes. The new paragraph would include the current provisions that allow an authorized representative to act for the household in the application process and to complete work registration forms for those household members required to register for work. It would also continue to require the State agency to inform the household of its liability for overissuances which result from erroneous information given by the authorized representative. We would also remove current paragraph (3) regarding nonhousehold members who can apply for minors and include the content in new paragraph (f)(ii).

We also proposed to remove the information in introductory paragraph 7 CFR 274.5(a) and the first sentence of paragraph (b) because they are unnecessary. The contents of paragraph (a)(1) and the second sentence of paragraph (a)(2) would be included in new paragraph (g)(2) entitled ''Obtaining food stamp benefits'' with minor editorial changes. The new paragraph would include the current provisions for encouraging the household to name an authorized representative for obtaining benefits at the time of application, that the representative's name be recorded in the household's case file and on its ID, and that the representative for obtaining benefits may be the same person designated to make application on behalf of the household. In the new paragraph (g)(2)(ii), we proposed to include a reference to 7 CFR 274.10(c) which provides for designating an emergency authorized representative subsequent to the time of certification.

We proposed to add a new paragraph (3) entitled ''Using benefits.'' This paragraph would include the information currently contained in 7 CFR 274.5(a)(6) and (7) and 274.5(c). The last sentence in 7 CFR 274.5(c) which prohibits a person disqualified for committing an intentional Program violation from using benefits on behalf of the household would be removed.

We also proposed to combine the current restrictions on designating authorized representatives in 7 CFR 273.1(f)(4) for application processing and 7 CFR 274.5 for obtaining benefits into proposed paragraph 7 CFR 273.2(g)(4), entitled ''Restrictions on designations of authorized representatives.'' We proposed to revise the provisions to omit examples and other unnecessary language. Proposed paragraph (4)(i) would provide that State agency employees involved in certification and issuance and retailers authorized to accept food stamp benefits may not act as authorized representatives without the specific written approval of the designated State agency official and only if that official determines that no one else is available to serve as an authorized representative. Proposed paragraph (4)(ii) would provide that individuals disqualified for intentional Program violations cannot act as authorized representatives while they are disqualified unless no one else is available. Proposed paragraph (4)(iii) would include the provisions for disqualifying authorized representatives for misrepresentation or abuse, and paragraph (4)(iv) would contain the current provision that homeless meal providers may not act as authorized representatives for homeless food stamp recipients. Proposed paragraph (4)(v) would allow the State agency to restrict the number of households an authorized representative may represent.

Our proposal to consolidate the provisions on authorized representatives into one section of the regulations was generally well received by commenters. One commenter did object to our proposal to remove the requirement currently contained at 7 CFR 274.5(a)(2) that requires food stamp offices to take steps to ensure that farm workers are acting voluntarily when they designate a grower or labor contractor as their authorized representatives. The commenter noted that since employers have so much leverage over farm workers, they and their family members should be

prohibited from serving as authorized representatives unless it is clear that the household needs such assistance and has no one else to whom to turn. We concur with the commenter that the potential for fraud and abuse still exists in such situations and are therefore reinstating the requirement.

Several commenters objected to the proposal in 7 CFR 273.2(g)(4)(iii) to exempt drug and alcohol treatment programs from disqualification in cases of fraud. The commenters thought that fraudulent acts committed by substance abuse treatment centers should be treated in the same manner as similar acts by retailers. One commenter asked that FNS provide instructions in these regulations on what actions States should take when it is discovered that a treatment center or group home knowingly provided false information or misused benefits.

Current regulations at 7 CFR 274.5(d) provide that drug and alcohol treatment centers and the heads of group living arrangements which act as authorized representatives for their residents and which intentionally misrepresent households circumstances may be prosecuted under applicable State fraud statutes for their acts. We are amending the proposed regulations on authorized representatives to include this provision.

One commenter thought that proposed regulations at 7 CFR 273.2(g)(1) addressing when a household may use an authorized representative are too limiting for households with disabilities. The commenter thought that persons with disabilities should be permitted to nominate an authorized representative in cases where completing the application process would be unusually burdensome for them but not literally impossible.

The proposed regulations at 7 CFR 273.2(g)(1) permit a household to utilize an authorized representative when ''a responsible member of the household cannot complete the application process.'' We believe that this language is sufficiently broad to allow persons with disabilities who may find completing the application process unduly burdensome to utilize an authorized representative. Therefore, we are not changing the proposed provision.

The same commenter thought that proposed regulations at 7 CFR 273.2(g)(ii) preclude non-household members from serving as authorized representatives except for those cases in which the non-household member is the only adult in the household. We disagree with the commenter. The proposed regulations at 7 CFR 273.2(g)(1)(i) clearly state that a non-household member may be designated as an authorized representative and does not limit that authority to situations in which the nonmember is the only adult in the household.

A commenter thought that the proposed regulations should be amended to permit households to designate authorized representatives to carry out household responsibilities during the certification period, such as submitting reports on changes in household circumstances, as well as at application.

The Department did not intend for the proposed regulations to prohibit authorized representatives from carrying out household responsibilities during the certification period. We recognize that there may be instances in which a household cannot satisfy program requirements after certification, such as submitting information on changes in household circumstances. Therefore, we are amending the proposed regulations at 7 CFR 273.2(g)(1) to provide that the authorized representative designated for application processing purposes may also fulfill household responsibilities during the certification period. The household will be liable for any overissuances that results from erroneous information given during the certification period by the authorized representative.

One commenter requested that the proposed language at 7 CFR 273.2(g)(1)(iii) be clarified regarding the use of authorized representatives for individuals residing in group living arrangements. The provision requires that residents of drug or alcohol treatment centers and group homes apply and be certified for food stamps through the use of authorized representatives in accordance with sections 273.11(e) and (f). The commenter noted that regulations at 7 CFR 273.11(f) allow residents of a group home to apply either through the center's authorized representative or on their own behalf. We are clarifying the regulations at 7 CFR 273.2(g) to note the distinction in the requirements to use authorized representatives that exist for residents of drug or alcohol treatment centers and group homes.

We are adopting the proposed regulations on authorized representatives as final with the changes noted above, including those changes to § 273.11(f). However, because we are retaining current regulations at 7 CFR 273.2(g), we are designating the section on authorized representatives as 7 CFR 273.2(n).

Expedited Service—7 CFR 273.2(i)

In the NPRM, we proposed to amend 7 CFR 273.2(i), which lists the categories of households entitled to expedited service and establishes the procedures that State agencies must use in providing that service. Section 838 of PRWORA amended Section 11(e)(9) of the Act, (7 U.S.C. 2020(e)(9)) by removing households consisting entirely of homeless people as a category of households entitled to expedited service and increasing the number of days which State agencies have to provide expedited service from 5 to 7 calendar days. We proposed to implement the changes resulting from section 838 of PRWORA by amending 7 CFR 273.2(i) as follows: (1) removing the reference to homeless households in current paragraph (i)(1)(iii); (2) renumbering paragraph (iv) as (iii); and (3) changing the expedited processing time frame appearing in current paragraph (i)(3) from 5 days to 7 days.

Our proposals to amend 7 CFR 273.2(e) to implement the requirements of section 838 of PRWORA have already been finalized in another rule, the Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, published on October 30, 2000 (65 FR 64581). Please refer to that rule for a complete understanding of the final provisions.

In addition to making the changes to 7 CFR 273.2(i) mandated by PRWORA, we also proposed to amend the section by removing repetitive definitions and simplifying the procedures for providing expedited service.

Comments received on the proposed discretionary changes were mixed. Some commenters, while supporting the increased flexibility provided under the revised regulations, thought the Department should go still farther in simplifying expedited service requirements for State agencies. For example, one commenter opposed the regulations at the renumbered paragraph (i)(6), which provide no limit on the number of times a household can be certified under expedited service procedures. The commenter saw no logical reason why households that fail to submit timely recertification applications should be rewarded with the ability to receive benefits expeditiously, and preferred that expedited service be reserved to households newly applying and those who have been off the program for a month. Other commenters felt that the revised regulations failed to contain sufficient provisions protecting customer rights. One commenter thought that the food stamp office

should be required to contact households that submit incomplete applications promptly to request more information and to inform them that they may be eligible for expedited issuance based on gross income, liquid resources, and shelter costs. In addition, the commenter thought that application forms should be required to have a prominent place on or near the front where the household can indicate its gross income, liquid resources, shelter costs, and status (or not) as a migrant or seasonal farm worker. The commenter thought that if a ready opportunity is offered to provide this information, many households are likely to do so, facilitating the screening for expedited issuance of applications that are mailed in or dropped off by applicants whose work schedules prevent them from waiting to meet with agency staff.

Given the considerable disagreement among commenters on our proposals to amend paragraph (i), and the Department's commitment to ensuring that all food stamp applicants and participants receive timely, accurate and fair service, we have decided to withdraw the proposed changes and retain current rules.

PA, GA and Categorically Eligible Households—7 CFR 273.2(j)

As noted in the proposed rule, section 835 of PRWORA amended section 11(e) of the Act to eliminate the mandate for the joint processing of applications for households in which all members are receiving public assistance (PA), supplemental security income (SSI), or general assistance (GA). However, State agencies retained the option to continue to jointly process these cases. Accordingly, we proposed in the NPRM to revise current paragraph (j) in its entirety. Specifically, we proposed to revise the paragraph as follows: (1) retain pertinent provisions related to the categorical eligibility of certain households for the Food Stamp Program; (2) remove provisions or references associated with mandatory joint application processing; and (3) retain those joint processing provisions we believe are necessary to protect the client should a State agency opt to continue joint processing of TANF, SSI or GA households.

We received a large number of comments opposing the changes made in the NPRM to paragraph (j). Many commenters felt that our proposal removed too many existing safeguards for applicants. For example, some commenters thought that many of the provisions in current paragraph 7 CFR 273.2(j)(1)(iv) should be retained, including the provision which requires a food stamp office to postpone denying the application of a household that is applying for TANF-funded benefits and that would be categorically eligible for food stamps if the household's TANF application is approved, and the provision which requires that notices denying food stamps to households with applications pending for cash assistance or SSI should inform the household that it should notify the food stamp office if its cash assistance or SSI benefits are approved.

Commenters requested that we restore many other provisions as well, including the provision in current section 273.2(j)(1)(iii) which prohibits food stamp offices from delaying a household's food stamp benefits beyond 30 days if the State has sufficient verification to determine food stamp eligibility even if it is waiting for further information it needs to determine the family's eligibility for TANF-funded benefits, and the provision in current section 273.2(j)(4)(vi) which does not require that all household members receive benefits from the same assistance program to be categorically eligible for food stamps.

Given the considerable opposition raised by commenters to our proposed changes to 7 CFR 273.2(j), we are withdrawing most of those changes at this time. The existing provisions in paragraph (j) promote program access among recipients of other assistance programs, and we agree with the commenters that, given the Department's commitment to ensuring program access and to providing timely, accurate and fair service to applicant and participants, the provisions should be retained at this time.

However, we are making several changes to paragraph (j) to reflect changes in the Act brought about by PRWORA and to address comments received on the NPRM.

Section 835 of PRWORA amended section 11(e) of the Act to eliminate the mandate for joint application processing for households in which all members are receiving PA, SSI, or GA. However, State agencies may opt to continue to jointly process these cases. To reflect this change in the law, we are amending the introductory paragraph of (j), and paragraphs (j)(1)(i) and (j)(3).

Several commenters were disappointed that the proposed regulations did not require food stamp offices to inform households that TANF time limits or other requirements do not apply to the receipt of food stamp benefits. These commenters cited recent studies which indicate that many families that are eligible for food stamps are leaving the program at the same time their cash assistance cases are closed. The commenters feared that many of these households are prematurely leaving the Food Stamp Program because of the erroneous belief that they are no longer eligible for food stamps when they lose eligibility for TANF.

Participation in the Program is a vital component of the transition from welfare to work. Eligible households that fail to take advantage of the Program because of confusion over the linkage between TANF and food stamp eligibility lose a vital nutritional support and jeopardize their ability to become self-sufficient. Therefore, we agree with the commenters that food stamp applicants and recipients that also participate in the TANF program should be informed that their eligibility for food stamps does not necessarily cease when they lose eligibility for TANF. We are amending the regulations at 7 CFR 273.2(j)(1) to require that the State agency notify households applying for TANF that the time limits or other requirements that apply to the receipt of TANF benefits do not apply to the receipt of food stamp benefits. Further, State agencies must notify such households that if TANF benefits cease because they have reached a time limit, have begun working, or for other reasons, they may still qualify for food stamp benefits. We are making a similar amendment to 7 CFR 273.2(e)(1).

One commenter expressed concern that in an attempt to divert households from applying for TANF, State agencies may inadvertently be diverting households from applying for food stamps. This commenter suggested we include language reminding State agencies not to discourage households from applying for food stamps. In response to this comment and in an attempt to increase Program access, we are providing at 273.2(j) that if the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household.

One legal assistance group commented that a local welfare agency required joint applicants for food stamps and cash assistance to submit to at least five separate interviews in its process for determining eligibility. Failure of the household to attend any one of these interviews or to provide

verification of circumstances as required under the cash assistance rules will result in denial of the application. This is the case even if the household submitted verification which would be acceptable in a food stamp only case. The current regulations allowing State agencies to use PA verification rules for factors of eligibility which are common to both food stamps and cash assistance could be read to sanction the local agency's practices. However, it was never the Department's intent that a household could be denied both food stamps and cash assistance, if it had complied with the food stamp verification requirement, but had failed to comply with a more stringent cash assistance requirement. While the Department believes that the language of the current rule expresses this intent, it is apparent that it is subject to interpretation in ways not in consonance with our policy. Accordingly, the final rule amends 7 CFR 273.2(j)(1)(iii) to clarify this intent. State agencies may continue to use PA verification rules for factors of eligibility which are common to both food stamps and cash assistance; however, the State agency may not deny the household's food stamp application if it has provided sufficient verification in accordance with food stamp rules. For example, a State agency may not deny a household's food stamps under joint processing, if it has submitted verification of its circumstances sufficient for food stamp purposes, but fails to submit to a home visit required for cash assistance purposes.

Several commenters thought that the final rules at 7 CFR 273.2(j) should be updated to incorporate the substance of the Department's July 14, 1999, guidance on categorical eligibility as well as the key points of clarifying questions and answers it has issued since. The guidance clarified categorical eligibility in the Program by stating that it applies not just to households receiving cash assistance under TANF-funded programs but also to those receiving or authorized to receive non-cash or in-kind benefits or services from such programs.

We agree with the commenters and are amending paragraph (j)(2) to incorporate into current regulations much of the Department's July 14, 1999, guidance on categorical eligibility, with modifications. It has come to our attention that this policy has allowed State agencies to use categorical eligibility beyond the scope of what was originally intended. The original intent of categorical eligibility was to reduce the administrative burden on State agencies by simplifying the certification process and eliminating the need for the eligibility worker to apply two different income eligibility tests for a household applying for public assistance and food stamps. Therefore, Congress allowed the State agency to apply the public assistance income and resource tests to applicants of both programs, thus eliminating the need to satisfy a second income eligibility test for the Food Stamp Program. However, the context for categorical eligibility changed after PRWORA, particularly because TANF is a block grant and can be used to support in-kind and non-cash benefits and services to low-income working families who may or may not be required to meet income eligibility criteria. The four purposes of the TANF block grant are to (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives; (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and (4) encourage the formation and maintenance of two-parent families. Funds spent to meet the first and second purposes of the block grant must be spent on ''needy families'', as defined by the State, and thus applicants must meet the State's definition of ''needy''. Funds spent to meet the third and fourth purposes of the block grant are not limited to ''needy families.'' In general, States have designed their TANF cash assistance programs and support services for families who meet income eligibility criteria. However, some TANF services do not have income eligibility criteria. We believe that it is inappropriate to confer food stamp eligibility without income eligibility criteria. Therefore, in this regulation, we are modifying the policy that was set forth on July 14, 1999. We have decided to confer categorical eligibility to all households authorized to receive TANF funded benefits and services designed to further TANF purposes one and two, which by statute must be targeted to ''needy families.'' In addition, we have decided to confer categorical eligibility to all households authorized to receive TANF funded benefits and services designed to further TANF purposes three and four, as long as those services have income eligibility criteria set at 200 percent of the Federal poverty level or lower. We made this decision in order to (1) ensure that only TANF benefits and services with income eligibility criteria confer categorical eligibility, and (2) maximize the usefulness of categorical eligibility based upon an analysis by HHS which determined that for services with income eligibility criteria, such criteria tend to be set at 200 percent of the Federal poverty level or lower (although some States may have income eligibility criteria at higher levels).

At the same time, we realize that some households no longer qualify for cash assistance simply because they have reached a time limit. Some households, simply by virtue of their past participation in the TANF cash assistance program, receive post-assistance transitional benefits, such as child care. Such programs are covered by the categorical eligibility policies described above. If transition services are designed to further TANF purposes one and two, they confer categorical eligibility since those households must meet the State's definition of ''needy''. If transition services are designed to further TANF purposes three and four, they confer categorical eligibility as long as the transition services have an income eligibility test set at 200 percent of the Federal poverty level or below. Though we believe that the regulations as written cover these individuals, where States have discretion pursuant to this rule and as described below, we are urging them to identify such programs as conferring categorical eligibility for food stamp purposes.

We realize that there are several State agencies that have identified programs to confer categorical eligibility for food stamps that are designed to further purposes three and four of the TANF block grant and that either have income eligibility criteria above 200 percent of the poverty level or have no income eligibility criteria at all. In order to satisfy the new requirements of this rule, we recognize that State agencies will need time to adjust processes so that certain programs no longer confer categorical eligibility. Therefore, in order to give State agencies the necessary time to make these changes, we are providing that State agencies may continue to use these programs to confer categorical eligibility for food stamp purposes until September 30, 2001.

Based on the above discussion, in this rule at 273.2(j)(2), households that meet the following requirements would be categorically eligible: (1) households in which all members receive or are authorized to receive cash assistance through a program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A; (2) households in which all members receive or are

authorized to receive non-cash or in-kind services or benefits from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes one and two of the TANF block grant; (3) households in which all members receive or are authorized to receive non-cash or in-kind services or benefits from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the TANF block grant and that requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level; (4) households in which all members receive or are authorized to receive SSI benefits, and (5) households in which all members receive or are authorized to receive PA and/or SSI benefits in accordance with (j)(2)(i)(A) though (j)(2)(i)(D) of this section.

Also, State agencies have the option to extend categorical eligibility to the following households if doing so will further the purposes of the Food Stamp Act: (1) households in which all members receive or are authorized to receive non-cash or in-kind services or benefits from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes one and two of the TANF block grant. States must inform FNS of the TANF services that confer categorical eligibility under this option; (2) subject to FNS approval, households in which all members receive or are authorized to receive non-cash or in-kind services or benefits from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the TANF block grant and that requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level; (3) households in which one member receives or is authorized to receive benefits according to (j)(2)(i)(B), (j)(2)(i)(C), (j)(2)(ii)(A) and (j)(2)(ii)(B) of this section and the State agency determines that the whole household benefits.

In response to comments and to incorporate current policy, we are including at 273.2(j) the definition of ''authorized to receive.'' For purposes of this provision, ''authorized to receive'' means that an individual has been determined eligible for benefits under PA program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A, and has been notified of this determination, even if the benefits have been authorized but not received, authorized but not accessed, suspended or recouped, or not paid because they are less than a minimum amount.

Finally, several commenters requested that FNS amend current rules at section 273.2(j)(2)(vii)(F) which prohibit States from denying categorically eligible households when they are eligible for no food stamp benefit. One commenter noted that as a result of the Department's July 1999 guidance on categorical eligibility, significantly more households are likely to be categorically eligible but eligible for no food stamp benefit due to their income. To require States to certify such households for zero benefits would be administratively burdensome and could discourage States from adopting expansive categorical eligibility policies. The commenter recommended that the regulations should be revised to give States the same option to treat categorically eligible households that are eligible for zero benefits in the same manner as they treat households that are not categorically eligible: where a household's net income exceeds the level at which benefits are provided, States should be allowed to choose between denying the application or certifying the case but suspending benefits.

We agree with the commenters that allowing States to deny categorically eligible households when they are eligible for no food stamp benefit would alleviate administrative burdens on States and eliminate a potential barrier to States adopting more expansive categorical eligibility policies. Therefore we are amending current rules at section 273.2(j)(2)(vii)(F) to make this change.

Alien Eligibility—7 CFR 273.4

We proposed to revise 7 CFR 273.4(a) to remove references to those aliens no longer eligible and add provisions referencing the alien provisions of Title IV of PRWORA, as amended. We also proposed to revise the section to remove unnecessary and overly prescriptive requirements. As discussed above, we also made conforming amendments to 7 CFR 273.2(f)(1)(ii) to address verification of alien eligibility under the new alien eligibility requirements and to reference the DOJ Interim Guidance.

What is a Citizen?

We proposed to add a reference in paragraph (a)(1) to the DOJ Interim Guidance which includes a definition of the term ''citizen.'' Several commenters pointed out that they could not find this reference in the regulatory amendment. We inadvertently omitted this reference in the proposed rule; however, it appears in the text of the final rule.

We proposed to add the term ''non-citizen national'' to paragraph (a)(2) to clarify that non-citizen nationals are eligible to participate. Several commenters pointed out that the term appearing in the regulatory text, ''alien national,'' was not usual DOJ terminology. The use of this term was a drafting error. The final rule uses the term ''non-citizen national'' and includes a reference to the definition in the DOJ Interim Guidance.

What is a Qualified Alien?

In accordance with section 431 of PRWORA, we proposed to define a qualified alien as:

(1) an alien who is lawfully admitted for permanent residence under the INA;

(2) an alien who is granted asylum under section 208 of the INA;

(3) a refugee who is admitted to the United States under section 207 of the INA;

(4) an alien who is paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;

(5) an alien whose removal or deportation is being withheld under section 241(b)(3) or 243(h) of the INA;

(6) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) a battered alien, an alien whose child has been battered, or an alien child of a battered parent; or

(8) a Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

Several State agencies objected to the requirement that State agencies determine if an alien has been subjected to ''battery or extreme cruelty'' with respect to establishing qualified alien status. Some State agencies and many advocacy groups suggested that we establish national standards for State agency use in making determinations of ''battery or extreme cruelty.'' One State agency worried that FNS would scrutinize ''battery or extreme cruelty'' determinations through the Quality Control process. While national standards for such determinations might be good public policy, Congress clearly delegated the authority for making such decisions to the States, assisted by

guidance from the U.S. Attorney General. (See Exhibit B to Attachment 5 of the DOJ Interim Guidance.) We can find no authorization to preempt the States' authority in these matters. Moreover, we believe the Attorney General's Interim Guidance is sensible and comprehensive. We defer to her expertise in immigration matters and feel that State agencies would do well to follow her suggestions. Accordingly, we are not changing the proposed language in the final rule. We do wish to point out that FNS does not intend to review State agency ''battery or extreme cruelty'' determinations through the food stamp QC process. The Department has no mandate to question the substance of State agency determinations on this issue. However, once a State agency makes a ''battery or extreme cruelty'' determination, food stamp QC will assess whether the State agency timely and correctly applied its determination to the food stamp case under review.

Which Aliens Must Be Both Qualified Aliens and Food Stamp Eligible Aliens?

To be eligible for food stamps, most aliens must be both a qualified alien as defined in section 431 of PRWORA and meet one of the food stamp criteria in section 402 of PRWORA. Section 402, as amended by the Balanced Budget Act, limits eligibility for food stamps to qualified refugees, asylees, deportees, specified Amerasians, Cuban and Haitian entrants, certain legal permanent residents, and veterans and active duty personnel and the spouse and unmarried dependent children of the veterans and active duty personnel. We proposed to include the list in paragraph (a)(5)(ii).

We received numerous comments on the iteration of aliens who must have qualified alien status and food stamp eligible status. Several State agencies and many advocacy groups requested that the Department clarify the regulation to indicate that each category of eligible immigration status stands alone for purposes of determining eligibility. For example, a refugee is eligible for 7 years from the date of entry, even if he or she adjusts status to lawful permanent resident status later during that 7-year period. We thought the regulation language was clear that, as illustrated in the example, adjustment to a more limited status does not override eligibility based on an earlier less rigorous status, or that if eligibility expires in one eligible status, the alien may yet be eligible under another. However, in view of the comments, we are adding a paragraph to the final rule to emphasize this point. A number of commenters thought the Department should require that State agencies provide a 1 to 2 year advance warning to aliens in a time-limited eligibility status that they are approaching the limit and that to continue participating they have some other basis of eligibility once they reach the limit. We are not adopting this suggestion, as we are reluctant to impose this burden on State agencies. We believe that Program informational materials directed to immigrant populations adequately explain the food stamp eligibility requirements for aliens and that the immigrant community is well aware of the time limits and other requirements. Moreover, we have doubts about the utility of the suggestion. Through the policy changes in PRWORA, Congress intended to provide impetus to aliens to become naturalized citizens as soon as possible. Consider the case of a refugee couple who have continuously worked and participated in the Program for 5 years since they entered the U.S., and have adjusted to lawful permanent resident status. Unless that couple has diligently pursued meeting all the requirements for naturalization, a warning at the end of the 5th or 6th year will come too late. After the 7-year period expires, and these aliens have not naturalized, they will likely lose food stamp eligibility, as none of the quarters of social security coverage will count due to their participation in the Program. A State agency thought that aliens with a pending application for lawful permanent resident status should remain eligible, even though the 7-year period of eligibility had expired. The Department cannot adopt this suggestion, as the statute does not allow such treatment.

What Are the Requirements for Eligibility as a Lawful Permanent Resident?

Under section 402(a)(2)(B) of PRWORA, the eligibility of aliens lawfully admitted for permanent residence is limited to those who have earned or can be credited with 40 qualifying quarters of work. An alien may get credit for all of the qualifying quarters worked by a parent of the alien before the alien becomes age 18 and the quarters worked by a spouse of the alien during their marriage, if they are still married or the spouse is deceased. We proposed to include this requirement in the introductory language of the new paragraph (b)(1).

To establish eligibility based on 40 quarters of work, the State agency may request information from the Social Security Administration through the Quarters of Coverage History System (QCHS) and/or obtain verification from the household. State agencies may request and receive information regarding qualifying quarters from SSA according to SSA instructions. For each individual (other than the person who signed the application) whose SSN is submitted to SSA with a request for quarters of coverage information, the State agency must obtain a signed form consenting to the release of the information. This form is to be filed in the household's case file. Section 5573 of the Balanced Budget Act authorizes SSA to disclose quarters of coverage information concerning an alien and an alien's spouse or parents to other government agencies. Therefore, if the household needs quarters of coverage based on relationship and it cannot obtain a signed form, the State agency may submit a request to SSA for information regarding the individual's work history. These requests will be processed manually by SSA. Procedures for requesting information from SSA are contained in SSA's manual for obtaining quarters of coverage information.

Aliens who can be credited with 40 qualifying quarters, as reported by SSA, would be certified, if otherwise eligible. Those who do not have 40 quarters according to SSA records and who accept that determination would be denied participation. However, individuals who believe they should be credited with more quarters of work may request that SSA investigate their work history to determine if more quarters can be credited. As indicated above under the discussion of verification of alien eligibility, we proposed to require that if SSA is conducting an investigation to determine if more quarters can be credited, the applicant may participate pending the results of the investigation for up to 6 months from the date of SSA's original finding of insufficient quarters. We proposed a conforming amendment to include this requirement in the verification requirements in new 7 CFR 273.2(f)(1)(iv)(B).

SSA has prepared guidance for State agencies to use in requesting work history information through the QCHS. Through this system, State agencies are able to obtain information about work performed in jobs covered by Title II of the Social Security Act and some work that is not covered by Title II, such as some employment with Federal, State, or local governments or nonprofit organizations. If the State agency cannot obtain work history information from SSA, the State agency will have to obtain verification of work from the applicant or other available data

sources. This will always be the case for recent quarters (lag quarters) worked because of the time it takes SSA to update the database using the most recent tax returns.

Section 402(a)(2)(B)(ii) of PRWORA also provides that no qualifying quarter creditable for a period beginning after December 31, 1996, can be included as one of the credited quarters if the individual received any Federal means-tested public benefit (as provided under section 403) during that quarter. Section 435 of PRWORA provides that no qualifying quarter for any period after December 31, 1996, by a parent or spouse of the alien may be included if the parent or spouse received any Federal means-tested public benefit during that quarter. Section 403(c) includes a list of types of assistance or benefits that are exempt from the prohibition (exempt assistance). The list includes: certain emergency medical assistance; short-term, non-cash emergency disaster relief; assistance under the National School Lunch Act; assistance under the Child Nutrition Act of 1966; certain non-Title XIX public health assistance; certain foster care and adoption payments; student assistance provided under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act; benefits under the Head Start Act; and benefits under the Workforce Investment Act. The list also includes in-kind services which may not be means-tested, such as soup kitchens and short-term shelter, specified by the Attorney General. The DOJ published a Notice in the **Federal Register** on August 30, 1996 (61 FR 45985), containing a non-exclusive list of the types of exempt in-kind services.

Each Federal agency which issues means-tested public benefits is responsible for identifying and publishing a list of benefits to which the term ''Federal means-tested public benefit'' as used in PRWORA applies. According to **Federal Register** notices published by HHS (62 FR 45256) and SSA (62 FR 5284) on August 26, 1997, TANF, Medicaid, and SSI are Federal means-tested public benefits. According to a **Federal Register** notice published by this Department on July 7, 1998 (63 FR 36653), the Food Stamp Program and the block grant food assistance programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands are the only FNS program to which the term applies. We proposed that ''received'' means that the alien actually received the assistance or food stamps in the quarter in question.

Several commenters suggested that we specify in the regulations the programs which are Federal means-tested public benefits. We are not adopting this suggestion, since we do not wish to amend the regulations every time a Federal agency adds a program to the list. However, we do intend to keep a current list posted on the FNS web site, so that interested parties will have easy access to this information.

We proposed to provide in paragraph (a)(5)(ii)(A) that if an alien was determined eligible for any Federal means-tested public benefit as defined by the agency providing the benefit or was certified to receive food stamps during any quarter after December 31, 1996, the quarter cannot be credited toward the 40-quarter total. Likewise, if the alien needs a quarter from a parent or spouse, the parent or spouse's quarter cannot be counted if the parent or spouse was determined eligible for any Federal means-tested public benefit or was certified to receive food stamps during the quarter. For example, if the alien worked and the alien's parents received SSI in the first quarter of 1997, the alien would have one quarter counted because the alien worked and did not receive assistance; if the alien did not work but the alien's parents worked and received SSI, the alien would not have any countable quarters.

The Department received several comments on the 40 quarters of coverage provisions. One commenter thought that the Department should specify that a quarter earned by a parent or spouse is creditable to the worker and transferable to the spouse or child even when the child of the parent or the spouse receives a federal means-tested public benefit. The Department cannot adopt this suggestion as it violates the clear language of the statute. Moreover, SSI follows the same policy. The same commenter suggested that the Department should mandate that quarters worked before a child is born or adopted are creditable. We are adding clarifying language in the final rule as such a policy was our intent. The same commenter urged the Department to make it clear that up to four quarters can be earned in any year when an immigrant has sufficient earnings during periods of nonreceipt of benefits. The commenter further suggested that the Department structure the computation of qualifying quarters so that an alien could evade the strictures of the statute by foregoing receipt of a Federal means-tested public benefit in a quarter and earning enough in that quarter to receive credit for 4 quarters of coverage. The commenter opined that the alien could then receive a Federal means-tested public benefit in the other quarters of the year and that such receipt would not disqualify the quarters earned in a period of nonreceipt of a Federal means-tested public benefit. The commenter correctly points out that SSA allows credit for a maximum of four quarters of coverage for earnings received in a period of less than 1 year. SSA bases credit for quarters on the individual's earnings over the course of the year, not on the amount earned in each calendar quarter. Since this point is made clear in SSA's guidance we saw no need to include the issue in the proposed regulations. The Department is not adopting the commenter's suggestion, because it is at odds with the procedures SSA uses to determine qualifying quarters for SSI. Even if a worker earns enough in one quarter to qualify for 4 quarters of coverage, SSA does not credit a quarter until it actually begins. Credit for the quarter accrues on the first day of the quarter. Thus, it is possible to correlate qualifying quarters of coverage with quarters in which the alien or the alien's parents or spouse received a Federal means-tested public benefit. The final rule does provide more guidance for determining qualifying quarters. We are adding language to the final rule specifying that State agencies must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. If an alien earns 4 quarters coverage in a calendar year and receives Federal means-tested public benefits in 2 quarters of that year, the State agency must disqualify 2 of the quarters of coverage so earned. Finally, the same commenter urged the Department to require that quarters of coverage credited from the earnings of a spouse continue even if the couple subsequently divorces. The commenter argued that current FNS policy allows State agencies the option of crediting such quarters of coverage to a divorced spouse even after the former spouse is recertified and that a uniform national policy would be preferable. The commenter's statement is not an accurate portrayal of FNS policy. The FNS guidance on this matter allows States to use discretion in this matter either by immediately discrediting the quarters of a divorced spouse or by waiting until the household's next recertification. However, once the State agency redetermines eligibility, the alien loses the quarters of the former spouse. In view of the clear language of the statute, the Department is not adopting the commenter's suggestion. However, to be consistent with SSI policy, the final rule provides that once the State agency determines eligibility

based on the quarters of coverage of the spouse, such eligibility continues until the household's next recertification. Also, for consistency with SSI policy, the final rule stipulates that if the alien earns the 40th quarter of coverage prior to applying for food stamps in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total. Finally, the final rule codifies a DOJ legal determination that qualifying quarters of work not covered by Title II of the Social Security Act may be credited in determining the eligibility of an immigrant. According to DOJ's determination, Congress intended to adopt the mechanism used by SSA for calculating the amount of wages necessary to obtain a quarter of coverage, but not the limitations on the types of employment in which the wages may be earned.

Which Qualified Aliens are Subject to a 7-Year Eligibility Limit?

Section 402(a)(2)(A) of PRWORA provided that refugees admitted under section 207 of the INA, asylees admitted under section 208 of the INA, and aliens whose deportation or removal has been withheld under sections 243(h) or 241(b)(3) of the INA would be eligible for 5 years. Refugees would be eligible for 5 years from the date of entry into the country, asylees would be eligible for 5 years from the date asylum was granted, and deportees would be eligible for 5 years from the date deportation or removal was withheld. Section 5302 of the Balanced Budget Act of 1997 reorganized section 402(a)(2)(A) to separate the requirements for eligibility for SSI and food stamps and to provide in paragraph (A)(ii)(IV) that an alien granted status as a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, would be eligible for 5 years from the date granted that status. Section 5306 of the Balanced Budget Act further amended section 402(a)(2)(A) of PRWORA to add a new paragraph (A)(ii)(V) which provided that certain Amerasians would be eligible for 5 years from date admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations Appropriations Act, incorporated as section 101(e) of Public Law 100–202 as amended by Public Law 100–461. This legislation provided for certain Amerasians in Vietnam, with their close family members, to be admitted to the U.S. as immigrants through the Orderly Departure Program beginning on March 20, 1988. These Amerasians will be admitted for permanent residence at the point of entry.

The AREERA further amended section 402 of PRWORA. Section 503 of AREERA amended section 402(a)(2)(A) of PRWORA to extend the time period that refugees, asylees, deportees, Cubans, Haitians, and Amerasians can be eligible from 5 years to 7 years. Section 402(a)(1) of PRWORA makes all other types of qualified aliens (with the exceptions of lawful permanent residents with 40 qualifying quarters of work and alien members of the armed forces, alien veterans, and certain members of such an alien's family) ineligible for food stamps for as long as they maintain their current alien status; all other non-qualified aliens are ineligible under section 401(a) of PRWORA. Section 504 of AREERA amended section 402(a)(2)(F) of PRWORA to provide that aliens who are receiving benefits or assistance for blindness or disability as defined in section 3 (r) of the Food Stamp Act may be eligible for food stamps provided that they were lawfully residing in the United States on August 22, 1996. Section 506 of AREERA added a new section (I) to section 402(a)(2) of PRWORA to make aliens eligible if they were lawfully residing in the United States on August 22, 1996 and they were 65 years of age or older on that date. Section 507 of AREERA added a new section (J) to section 402(a)(2) of PRWORA to make aliens eligible if they were lawfully residing in the United States on August 22, 1996 and are currently under 18 years of age. We proposed to include the alien eligibility criteria added by AREERA in section 7 CFR 273.4(a).

One commenter thought that the provision relating to aliens who were legally residing in the United States on August 22, 1996, and were age 65 or older on that date could be clarified by specifying that the provision applied to aliens born on or before August 22, 1931. The Department has adopted this suggestion.

In order to formalize our existing guidance on the applicability of the disparate eligibility requirements enumerated in section 402 and section 403 of PRWORA, we proposed to apply the requirements of PRWORA section 402 uniformly to the Food Stamp Program. We received no comments on this determination. Because we are currently reviewing our existing guidance, we decided not to address the applicability of PRWORA section 403 to the Program in this final rule. We will issue revised guidance if necessary as a result of our review.

Under section 402(a)(2)(C) of PRWORA, an alien lawfully residing in any State who is a veteran honorably discharged for reasons other than alien status or who is on active duty in the Armed Forces of the United States for reasons other than training or the spouse or unmarried dependent child of a veteran or person on active duty is eligible to participate. Section 5563 of the Balanced Budget Act of 1997 amended the provision regarding military-related eligibility to: (1) apply the minimum active duty service requirement (24 months or the period for which the person was called to active duty); (2) expand the definition of ''veteran'' to include military personnel who die while on active duty and certain aliens who served in the Philippine Commonwealth Army during World War II or served as Philippine Scouts after World War II; and (3) add eligibility for the unremarried surviving spouse of a deceased veteran, provided the couple was married for at least one year or for any period if a child was born of the marriage or was born to the veteran and the spouse before the marriage and the spouse has not remarried.

We proposed to define an unmarried dependent child for purposes of section 402(a)(2)(C) regarding persons with a military connection to include a legally adopted or biological dependent child of an honorably discharged veteran or active duty member of the Armed Forces if the child is under the age of 18 or a full-time student under the age of 22. It would also include a child of a deceased veteran provided the child was dependent upon the veteran at the time of the veteran's death. In addition, we proposed to include a disabled child age 18 or older if the child was disabled and dependent on the active duty member or veteran prior to the child's 18th birthday. This definition is consistent with that developed for the Supplemental Security Income (SSI) program. We also proposed to apply this definition of an unmarried dependent child to section 402(a)(2)(K) regarding unmarried dependent children of Hmong and Highland Laotians. Section 431(a) of PRWORA provides that except as otherwise provided, the terms used have the same meaning given such terms in section 101(a) of the INA. However, there is no definition of a child in section 101(a), and there are two definitions in 101(b), one for immigration purposes and one for nationality purposes. Because of the ambiguity of the law and the fact that both of the INS definitions are much more complicated than the definition used for SSI purposes, we proposed to use the SSI definition of dependent child. We also considered using

dependent as used for other food stamp purposes such as the work registration exemption, but believe they are too restrictive for this purpose.

We proposed to include the eligibility provision for individuals with a military connection in new paragraph (a)(5)(ii)(G).

Under current regulations at 7 CFR 273.4(a)(8) and (a)(9), aged, blind, or disabled aliens admitted for temporary or permanent residence under section 245A(b)(1) of the INA and special agricultural workers admitted for temporary residence under section 210(a) of the INA are eligible to participate. The PRWORA does not address the status of aliens admitted for temporary residence. Therefore, these aliens are eligible only if they meet the requirements of section 402 of PRWORA described above, and we proposed to remove paragraphs (a)(8) and (a)(9).

We also proposed to remove 7 CFR 273.4(b), (c) and (d) as unnecessary and redesignate paragraph (e) as paragraph (b). Current paragraph (b) is a partial list of ineligible aliens. Current paragraph (c) refers to the provisions in 7 CFR 273.11(c)(2) for treatment of the income and resources of an ineligible alien and is unnecessary. Current paragraph (d) explains how to treat the income and resources of an alien while awaiting a determination of an individual's eligible alien status. Provisions governing the treatment of individuals while awaiting verification of eligible alien status are located at 7 CFR 273.2(f)(1)(ii), and it is not necessary to repeat the procedure at 7 CFR 273.4. We would retain in redesignated paragraph 7 CFR 273.4(b) the requirement in current 7 CFR 273.4(e) to report illegal aliens to INS.

We proposed a conforming amendment to 7 CFR 273.1(b)(2)(ii), concerning ineligible household members. We proposed to change the reference in 7 CFR 273.1(b)(2)(ii) from ''§ 273.4(a)'' to ''§ 273.4'' because both paragraphs 273.4(a) and (b) describe eligibility requirements for aliens.

What Does the Term ''Lawfully Residing'' Mean?

Several advocacy groups suggested that we add a definition of the term ''lawfully residing'' in the United States to the final rule. Such groups further suggested that the DOJ definition of ''lawfully present'' for purposes of receiving benefits under Title II of the Social Security Act could be used for food stamp purposes. The DOJ definition gives lawfully present status to the following aliens:

(1) A qualified alien as defined in section 431(b) of Pub. L. 104–193;

(2) An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(3) An alien who has been paroled into the United States pursuant to section 212(d)(5) of the INA for less than 1 year, except:

- Aliens paroled for deferred inspection or pending exclusion proceedings under 236(a) of the INA; and
- Aliens paroled into the United States for prosecution pursuant to 8 CFR 212.5(a)(3);

(4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

- Aliens currently in temporary resident status pursuant to section 210 or 245A of the INA;
- Aliens currently under Temporary Protected Status (TPS) pursuant to section 244A of the INA;
- Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603, as amended;
- Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649, as amended;
- Aliens currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;
- Aliens currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22);
- Aliens who are the spouse or child of a United States citizen whose visa petition has been approved and who have a pending application for adjustment of status;

(5) Applicants for asylum under section 208(a) of the INA and applicants for withholding of deportation under section 243(h) of the INA who have been granted employment authorization, and such applicants under the age of 14 who have had an application pending for at least 180 days.

We are adopting this suggestion to clarify eligibility requirements for Hmong and Highland Laotian tribal members, and certain individuals whose eligibility depends on their lawful residence in the United States on August 22, 1996. While we are adopting DOJ's definition by reference, we are not repeating the definition in the final rule. We now believe a definition of the term ''lawfully residing in the United States'' is necessary for two reasons. First, although Hmong and Highland Laotian tribal members do not have to be qualified aliens to be eligible for food stamps, they still must have a lawful immigration status. The definition set forth at 8 CFR 103.12(a) will provide guidance to State agencies in making this determination. Second, aliens who must qualify under the AREERA amendments to PRWORA to be eligible for food stamps must meet two separate tests: (1) the alien had to be lawfully residing in the United States on August 22, 1996; and (2) the alien must have current status as a qualified alien (with the above-noted exception for Hmong and Highland Laotians). The final rule clarifies that an alien may have had an immigration status on August 22, 1996, that would not *currently* qualify the alien for participation. As long as the alien met the definition of ''lawfully residing in the United States'' *then*, the alien may be eligible for food stamps, if *now* he or she has adjusted to a qualifying immigration status. For example, a 70 year old alien had an application for asylum pending as of August 22, 1996. Subsequently, the INS grants the asylum request. The alien is eligible for 7 years from the date of the granting of asylum. On the other hand, an individual who was present in the United States on August 22, 1996, but not lawfully residing in the United States, may not use this provision to access food stamp benefits. This is true even if he or she later achieves a qualifying immigration status. For example, an undocumented then-66 year old alien was present in the United States on August 22, 1996. The alien subsequently leaves the county and returns as a LPR. Unless the alien has earned or can get credit for 40 quarters of Social Security coverage, the alien is not eligible for food stamps.

May any Non-Qualified Aliens Participate in the Program?

Section 505 of AREERA amended section 402(a)(2)(G) of PRWORA to provide that aliens who are American Indians born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply or who are members of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act may be eligible for food stamps. Section 508 of AREERA added a new section (K) to section 402(a)(2) of PRWORA to make any individual eligible who is lawfully residing in the United States and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (August 5, 1964–May 7,

1975). Section 508 further extends food stamp eligibility to the spouse, or unremarried surviving spouse, and unmarried dependent children of such Hmong or Highland Laotian. Section 509 of AREERA amended section 403(b) of PRWORA to provide that American Indians made eligible by section 505 and Hmong and Highland Laotians and their families made eligible by section 508 do not have to be qualified aliens to be eligible for food stamps. We proposed that members of these groups are the only aliens who can be eligible for food stamps without being a qualified alien as defined in section 431 of PRWORA.

There were several comments relating to the eligibility of Hmong and Highland Laotians. One commenter thought the Department should simply confer eligibility on any person who was a member of a Hmong or Highland Laotian tribe on or prior to May 7, 1975. We are not adopting this suggestion. The Department has no authority to change the clear requirement of the statute. One State agency suggested that the Department include step-children in the definition of ''dependent child'' for purposes of determining eligible status under section 508. As stated previously, the Department is adopting the definition as proposed for the sake of consistency with SSI.

How Must State Agencies Comply With the Requirement To Report Illegal Aliens?

The Department proposed no changes in, nor received any comments on, the requirement in renumbered 7 CFR 273.4(b)(1) to report illegal aliens. However, we are taking this opportunity to recognize the September 28, 2000 (65 FR 58301) publication of the Interagency Notice providing guidance for compliance with PRWORA section 404. PRWORA section 404 requires certain Federal and State entities at least four times annually, to notify the INS of any alien the entity ''knows'' is not lawfully present in the U.S. The Interagency Notice specifies that a government entity ''knows'' that an alien is present illegally only when the entity's finding or conclusion of unlawful presence is made as part of a formal determination subject to administrative review and is supported by a determination of the INS or the Executive Office of Immigration Review, such a Final Order of Deportation. PRWORA section 404 does not apply to the Food Stamp Program; however, for purposes of complying with the reporting requirement in 7 CFR 273.4(b)(1), the Department considers a State agency to be compliant if it limits its reporting of illegal aliens for food stamp purposes to the standard of ''knowing'' established in the above-cited Interagency Notice. We believe that ''knowing'' that an alien is present illegally as defined in the Interagency Notice is consistent with the State agency ''determining'' that an alien is present illegally as required under 7 CFR 273.4(b)(1), as interpreted to conform with the September 28, 2000 (65 FR 58301) Interagency Notice providing guidance for compliance with PRWORA Sec. 404.

How Must State Agencies Treat the Deemed Income and Resources of Sponsored Aliens?

We proposed to move the sponsored alien provisions from 7 CFR 273.11(j) to new paragraph 7 CFR 273.4(c) and to renumber 7 CFR 273.11(k) as 7 CFR 273.11(j). This will consolidate most of the alien provisions.

Current rules at 7 CFR 273.11(j) establish special procedures for determining the income and resources of sponsored aliens. Sponsored aliens are individuals lawfully admitted to the United States for permanent residence. A sponsor is a person who executed an affidavit of support on behalf of an alien as one of the conditions required for the alien's entry into the United States. The current rules require that a portion of the gross income and resources of the sponsor and the sponsor's spouse (if living with the sponsor) be deemed to the sponsored alien for a period of 3 years from the date of the sponsored alien's entry into the country as a lawfully admitted permanent resident alien. Under section 5(i) of the Food Stamp Act, the income of the sponsor and the sponsor's spouse (if living with the sponsor) is the total annual income reduced by the income eligibility standard for a household equal in size to the sponsor's household, and deeming continues for only 3 years. The Act also requires the subtraction of $1,500 from the resources of the sponsor and the sponsor's spouse prior to deeming the remainder to the alien.

Section 421 of PRWORA, as modified by the OCAA and the Balanced Budget Act, contains several provisions which revise the current requirements. First, section 421(a)(1) provides that, notwithstanding any other provision of law, the income and resources of the alien must be deemed to include the income and resources of any person who executed an affidavit of support pursuant to section 423 of PRWORA which is a legally binding contract. Section 421(a)(2) provides that the income and resources of the spouse (if any) of the person executing the affidavit are to be deemed to the alien. Section 421(b) provides that the deeming must continue until the alien becomes a citizen or has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters. Any quarter creditable for a period beginning after December 31, 1996, cannot be credited if the alien received any Federal means-tested public benefit during the quarter. Section 403 includes a list of types of assistance exempt from the prohibition against allowing a quarter of work credit for a quarter in which an alien received any means-tested public benefit. This list of exempt assistance is addressed in the discussion of alien eligibility requirements above.

Section 552 of OCAA amends section 421 of PRWORA to provide two exceptions to the requirement that the income and resources of the sponsor(s) and sponsor's spouse be deemed to the sponsored alien. For indigent aliens deeming is limited to the amount actually provided by the sponsor to the alien for a period beginning on the date of such determination and ending 12 months after such date. The Department proposed that the State agency establish criteria for determining when an alien is unable to obtain food and shelter considering all income and assistance provided by individuals and thus should be considered indigent. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved. Deeming is eliminated for 12 months for battered alien spouses and children and parents of battered children if the benefit provider determines that the battering is substantially connected to the need for benefits. Section 5571 of the Balanced Budget Act of 1997 includes the alien child of a battered parent in this provision. Deeming of the batterer's income and resources is eliminated after 12 months if the battery is: (1) recognized by a court or the INS; and (2) has a substantial connection to the need for benefits. These provisions do not apply if the battered alien lives with the batterer.

Section 423, as amended by section 551(a) of the OCAA, provides that the sponsored alien provisions in PRWORA apply to aliens who are sponsored under a new legally binding affidavit of support. It also requires that if a sponsored alien has received any benefits under a means-tested public benefit program, the State agency must request that the sponsor provide reimbursement in the amount of such assistance. If, within 45 days after the

request for reimbursement, the sponsor has not indicated a willingness to commence payment, the State agency may bring legal action against the sponsor pursuant to the affidavit of support. The DOJ published an interim rule with request for comments on the new affidavits of support and reimbursement provisions in the **Federal Register** on October 20, 1997 (62 FR 54346). The rule is effective on December 19, 1997, and the new affidavits of support should be used for all aliens who become sponsored after that date.

The Department proposed to revise 7 CFR 273.11(j) to incorporate provisions of PRWORA, OCAA, and the Balanced Budget Act of 1997 and to streamline the section by increasing State agency flexibility and removing redundant requirements. Our proposals generated many adverse comments. Generally, State agencies and advocacy groups opposed the proposals to delete the provisions of the current regulation, which tend to reduce the amount of the sponsor's income and resources which could be considered available to the sponsored alien. Many commenters urged us to restore the deductions from the sponsor's income and resources which are included in the current regulations. Commenters worried that the proposals, if implemented, would result in the ineligibility of other household members, particularly U.S. citizen children of sponsored aliens, ostensibly an unintended result of the deeming provisions. They felt the proposed rule was antithetical to the Department's efforts to increase participation of low-income households containing eligible aliens and U.S. citizens. Commenters also cited the inequity of counting the deemed income of the sponsored alien as being available to individuals for whom the sponsor has executed no affidavit of support.

The Department carefully reviewed the concerns the commenters raised on this difficult issue. We struggled to find a sensible way to comply with new PRWORA deeming provisions, while taking into account the existing requirements of section 5(i) of the Act. During formulation of the final rule, we had extensive discussions of this issue with other agencies within the Executive Branch. Based on these conversations and comments we received, we determined that the provisions of PRWORA which require deeming of a sponsor's income and resources do not conflict with the provisions of the Act specifying how to calculate the amount of money to deem from a sponsor. Therefore, those Food Stamp Act provisions remain in effect.

We concluded that the best reading of the law, in consideration of the comments received and the determination noted above, would be to modify the proposed rule as follows. Outlined below are the proposals and changes we made in the final rule:

1. We proposed in new paragraph (c)(1) to add a reference to section 213A of the INA, which contains requirements for the affidavit of support. We incorporated the definition of ''sponsor'' in the definition of ''sponsored alien'' and removed the definitions of ''Date of entry'' and ''Date of admission'' because those terms are no longer relevant to the new deeming requirements

Several commenters questioned the ability of the Department to require deeming of income from spouses who had not executed an affidavit of support. One State agency thought that the regulation was unclear on the point of the obligation of a spouse to support the sponsored alien. The State agency asked for guidance in situations where the affidavit of support predates the marriage, or the spouse signs an affidavit of support and subsequently, the couple divorce.

The Department agrees that the obligation of spouses to support the sponsored alien needs clarification. There seems to be an inconsistency between the provision in PRWORA requiring the deeming of the income of an individual who has executed an affidavit of support on behalf of an immigrant and the provision requiring the deeming of income of a spouse without specifying whether this individual has also executed an affidavit of support (either Form I–864 or Form I–864A). We look to the INS regulations at 8 CFR 213a to resolve this apparent inconsistency. Through its regulation, INS has made it clear that only individuals who execute legally binding contracts for support are responsible for the support of the sponsored alien. Further, only those individuals who have signed either Form I–864 or Form I–864A are responsible for reimbursing the value the value of Federal means-tested public benefits paid to an eligible sponsored alien. The final rule specifies that only those persons who have executed affidavits of support are sponsors.

One State agency observed that sponsored status is not indicated on the ''green card'' or on ASVI; therefore, staff are unable to identify sponsored aliens, absent specific Interim Guidance from FNS. The State agency correctly observed that sponsored status is not indicated on the I–551 or through ASVI. However, as there is no list of categories of legal permanent residents who would be excluded from obtaining a sponsor, the Department expected that eligibility workers would need to explore sponsored alien status with all immigrants during the application and verification process. In view of the State agency's concern, FNS will explore the need for and possibly issue additional guidance on this issue.

2. We proposed to revise the introductory text of current paragraph (j)(2) to incorporate our original reading of the statute that PRWORA requires that all of the sponsor's income and resources be counted in determining the eligibility and benefits of the sponsored alien, and that deeming lasts until the alien becomes a citizen or can be credited with 40 qualifying quarters of coverage. The income and resources of sponsored aliens, whether they are eligible or ineligible aliens, would include the income and resources of the sponsor and would be counted in determining the eligibility and benefits of the rest of the household, in accordance with 7 CFR 273.11(c). We proposed to remove the provision in current paragraph (j)(2)(v) requiring the counting of the income and resources of both the sponsor and sponsor's spouse in determining eligibility. We proposed to remove the provisions of current regulations in paragraph (j)(2)(i)(A) allowing a 20 percent deduction from the sponsor's earned income and paragraph (j)(2)(i)(B) allowing a deduction for an amount equal to the Program's monthly gross income eligibility limit for a household equal in size to the sponsor's household. We proposed also to remove the provision allowing use of the income amount reported for AFDC purposes in current paragraph (j)(2)(ii). We proposed to remove the provision of paragraph (j)(2)(iv) which limits the deemed amount of the sponsors' resources to those in excess of $1,500 to conform with our reading of PRWORA section 421 regarding deeming of sponsor resources. With the removal of these provisions, we proposed to retain and designated as paragraphs (c)(2)(i) and (c)(2)(ii), respectively current paragraphs (j)(2)(iii) regarding money the sponsor pays to the alien and (j)(2)(iv) requiring the division of the income and resources of the sponsor among the number of aliens sponsored by that sponsor. We proposed to delete current paragraph (j)(2)(vii) which provides specific procedures for handling changes in sponsors in order to provide State agency flexibility. We believed that the State agency is in the best position to make these decisions.

Requirements contained elsewhere in current regulations for reporting and acting on changes that affect a household's eligibility or benefit levels are already comprehensive and we believed there was no additional Federal interest to be protected by providing specific procedures for this particular kind of change.

In the final rule, the Department is making significant revisions to the deeming provisions, and is limiting their application to situations where the sponsored alien is an *eligible* alien. We felt that PRWORA gave the Department discretion to determine whether section 421 requires that the amount of income and assets of a sponsor of an *ineligible* alien be counted in the food stamp case of a household which includes both eligible and ineligible members. Accordingly, the final rule excludes the deemed income and resources of an ineligible sponsored alien.

However, we could find no such latitude in the case of an *eligible* sponsored alien. In as much as the eligible alien is a household member, we see no way to exclude the income and resources, including the deemed income and resources of the alien's sponsor, from the calculation of household eligibility and benefit amount, if the sponsored alien is not indigent as discussed below. In the final rule, we are restoring some significant provisions of the current regulations relating to the computation of the sponsor's income and assets. These are the provisions allowing a 20 percent deduction from the sponsor's earned income and allowing a deduction for an amount equal to the monthly gross income eligibility limit for a household equal in size to the sponsor's household, and the provision which limits the deemed amount of the sponsors' resources to those in excess of $1,500. The final rule also provides that the normal food stamp definitions of income and resources apply to the determination of sponsor income and resources. To the extent that another assistance program the State agency administers collects gross income information on sponsors from sponsored aliens, the State agency may use this information in the sponsored alien's food stamp case. Several commenters suggested that the Department raise the resource exclusion to $2,000 to conform to the resource limit for households without an elderly member as set forth in section 5(g)(1) of the Act. We are unable to adopt this suggestion, as Congress did not raise the threshold amount for excluding the resources of a sponsor when it raised the general resource limits for households without an elderly member.

3. Current paragraph (j)(3) exempts the following aliens from the deeming provisions: aliens whose sponsor is participating in the Program in the same household as the sponsored alien or in a separate household, aliens who are sponsored by a group as opposed to an individual, and aliens not required to have sponsors. We proposed to delete the exemption for aliens whose sponsor is participating in the Food Stamp Program in a separate household from the sponsored alien. We proposed to retain the exemption for sponsored aliens who are included in the same household as the sponsor so that the State agency does not double count sponsor's income and resources. We proposed to add exemptions for indigent aliens and certain battered aliens and the child of a battered alien as provided in the OCAA and the Balanced Budget Act of 1997 and to require reporting each indigence determination to the Attorney General.

Many commenters opposed the proposal to delete the exemption from deeming for sponsored aliens whose sponsor participates in the Program in a separate household. The Department is not adopting this suggestion. As stated previously, section 423 of PRWORA provides that the deeming provisions apply to aliens who are sponsored under a new legally binding affidavit of support. The provision does not apply to aliens who are not required to have an affidavit of support filed on their behalf, nor to those who have an organization, as opposed to a ''person,'' as their sponsor. The Department's regulations excuse from the deeming provisions sponsored aliens who participate in the Program in the same food stamp household as their sponsor. In this instance, the food stamp household concept already requires consideration of the income and assets of all eligible household members. Beyond the just-noted exceptions to deeming, the Department sees no legal basis for excusing an eligible sponsored alien from the deeming requirements, simply because the sponsor is receiving food stamps. Receipt of food stamps does not render invalid the affidavit of support the sponsor has signed. However, the Department has restored the provisions of the current regulations with respect to the amount of deemed income that State agencies may count in the food stamp case of an eligible sponsored alien. Accordingly, little or no income or resources of a sponsor who is participating in the Program could be deemed in the food stamp case of a eligible sponsored alien.

Some State agencies and many advocacy groups suggested that we establish national standards for State agency use in making determinations of ''indigence'' with respect to excusing sponsored aliens from the deeming provisions. After consultation with the INS, the Department has determined that it does have authority to mandate such standards and the final rule adopts the suggestion. Section 423 of PRWORA requires the State agency to determine that a sponsored alien would, in the absence of the assistance provided by the State agency, be unable to obtain food and shelter, taking into account the alien's own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved. The final rule emphasizes the indigence exception by more closely defining the term ''inability to obtain food and shelter without assistance.'' Under the final rule, a sponsored alien is indigent if the sum of all the sponsored alien's household's income and any assistance the sponsor or others provide (cash or in-kind) is less than or equal to 130 percent of the poverty income guideline. The Department feels that the 130 percent of poverty income guideline is a well-recognized benchmark for determining if a household is in need of food stamps and other government assistance. However, to comply with the statute, and unlike a normal determination of income for food stamp eligibility purposes, the indigence determination includes the value of in-kind assistance the sponsor and others provide. The State agency would determine the amount of income and other assistance provided in the month of application. Each indigence determination is good for 12 months and is renewable for additional 12-month periods. If the sponsored alien is indigent, then the normal food stamp budgeting process would begin. The State agency would count in the food stamp budget whatever *actual* cash contributions the sponsor and others make.

The Department believes the procedure for determining indigence would work as follows:

A. The eligibility worker (EW) would inquire about sponsored alien status if an alien is a LPR.

B. If the LPR is an *eligible* sponsored alien, then the EW would make an indigence determination.

C. If the alien is indigent, then the EW processes the case as normal, counting only the actual amount of cash support

from the sponsor. If the alien is not indigent, then the EW would require the sponsored alien to collect information on the total amount of the sponsor's income and assets and deem appropriate amounts to establish eligibility and benefit amount.

4. We proposed to retain the provisions of current paragraph (j)(4) concerning the sponsored alien's responsibility for obtaining the cooperation of the sponsor and providing information about the sponsor to the State agency.

Some commenters questioned how a sponsored alien could garner information from a sponsor with whom the alien's relationship had soured, particularly if the sponsor were battering the alien. We are leaving this language unchanged in the final rule; however, the Department has restored the requirement that State agencies assist aliens in obtaining information from recalcitrant sponsors.

5. We proposed to delete the provisions of current paragraph (j)(5) which lists specific responsibilities of the State agency for processing cases involving households with sponsored aliens. We believed that these requirements are unnecessary because the State agency is aware of the information about the sponsor that must be obtained and there is no need to provide detailed regulatory requirements. We received no adverse comments on this provision, so we are leaving the proposed language unchanged in the final rule.

We proposed to renumber current paragraph (j)(6) concerning procedures for acting on a household's application pending receipt of verification about the sponsor's income and resources as paragraph (j)(5). We proposed to delete the last sentence of current paragraph (j)(6) in the new paragraph (j)(5). That sentence requires State agencies to assist aliens in obtaining verification in accordance with the provisions of current § 273.2(f)(5). In accordance with amendments made by PRWORA discussed above, we proposed to remove the requirement to assist households in obtaining verification from the regulations. Inasmuch as the Department is retaining current § 273.2(f)(5), we are restoring this reference to the final rule.

6. We proposed to remove current paragraph (j)(7) requiring the Department to enter into a Memorandum of Agreement between the Department and other Federal agencies as this is a Federal responsibility, and it is addressed by DOJ's interim rule published on October 20, 1997, (62 FR 54346). We received no adverse comments on this provision, so we are leaving the proposed language unchanged in the final rule.

7. We proposed to remove the provisions of current paragraph (j)(8) concerning overissuances which may result from the use of incorrect sponsor information. A State agency asked us to clarify the status of recipient claims filed against sponsors pursuant to 7 CFR 273.11(c)(8)(iii). The State agency worried that any such claims might become uncollectible once the new rule is effective.

In regard to the State agency's question on the status of overissuance claims against sponsors, current § 273.11(j)(8)(iii) and the requirements of PRWORA section 423(e), address completely separate issues. The USDA regulation addresses recipient claims situations where a sponsor is at fault for providing inaccurate information to the State agency for the purpose of establishing the eligibility and benefit amount of the sponsored alien's household. PRWORA section 423(e) addresses situations where the sponsor has executed the specified affidavit of support and owes the benefit-providing agency the value of any Federal means-tested public benefits provided to the sponsored alien. (This issue is discussed extensively in the following paragraph.) Accordingly, any existing claims against sponsors filed under 7 CFR 273.11(j)(8)(iii) remain valid claims. After the State agency implements the final rule, any recipient claims arising from overissuances to a household which includes a sponsored alien will be the sole responsibility of that household.

8. The NPRM did not establish any procedures for sponsor reimbursement of means-tested public benefits provided to sponsored aliens, as stipulated under PRWORA section 423(e). Instead, in the proposed rule's preamble, the Department directed readers to refer to an Interim DOJ rule published on October 20, 1999 (62 FR 54346). There was much adverse commentary from State agencies and advocacy groups on the lack of policy direction on this issue.

Advocacy groups urged the Department to be more specific as to the calculation of benefits for which a State agency could bill a sponsor when the eligible sponsored alien receives food stamp benefits. Advocacy groups also urged us to prevent State agencies from billing sponsors until the Department and other Federal agencies develop uniform collection procedures through the regulatory process. Several State agencies and advocacy groups urged the Department to exempt certain sponsors from the requirement to reimburse the Federal government for the value of food stamps issued to eligible sponsored aliens.

During the development of the final rule, it became apparent to us that the issue of billing sponsors for the value of means-tested public benefits was extremely complex and could not be resolved without coordination and consultation with other Federal agencies. After consultation with appropriate departments of the Executive Branch, we have decided not to regulate this issue until the Department has completed a thorough policy development process in coordination with other Federal agencies, with one exception discussed below.

The final rule addresses the issue of State agencies billing sponsors who themselves participate in the Program, either in the same household or in a separate household. Commenters have raised an issue which is not easily resolved. Under the OCCA amendment to PRWORA, an intending sponsor must demonstrate the means to maintain an annual income of at least 125 per cent of the Federal poverty income guideline for the sponsor's household size, including any dependents and the sponsored alien(s). Also, a sponsor may qualify financially based on the anticipated contribution of the sponsored alien to the sponsor's household's income. The annual income requirement is no less than 100 percent of the Federal poverty income guideline if the sponsor is an active duty member of the armed forces and the intending immigrant is the sponsor's wife or child. Further, the obligation of the sponsor to support a sponsored alien ceases only when the alien naturalizes or when the alien works or can get credit for 40 quarters of social security coverage. However, the framers of the OCCA amendment to PRWORA apparently did not contemplate that individuals and their families who meet the minimum financial requirements for sponsorship may yet qualify for food stamps, as well as other Federal means-tested public benefits. The general gross income guideline for the Program is 130 per cent of the Federal poverty income guideline. The gross income test does not apply to households which include a member age 60 or older; rather, such households must pass a net income test of 100 percent of the Federal poverty income guideline, after deducting allowable expenses from gross income. The Department does not believe that Congress intended that in order to comply with the law State agencies must bill sponsors for the value of food

stamp benefits paid to the eligible sponsored alien, notwithstanding the fact that the sponsors themselves are eligible for the Program or that the eligible sponsored alien is a member of the sponsor's food stamp household. After consultation with DOJ, the Department believes it has the authority to forestall such an incongruous result. Accordingly, the final rule exempts sponsors who are themselves participating in the Program from receiving bills from State agencies for the value of food stamp benefits provided to an alien for whom they have signed an affidavit of support.

9. Finally, based on comments from State agencies and advocacy groups, the final rule deletes the requirement in the proposed rule that State agencies may prorate the income and resources of the sponsor among multiple sponsored aliens only if the sponsored aliens apply for or participate in the Program. However, the final rule retains the requirement that the State agency must prorate the deemed income among the various sponsored aliens regardless of whether the sponsor participates in the program (as set forth in § 273.4(c)(2)(v)).

7 CFR 273.8

Inaccessible Resources—Vehicles—7 CFR 273.8(e) and (f)

We proposed to amend section 273.8(e)(18) to allow vehicles to be treated as inaccessible resources. We also proposed to amend section 273.8(h)(1) to add a provision for excluding the value of a vehicle that the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The rule would have excluded any vehicle which was likely to produce a return of less than $1,000 or $1,500, depending on the household's resource limit. We also solicited public comment on the ways in which we could simplify the method for evaluating vehicles. Currently, the rules are fairly complex. Some vehicles are exempted from consideration as a resource. Others which are nonexempt, but are the household's only transportation or are used for employment or training are subject only to the fair market test. A third category of household vehicles is subject to a dual test, which counts as a resource the higher of the fair market value in excess of $4,650 or the equity value. (Section 810 of PRWORA amended section (5)(g) of the Act to set the fair market value exclusion limit at $4,650, effective October 1, 1996. See the final rule ''Food Stamp Program: Non-Discretionary Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996'' published in the **Federal Register** on October 30, 2000 (65 FR 64581) for further information.) We advised commenters that the fair market value test is established by statute, while the equity test is subject to Departmental discretion.

The proposal to allow vehicles to be considered under the inaccessible resources provision received widespread support. Many commenters agreed that the rule change would help working households achieve or maintain self-sufficiency. Several commenters suggested raising the threshold amount for determining inaccessibility to higher amounts than we proposed. Commenters pointed out that the food stamp fair market value limit had simply not kept pace with the value of a modest, reliable vehicle in today's economy. Commenters argued that the Department should eliminate the equity value test as this was not required by statute and its use unduly complicated the resource determination for vehicles. State agencies generally supported the rule change, but worried that estimating the proceeds of the sale of a vehicle would be complex. Moreover, they thought the ''proceeds value'' of a vehicle would be subject to constant recalculation as the household paid down its loan balance.

State agencies correctly observed that the ''proceeds value'' of an inaccessible resource would require periodic evaluation as the loan balance on the resource declines. As the Department did not propose to amend the change reporting requirements of 7 CFR 273.12(a) in connection with this rulemaking, we intend that State agencies assess the vehicle's continued inaccessibility at recertification. In its July 1999 food stamp initiative, the Department offered State agencies the opportunity to increase program access and improve accuracy rates. By use of reporting options and other available waivers, State agencies may limit the number of times eligibility workers need to reevaluate inaccessibility by assigning households the longest certification period consistent with the stability of their circumstances. Also, some State agencies worried that the way the Department structured the proposed rule, eligibility workers would have to evaluate almost every vehicle for inaccessibility before going on to the fair market value and equity tests. This was not our intent. The way we sequence issues in the regulations to meet regulatory drafting requirements is not necessarily the best way to address issues in the actual certification process. State agencies may find it more expedient and efficient to instruct eligibility workers and program computer systems to follow a different sequence, as long as they achieve the correct outcome. For example, if a household's only vehicle has a fair market value of no more than $4,650, it is not necessary to inquire further into its accessibility. In actual practice, inaccessibility might be the test of last resort, if the eligibility worker could not find any other way to exclude the vehicle from resource consideration.

We are sympathetic to commenters' concerns that the current fair market value limit is outdated. However, as the fair market value threshold is set by statute, any modification to the current policy is beyond the scope of this rulemaking.

In the final rule we are using our discretion to simplify greatly the resource determination for vehicles. First, we are establishing a uniform threshold amount of $1,500 for determining if the value of a resource is inaccessible. This action will eliminate the need to distinguish between households with a $2,000 resource limit and those with a $3,000 limit for calculating the threshold amount of a resource. Second, the Department is changing the policy for exempting the equity value of licensed vehicles. Currently, the regulations exempt from the equity test one licensed vehicle per household and additionally any licensed vehicles used to go to work, training or education, or to look for work. In the final rule, we are broadening the exclusion from the equity test for licensed vehicles. The regulation exempts from the equity test one licensed vehicle per adult household member and any licensed vehicle a minor drives to work, school or training, or to look for work. These changes will simplify the resource calculation and aid more low-income families.

Under the final rule, these are the provisions for handling licensed vehicles:

(1) The rule completely excludes a vehicle from the resource test if it is necessary to produce income, used as a home, necessary to transport a disabled household member, necessary to carry fuel for heating or water for home use, or it is classified as an inaccessible resource (*i.e.,* likely to produce a return of no more than $1,500);

(2) The rule exempts from the equity test and requires evaluation for fair market value only one licensed vehicle not excluded under the previous paragraph for each adult household

member regardless of use, and any unexcluded licensed vehicle a household member under age 18 drives to work, school or training, or to look for work. The State agency would count the fair market value in excess of $4,650 for each such vehicle.

(3) For any other vehicles the household possesses, the rule requires counting of the higher of the fair market value in excess of $4,650 or the equity value.

The following examples show how the new policy would work: (1) A household is making payments on a 1994 sedan with a fair market value of $7,000. The household has no other vehicles. The eligibility worker knows that excess fair market value ($2,350) would make the household ineligible. In this instance, the eligibility worker must determine if the vehicle is inaccessible. It turns out that the household would net $500 from the vehicle, if it were sold. As the proceeds from the sale would be no more than $1,500, the eligibility worker would deem the entire value of the vehicle to be an inaccessible resource and would exclude the vehicle from consideration as a resource for eligibility purposes. (2) Alternatively, assume a household has a single vehicle which is not otherwise excludable and has a fair market value of $6,200. The eligibility worker could first evaluate the vehicle according to its excess fair market value. The countable fair market value of the vehicle as a resource would be $1,550 ($6,200–$4,650). Assuming the household did not have any other countable resources that, combined with the $1,550, would exceed the applicable resource limit for the household, the household would remain eligible for participation. In that case, the eligibility worker did not have to use the inaccessible resource provision to exclude the vehicle. (3) A household consisting of two members has three licensed vehicles. One of the vehicles is a specially equipped van used for transporting a household member who is disabled. The other two vehicles would net the household more than $1,500 each if sold. In this case, the van is totally excluded and the other two vehicles are subject only to the excess fair market value test.

Finally, in response to comments, we are adding a sentence to 7 CFR 273.8(e)(17) to make it clear that if an individual receives non-cash or in-kind services under a TANF-funded program, the State agency must determine if the individual or the household benefits from the assistance provided.

7 CFR 273.9

JTPA Payments—7 CFR 273.9(b)(1)(v)

We proposed to change the references in 7 CFR 273.9(b)(1)(v) from the Job Training Partnership Act (JTPA) to the Workforce Investment Act of 1998 (WIA) based on section 199A(c) of the WIA which states that all references in any other provision of law to a provision of the Comprehensive Employment and Training Act (CETA) or JTPA, as the case may be, shall be deemed to refer to the corresponding provision of the WIA. Since publication of the proposed rule, we have received questions about the exclusion of WIA payments. Although section 181(a)(2) of the WIA provides that allowances, earnings and payments to individuals participating in programs under said Act shall not be considered as income for purposes of determining eligibility for and the amount of benefits for any Federal program based on need, section 5(l) of the Food Stamp Act provides that notwithstanding section 181(a)(2) of the WIA, earnings to individuals participating in on-the-job training under Title I of the WIA shall be considered earned income for purposes of the Food Stamp Program, except for dependents less than 19 years of age. Accordingly, we are adopting the revision to paragraph (b)(1)(v) as proposed.

Transitional Housing Payments—7 CFR 273.9(c)(1)(i)(E) and (c)(1)(ii)(E)

Current regulations at 7 CFR 273.9(c)(1)(i) and (ii) exclude the full amount of any PA or GA grant made to a third party (vendor payment) on behalf of a household residing in transitional housing for the homeless. Section 811 of PRWORA amended section 5(k)(2)(F) of the Act to remove the exclusion for transitional housing payments.

In accordance with section 811 of PRWORA, we proposed to rescind 7 CFR 273.9(c)(1)(i)(E) and (c)(1)(ii)(E) to eliminate the exclusion for PA or GA transitional housing vendor payments. State agencies would continue to be able to exclude emergency housing assistance to migrant or seasonal farmworker households while they are in the migrant stream and emergency and special assistance that is above the normal grant. GA payments from a State or local housing authority and assistance provided under a program in a State in which no cash GA payments are provided would also be excludable. With the removal of paragraph (c)(1)(i)(E), we proposed that current paragraph (c)(1)(i)(F) become paragraph (c)(1)(i)(E). Also, with the removal of paragraph (c)(1)(ii)(E) and the removal of paragraph (c)(1)(ii)(A), as described under ''Energy Assistance'' below, we proposed that current paragraphs (c)(1)(ii)(B) through (G) would become paragraphs (c)(1)(ii)(A) through (c)(1)(ii)(E).

We received no comments on the proposal to rescind 7 CFR 273.9(c)(1)(i)(E) and (c)(1)(ii)(E) to eliminate the exclusion for PA or GA transitional housing vendor payments and the resulting redesignations. Accordingly, we are adopting the revisions and redesignations as proposed.

Earnings of Children—7 CFR 273.9(c)(7)

Current regulations at 7 CFR 273.9(c)(7) exclude the earned income of any household member who is under age 22 and an elementary or secondary school student living with a natural, adoptive or stepparent or under the parental control of a household member other than a parent. Section 807 of PRWORA amended section 5(d)(7) of the Act (7 U.S.C. 2014(d)(7)) to exclude the income of children age 17 and under. Accordingly, we proposed to amend 7 CFR 273.9(c)(7) to exclude the earned income of any household member who is under age 18. We proposed to retain all the other provisions of 7 CFR 273.9(c)(7) regarding this exclusion which were implemented in the rule published October 17, 1996 (61 FR 54292). We received no substantive comments on this proposed change. Therefore, we are adopting it as proposed.

Currently, 7 CFR 273.10(e)(2)(i) provides that for prospective eligibility and benefit determination, the earned income of a high school or elementary school student must be counted beginning with the month following the month in which the student turns 22. Section 273.21(j)(1)(vii)(A) provides that the student's income must be counted beginning with the budget month after the month in which the student turns 22. We proposed to make conforming amendments to these sections to change the age from 22 to 18. We received no substantive comments on this proposed change. Therefore, we are adopting it as proposed.

Nonrecurring Lump-Sum Payments—7 CFR 273.9(c)(8)

In 7 CFR 273.9(c)(8) regarding nonrecurring lump-sum payments, we proposed to add a sentence to allow TANF diversion payments to be excluded under certain conditions. Current policy is that they may be excluded if no more than one payment is anticipated in any 12-month period to

meet needs that do not extend beyond a 90-day period, the payment is designed to address barriers to achieving self-sufficiency rather than provide assistance for normal living expenses, and the household did not receive a regular monthly TANF payment in the prior month or the current month. We proposed to include this policy except that we changed the 90-day period to a 4-month period to reflect that the Department of Health and Human Services uses a 4-month period as the regulatory framework for its definition of short-term. (See 64 FR 17759, April 12, 1999.)

We received comments from one State association, four State agencies, and many advocacy groups. The commenters supported including the exclusion of TANF diversion payments; the State association and two State agencies suggested expanding the exclusion to cover all additional or all TANF diversion payments. The advocacy groups suggested that the definition be expanded to include any TANF payments not recognized as assistance under TANF regulations because of the exception for non-recurrent short-term benefits and that the regulations incorporate a reference to the definition of assistance in the TANF regulations. We agree with the commenters that the exclusion for TANF diversion payments should be consistent with the TANF exception for non-recurrent short-term benefits. Accordingly, we have modified the provision to exclude TANF payments not defined as assistance because of the exception for non-recurrent, short-term benefits in 45 CFR 261.31(b)(1).

Energy Assistance—7 CFR 273.9(c)(11)

Under current regulations at 7 CFR 273.9(c)(11), energy assistance provided under any Federal law is excluded from consideration as income. Energy assistance provided under State or local law which meets the requirements specified in the regulations is excluded from income if FNS has approved the exclusion. Section 808 of PRWORA replaced section 5(d)(11) of the Act with a new section 5(d)(11) , 7 U.S.C. 2014(d)(11), which modifies the exclusion for Federal and State agency energy assistance payments. Federal energy assistance payments are excluded under this provision, with one exception. Energy assistance provided under Title IV-A of the Social Security Act is not excluded, thereby eliminating the exclusion of any energy assistance provided as part of a State's public assistance grant. The new provision allows an exclusion for one-time payments or allowances made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device.

In accordance with PRWORA provisions, we proposed to revise 7 CFR 273.9(c)(11) in its entirety, adding exclusions in new paragraph (c)(11)(i) for any payments or allowances made for the purpose of providing energy assistance under any Federal law other than Part A of Title IV of the Social Security Act and new paragraph (c)(11)(ii) for one-time payments issued on an as-needed basis under Federal or State law for weatherization or emergency replacement or repair of heating or cooling devices. All other provisions appearing under current paragraph (c)(11) were proposed to be removed.

We received comments on this proposal from a State agency and many advocacy groups. All suggested clarification to the proposed language. The State agency believed that the word ''and'' between paragraph (i) and (ii) should be replaced by ''or'' because the ''and'' could be misconstrued to prohibit the exclusion of Title IV–A payments for weatherization or emergency repair. We agree with the commenter that the word ''or'' is clearer and accordingly have revised paragraph (i) to end with ''or''.

The advocacy groups felt that the language in paragraph (ii) did not make it clear that the exclusion of Federal energy assistance applies as long as the program under which the payments are being provided is federal, regardless of whether the agency making the payments is a federal one. Specifically, the advocacy groups were concerned that not citing Department of Housing and Urban Development (HUD) and USDA Rural Housing Service (RHS) payments could result in future policy changes which could result in these payments being counted as income. In order to alleviate any confusion we have retained reference to specific exclusion of HUD and RHS energy assistance payments. Accordingly, we are adopting the revised paragraph (c)(11)(i) and (ii), modified as discussed above.

Shelter Costs—7 CFR 273.9(d)(5), Standard Utility Allowance—7 CFR 273.9(d)(6), and Adjustment of Shelter Deduction—7 CFR 273.9(d)(9)

We propose to reorganize 7 CFR 273.9(d)(5) and (6) to include all provisions related to shelter expenses in revised 7 CFR 273.9(d)(6). Current paragraph (d)(5) sets forth the requirements for allowing a deduction from the household's income for shelter expenses, including a description of allowable shelter costs and the special provisions for homeless households. Current paragraph (d)(6) describes the procedures for establishing and using a standard utility allowance as a shelter cost deduction. We proposed to reorganize 7 CFR 273.9(d)(5) and (6) by moving the provisions of paragraph (d)(5), combining them with the provisions in paragraph (d)(6), and retitling the revised paragraph (d)(6) as ''Shelter costs.'' We also proposed to redesignate paragraph (d)(7) regarding child support as (d)(5). We received no comments on the proposed reorganization and are adopting that structure as proposed.

1. *Homeless households.* Current regulations at 7 CFR 273.9(d)(5)(i) provide that State agencies must use a standard estimate of the shelter expenses for households in which all members are homeless and are not receiving free shelter throughout the month. State agencies may develop their own standards or use an annually adjusted standard provided by FNS, currently $143 per month. Further, under current regulations, the homeless shelter estimate is used in determining the household's excess shelter deduction. That is, if the household claimed no shelter costs exceeding the estimate, the estimate would be considered to be the household's total shelter cost and the amount of the estimate over 50 percent of the household's income would be the household's excess shelter deduction.

Section 809 of PRWORA amended section 11(e)(3) of the Act to remove the homeless shelter provision and added a new paragraph (5) to section 5(d) of the Act (7 U.S.C. 2014(d)(5)) to provide that State agencies may develop an optional standard homeless shelter allowance not to exceed $143 per month. The new paragraph provides that the State agency may use the allowance in determining eligibility and allotments for homeless households and that the State agency may make a household with extremely low shelter costs ineligible for the allowance.

We proposed to revise current 7 CFR 273.9(d)(5)(i) (redesignated as paragraph (d)(6)(i)) to add an optional homeless shelter deduction from net income. Households claiming the homeless shelter deduction would be entitled to no other shelter deduction. They could, however, be entitled to a deduction for excess shelter expenses instead of the homeless shelter deduction if they verified actual costs. We received two comments from State agencies on this proposal. One State agency supported it; the other State agency opposed the

provision. That State agency believed the Department was interpreting the law too literally and that many State agencies would not adopt the optional separate homeless deduction. The Department does not agree with this commenter. As discussed in the proposed rule, the language of the law is clear that the allowance is to be used as a deduction in determining eligibility and allotments. The law does not indicate that the standard is to be used in computing the excess shelter expense, as is the case with the standard utility allowance. Accordingly, we are adopting the provision as proposed.

We also proposed a conforming amendment to 7 CFR 273.10(e)(1)(i) to add a new paragraph (G) to include the standard homeless shelter deduction. We received no comments on this conforming amendment and are adopting it as proposed.

2. *Excess shelter deduction.* Currently, 7 CFR 273.9(d)(5)(ii) provides that households are allowed a deduction for shelter costs in excess of 50 percent of the household's income after all other deductions have been subtracted. It provides that the shelter deduction cannot exceed the maximum limit established for the area, unless the household contains a member who is elderly or disabled. We proposed that the provisions of current paragraph (d)(5)(ii) concerning application of the excess shelter expense limit in households with and without an elderly or disabled member would be included in the introductory language of new 7 CFR 273.9(d)(6)(ii). We received no comments on this reorganization and are adopting it as proposed.

Current paragraph (d)(5)(ii) provides that the maximum shelter deduction limits applicable for use in the States, District of Columbia, Guam, and the Virgin Islands will be published as a notice document in the **Federal Register**. In 7 CFR 273.9(d)(9), the shelter deduction amounts and adjustments are described. Section 809 of PRWORA eliminated the annual cost of living adjustments and set the limits for the various areas by year. Therefore, we proposed to remove these provisions and provide instead that FNS will notify State agencies when the amount of the excess shelter limits change. We received no comments on the proposal to eliminate the General Notices and the description of the adjustment procedures. Therefore, we are deleting the provisions as proposed.

Current paragraphs (d)(5)(ii)(A) through (E) describe allowable shelter expenses. We proposed to amend paragraph (d)(5)(ii)(C) to expand the list of allowable utility costs to include fuel or electricity used for household purposes other than heating or cooling (including cooking) as an allowable utility expense. We received comments from one State association and four State agencies, all supporting the expansion. We also received comments from many advocacy groups suggesting that the list of allowable utility costs be revised to include a more generic description of telephone service that would include all of the various components of mandatory telephone fees. The advocacy groups pointed out that the current language ''the basic service fee for one telephone, including tax on the basic fee'' does not reflect the way charges are now billed in the competitive telephone marketing environment. We agree with the advocacy groups about the need to update the telephone service fee description. We are taking the opportunity at this time to add the costs of installing and maintaining wells and septic tank systems as an allowable utility cost. We have repeatedly over the years denied the allowability of these costs under current regulations. We have reconsidered this and have determined that these costs are analogous to costs for water and sewage. Accordingly, we are adopting the proposed revision to 7 CFR 273.9(d)(5)(ii)(C), expanding the description of basic telephone service, and adding well and septic tank system installation and maintenance to the list of allowable utility costs.

One State association and four State agencies requested that the regulations at current paragraph (d)(5)(ii)(A) be revised to include the recent policy decision to allow condo fees as shelter cost as a continuing charge for shelter. We have adopted this suggestion and are amending 7 CFR 273.9(d)(5)(ii)(A) accordingly.

The provisions of current paragraph (d)(5)(ii)(A) through (E), with the modifications outlined above, were proposed to be included in new paragraph (d)(6)(ii)(A) through (E). In addition, we proposed to remove an unnecessary sentence referring to the excess shelter deduction from 7 CFR 273.10(e)(1)(i)(E). We are adopting this redesignation and are deleting this sentence.

3. *Standard utility allowance—7 CFR 273.9(d)(6).* Under the proposed reorganization of 7 CFR 273.9(d)(6), provisions for utility standards would be contained in 7 CFR 273.9(d)(6)(iii) and would be reorganized. The reader is referred to the proposed rule for a detailed description and rationale of the proposed reorganization. Discussed below are the substantive changes we proposed concerning the standard utility allowances.

A. Developing Standards

Current regulations at 7 CFR 273.9(d)(6)(i) allow State agencies to offer a single standard utility allowance that includes the cost of heating and/or cooling, cooking fuel, electricity not used to heat or cool the residence, the basic service fee for one telephone, water, sewerage, and garbage and trash collection to households that incur a heating or cooling cost, receive energy assistance under the Low-Income Home Energy Assistance Act of 1981 (LIHEA), or receive other energy assistance but still incur out-of-pocket expenses. This allowance is hereinafter called the heating and/or cooling standard utility allowance (HCSUA). Instead of offering a single HCSUA, State agencies may offer an individual standard allowance for each utility expense, such as electricity, water, sewerage, or trash collection.

Section 890 of the PWORA, which amended section 5(d) of the Act, allows State agencies to develop one or more standards that include the cost of heating and cooling and one or more standards that do not include the cost of heating and cooling. Currently, there is no regulatory provision for a limited utility allowance (LUA) that includes utility expenses other than heating or cooling and is offered to households that do not have a heating or cooling expense but do incur the costs of other utilities. We proposed to add the authority for developing an LUA in paragraph (d)(6)(iii)(A).

We proposed in paragraph (d)(6)(iii)(A) that State agencies could establish an LUA that includes at least two utilities other than telephone. State agencies could offer individual standards to households that incur only one utility expense. We also proposed that State agencies could use different types of standards but could not allow households to use two standards that include the same expense. The State agency could vary the standards by factors such as household size, geographical area, or season. However, only utility costs identified in proposed paragraph (d)(6)(ii)(C) would be allowable expenses. States in which the cooling expense is minimal could continue to include the cooling cost in the LUA as part of the electricity component.

We received one comment from a State agency on the proposed structure of the LUA. That State agency questioned why two utilities were required for a LUA, and why, if two were required, a telephone could not be

one of the two. We continue to believe that a household needs to have a minimum of two utility costs to qualify for an LUA. However, we agree with the State agency that telephone service should be allowed as one of the two. Accordingly, we are adopting paragraph (d)(6)(iii)(A), modified to allow a telephone service as one of the two utilities. We are also adding the additional utilities included in modified paragraph (d)(6)(ii)(C) as allowable expenses.

B. Updating Standards

Current regulations at 7 CFR 273.9(d)(6)(iv) require State agencies to submit the methodology used in developing a standard to FNS for approval. These current rules also require State agencies to review and adjust the standard annually to reflect changes in the cost of utilities. We proposed to remove the requirement for annual submission of the amounts of the standards. As proposed, in new 7 CFR 273.9(d)(6)(ii), State agencies would be required to review standards periodically, make adjustments, and notify FNS if the amount changes. They could, at their option, establish thresholds for making adjustments. We also proposed to require that methodologies be submitted for approval when a standard is developed or changed.

We received comments from one State agency and many advocacy groups. The State agency believes that State agencies should only have to submit SUAs for approval when the methodology is being developed or changed. The advocacy groups suggested that State agencies be required to submit their SUAs for approval only once every five years as long as an annual inflation factor is included in the methodology. Further, the advocacy groups are opposed to allowing State agencies to establish a threshold for making adjustments based on cost increases. We agree with the State agency that State agencies should only have to submit their SUAs for approval when the methodology is being developed or changed. We agree with the advocacy groups that an annual review for cost increases is important, however. The proposed rule only required periodic reviews. Based on the comments, we have modified this final rule to require State agencies to submit an SUA for our approval whenever the methodology changes, to require annual reviews by State agencies to assess the need for cost-of-living adjustments, and to require State agencies to make adjustments based on cost increases by rounding to the nearest whole dollar. State agencies will be required to advise FNS whenever the amount of a standard changes.

A number of State agencies have waivers for an LUA. If the State agency's LUA is not consistent with paragraph (d)(6)(iii)(A) in this final rule, it will need to submit a revised LUA for approval. State agencies with LUAs consistent with paragraph (d)(6)(iii)(A) do not need to resubmit them for approval.

C. Entitlement

Section 5(e)(7)(iv) of the Act, as revised by section 809 of PRWORA, provides that recipients of LIHEA are entitled to use an HCSUA only if they incur out-of-pocket heating or cooling expenses in excess of the amount of the assistance paid on behalf of the household to an energy provider, that a State agency may use a separate HCSUA for households receiving LIHEA, and that the LIHEA must be considered to be prorated over the heating or cooling season. Section 2605(f)(2) of the LIHEA (42 U.S.C. 8624(f)) provides that LIHEA payments must be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of such household.

Current regulations at 7 CFR 273.9(d)(6)(ii) provide that the standard utility allowance which includes a heating or cooling component must be made available only to households which incur heating and cooling costs separately and apart from their rent or mortgage. These households include residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering, recipients of LIHEA, or recipients of indirect energy assistance payments other than LIHEA who continue to incur out-of-pocket heating or cooling expenses during any month covered by the certification period. Households in public or private housing with a central meter who are billed only for excess usage are not permitted to use the HCSUA. (Renters must be billed on a monthly basis by their landlords for actual usage as determined through individual metering to be entitled to use the HCSUA.) A household not entitled to the HCSUA may claim actual expenses.

In the proposed 7 CFR 273.9(d)(6)(iii), we clarified and simplified the rules for determining entitlement to an HCSUA. (For more information regarding the background of the provisions governing entitlement to the HCSUA, readers may refer to the preamble to the proposed rule.) The following requirements of the Act and the LIHEA Act were included in proposed 7 CFR 273.9(d)(6)(iii) for clarity:

(1) An allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense.

(2) A household that incurs a heating or cooling expense but is located in a public housing unit which has central utility meters and charges households only for excess heating or cooling costs is not entitled to a standard that includes heating or cooling costs. However, the State agency may use the excess costs in developing an overall LUA or develop a standard specifically for households which pay excess heating or cooling costs.

(3) For purposes of determining any excess shelter expense deduction, the full amount of LIHEA energy assistance payments must be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly or indirectly to the household.

(4) An HCSUA must be made available to households receiving energy assistance (other than LIHEA) only if the household incurs out-of-pocket heating or cooling expenses. A State agency may use a separate utility standard for these households.

(5) An HCSUA may not be used for a household that shares the heating or cooling costs with and lives with another individual not participating in the Program, another participating household, or both, unless the HCSUA is prorated between the household and the other individual, household, or both.

(6) A State agency that has not made the use of a standard mandatory (as provided in paragraph (d)(6)(iii)(E)) must allow a household to switch between the standard and a deduction based on actual utility costs at the end of any certification period.

One proposed change would have extended use of the HCSUA to households that live in separate residences but share a single utility meter. Three State agencies and one State association supported this proposed change. No commenters opposed it. Accordingly, we are adopting it as proposed.

Under another proposed change, the HCSUA would have been made available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. One State agency commenter supported this

proposed change, and two State agency commenters opposed it. Although the advocacy groups did not directly address this proposal, we have inferred from related comments that they supported this change. One commenter misunderstood the proposal and thought that we were eliminating the use of the HCSUA for households residing in public housing who are billed separately on the basis of individual usage. This is incorrect; the proposal provides that the HCSUA is available to households that incur heating or cooling expenses separately from their rent or mortgage. We are adopting this provision as proposed. The State agencies opposing it were concerned about errors and disparate treatment between households residing in private and public housing. Section 5(e)(7)(C)(ii)(I) of the Act does not permit use of an HCSUA for a household that does not incur such a heating or cooling expense. However, we believe that the provision simplifies the determination of who is eligible for the HCSUA and makes it less error prone by making more households eligible for the HCSUA. State agencies concerned about errors or the disparate treatment may include the excess heating and cooling costs in its LUA as discussed elsewhere in this rule.

The proposed rule in 7 CFR 273.9(d)(6)(iii) would also have allowed State agencies the discretion to develop and use whatever procedures they deem appropriate regarding anticipation of entitlement to an HCSUA so long as they complied with the requirements of the Act and the LIHEA regarding use of an HCSUA. The advocacy groups suggested that the final rules give states the flexibility to prorate in any manner that reasonably achieves the goal of not providing an inappropriately large SUA to such food stamp households. We believe that the provision as proposed accomplishes that goal, and therefore, we are adopting the provision as proposed.

As indicated above, provisions of LIHEA control (without specifically repealing) sections 5(e)(7)(iv)(I) through (IV) of the Food Stamp Act which provide that: (1) Recipients of LIHEA are entitled to the HCSUA only if they incur expenses that exceed the LIHEA payments, (2) State agencies may use a separate standard for households that receive LIHEA, (3) State agencies using a single allowance are not required to reduce the allowance for households that receive LIHEA, and (4) the LIHEA must be prorated over the entire heating or cooling season. Section 2704(f)(2) of the LIHEA (42 U.S.C. 8624(f)) provides that LIHEA payments must be treated consistently regardless of whether the payments are received directly or indirectly and that the full amount of the payments must be considered to be expended by the household for heating or cooling expenses. These requirements were proposed to be included in new paragraph (d)(6)(ii)(C). We did not receive any comments on this provision and are adopting it as proposed.

We also included in new paragraph (d)(6)(iii) the basic requirements for allowing a deduction when a household receives direct or indirect assistance in paying its shelter expenses. If a household receives direct assistance that is counted as income and incurs a deductible cost, the entire expense is included in the excess shelter deduction computation. If the household's bill is paid by a vendor payment that is counted as income, the household is likewise entitled to the expense. We did not receive any comments on this provision and are adopting it as proposed.

We proposed to delete the last sentence in 7 CFR 273.2(f)(1)(iii) which prohibits a household that wishes to claim expenses for an unoccupied home from using the standard utility allowance. One State agency supported this change; we are adopting it as proposed. We proposed to add a sentence to 7 CFR 273.9(d)(6)(ii)(C) to provide that only one standard utility allowance can be allowed if the household has both an occupied home and an unoccupied home. We did not receive any comments on this provision and are adopting it as proposed.

D. Household Options

Current regulations at 7 CFR 273.9(d)(6)(vii) provide that households may claim verified actual costs rather than a standard allowance (except for the telephone standard). Under current rules at 7 CFR 273.9(d)(6)(viii), households have the right to switch between the use of actual utility costs and a standard at the time of recertification and one additional time during each 12-month period. Section 5(e)(7)(iii)(II) of the Act, as amended by section 809 of PRWORA, provides that a State agency that has not made use of a standard mandatory must allow a household to switch between actual expenses and the standard or vice versa only at recertification. Therefore, the option to switch one additional time during each 12-month period is being removed. Since some households may be certified for 24 months under the certification period requirements of section 3(c) of the Act, as amended by PRWORA, we propose that these households be allowed to switch at the time of the mandatory interim contact. Under the proposed reorganization of the regulations, the ''switching'' requirements would be included in 7 CFR 273.9(d)(6)(iii)(D). Although one State agency opposed the elimination of the household's right to switch one additional time during each 12-month period, we are adopting the provision as proposed because the option to switch one additional time was deleted from the Act by PRWORA.

Current policy is that households may choose between actual expenses and a standard when they move. We proposed in new paragraph (d)(6)(iii)(D) that a household would have the opportunity to select either the standard or actual costs at the new address when that household moves. The advocate groups supported this provision. We are adopting it as proposed.

E. Mandatory Standards

Section 809 of PRWORA amends section 5(d) of the Act to provide in section 5(d)(7)(C)(iii)(I) that a State agency may, at its option, make use of a standard utility allowance mandatory for all households with qualifying utility costs, provided:

(a) The State agency has developed one or more standards that include the cost of heating and cooling and one or more standards that do not include the cost of heating and cooling, and

(b) The standards will not increase Program costs.

Households that are entitled to the standard will not be able to claim actual costs even if they are higher. Households not entitled to the standard will be able to claim actual allowable costs. Using mandatory standards does not bestow entitlement to a standard a household would not otherwise be entitled to receive. For example, households in public housing units which have central utility meters and charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs, but they may claim the LUA.

We proposed to provide in paragraph (d)(6)(iii)(E) that States using both an HCSUA and LUA may mandate use of a standard, provided that use of the mandatory standard does not increase Program costs and the standards have been approved by FNS. Requests for approval to use a single standard for a utility (such as a water standard) would be required to include the figures upon which the standard is based. If a State wants to mandate use of utility standards but does not want individual standards for each utility, the State would be required to submit

information showing the approximate number of food stamp households that would be entitled to the nonheating and noncooling standard and their average utility costs before implementation of the mandatory standards, the standards the State proposes to use, and an explanation of how the standards were computed. Four State agencies and many advocacy groups submitted comments on the mandatory standards provisions. Two State agencies opposed allowing households that are not entitled to a standard to claim actual costs, as proposed in paragraph (d)(6)(iii)(E). The advocacy groups supported retaining the requirement that households not qualifying for any standard be permitted to claim actual costs because without this provision, these households would be denied any consideration for the real utility costs that they incur. We agree with the advocacy groups that the Act entitles households to claim shelter expenses and disallowing these actual costs would run counter to the entitlement.

Three State agencies expressed concerns about the requirements in proposed paragraph (d)(6)(iii)(E) for the approval of mandatory standards by FNS. Two State agencies suggested that States who already have mandatory SUAs should not have to resubmit them for approval. One State agency felt that the requirements were overly proscriptive. We believe that the provisions as proposed are the minimum necessary to meet the requirement of ensuring no Program cost increase. State agencies with approved mandatory standards do not need to resubmit their standards for approval, provided their standards comply with the requirements in paragraph (d)(6)(iii)(A).

Many advocacy groups commented that the prohibition about increasing Program costs because of use of a mandatory standard did not prohibit increasing the costs of standards to reflect increased utility costs and suggested that the regulation be clarified accordingly. We agree with the advocacy groups that a clarification is needed. Accordingly, we are adopting proposed paragraph (d)(6)(iii)(E) with a clarification.

F. Sharing

Section 5(e)(7)(iii)(II) of the Act requires proration of an HCSUA when households live together and share the cost. Current regulations at 7 CFR 273.9(d)(6)(viii) provide that if a household lives with and shares utility expenses with another household, the State agency must prorate a standard among the households or allow the actual costs of each household. The State agency determines the proration method if a standard is used.

Although the Act requires that an HCSUA be prorated among households that share the heating or cooling expense, it does not require that all standards be prorated and does not specify how the HCSUA should be prorated. Therefore, we did not propose to regulate in this area. Two State agencies supported giving State agencies the flexibility to determine the method of proration. Many advocacy groups suggested that the final regulations not require prorating of the SUA if all of the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible. We are adopting this suggestion and have modified paragraph (d)(6)(iii)(F) accordingly.

G. Adjustment of Standard Deduction—7 CFR 273.9(d)(8)

Current paragraph (d)(8) describes adjustments to be made to the standard deduction. Section 809 of PRWORA sets the amounts by year. We proposed removing this paragraph because the amounts are now specified in the law. We received no comments on this and are adopting it as proposed.

7 CFR 273.10

How Will State Agencies Prorate Benefits at Recertification?

Under section 827 of PRWORA, State agencies must prorate benefits at initial certification and at recertification if there has been *any* break in certification following the last month of certification, except for migrant and seasonal farmworker households. For migrant and seasonal farmworkers, the term initial month means the first month for which the household is certified following any period of more than 30 days during which the household was not certified. We proposed to amend 7 CFR 273.10(a)(1)(ii) and 7 CFR 274.10(a)(2) to conform to the new statutory requirement.

We received one comment on this provision from a State agency which suggested that for migrant and seasonal farmworker households, the term initial month should mean the first month for which the household is certified following any *month* during which the household was not certified for participation. This suggestion has merit as food stamp households participate on a calendar or fiscal month basis, not a daily basis. We are adopting this change in the final rule.

We received one comment from an advocacy group which suggested that language be incorporated that prohibited proration if a State agency rather than a household was at fault for a gap in participation. We agree that a household should not be penalized for a State agency error. However, the Act is specific that any break in participation requires proration. In order to ensure that households are not penalized for State agency errors, we have added a reference in section 273.10(a)(2) to provisions in section 273.14(e) concerning delayed processing of recertification applications. This issue is addressed further in the discussion on recertification.

How Will State Agencies Determine the Length of Certification Periods?

Section 801 of PRWORA amended section 3(c) of the Act and eliminated specific certification periods by type of household. PRWORA now provides that the certification period cannot exceed 12 months, except that the certification period may be up to 24 months for households in which all adult household members are elderly or disabled. Section 801 requires that the State agency have at least one contact with each certified household every 12 months.

We proposed to amend 7 CFR 273.10(f) to reflect the new certification period requirements of PRWORA. We proposed that State agencies may certify households for no more than 12 months. However, State agencies may certify households in which all adult members are elderly or disabled for no more than 24 months, provided the State agency makes at least one contact every 12 months with each such household. Therefore, if the State agency certifies a household in which all adult members are elderly or disabled for 18 months, there must be at least one contact with the household by the end of the first 12 months. State agencies may use any method they choose for this contact, including a change report form or a telephone call.

We included a special condition for treatment of one-time medical expenses as averaging an expense over more than 12 months could result in a very small expense each month. Therefore, we proposed to amend 7 CFR 273.10(f)(1)(iii) as follows: Households certified for more than 12 months that incur a one-time medical expense in the first 12 months of the certification period may elect to (1) Budget the expense in one month, (2) average the expense over the remainder of the first 12 months of the certification period, or (3) average it over the remainder of the

certification period. One-time expenses reported after the 12th month of the certification period would be allowed in one month or averaged over the remainder of the certification period, at the household's option. We also proposed to add a reference to the budgeting options to 7 CFR 273.10(d)(3) for conformity. As we received no adverse comments on this change, we are adopting the language as proposed.

In addition to removing the provision of section 3(c) of the Act that the 12-month limit on certification periods could be waived, section 801 of PRWORA removed the requirement that the certification period of households in which all members received PA or GA must coincide with the period of the grant. It also removed the requirement that State agencies certify monthly reporting households for 6 or 12 months, unless FNS granted a waiver. We proposed to revise 7 CFR 273.10(f) and to remove 7 CFR 273.21(a)(3) to reflect these changes. We also proposed to include in the new 7 CFR 273.10(f)(2), the provision at 7 CFR 273.21(t) that State agencies must certify for 2 years monthly reporting households residing on reservations, unless a waiver is approved. This requirement is based on section 6(c)(1)(C)(iv) of the Act, which was not affected by the amendment to section 3(c). As we received no adverse comments on these changes, we are adopting the language as proposed.

We proposed to include in revised 7 CFR 273.10(f)(3) the provision of current 7 CFR 273.10(f)(9) concerning the assignment of certification periods to households claiming a deduction for legally obligated child support payments. State agencies complained about the requirement to limit the certification periods of households claiming the child support deduction. Given the flexibility the Department otherwise provided State agencies to assign certification periods based on the stability of household circumstances in all other instances, they felt they were in the best position to determine the length of the certification period for these households. The advocacy groups supported more flexibility in this area. We agree with the commenters. The Department is dropping the current limitation from the final rule.

However, the advocates also commented on the proposed deletion of certification period requirements in 7 CFR 273.10(f)(4). They felt that the elimination of guidelines for certification period length based on household circumstances would negatively affect households, particularly the working poor. Further, they felt that the increased use of 3-month certification periods as an error reduction tool has proven burdensome and may be part of the cause of the recent caseload reduction. The Department has considered these comments and has reviewed the changes made by PRWORA concerning mandatory certification period lengths. While PRWORA did remove certain mandated requirements, PRWORA did not create any requirements or prohibitions other than the 12 and 24 month maximums. We share the advocates' concerns about the unexplained caseload reductions and the need to reduce the burden involved in participating in the program for low-income working families. Therefore, in response to the comments from the advocates, we have decided to maintain guidelines for assigning certification periods in the regulations. These guidelines are: that households should generally be assigned certification periods of 6 months or greater; that State agencies may assign 3 month certification periods for households with unstable circumstances, such as ABAWDs or household with zero net income; and that certain households may have circumstances that are so unstable or that may only be eligible for a very short period of time that a certification period of one or two months may be warranted. It is anticipated that very few households would be certified for one or two months.

The Department recognizes that short certification periods pose a particular burden to working families by forcing more frequent reapplications that require more visits to the local office and more paperwork. In particular, many low-income workers do not enjoy fully predictable employment situations and their earnings fluctuate. The income reporting options announced by the Department in 1999—status reporting and quarterly reporting—aimed at more effective management of these cases. The new option announced in this regulation to only require reports of changes that make working households income-ineligible is a much bolder step. The Department believes that fluctuating earned income should not force households into short certification periods intended for households with unstable circumstances, but rather that States should use these new reporting options announced in this rule and earlier guidance to successfully manage this portion of their caseload.

Because the Department is aware that State agencies are reluctant to assign working households long certification periods because of potential vulnerability for quality control errors resulting from unreported changes, the Department is adopting in this final rule an optional reporting system for these households. Under this option, households with earned income assigned a six-month or longer certification period may be required to report only changes in income that result in gross monthly income exceeding 130 percent of the monthly poverty income guideline, in lieu of the requirement to report changes in the amount of gross monthly income that exceed $25. State agencies are provided this information by FNS each year, as it is the gross monthly eligibility income standard for households. State agencies should ensure that households understand that the reporting requirement is based on combining all countable sources of income, both earned and unearned, received by household members. This reporting requirement is consistent with Medicaid rules in many States which require families only to report if their income makes them ineligible for Medicaid. These households would not be subject to the remaining reporting requirements in 7 CFR 273.12(a)(1) unless they are certified for longer than six months. Households with earned income that are certified for longer than six months shall be required to submit a report at six months that includes all of the items subject to reporting under paragraph (a)(1).

State agencies are discouraged from certifying migrant or seasonal farmworker households or households in which all members are homeless individuals under this option because these categories of households are exempt from any type of periodic reporting under Section 6(c)(1)(A) of the Food Stamp Act of 1977 (7 U.S.C. 2015(c)(1)(A)) and thus cannot be required to submit an interim report at six months. However, if the State opts to do so, it may not certify such households for longer than six months.

The State agency shall act on changes reported by the household that increase benefits in accordance with 7 CFR 273.12(c) and on changes in public assistance and general assistance grants and other sources that are considered verified upon receipt by the State agency. For households certified for six months, State agencies may opt to waive every other face-to-face interview in accordance with 7 CFR 273.2(e). This reporting option is incorporated into 7 CFR 273.12(a).

We also proposed to make a conforming amendment to remove 7 CFR 272.3(c)(5) from the regulations and renumber paragraphs (c)(6) and (c)(7).

Paragraph (c)(5), which authorized waivers of the certification period requirements in section 3(c) of the Act, is now obsolete. We also proposed to make a conforming amendment to remove 7 CFR 273.11(a)(5), which addresses certification period requirements for households with self-employment income. This paragraph is unnecessary because PRWORA removed from the Act the provision regarding certification period length for these households. As we received no adverse comments on these changes, we are adopting the language as proposed.

How May State Agencies Adjust the Length of Certification Periods?

To provide more State agency flexibility in its day-to-day operation of the Program, we proposed to add a new section (7 CFR 273.10(f)(4)) allowing State agencies to shorten a household's currently assigned certification period under certain circumstances with a notice of adverse action. Under current policy, State agencies may shorten certification periods (close the food stamp case) once established when a household leaves a PA or GA program, when the State agency needs to adjust the caseload to more evenly distribute the workload, when a household reports a change that indicates that the new circumstances are very unstable, or when the household fails to provide required information regarding a change in household circumstances. When a household's certification period is shortened under these circumstances, the State agency must send a notice of expiration (NOE), or for households subject to monthly reporting, the State agency must shorten the certification period with an adequate notice in accordance with 7 CFR 273.21(m).

We proposed to consolidate in new paragraph (f)(4) most situations where shortening the certification period would be allowed. We proposed to eliminate the use of the NOE as a vehicle for shortening certification periods. In place of the NOE, State agencies would use the notice of adverse action (NOAA) for early case closure. The new paragraph would provide specific authority to shorten the certification period when the State agency has information indicating that the household is not reporting income properly, the household has become ineligible, a household reports a change that indicates that the new circumstances are very unstable, or the household fails to provide adequate information regarding a change in household circumstances other than income. Only in the instances set forth in the new paragraph could State agencies schedule a household for early termination of benefits.

We proposed a two-step process for shortening certification periods. First, the State agency must provide the household written notice that it has reason to believe the household's circumstance have changed. The notice must clearly specify the basis for the State agency's belief and the actions the State agency expects the household to take. The notice must give the household at least 10 days to contact the State agency and clarify its situation. Second, at the end of the period allowed for responding to the notice, the State agency may issue a notice of adverse action to shorten the certification period if: (1) The household does not respond; (2) the household does not provide sufficient information to clarify its circumstances; or (3) the household agrees that changes in its circumstances warrant filing a new application. The notice of adverse action must meet the requirements of 7 CFR 273.13 and explain the reason for the action. We also proposed a conforming amendment to 7 CFR 273.11(g)(5).

The Department's proposal generated much adverse commentary. State agencies and advocacy groups objected to the proposal for shortening certification periods, but for different reasons. State agencies were accustomed to shortening certification periods with the NOE to require the household to clarify its circumstances with a full recertification. Accordingly, they complained of the complexity of the proposed requirement to specify in writing what issues they wanted the household to clarify. Some State agencies thought the two-step process unnecessarily lengthened the time for addressing problem cases. One State commenter questioned the need for a written request for clarification if the household were reporting the change directly to an eligibility worker. On the other hand, advocacy groups worried that State agencies would abuse the procedure by requiring households to recertify based on picayune changes in household income or expenses, or by applying an overly rigorous definition of reported ''unstable circumstances.'' Moreover, they viewed the proposal as inconsistent with the Department's initiatives encouraging State agencies to assign the longest possible certification periods to households. Some thought that the Department should curtail entirely or severely limit the ability of State agencies to shorten certification periods in the final rule.

We are not swayed by the State agencies' objections. The NPRM presented a very strong legal argument for shortening certification periods with the NOAA instead of the NOE. We were very concerned by what has become the routine use of the NOE to shorten certification periods. It appears that eligibility workers have become inclined simply to close cases, without making the effort to determine if the household could continue participation in the Program absent a complete recertification. We believe that use of the proposed two-step process will reduce the number of costly recertifications and preclude households from making needless trips to the food stamp office. Finally, use of the NOAA will bring food stamp case closure procedures into closer conformance with the other Federal safety net programs and many TANF programs.

Nor are we totally swayed by the advocacy groups' fears either. When State agencies assign a certification period to a household, there is no absolute guarantee that benefits will remain constant throughout the certification period, or that the household will remain eligible. Recipient households have an obligation to report changes during a certification period as required by the regulations. State agencies have an obligation to question a household's continued eligibility or benefit amount when eligibility workers receive reports indicating a significant change in household circumstances. We remain convinced that there are times when early closure of a household's case serves a legitimate purpose of preserving Program integrity or furthering payment accuracy. We believe that State agencies will find it is in their own best interest to assure that eligibility workers explore continuing eligibility with households before taking steps to close the food stamp case. Finally, the requirement to use the NOAA prior to closing the case affords the household the protection of requesting a fair hearing and continuation of benefits up to the end of its original certification period.

The Department is retaining the basic proposal, with some modifications reflecting the comments received. The final rule adds a new paragraph (4) to section 273.10(f), which provides only two basic instances when the State agency may shorten a certification period. These are: (1) When the State agency receives information which indicates that the household is ineligible and (2) when the household does not cooperate in clarifying its circumstances. State agencies must use the NOAA in any instance where it is necessary to terminate benefits during

the certification period. A prohibition against using the NOE to shorten certification periods has been added to section 273.10(f)(4). Henceforth, State agencies will use the NOE only in the manner originally envisioned in the Act, that is, simply as a vehicle for notifying households that their assigned certification period is coming to an end, and outlining the procedures for continuing their participation in the Program. The Department decided that it would be extremely difficult, if not impossible, to develop criteria for early closure of cases which eligibility workers could apply fairly and consistently. In letter after letter, commenters pointed out the difficulty households have in simply contacting local agencies, much less getting an appointment for an interview, if their case is closing. Case closure places households where the adult members are either workers or care givers particularly at risk of becoming non-participants, even though they continue to be eligible. The Department wishes State agencies to apply a consistent policy that a household must be ineligible for benefits before its case is closed, either because it no longer meets the criteria for participation or because it does not cooperate in clarifying its circumstances. Loss of public assistance benefits or a change in employment could not be considered sufficient in and of itself to meet the conditions for shortening a certification period. Accordingly, we took the approach in the final rule that State agencies must work with households to clarify their circumstances and adjust benefit amounts, in accordance with sections 273.12(c)(1) and 273.12(c)(2), *without* requiring a complete recertification. If an eligibility worker feels that a household's circumstances are ''unstable,'' then the worker should emphasize reporting requirements with the household.

We are also adopting the conforming amendment to 7 CFR 273.11(g)(5), with a modification to include a reference to changes reported in accordance with the provisions of 7 CFR 273.21.

We are addressing the procedural aspects of processing unclear information in a new section 273.12(c)(3). We direct readers to that section of the preamble for further discussion of shortening certification periods.

Finally, in paragraph (f)(5), we proposed to continue to prohibit lengthening of a household's current certification period once it is established. State agencies commented that the proposal was antithetical to other provisions in the proposed rule which allowed greater flexibility in setting the length of certification periods. Advocacy groups felt that the Department should allow State agencies to extend certification periods. An extension of the food stamp certification period to align the case with review dates of other State-administered assistance could avoid more frequent and possibly redundant food stamp reviews. The final rule allows State agencies to extend certification periods. This authority to lengthen certification periods gives States broad flexibility to extend certification periods, such as to align the food stamp certification period with the Medicaid certification period. However, PRWORA limits certification periods to 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. The final language stipulates that the total months of the certification period cannot exceed the statutory limits. We are also requiring that the household must receive proper notification if the State agency extends the certification period. State agencies must advise the household of the new certification ending date with a notice containing the same information as the notice of eligibility set forth in section 273.10(g)(1)(i)(A). This will assure that the household is aware of its extended certification period, as well as its rights and responsibilities during the extended period.

Self-Employment Expenses—7 CFR 273.11(a)(4) and (b)(2)

Current regulations at 7 CFR 273.11(a)(4) contain requirements for determining the allowable costs that can be excluded in determining the amount of self-employment income to be counted. Paragraph (a)(4)(i) provides that the allowable costs of producing self-employment income include, but are not limited to, certain identifiable costs. Section 273.11(b)(1) provides that households with income from boarders may elect from among several methods of determining the cost of doing business, including a flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's food stamp manual. Paragraph (b)(2) provides that households with income from day care may choose one of the following in determining the cost of meals provided to the individuals: the actual documented costs of meals, a standard per-day amount based on estimated per-meal costs, or the current reimbursement amounts used in the Child and Adult Care Food Program. We proposed to consolidate allowable costs of producing self-employment income and include them in a revised paragraph (b). We did not receive any comments on the proposed reorganization and are adopting it as proposed.

To simplify the certification process and respond to State agency requests for increased flexibility, we proposed to add in new paragraph (b)(3)(iv) (mistakenly identified as paragraph (b)(3)(iii) in the preamble of the proposed rule) an option for State agencies to use the same standard self-employment expense amounts or percents established for households receiving TANF benefits under Title IV–A of the Social Security Act. We received comments from three State agencies and one State association supporting this proposal. We are adopting it as proposed.

In addition, section 812 of PRWORA required the Department to establish by August 22, 1997, a procedure by which a State may submit a method for producing a reasonable estimate of the cost of producing self-employment income in place of calculating actual costs. FNS issued a guidance memorandum in compliance with the statutory requirement on August 1, 1997. The method proposed by the State agency and submitted to FNS for approval must be designed so that it does not increase Program costs. The method may be different for different types of self-employment.

To implement the provisions of section 812 of PRWORA, we proposed to amend 7 CFR 273.11 to provide in new paragraph (b)(3)(iv) that State agencies may submit requests to FNS to use a simplified method of calculating self-employment expenses for specified categories of businesses. The request must include a description of the proposed method, information concerning the number and type of households affected, and documentation indicating that the proposed procedure would not increase Program costs. We received comments from one State association and three State agencies recommending that FNS develop the standards rather than the individual State agencies. Section 812 of PRWORA provides that States agencies are to submit the methods. Therefore, we are not adopting the commenters' suggestion.

We also received comments from advocates that recommended that the rules allow a State agency to include in any standardized figure an amount that represents the typical capital costs associated with self-employment. Current policy at 7 CFR 273.11(a)(4)(ii) precludes allowing the cost of capital

assets in determining self-employment income. In response to this comment, we are taking the opportunity to revise our policy to allow capital costs in determining self-employment income. We believe that this change recognizes that capital costs are a legitimate expense in producing self-employment income and that the change will support the self-employed working poor. Accordingly we have revised the proposal to delete proposed paragraph (b)(2)(i) and have redesignated proposed paragraphs (b)(2)(ii) and (iii) as paragraph (b)(2)(i) and (ii) respectively. We have modified paragraph (b)(1) to include capital assets as an allowable cost.

Current regulations allow households to choose between a standard amount or actual costs in claiming expenses incurred in producing boarder and day-care income. However, section 812 of PRWORA requires FNS to establish a procedure whereby States may request to use a method of producing a reasonable estimate of excludable expenses ''in lieu of calculating the actual cost of producing self-employment income.'' In accordance with this provision, we proposed in new paragraph (b)(3) that State agencies, rather than households, must determine whether to use actual costs or another approved method to determine self-employment expenses. We received comments from two States agencies and one State association supporting this proposed change. We are adopting it as proposed.

We also proposed to take this opportunity to completely revise 7 CFR 273.11(a) to simplify the regulations and increase State agency flexibility. Currently, 7 CFR 273.11(a) contains special procedures for determining a household's income from self-employment. Current regulations provide that income received from self-employment is offset by the cost of producing the self-employment income. The remaining income is then averaged over the number of months it is intended to cover. We proposed to revise and combine portions of paragraphs (a)(1), (a)(2), and (a)(3) and remove superfluous language and examples without changing any policy contained in those provisions. In addition to the comments discussed above concerning capital costs, we received comments from one State agency supporting the revision of 7 CFR 273.11(a) and one State agency suggesting that State agencies be allowed to determine what allowable costs could be excluded. As discussed above, we have changed the policy concerning capital costs. Other than this modification, we are adopting the revisions as proposed.

To increase State agency flexibility, we would eliminate some prescriptive requirements in the current regulations at 7 CFR 273.11(b) regarding the treatment of shelter expenses paid by boarders. Currently, paragraph (b)(1)(i) specifies that contributions made by the boarder to the household to cover its shelter expenses are included as income to the household. The current provision further specifies that expenses paid by the boarder to someone outside of the household cannot be counted as income to the proprietor household. In addition, the current regulation in paragraph (b)(1)(iii) provides requirements addressing whether costs paid by the boarder count in determining the proprietor household's entitlement to a shelter deduction. We proposed to eliminate these prescriptive requirements in favor of letting State agencies determine the appropriate way to handle these shelter expenses. Two State agencies and one State association supported the proposed revision. Accordingly we are adopting paragraph (b)(3)(ii) as proposed.

Treatment of the Income and Resources of Ineligible Aliens—7 CFR 273.11(c)(2)

Current regulations at 7 CFR 273.11(c)(2) provide that the benefits of a household containing either a person disqualified for failure to provide a social security number or an ineligible alien must be determined as follows: the resources of the ineligible member count in their entirety to the rest of the household; all but a pro rata share of the ineligible household member's income is counted; and the 20 percent earned income deduction is applied to the prorated income earned by the ineligible member, and all but the ineligible member's pro rata share of the household's allowable shelter, child support, and dependent care expenses which are either paid by or billed to the ineligible member is allowed as a deductible expense for the household. We proposed to renumber paragraph (c)(3) as (c)(4), to remove the provisions regarding ineligible aliens from (c)(2), and to add a new paragraph (c)(3) for ineligible aliens.

Section 818 of PRWORA amended section 6(f) of the Act (7 U.S.C. 2015(f)) and grants State agencies the statutory authority to count all or all but a pro rata share of the income of an alien who is in an ineligible category listed under the alien provisions of 6(f) of the Act, *i.e.,* those ineligible prior to PRWORA. They are primarily visitors, tourists, diplomats, students, and undocumented aliens. Proposed paragraph (c)(3) would provide that State agencies must count all of the resources and either all or all but a pro rata share of the income and deductions of these ineligible aliens. Excluded from the provisions of (c)(3)(i) are the categories of aliens eligible under the Act listed in new paragraphs (3)(i)(A) through (E).

One State agency asked if it could count all of the alien's income for purposes of applying the gross income test and only all but a pro rata share for other purposes. The State agency was concerned that counting a pro rata share of the alien's income could result in some households with ineligible aliens being eligible whereas a similar household made up of citizens with the same income would be ineligible based on gross income. To remedy this situation, we proposed to allow the State agency to count all of the alien's income for purposes of applying the gross income test for eligibility purposes but only count a pro rata share for applying the net income test and determining the level of benefits. This State agency option applies to aliens who do not meet the alien eligibility requirements in section 6(f) of the Food Stamp Act.

PRWORA made additional categories of aliens ineligible for food stamp benefits, beyond those ineligible under section 6(f) of the Act. The majority of these aliens are refugees and asylees who have been in this country for more than 7 years and lawful permanent residents except those who can be credited with 40-quarters of work or who were living in this country on August 22, 1996, and were elderly on that date or are now disabled or under age 18. PRWORA did not address the treatment of the income and resources of these additional categories of ineligible aliens. Congress did not grant State agencies statutory authority to count all or all but a pro rata share of the income of PRWORA-ineligible aliens. Further, the amended version of subsection 6(f) of the Act is explicitly limited by its plain language to aliens in categories ineligible prior to the enactment of PRWORA. In the preamble of the NPRM, we examined various options for counting the resources and income of those categories of PRWORA-ineligible aliens and selected two options for comment.

We proposed to allow the State agency to pick one State-wide option for determining the eligibility and benefit level of households with members who are aliens made ineligible under PRWORA. State agencies may either: (1) Count all of the aliens' resources and a pro-rated share of the aliens' income and deductions; or (2) count all of the

aliens' resources, not count the aliens' income and deductions, but cap the resulting allotment for the eligible members at the allotment amount the household would receive were it not for the PRWORA eligibility restrictions. Option (1) merely continues the policy that most State agencies are pursuing with respect to PRWORA-ineligible aliens. State agencies operating State Option Programs under section 8(j) of the Act may find option (2) attractive in terms of simplifying administration. This option would require two benefit calculations. In calculation (1), the State agency would determine eligibility and benefit level as if all PRWORA-ineligible aliens could still receive Federal benefits. In calculation (2), the State agency would determine eligibility and level of benefits for the eligible members, excluding the income and deductions of the PRWORA-ineligible aliens; however, the benefit amount could not exceed the amount determined in calculation (1). In State Option Programs, the difference between calculation (1) and calculation (2) would be the State's share of benefits payable to FNS. Funding for state-to-state technical assistance visits will be available through our State Exchange program for States wishing to learn about the automation procedures necessary for implementation of this option. We proposed to allow a second variance exclusion period under 7 CFR 275.12(d)(2)(vii) for States which implement option 1, and then decide at a later date to implement option 2. For aliens ineligible under section 6(f) of the Act and for those unable or unwilling to document their alien status, the proposed rule would reflect the statute which permits the State agency the option to count all or all but a pro rata share of such an alien's income and require that all of such an alien's resources be counted.

The Department's proposals generated a great many comments. Many State agencies thought the proposal to distinguish between aliens ineligible under the Act and those ineligible under PRWORA was too complex. They felt that Congress intended to allow State agencies to apply the same options for treatment of income and deductions to all aliens. Several State agencies praised the Department's decision to allow the ''option 2'' treatment. Other State agencies decried this option, stating that they might feel pressure to implement ''option 2,'' should the Department offer that option in the final rule. One State agency stated that its State Option Program provides benefits to all qualified aliens, not just the categories of aliens set forth in proposed paragraphs (3)((i)(A) through (E). Accordingly, the State agency suggested that the Department adjust the proposed language to provide simply that all qualified aliens are excluded from the provisions of (3)(i). On the other hand, advocacy groups generally favored the options offered; however, some had reservations. One such group worried that State agencies would find ''option 2'' complex to administer and error-prone. Thus, State agencies would be reluctant to implement an otherwise helpful option. The group suggested that the Department modify ''option 2'' as follows. The State agency would apply the gross income test to the household, including the PRWORA-ineligible alien members. If the household passed the gross income test, the State agency would exclude the PRWORA-ineligible alien's income and deductions to determine the benefit amount. At its discretion, the State agency could add a second calculation as in ''option 2'' to prevent an increase in benefits.

After carefully considering the comments on this issue, the Department has decided to adopt the proposed language in the final rule, with some modifications. We are not changing the options available to State agencies for treatment of the income and deductions. We believe the rationale provided in the preamble to the NPRM for proposing these options still remains valid. As is always the case when the Department offers options in the regulations, or chooses not to regulate a certain matter, State agencies must be prepared to defend the decisions taken with respect to choosing a particular option or dealing with the unregulated matter. The Department is not adopting the State agency's suggestion to exempt only qualified aliens from the provision allowing a State agency to count all of the ineligible alien's income and deductions, but excluding that member from the household for the eligibility and benefit calculation. The purpose of the provision in the proposed rule was to give some degree of protection to now-ineligible aliens who were eligible prior to the PRWORA amendments. To that end we are adding to the final rule two groups of aliens we inadvertently omitted from the proposed language, aged, blind, or disabled aliens admitted for temporary or permanent residence under section 245A(b)(1) of the INA; and special agricultural workers admitted for temporary residence under section 210(a) of the INA. Further, the Department feels that the rulemaking process is not the most appropriate venue for dealing with the intricacies of State Option Programs. FNS will work with State agencies through the plan approval process to give State agencies the maximum possible latitude to craft State Option Programs which are responsive to each State's unique situation. Finally, the Department is not adopting the advocacy group's suggestion for modifying ''option 2.'' We considered and discarded similar options in formulating the NPRM. The Department wants to avoid creating a regulatory scheme where similarly situated households in which all members are either U.S. citizens or eligible aliens would receive less benefits than a household in which some members are in food stamp eligible status and others are not.

To conform to the changes the Department is making to the provisions for deeming of sponsor income and resources, we are changing paragraph (c)(3)(v) to specify that State agencies must not include the resources and income of the sponsor and the sponsor's spouse in determining the resources and income of an ineligible sponsored alien.

Residents of Drug and Alcohol Treatment and Rehabilitation Centers—7 CFR 273.11(e)

Current rules at 7 CFR 273.11(e) set forth the procedures for certifying residents of a drug addict or alcoholic treatment and rehabilitation (DAA) centers for Program participation. In the NPRM, the Department proposed to revise the title of paragraph (e) and paragraphs (e)(1) through (5) to make the procedures clearer, to add two new provisions contained in section 830 of PRWORA, and to take into account electronic benefit transfer (EBT) issuances.

Paragraph (e)(1) of current rules provides that individuals in DAA centers may individually apply for food stamp benefits, but certification must be accomplished through an authorized representative who is an employee of the treatment center. Section 830 of PRWORA amended section 8 of the Act (7 U.S.C. 2017(f)) to allow the State agency the option of requiring households to designate the DAA center as their authorized representative for the purpose of receiving allotments on behalf of the households. In the NPRM, we proposed that this change be included in new paragraph (e)(1) and that it apply only with regard to obtaining and using benefits on behalf of the household. The current regulatory requirement in paragraph (e)(1) that households residing in treatment centers must apply and be certified through an authorized representative would continue to apply.

Paragraph (e)(5)(i) of current rules provides that if a resident leaves the DAA center, the center must provide the household with its full allotment if the allotment has been issued and no portion of the allotment has been spent by the center on behalf of the household. If a resident household leaves the center prior to the 16th of the month and a portion of the allotment has already been spent by the center on behalf of the household, the center must provide the departing household with one-half of its monthly allotment. If the household leaves the center on or after the 16th of the month, the household is not entitled to any portion of the allotment. The center must return any unspent benefits of a household that has left the center to the State agency. Section 830 of PRWORA amended section 8 of the Act to allow State agencies the option of providing an allotment for the individual to: (a) The center as an authorized representative for a period that is less than 1 month; and (b) the individual, if the individual leaves the center. Since State agencies will generally not know in advance when a resident is going to leave the center, we proposed to allow State agencies to routinely issue allotments for household's in DAA centers on a semi-monthly basis, *e.g.,* half of the allotment could be issued on the first of the month and half could be issued on the 16th of the month.

We also proposed to amend current regulations at 7 CFR 273.11(e)(2) to take into account various EBT systems being used. We did not endorse any single EBT design, but did require that any design or State procedures used as part of the design used to accommodate DAA facilities assure that a household has access to one-half of its allotment when it leaves the center before the 16th of the month.

We also proposed to delete current paragraphs (e)(3)(i) through (iii) which provide that the expedited and regular processing standards apply to residents of DAA centers as well as other households and the requirement for the State agency to process changes in circumstances and recertification for these households the same as other households. These provisions still apply, but it is not necessary to specifically mention them.

We received two comments on our proposed revisions to 7 CFR 273.11(e), both supportive of the proposed changes. One commenter submitted a suggestion for a new system of issuance for DAA centers. That suggestion is outside the purview of this regulation and cannot be addressed at this time. However, we have forwarded the suggestion to the proper area in the Department for its consideration. We are adopting the proposed revisions to 7 CFR 273.11(e) as final.

Reporting Changes—7 CFR 273.12

How Will State Agencies Process Reported but Unclear Information on Case Changes?

As stated before in the discussion of changes to 7 CFR 273.10, we are clarifying the circumstances under which a State agency must send a NOAA to shorten an assigned certification period. To emphasize that State agencies must determine if a household is in fact ineligible before the State agency may close its case, the final rule adds a new section 273.12(c)(3), which sets forth the procedure for acting on unclear information. During the certification period, the State agency may obtain information about changes in a household's circumstances from which the State agency cannot readily determine the effect of the change on the household's benefit amount. The State agency might receive such unclear information from a third party or from the household itself. The State agency must pursue clarification and verification of household circumstances by issuing a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances. The RFC must allow the household at least 10 days to respond and to clarify its circumstances, either by telephone or by correspondence, as the State agency directs. The RFC must also state the consequences if the household fails to respond to the RFC, that is, case closure. Consistent with the existing procedure at 7 CFR 273.2(f)(9)(v) for independent verification of information received from IEVS, the State agency must issue a NOAA if the household does not respond at all to the notice requesting that it contact the food stamp office to clarify its circumstances. Once the household has contacted the State agency, it must refuse to cooperate with requests to clarify its circumstances before the State agency may close its case. When the household responds to the RFC and provides sufficient information, the State agency must act on the new circumstances in accordance with normal change processing time frames.

One State agency suggested that we allow a procedure it employs in its TANF program. Instead of outright termination of cases where families do not respond to requests to clarify circumstances, the State's TANF program *suspends* such cases for 1 month before termination. The TANF case receives a NOAA stating that after the adverse action period expires, the State agency will suspend cash assistance for 1 month. If the family responds satisfactorily during the suspension period, the State issues the payment for the month of suspension, and, if necessary adjusts the cash payment with a subsequent NOAA. This procedure fits well with the proposed two-step procedure and has merit as the State agency reinstates households without their needing to file an application, if they responded satisfactorily during the suspension period. The final rule allows this procedure as a State agency option.

How Will TANF Leavers Transition to Nonassistance Food Stamps?

We proposed to retain the long-standing procedure for adjusting the certification periods of households leaving the TANF rolls, with a modification. Current 7 CFR 273.12(f)(4) requires that State agencies adjust food stamp participation of TANF leavers with a NOAA when it is clear that changes in the household's circumstances require a reduction or termination of benefits. Current 7 CFR 273.12(f)(5) outlines the procedures a State agency must follow when TANF leavers do not fully apprise the State agency of their new circumstances and the State agency does not possess enough information to make an informed determination about their continuing food stamp eligibility. In this instance, the State agency closes the food stamp case with a NOE. Despite our concerns over the legal sufficiency of using the NOE in lieu of the NOAA, we provided a rationale for continuing its use in this limited instance. However, we recognized that in some cases, the State agency might need only one or two pieces of information or documentation to determine continuing food stamp eligibility, depending on the level of information available in the case file. We believed it would be preferable to avoid requiring the household to report for a full recertification, if a response to a notice to the household requesting information could clear up a few remaining points of eligibility. Thus adjusting the household's participation with a NOAA would be appropriate. Accordingly, we proposed an option which would allow State agencies to close cases with a notice of adverse action, provided the State agency has sent the household a notice clearly specifying the actions the household must take to continue its eligibility.

The few State agencies that commented on the proposal thought the Department should not change the current procedure. However, many advocacy groups commented that, in many cases, local agencies simply terminate the food stamp cases of TANF leavers without any effort to explore their continuing eligibility for food stamps. Advocacy groups felt that TANF leavers have the impression that cash assistance and food stamps are inextricably connected and that filing an application for food stamps after cash assistance ends would be futile. Sadly, a Mathematica Policy Research review of the recent literature on access and participation in food stamps and Medicaid by TANF leavers study (Dion and Pavetti, pp 14–15, 23 and 32) had similar findings. The Department of Health and Human Services funded this review with financial assistance from the Department.

Upon reviewing the public comments on this provision, it became clear to us that the requirements of 7 CFR 273.12(f)(4) are honored more in the breach. With or without the sanction of the State agency, eligibility workers seem to issue routinely a NOE to *all* TANF leavers, without exploring the household's continuing eligibility for food stamps. This inappropriate use of the provisions of 7 CFR 273.12(f)(5) might account for at least a part of the decline in food stamp participation in some States. Failure to follow the requirements of 7 CFR 273.12(f)(4) violates a clear mandate of the Act. Section 11(i)(2) of the Act (7 U.S.C. 2020(i)(2)), which remains unchanged by PRWORA, stipulates that: ''* * * [N]o household shall have * * * its benefits under the food stamp program terminated solely on the basis that * * * its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 5(a) [TANF, SSI and AABD programs] and *without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the food stamp program.*'' [Emphasis added.]

In the final rule the Department is taking firm action to implement the statutory mandate. As stated previously in the discussion of the amendment to 7 CFR 273.10(f)(4), the final rule eliminates entirely the use of the NOE to shorten certification periods. We are collapsing current 7 CFR 273.12(f)(4) and 7 CFR 273.12(f)(5) into one paragraph which sets forth the procedures for reviewing the participation of food stamp households who are leaving cash assistance. There is no change in the procedure for adjusting food stamp participation when the State agency is fully aware of the household's circumstances. However, if circumstances are unclear, the State agency must attempt to contact the household to elicit enough information to make a determination on the household's continuing food stamp eligibility. Using the two-step procedure set forth at 7 CFR 273.12(c)(3) will assure that TANF leavers receive a thorough review of their food stamp case contemporaneously with the TANF closure action and an opportunity to present or clarify its circumstances *prior to* any action to close the food stamp case.

The revised procedure dovetails with the Medicaid policies stipulating that States may not deny Medicaid eligibility to a family or family member simply because the family is ineligible for TANF. Nor may a State deny Medicaid eligibility because a family member loses eligibility under a particular Medicaid eligibility category. Under the Medicaid program, *States are prohibited from denying or terminating Medicaid eligibility unless all possible avenues to Medicaid eligibility have been affirmatively explored and exhausted.* The final rule makes it clear that the Federal government expects State agencies to assure that eligibility workers evaluate TANF leavers for continuing eligibility in the Federal safety net programs to which they are entitled.

Transitional Food Stamps for TANF Leavers

Several advocacy groups put forth a suggestion for providing TANF leavers ''transitional food stamp benefits,'' much in the same way families receive transitional Medicaid after leaving the TANF rolls. Transitional food stamp benefits would serve several purposes. First, providing a known amount of food stamp benefits assistance would provide a critical work support that helps a household meet its nutritional needs while making the transition from TANF cash assistance. Second, transitional food stamp benefits provide time for household circumstances to stabilize before the State agency attempts to redetermine eligibility and benefit levels. Further, providing transitional food stamps would reinforce with households the fact that food stamp participation is not dependent upon eligibility for TANF. The Department agrees with this suggestion. In the final rule we are offering State agencies an alternative procedure for issuing transitional benefits. The details are set forth below.

What Is the Transitional Benefits Alternative (TBA)?

The gist of the new policy is that the State agency would freeze food stamp benefits of households leaving TANF rolls for up to 3 months, depending on the period of time since the household's last certification. Near the close of the transition period, the State agency would act on information collected from the household, either adjusting the benefit level, or closing the household's food stamp case because it is no longer eligible or it has failed to provide sufficient information to continue its eligibility for the Program. In some cases, the State agency would have to conduct a full recertification of eligibility, if it was not possible to extend the household's certification period beyond the statutory maximum for its circumstances. As the household would have no reporting requirement during the transitional period, the State agency would incur no QC liability for unreported changes in household circumstances during the period of time benefits are frozen.

Providing States the ability to offer transitional benefits is consistent with those provisions of the Act which give the Secretary broad authority to determine the most expedient way of moving families from participating as recipients of both TANF and food stamps to participating in food stamps without cash assistance. Congress generally left it to the Secretary's discretion to define through regulations the establishment of reporting systems and action time frames.

Is TBA Mandatory or Optional?

While the Department encourages State agencies to offer TBA to households leaving the TANF rolls, in order to ease the transition from PA, we did not offer this procedure in the NPRM. State agencies had no opportunity to comment, either to raise objections or to provide suggestions. For this reason, the final rule establishes TBA as a State agency option, not a mandatory provision of the regulations. As noted previously, State agencies electing the TBA would incur no QC liability for unreported changes in household circumstances during the period of time benefits are frozen.

How Would It Work?

When the State agency takes action to close a household's TANF case, it would freeze the household's food stamp benefit amount for a maximum of 3 months. This is the household's transition period. The State agency could extend the household's

certification period, if necessary, to provide the 3-month transition period. The end of the transition period does not require recertification, so State agencies can also extend the certification period beyond the 3-month transition period. However, the State agency must not exceed the statutory maximum, usually 12 months since the last certification.

Any freezing of benefits presupposes some degree of suspending action on reported changes. Freezing benefit amounts could be accomplished in several different ways. The commenters suggested freezing benefits by switching TANF leavers from prospective eligibility and budgeting to retrospective budgeting and eligibility. However, the Department did not adopt this suggestion. Instead, in the final rule we adopted the approach of lengthening the time frame State agencies have to act on changes in household circumstances. Families leaving TANF would receive a ''Transition Notice'' (TN) advising the household that due to the closure of cash assistance, food stamp participation will need reevaluation; the food stamp allotment is stabilized at the pre-TANF closure amount; and the household will not have to report changes to the food stamp office. However, by a date certain, the State agency must have enough information to keep the household's certification in force. In this regard, the TN would act very much like the RFC process described previously. Also, if the household will lose income as a result of the closure of its TANF case, the State agency must notify the household the frozen benefit amount reflects the loss of cash assistance. In some cases, the State agency would have to schedule the household for a full recertification because the household could receive no more extensions of its certification period. In such circumstances the TN would look very much like a NOE. If the household does report changes in its circumstances during the transition period, the State agency must adjust the household's benefit amount in accordance with normal procedures if the change would increase benefits. For example, the household might lose a source of income or incur a new expense. However, if the reported change would decrease benefits, the State agency would defer acting on that change until the month after the last month of the transition period. The Department believes that the final rule gives State agencies maximum flexibility to address notice requirements for the various circumstances under which food stamp household leaving the TANF program may have their food stamp participation reevaluated and continued, if eligible.

As the transition period ends, the State agency would close the food stamp case or adjust the household's benefit level with a NOAA based on the information collected through the TN process during the transition period, recertify the household after issuing a NOE if it has reached the maximum number of months in its certification period during the transition period, or close the case with a NOAA, if the household had not provided sufficient information through the TN process during the transition period to determine continuing eligibility. At the end of the transition period, the State agency may extend the household's certification period in accordance with § 273.10(f)(5).

What Groups of TANF Leavers Would Get TBA?

Families generally leave TANF when they go to work, exceed the income or assets limits (due to employment or other factors), fail to comply with the behavioral or procedural requirements of TANF, reach the Federally or State-defined time limit, lose technical eligibility, or leave voluntarily to ''bank'' their TANF months. For State agencies electing the TBA, the Department has structured the final rule to allow maximum flexibility in deciding which families leaving TANF would be eligible for TBA. The final rule requires State agencies, at a minimum, to provide TBA to all families with earnings who leave TANF. If the household is losing income as a result of leaving TANF, the State agency must adjust the food stamp benefit amount *before* freezing the benefit amount. For example, such treatment might be appropriate when a TANF family leaves cash assistance because it has reached the time limit for such assistance and has gained no source of income which would replace the lost cash assistance. On the other hand, under the final rule State agencies may not provide TBA to households which are leaving TANF because: A household member has violated a TANF provision and the State is imposing a comparable food stamp sanction in accordance with sections 819, 829, or 911 of PRWORA; a household member has violated a food stamp work requirement; a household member has committed an intentional Program violation; or the TANF case is closing because the State agency is taking action in response to information indicating the household failed to comply with food stamp reporting requirements, *e.g.,* the State agency discovered unreported income or assets through computer matching indicating noncompliance with food stamp reporting requirements. The Department chose not to allow participation of such households in TBA for several reasons. First, it would not be fair to households who have broken no food stamp rules and are compliant with food stamp reporting requirements to provide a special treatment to households which are under sanction for food stamp noncompliance or which are not complying with food stamp reporting requirements. Second, the State agency is well aware of the circumstances of households which are noncompliant with cash assistance requirements and which are incurring a comparable food stamp sanction, or have violated other food stamp requirements, or food stamp reporting requirements. Beyond the groups the Department has determined must or must not participate in TBA, the State agency is free to specify any additional group or groups of TANF leavers for participation in TBA. However, it is important to point out that households that are ineligible for transitional benefits based on these restrictions may still be eligible for food stamps. State agencies must determine their continued eligibility based on procedures at § 273.12(f)(3).

How Would QC Review These Cases?

QC will determine whether the State agency correctly selected the household for TBA. If the State agency incorrectly assigned the household to TBA, QC will review the case following standard QC procedures. If the State agency terminated a household's benefits and the State agency should have assigned the household to TBA, the QC reviewer will cite an invalid negative action. If the State agency correctly assigned and issued the household TBA, then the QC reviewer will continue to determine the appropriate benefit level according to the following procedures:

1. The QC reviewer will cite in the error determination any errors that exist at the time the benefits are frozen for the 3 additional transitional months.

2. The QC reviewer will do a comparison between the certification of the sample month versus the actual sample month circumstances to determine if the case is within the $25 tolerance for citing an error.

3. The QC reviewer will focus on the circumstances in the last month prior to issuance of TBA to determine the benefit amount for the sample month.

4. The QC reviewer will determine if the State agency appropriately processed any reported circumstances

that would result in an increase in benefits.

Notice of Adverse Action—7 CFR 273.13

We proposed to amend 7 CFR 273.13(a)(1) to clarify that the Notice of Adverse Action (NOAA) is considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice for its public assistance caseload, provided that the notice period is a set period of time which is no less than 10 days and no more than 18 days from the date the notice is mailed to the date the notice period expires. We did not propose any change to current regulations which provide that the adverse action take effect in the month following the month in which the notice expires, unless the household has requested a continuation of benefits pending the outcome of a fair hearing. The few State agencies that commented on this provision opposed it. They believe that the current rule accommodates State flexibility in setting advance notice periods to conform with TANF and warrants no change. One State agency felt that tying the food stamp advance notice period to the TANF period would limit access to the program because TANF time frames are more stringent. One State agency commented that its current advance notice period could be longer than 18 days because of a court-ordered settlement. Advocate groups favored maintaining the 10-day floor on the minimum advance notice period, but urged us to allow State agencies to conform the advance notice period with the Medicaid, even if the Medicaid advance notice period is more than 18 days. In response to the commenters' concerns, we have decided to retain the current rule to maintain the current level of flexibility for State agencies. The rule continues to allow State agencies to conform food stamp and Medicaid NOAA time frames with TANF, so long as there is a minimum of 10 days. As we noted in the preamble to the proposed rule, most State agencies currently have a notice period of 10 to 18 days. Thus the proposed change would have little impact on current Program costs.

Recertification—7 CFR 273.14

We proposed to amend 7 CFR 273.14 to conform the recertification application process to the changes made pursuant to PRWORA relative to the initial application process (discussed earlier in this preamble). More specifically, we proposed to:

(1) eliminate reference to a model notice of expiration (NOE).

(2) remove the sentence encouraging State agencies to send a recertification form, interview appointment letter, and statement of required verification with the NOE.

(3) remove certain requirements about the application form for recertification and replaced these with general requirements, specifically: (a) That the recertification process must only be used for those households applying for recertification prior to the end of the current certification period; (b) that the State agency must, at a minimum, obtain sufficient information that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility; (c) that the method of obtaining and recording information from the applicant household must be established by the State agency and may include a specially designed recertification application or the State agency may choose to simply annotate changes since the last certification on an existing application; (d) that the State agency must issue a notice of required verification, which would provide a clear written statement of the acts a household must perform to cooperate with the application process, identify potential sources of verification, and offer assistance to special needs households; and (e) that a new signature, whether handwritten or electronic, be obtained from the applicant at the time of each recertification.

(4) remove the option allowing State agencies to request the household to bring the recertification form to the interview or return it by a specified date because it is unnecessary.

(5) require only one face-to-face interview once every 12 months, regardless of the number of interim certification periods. Further, if the State agency conducts a telephone interview, the State agency must mail the application to the household to obtain the necessary signature.

(6) eliminate the requirement that the State agency conduct an annual face-to-face interview at the same time as the PA or GA interview.

(7) remove the option that the State agency may schedule an interview prior to the recertification application filing date, provided that the household was not denied for failure to attend such an interview and remove the requirement that the State agency schedule an interview on or after the date the application was filed if an interview was not previously scheduled and that the State agency reschedule any missed interview scheduled prior to receipt of an application. We proposed to retain the requirement that the State agency schedule interviews so that the household has at least 10 days to provide the required verification before the certification period expires.

(8) remove the requirements regarding the notice of required verification and clarify that benefits cannot be prorated if the time period for providing verification extended beyond the end of the certification period.

(9) revise and simplify the language regarding delays in application processing but retain the current State agency options. For a more detailed explanation of the proposed changes, the reader should refer to the proposed rule.

We received comments from one State association, four State agencies, and many advocacy groups. The State association and the States generally supported the proposed changes as more flexible. The advocacy groups felt that the current rules better protected recipients, particularly the working poor, and recommended that a number of the current regulatory provisions be retained, including the requirement that the household be given at least 10 days to provide verification, barring procedural denials of households that have not refused to cooperate, and requiring the State agency to reschedule the first missed interview.

We have considered the comments received carefully. In response to the comments, in recognition of the need to carefully balance State flexibility and recipient rights, and in recognition of the concerns about unexplained and excessive caseload drops, we decided to adopt certain proposed revisions, to keep some existing regulations, and to modify some of the proposed changes.

We are adopting the proposed changes to paragraph (b)(1) to eliminate the references to the model notice of expiration (NOE). FNS no longer has a model NOE so the reference is outdated. However, after due consideration of the comments we received about the importance of ensuring that recipients are aware of their rights and their responsibilities, we have decided not to adopt the proposal to delete the sentence encouraging State agencies to send the recertification form, interview appointment letter, and statement of required verification with the NOE. Although State agencies send out their notices and other correspondence consistent with their automated system and the options they choose on waiving interviews and scheduling appointments, the provision is not binding on State agencies. Further, it

codifies the Department's viewpoint that the interests of recipients are best served by providing all the pertinent information about recertification at one time. Paragraph 273.14(b)(1)(iii) has been modified to incorporate the requirement addressed elsewhere about advising households of their right to request a telephone interview.

We are adopting the revisions to paragraph (b)(2) concerning the requirements for the recertification form. There was general support by the State agencies for the proposed flexibility in design of recertification forms. There were no negative comments received about this flexibility.

We proposed requiring only one face-to-face interview yearly, regardless of the number of interim recertifications. However, the proposal did not eliminate the requirement for some type of interview for the interim recertifications. Some commenters felt that any interim interview was unnecessary and indicated that they believed that the requirement for an interview at interim recertifications within a 12 month period was eliminated in the proposed section 273.2(e). We agree with the commenters that one interview within a 12 month period is sufficient and have revised the rule accordingly to allow State agencies the option to require only one interview within a 12 month period. In order to ensure that households are aware of their options concerning interviews, we have revised paragraph (b)(3)(i) to provide the same protections incorporated into 7 CFR 273.2(e) relating to interviews.

One commenter questioned why there was a requirement to mail an application to the household to obtain its signature if a telephone interview was conducted. We have eliminated the proposed requirement in paragraph (b)(3)(i) to mail the application to the household in this instance because it is unnecessary. Paragraph (b)(2) already requires that each new application for recertification be signed and dated by the applicant household. Accordingly we are revising paragraph (b)(3)(i) as discussed above.

We are adopting the proposal to eliminate the requirement in paragraph (b)(3)(ii) to schedule the face-to-face interview at the same time the household receives a face-to-face interview for PA/GA purposes. PRWORA eliminated the requirement for a joint interview, and certification periods are no longer necessarily aligned.

We proposed to delete the first two sentences in paragraph (b)(3)(iii) concerning scheduling of interviews. These sentences provided: that the State agency may schedule an interview prior to the recertification application filing date, as long as the household was not denied for failure to attend such an interview; that the State agency schedule an interview on or after the date the application was filed if an interview was not previously scheduled; and that the State agency reschedule any missed interview scheduled prior to receipt of an application. We proposed to retain the requirement that the State agency schedule interviews so that the household has at least 10 days to provide the required verification before the certification period expires. One State agency opposed keeping the requirement to schedule interviews so that the household has at least 10 days to provide the required verification before the certification period expires because the provision is unworkable if the household files an application very shortly before the certification period closes. An advocacy group recommended that the rule provide safeguards for scheduling and rescheduling of office interviews, including requiring State agencies to reschedule a missed first interview for working households. We believe that flexibility has been provided to State agencies in scheduling interviews for recertification in those instances where face-to-face interviews are being required. Households are considered to have timely applied if they apply by the 15th day of the last month of the certification period. State agencies should schedule interviews such that households that timely reapply are recertified by the end of their certification period in accordance with 7 CFR 273.14(d)(2). State agencies are not currently required to reschedule a missed first interview for recertification unless a household requests a new interview. We are not establishing a requirement to do so in this rule. If a household requests that an interview be rescheduled, the State agency is required to schedule a second interview. A clarification stating this has been added to paragraph (b)(3)(iii). Also, consistent with 7 CFR 273.2, we have added a sentence to paragraph (b)(3)(iii) to require that the State agency send any household that misses its scheduled interview a Notice of Missed Interview. For recertification interviews the Notice of Missed Interview may be combined with the notice of denial.

We proposed to remove the requirements in paragraph (b)(4) regarding the notice of required verification and clarify that benefits cannot be prorated if the time period for providing verification extended beyond the end of the certification period. An advocacy group recommended that we maintain the current provisions of 7 CFR 273.14(b)(4) in order to ensure there were no unnecessary procedural denials. We agree with the commenter that there may be confusion that could result in inappropriate denials, and therefore, have decided not to adopt the proposed removal of the first two sentences. We are adding the clarification that benefits cannot be prorated if the time period for providing verification extended beyond the end of the certification period.

We proposed to revise and simplify the language in paragraph (e) regarding delays in application processing but retain the current State agency options. Both State agencies and advocates commented on the revision. States approved of the flexibility but were confused about some of the meaning. The advocates felt that the revisions were overly harsh and could result in inappropriate denials. In response to the comments received, we have revised paragraph (e) to provide recipients protection from inappropriate denials, intrusive interviews, and excessive verification requirements, while continuing to provide State agencies with flexibility in administration of its recertification process. If a household files an application by the end of its certification period, attends any required interview, and submits any required verification timely, the household shall be recertified and its benefits shall not be prorated. If the household reapplies before the end of its certification period, but does not attend a required interview and does not request that it be rescheduled and then attend the rescheduled interview, or does not provide any required verification timely, the household may be denied at the time of the failure, at the end of the certification period, or at the end of 30 days. If the State agency opts to deny a case at the time of the failure, and the household completes the missing requirements prior to the end of its certification period, the case shall be reopened and benefits shall be provided for the full month. If the household complies with the missing requirements after the end of its certification period, the State agency shall determine whether the fault for the delay was the household's or the State agency's. If the delay was the fault of the household, benefits shall be prorated from the date of compliance. If the State agency was at fault, benefits shall be provided for the full month. If the

household applies within 30 days after the end of its certification period, its application would be treated as an application for recertification; however benefits would be prorated from the date of the application. Further, we have added to paragraph (e)(1) and (2) a sentence stating that the procedures in 7 CFR 273.2(h)(1) on determining cause of delays in processing of initial applications also apply to delays in processing applications for recertification. Finally, we are also adding a requirement in paragraph (e)(3) that provides that if a household's application for recertification is delayed beyond the first of the month of what would have been its new certification period thorough the fault of the State agency, the household's benefits for the new certification period shall be prorated based on the date of the new application; however, the State agency shall also provide restored benefits to the household back to the date the household's certification period should have begun had the State agency not erred and the household been able to apply timely.

Fair Hearings—7 CFR 273.15

Under section 11(e)(10) of the Act (7 U.S.C. 2020(e)(10)) and the current rules at 7 CFR 273.15(a), the State agency must provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program. Until the enactment of PRWORA, current rules at 7 CFR 273.15(j) did not allow the State agency to accept an oral withdrawal of a fair hearing request from a household. Under 7 CFR 273.15(j), State agencies are required to accept only written withdrawals of fair hearing requests from the household or the household's representative (*e.g.,* authorized representative).

Section 839 of PRWORA amended section 11(e)(10) of the Act to provide State agencies with the option of accepting an oral withdrawal of the fair hearing request from the household. However, if the withdrawal request is an oral request, section 839 requires the State agency to provide a written notice to the household confirming the withdrawal and providing the households with an opportunity to request a hearing. To implement section 839 of PRWORA, the proposed rule would amend 7 CFR 273.15(j) to allow a State agency the option of accepting an oral request to withdraw a fair hearing from the household, which would be followed by the State's written confirmation of the withdrawal and an offer of a hearing opportunity.

Numerous comments were received on this proposal. The majority of comments were from legal aid organizations and advocacy groups which strongly opposed the PRWORA provision permitting State agencies the option to accept oral withdrawals from households. The comments from these groups are discussed in more detail in the following paragraphs. A few State agencies provided comments that, in general, support the option provided by PRWORA to States.

Legal aid organizations and advocacy groups requested that either the proposal be withdrawn or that the Department include additional protections to ensure households are properly notified of their right to a fair hearing. Many of the these commenters recommended that the final rules prohibit State agencies from soliciting or suggesting oral withdrawals of hearing requests. Legal aid organizations and advocacy groups also recommended that the required notice from the State agency to the household confirming its oral withdrawal should allow the household to reinstate the hearing request within 10 days of receipt of the notice.

Under current rules at 7 CFR 273.15(c)(1), within 60 days of receipt of a request, the State agency must assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision. If the household advises the State agency that its oral withdrawal was incorrect and that it in fact wants the fair hearing process to continue (*i.e.,* be reinstated), legal aid organizations and advocacy groups suggested that State agencies be given a modest amount of time, in addition to the original 60 day time frame, to schedule, conduct and render a decision. Therefore, rather than allowing the State agency an additional 60 days from the date the State agency receives notice from the household to continue the fair hearing, commenters recommend that the initial 60 day time frame (*i.e.,* the date of the household's original request) be extended by the time between the date the State agency sent the confirming notice and the time it received the request from the household, or its representative, for reinstatement of the fair hearing. For instance, assume a household receives a NOAA on May 1 and submits the request for a fair hearing May 5. By May 15th, the State agency and household agree that there is no basis for a fair hearing. The household member advises the State agency verbally of his or her desire to withdraw the hearing request. On May 20th, the State agency sends the household a Notice, as required in this final rule, advising the household of its requested withdrawal and of its right to request a hearing. On May 26th, the household returns a notice to its caseworker explaining that it still wants the fair hearing. The State agency receives the household's request on May 30, ten days from the date it sent the household the notice. As proposed by the commenters, the initial 60-day time frame, which, in this example would be until July 1, would be extended by 10 days, until July 10. The legal aid organizations and advocacy groups argue that without these revised time frames, some households would lose their right to continued benefits.

As specified under 7 CFR 273.15(g), a household shall be allowed to request a hearing on any action by the State agency, including loss of benefits, which occurred in the prior 90 days. Under 7 CFR 273.15(k), a State agency must allow a household to continue to participate in the FSP and receive continued benefits at the level of benefits being provided to the household prior to the NOAA, when the household requests a fair hearing within the period provided by the NOAA, usually 10 days. Continued benefits must be provided unless the household's certification period has expired or the continued benefits are not allowed as specified under 7 CFR 273.15(k)(2). Continued benefits are not provided when the State agency's adverse action was a termination of the household's participation, even though the State agency must provide a fair hearing of this action if requested by the household.

Finally, some legal aid and advocacy groups objected to allowing the State agency to accept an oral withdrawal from the household's authorized representative. To be consistent with current rules at 7 CFR 273.15, the Department proposed to allow a household's authorized representative to make the oral withdrawal.

The Department concurs that more guidance is necessary to ensure that, in State agencies electing to accept an oral withdrawal of their request to a fair hearing, households are properly informed of their rights and the procedures for reinstating a fair hearing if the household believes the State agency misinterpreted its oral statement or if the household reverses its decision. The Department further agrees that certain time frames must be identified to ensure State agencies process fair hearings in a timely manner. At the same time, the Department is interested in providing State agencies with flexibility to better administer the

Program without excessive or burdensome requirements.

Accordingly, the Department is amending its proposal at section 273.15 to include the following. First, the Department is amending its proposal at section 273.15(j)(2) to specify that a State agency may notify the household, or its representative, about the option of orally withdrawing the fair hearing request when the State agency and household reach agreement about issues related to the fair hearing request. However, the final rule at section 273.15(j)(2) explicitly prohibits the State agency from coercion or actions which would influence the household or its representative to withdraw the household's fair hearing request. While we are aware that this provision duplicates current law prohibiting State agencies from denying a household of its right to a fair hearing, we believe that an explicit statement in the fair hearing section of Program regulations is appropriate and necessary.

Second, the final rule amends section 273.15(j)(2) to specify that State agencies electing to accept an oral expression from the household or its representative to withdraw a fair hearing must provide written confirmation notice to the household within 10 days of receiving the request for withdrawal as per the request of commenters.

Third, 7 CFR 273.15(j)(2) is amended in this final rule to specify that the written notice must also advise the household, or its representative, that it must notify the State agency within 10 days of receiving the State agency's confirming notice if it wishes to continue with the fair hearing process. The Department is establishing this time frame to ensure that households are aware of what action must be taken and to be consistent with other programmatic time frames provided to households.

Fourth, should a household advise the State agency that it wishes to reinstate its initial request for a fair hearing, the Department is specifying at section 273.15(j)(2) that, as required under 7 CFR 273.15(c)(1) or (2), the State agency must complete the fair hearing process within 60 days, or 45 days, as appropriate, of receiving notice from the household that it wishes to continue the fair hearing. The Department is not structuring the time frame for completing the hearing process in the manner suggested by commenters because the time frame may not provide State agencies with sufficient time to process and render a complete hearing decision. State agencies, at their option, may establish time frames designed to expedite the fair hearing process as proposed by commenters, but they are not required to do so.

Fifth, to ensure that the household's rights to continued benefits are not adversely affected, the Department is amending section 273.15(k)(2) to clarify that, once continued or reinstated, benefits must be continued until the expiration of the 10-day period for advising the State agency that it wishes to continue with the fair hearing. Thus, unless the household is not eligible to receive continued benefits or if continued benefits are terminated for another reason specified under 7 CFR 273.15(k)(2), the household is assured of continued benefits until all opportunity for a fair hearing has been given to the household, or its representative.

Finally, the Department is including an additional amendment at section 273.15(j)(2) to clarify that the household has one opportunity to request a reinstatement of a fair hearing after the household withdraws its request orally. The Department believes that one reinstatement assures the household its right to a fair hearing while preventing prolonged administrative actions. The Department wishes to clarify that this requirement in no way prohibits the household from requesting a fair hearing over an adverse action unrelated to the reinstated fair hearing. State agencies are encouraged to design notices which clearly advise the household of its right to a fair hearing whenever it believes it is aggrieved by an action of the State agency.

The Department is not taking action in response to commenters who expressed concern about the State agency accepting an oral withdrawal of a fair hearing from a household representative. The Department proposed this amendment to establish consistent procedures between State agencies accepting either written or oral withdrawal of a fair hearing request and current rules under which State agencies may accept written requests to withdraw the household's fair hearing request. An authorized representative is chosen by the household to assist the household in matters related to the household's participation in the FSP. Commenters did not offer compelling justification to exclude the authorized representative, who otherwise speaks for the household in all FSP-related matters, from this particular action. Furthermore, should the household disagree with its representative's oral request to withdraw the fair hearing, it is assured the opportunity to reinstate the request. Thus, the Department is adopting the proposed provision allowing the household's representative to orally withdraw the household's request in this final rule.

Simplified Food Stamp Program—7 CFR 273.25

In writing the proposed rule, the Department limited the regulations to those areas of the statute where the Department has explicit authority to establish rules for the operation of a Simplified Food Stamp Program (SFSP) or where clarification is needed. Since the purpose of an SFSP is to simplify the administration of the Food Stamp Program for States while maintaining the nutritional safety net for applicants or recipients, the Department chose not to regulate many features of the SFSP so that States would have the flexibility to design programs that best serve their particular needs and the needs of the low-income families they are serving. The Department intends to maintain these goals in final regulations.

One hundred and eighteen (118) organizations commented on the proposed regulations for the SFSP.

1. Clarification of Households Eligible To Participate in an SFSP

Approximately one third of the commenters suggested that final regulations should make it clear that participation in the SFSP is limited to households in which at least one member is receiving ''assistance'' under a program funded through the Temporary Assistance for Needy Families (TANF) grant to distinguish such households from those who are receiving other benefits not categorized as assistance. As the statute specifically restricts participation in an SFSP to households receiving ''assistance'' under a TANF program, the final rule clarifies this point by adding the term ''assistance'' to the definition section with a cross-reference to the definition of assistance as provided in TANF regulations at 45 CFR 260.31. Unless a form of support to a household qualifies as ''assistance'' under the TANF program, the household is not eligible to participate in an SFSP.

Approximately one-third of the commenters suggested the Department clarify that the SFSP is applicable only to those households in which a member is receiving TANF assistance and not to households that are jointly applying for TANF assistance and food stamps. Consequently, State agencies cannot use the SFSP to lengthen application processing time frames for these households. As legislation governing the SFSP restricts participation to those households with members receiving TANF assistance, the final rule adds a new paragraph (c) to clarify that State

agencies must use regular Food Stamp Program procedures when a household applies for benefits under the SFSP and is not authorized to receive TANF assistance.

2. Restrictions on Eligibility

Approximately one-third of the commenters suggested the final rule should clarify that the SFSP cannot import new restrictions on eligibility from its TANF program such as the family cap policies that make certain household members ineligible for benefits or policies that prevent a family from qualifying for cash assistance. The Department believes the statute sufficiently addresses these situations; consequently, regulatory clarification is not necessary. Legislation governing SFSP operations at 7 U.S.C. 2035(f)(3)(B) stipulates that the value of food stamp allotments issued under a simplified program must be based on the Thrifty Food Plan (TFP) reduced by 30 percent of net income. As the TFP is based on household size, the Department would not allow a State to reduce the size of a household under the SFSP through a family cap or other similar policies. In addition, the legislation requires a household to be receiving TANF assistance to be eligible to participate in the SFSP. If a State agency determines that a household is ineligible for TANF assistance, the household would not be able to participate in an SFSP and could not be subject to SFSP rules. State agencies would use regular FSP rules and procedures to determine eligibility for such households. In situations where an individual member of the household is ineligible for TANF, the household is considered a mixed-household and subject, therefore, to the limit on benefit reductions for these households.

3. Households With High Shelter Costs

Approximately one-third of the commenters suggested the final rule set minimum standards for preserving the effect of the excess shelter deduction. Legislation governing the SFSP at 7 U.S.C. 2020(e)(25)(B) stipulates that State plans for operating SFSPs must ''address the needs of households that experience high shelter costs in relation to the incomes of the households''. Neither the legislative history nor the statute itself provides further direction in the application of this requirement. The Department anticipates that States can achieve the legislative mandate in numerous ways; therefore, it is not appropriate for the Department to regulate this provision. To meet the statutory requirements, a State could use, for example, multiple standards for households with high, medium, low and no shelter costs or a standard for households residing in public housing and another for non-public housing. Since the legislation specifically requires differential treatment for households with high shelter costs versus those with low shelter costs, the Department would not allow a State to use a single standard based on average shelter costs for all households participating in an SFSP. The final rule adds a new paragraph (d) to clarify limitations on the use of standards for shelter costs.

4. Opportunity for Public Comment

The majority of comments addressed the need for public input on proposed SFSPs prior to the Department's approval. 101 of the 118 organizations commenting on the proposed SFSP regulation suggested that the Department allow the public an opportunity to comment on State SFSP plans prior to their approval either through a comment period or public hearings since simplified programs can fundamentally change the food stamp benefit calculation in ways unanticipated by legislation or regulations. Public input could improve the quality of State plans and increase the accountability of State officials submitting simplified proposals. In many States, changes to a State's Medicaid or cash assistance programs of the magnitude allowed under the SFSP would require public hearings or a notice and comment prior to implementation. Since the majority of commenters support a process for public input on proposed SFSP plans, the Department has decided to require that States provide a public comment period or hold public hearings or meetings with groups representing recipients' interests on their SFSP plans. The Department, however, will not regulate the process States must follow for public comments, hearings or meetings. The Department is requiring that a State solicit public opinion about its SFSP proposal—particularly the portion that deals with changes in rules that will affect benefits so that the public understands how cost neutrality requirements may result in benefit losses to finance other benefit increases. States are encouraged to consult with the Department prior to seeking public comments. While the Department is requiring a public comment period before final approval of its SFSP plan, the statute governing the SFSP requires the Department to approve plans for pure-TANF households so long as these plans comply with statutory requirements. The final rule adds a new paragraph (e) requiring that a State allow a period for the public to comment or hold public hearings or meetings with groups representing participants' interests on SFSP plans, and to submit a review of these comments with its final SFSP plan for Departmental approval.

5. Benefit Reductions for Mixed-TANF Households

A majority of commenters believe the operation of an SFSP for ''mixed'' households (in which at least one member, but not all members, receive assistance from a TANF funded program) should not result in a reduction of benefits for these households. One of the statutory requirements governing the simplified program mandates that operation of these programs must not increase Federal costs for any fiscal year (7 U.S.C. 2035(d)(2)(B)). A program that allows all participating households to receive more benefits than they are eligible for under the regular Food Stamp Program would increase costs to the Federal government and would, therefore, violate statutory requirements. States operating SFSPs are not able to meet the statutory provisions for cost containment unless the increases in benefits to some households are offset by decreases in benefits to other households.

While the Department does not have the authority to limit the amount of benefit loss for pure-TANF households, it does have discretion in this area with respect to mixed-TANF households. As discussed in the proposed rule and our interim guidance on this issue, the Department's primary concern is that mixed-TANF households do not lose nutritional support while participating in an SFSP. At the same time, we recognize that States need flexibility in program design to achieve simplification given the constraints of cost containment. To meet these objectives, FNS chose not to impose criteria for mixed-TANF households that are overly prescriptive and developed a single criterion that it believes will achieve the appropriate balance between these competing priorities. If a State's SFSP reduces benefits for mixed-TANF households, then no more than 5 percent of these participating households can have benefit reductions of 10 percent or more of the amount they are eligible to receive under the regular Food Stamp Program and no mixed-household can have benefit reductions of 25 percent or more of the amount they are eligible to receive under the regular Program

(commonly called the 5/10/25 percent benefit reduction requirement).

In developing the 5/10/25 percent benefit reduction requirement above, the Department recognized that small reductions in monthly allotments could result in changes exceeding this threshold. Consequently, the Department proposed to disregard benefit reductions of $10 or less from this requirement. Several commenters want to increase the amount of the benefit reduction from $10 to $25. The Department believes the $10 disregard maintains the appropriate balance between State flexibility and safeguarding the nutritional needs of participating households. Any reduction, regardless of how small, limits a household's access to a nutritious, healthy diet. Since benefit loss under a SFSP is permanent, unless the household becomes ineligible to participate in a SFSP or the SFSP is terminated, disregards above $10 could severely impact a household's ability to meet its nutritional needs. To prevent this, the Department plans to maintain the benefit reduction disregard at the $10 limit.

A commenter suggested that the Department substitute the 5/10/25 percent benefit reduction for a rule that would limit the reductions in benefits to mixed-TANF households by no greater percentage amount, and to no greater proportion of households, than it reduces benefits to pure-TANF households. Legislation governing the SFSP requires the Department to approve any State plan for the operation of an SFSP so long as the plan does not increase costs to the Federal government and it complies with the statutory requirements for operating such programs. The legislation further allows the Department to establish guidelines for the approval of mixed-TANF households, but not for pure-TANF households. As the legislation does not limit the amount that States can reduce benefits for pure-TANF households, States can reduce benefit amounts for these households by any amount. As previously discussed, the Department chose to use its discretionary authority to ensure that mixed-TANF households do not experience a reduction in benefits severe enough to endanger their ability to meet their nutritional needs. Therefore, the Department has decided to adopt the 5/10/25 rule as final.

Several commenters want to simplify the benefit loss methodology by using a single measurement or allow States more flexibility in deciding the mechanism for achieving the desired results. The Department believes using a standard with incremental limits on the amount that States can reduce provides States with greater flexibility in program design than does a methodology with a single standard. At the same time, this methodology ensures protection of the nutritional safety-net for households. In addition, a national standard applied across all States ensures equitable treatment for households participating in SFSPs.

A few commenters said the proposed benefit loss methodology is too complex. FNS should provide actual methodologies to measure benefit reduction of mixed-TANF households. The Department believes that regulating a specific methodology for measuring benefit loss for mixed-TANF households is contrary to the goals of simplification and would result in less flexibility for States. Rather than regulating what measurement systems States should use, FNS will work with States on an individual basis to design a measurement system that fits the scope of individual programs.

6. Conforming Language Regarding Benefit Reductions for Pure-TANF Households Participating in an SFSP

The proposed rule described guidelines for reduction of benefits for mixed-TANF households. Conforming language containing guidelines for reduction of benefits for pure-TANF households should be included in the final rule. As previously discussed, legislation governing the SFSP requires the Department to approve State plans for pure-TANF households so long as it complies with statutory requirements and does not increase costs for the Federal government. Since the legislation does not establish limits on the amount of benefit loss for pure-TANF households, the Department would exceed its authority if it implemented conforming guidelines regarding benefit reductions for pure-TANF households.

7. Other

Several commenters suggested States should be given authority to develop SFSPs that serve local needs without being constrained by rigid and arbitrary requirements. FNS should review SFSP applications on a case-by-case basis with minimal advance restriction and should give great deference to a State's efforts to fulfill the simplification objectives of the law. The Department believes the proposed rule provides States with flexibility in designing SFSPs that fit their individual administrative needs while preserving the nutritional safety net for participating households. To ensure flexibility, the Department limited the regulations to those areas of the statute where regulatory standards are essential to ensure that simplified programs fulfill the mission of the FSP. The Food and Nutrition Service reviews State plans for operating SFSPs on a case-by-case basis and approves all plans complying with requirements.

Issuance and Use of Coupons—Mail Issuance 7 CFR 274.2

Prior to the enactment of PRWORA, section 11(e)(25) of the Act (7 U.S.C. 2020(e)(25)) required State agencies to issue food stamp benefits through a mail issuance system in rural areas where households generally experience transportation difficulties in obtaining benefits. Section 835 of PRWROA deleted direct-mail issuance requirements.

Current rules at 7 CFR 274.2(g) specify the requirements that State agencies must meet in determining the rural areas in need of mail issuance. The current regulations at 7 CFR 272.2(g) also require State agencies to submit an attachment to the State Plan of Operation describing mail issuance requirements.

To implement this provision, the Department proposed to remove the mandatory mail issuance requirements and State plan requirements at 7 CFR 274.2(g)(1) and (g)(2) and 7 CFR 272.2(d)(1)(xi). However, to ensure fair and timely issuance to rural households, the proposed rule retained basic provisions at 7 CFR 274.2(g) requiring State agencies to issue food stamp benefits through a direct mail issuance system in rural areas where households experience transportation difficulties in obtaining benefits. These provisions would apply unless an EBT system is in place. In areas where direct mail issuance would continue, the State agency would determine if any households or geographic areas would be granted an exception. These exceptions would be reported to FNS as required at 7 CFR 272.3(a)(2) and (b)(2). These sections require State agencies to prepare and provide staff with operating guidelines and to submit their operating guidelines to FNS.

The Department did not receive comments on its mail issuance proposal. Thus, we are adopting the proposed rules at 7 CFR 272.2(d)(1)(xi) and 7 CFR 274.2(g) in this final rule without change.

Part 277—Payments of Certain Administrative Costs of State Agencies

Section 11(e)(1) of the Food Stamp Act and the regulations at 7 CFR 272.5(c) allow State agencies, at their option, to conduct activities designed to

inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the FSP. States electing to conduct Program informational activities must submit a State plan for FNS approval as specified in the current rule at 7 CFR 272.2(d)(1)(ix). State agencies with approval from FNS are reimbursed at the standard 50 percent rate under section 16(a) of the Food Stamp Act (7 U.S.C. 2025(a)) and 7 CFR Part 277 of the corresponding regulations.

Section 847 of PRWORA amended section 16(a)(4) of the Food Stamp Act to specify that Federal reimbursement funding not include ''recruitment activities.'' To implement section 847, the Department proposed to amend 7 CFR 277.4(b) to prohibit Federal reimbursement for recruitment activities. State agencies could continue to seek reimbursement from FNS for Program informational and educational activities if they provide a plan to FNS as specified at 7 CFR 272.2(d)(1)(ix). The Department also requested comments about the usefulness of this plan and ideas about how to make the plan approval process more efficient.

Very few comments were received in response to this proposal. One commenter suggested that the final rule should include a simple, narrow definition of ''recruitment'' to eliminate confusion that may arise during the review and approval of a State agency's Outreach Plan. The commenter suggested the definition for recruitment as, ''activities designed to persuade an individual who has made an informed choice not to apply for food stamps to change his or her decision and apply.'' The Department is adopting this suggested definition in this final rule because it is consistent with the policy FNS has applied when approving State plans for conducting Program informational activities. The Department intends to encourage and support State outreach activities that inform and encourage potentially eligible households to apply for food stamp benefits without improperly recruiting applicants.

Accordingly, the Department is amending section 277.4 in this final rule to define recruitment activities.

Implementation

The greater part of the final rule is effective on January 20, 2001, 60 days after the date of publication; however, there are some exemptions. At 7 CFR 273.2(b)(4)(iv), the final rule is amending a provision of another final rule which is not yet effective. The final rule ''Food Stamp Program: Recipient Claim Establishment and Collection Standards'' published on July 6, 2000 (65 FR 41752) is not effective until August 1, 2001. Accordingly, the amendment to § 273.2(b)(2)(iv) in this final rule is effective August 1, 2001. Moreover, the final rule contains a group of amendments which are not effective until OMB approves the associated information collection burden. The paragraphs affected are: § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); § 273.12(c)(3); and § 273.12(f)(4). FNS will publish a document in the **Federal Register** announcing the effective date of these amendments after approval of the information collection requirements by OMB.

The final rule incorporates at 7 CFR 272.1(g), the implementation dates as follows. State agencies may implement the following amendments at their discretion at any time on or after the effective date: § 272.8; § 272.11(a); § 273.2(f)(10); § 273.2(j)(2)(ii); § 273.9(d)(6)(i); § 273.9(d)(6)(iii)(E); § 273.11(a)(3)(v); § 273.12(a)(1)(vii); § 273.25; and § 277.4(b). State agencies may implement the amendment to § 273.12(f)(4) at their discretion at any time after the effective date established by OMB approval of the associated information collection burden. State agencies must implement the amendments to § 273.2(c)(2)(i), § 273.2(e)(1), § 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); and § 273.12(c)(3) no later than 180 days after the effective date established by OMB approval of the associated information collection burden for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date. State agencies must implement all remaining amendments no later than June 1, 2001, for all households newly applying for Program benefits.

State agencies must convert current caseloads no later than the next recertification following the implementation date. Any variances would be excluded from quality control analysis in accordance with 7 CFR 275.12(d)(2)(vii) and 7 U.S.C. 2025(c)(3)(A). The final rule allow a second variance exclusion period under 7 CFR 275.12(d)(2)(vii) for States which first implement option 1 under 7 CFR 273.11(c)(3)(ii), and then decide at a later date to implement option 2.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Claims, Food stamps, Grant programs, Social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees, Grant programs, Social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security Income, Wages.

7 CFR Part 274

Food stamps, Fraud, Grant programs, Social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Administrative practice and procedure, Food stamps, Fraud, Grant programs, Social programs, Penalties.

Accordingly, 7 CFR Parts 272, 273, 274, and 277 are amended as follows:

1. The authority citation for Parts 272, 273, 274, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, add paragraph (g)(161) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(161) *Amendment No. 388* The provisions of Amendment No. 388 are implemented as follows:

(i) State agencies may implement the following amendments at their discretion at any time on or after the effective date: § 272.8; § 272.11(a); § 273.2(f)(9)(i); § 273.2(f)(10); § 273.2(j)(2)(ii); § 273.9(d)(6)(i); § 273.9(d)(6)(iii)(E); § 273.11(a)(3)(v); § 273.12(a)(1)(vii); § 273.25; and § 277.4(b).

(ii) State agencies may implement the following amendment at their discretion at any time after the effective date established by OMB approval of the associated information collection burden: § 273.12(f)(4).

(iii) State agencies must implement the following amendments no later than 180 days after the effective date established by OMB approval of the associated information collection burden for all households newly applying for Program benefits: § 273.2(c)(2)(i), § 273.2(e)(1),

§ 273.2(e)(2)(i), § 273.2(e)(2)(ii), § 273.2(e)(3), § 273.4(c)(3)(iv); and § 273.12(c)(3). State agencies must convert current caseloads no later than the next recertification following the implementation date.

(iv) State agencies must implement the amendment to § 273.2(b)(4)(iv) no later than August 1, 2001, for all households newly applying for Program benefits.

(v) State agencies must implement all remaining amendments no later than June 1, 2001, for all households newly applying for Program benefits. State agencies must convert current caseloads no later than the next recertification following the implementation date.

(vi) Acting under policy guidance the Department issued previous to the publication of this final rule, several State agencies that have identified programs to confer categorical eligibility for food stamps that do not meet the criteria established at §§ 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B) of this chapter. Any such State agency may continue to use these programs to confer categorical eligibility for food stamp purposes until September 30, 2001.

(vii) A State agency which first implements option 1 under 7 CFR 273.11(c)(3)(ii), and then decides at a later date to implement option 2 under that same paragraph is entitled to a second variance exclusion period under 7 CFR 275.12(d)(2)(vii).

* * * * *

§ 272.2 [Amended]

3. In § 272.2:

a. Paragraph (a)(2) is amended by removing the thirteenth sentence; and

b. Paragraph (d)(1)(xi) is removed and reserved.

4. In § 272.4:

a. Paragraph (d) is removed.

b. Paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), and (g) respectively; and

c. Newly redesignated paragraph (f) is revised to read as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(f) *Hours of operation.* State agencies are responsible for setting the hours of operation for their food stamp offices. In doing so, State agencies must take into account the special needs of the populations they serve including households containing a working person.

* * * * *

5. In § 272.5:

a. Paragraph (b)(1)(i) is redesignated as the text of (b)(1) and is revised;

b. Paragraphs (b)(1)(ii) and (b)(1)(iii) are removed;

c. Paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively; and

d. Paragraph (b)(1)(iv) is redesignated as paragraph (b)(2).

The revision reads as follows:

§ 272.5 Program informational activities.

* * * * *

(b) * * *

(1) *Nutrition information.* FNS must encourage State agencies to develop Nutrition Education Plans as specified at § 272.2(d)(2) to inform applicant and participant households about the importance of a nutritious diet and the relationship between diet and health.

* * * * *

6. Section 272.8 is revised to read as follows:

§ 272.8 State income and eligibility verification system.

(a) *General.* (1) State agencies may maintain and use an income and eligibility verification system (IEVS), as specified in this section. By means of the IEVS, State agencies may request wage and benefit information from the agencies identified in this paragraph (a)(1) and use that information in verifying eligibility for and the amount of food stamp benefits due to eligible households. Such information may be requested and used with respect to all household members, including any considered excluded household members as specified in § 273.11(c) of this chapter whenever the SSNs of such excluded household members are available to the State agency. If not otherwise documented, State agencies must obtain written agreements from these information provider agencies affirming that they must not record any information about individual food stamp households and that staff in those agencies are subject to the disclosure restrictions of the information provider agencies and § 272.1(c). The information provider agencies, at a minimum, are:

(i) The State Wage Information Collection Agency (SWICA) which maintains wage information;

(ii) The Social Security Administration (SSA) which maintains information about net earnings from self-employment, wages, and payments of retirement income, which is available pursuant to section 6103(1)(7)(A) of the Internal Revenue Service (IRS) Code; and information which is available from SSA regarding Federal retirement, and survivors, disability, SSI and related benefits;

(iii) The IRS from which unearned income information is available pursuant to section 6103(1)(7)(B) of the IRS Code; and

(iv) The agency administering Unemployment Insurance Benefits (UIB) which maintains claim information and any information in addition to information about wages and UIB available from the agency which is useful for verifying eligibility and benefits, subject to the provisions and limitations of section 303(d) of the Social Security Act.

(2) State agencies may exchange with State agencies administering certain other programs in the IEVS information about food stamp households' circumstances which may be of use in establishing or verifying eligibility or benefit amounts under the Food Stamp Program and those programs. State agencies may exchange such information with these agencies in other States when they determine that the same objectives are likely to be met. These programs are:

(i) Temporary Assistance for Needy Families;

(ii) Medicaid;

(iii) Unemployment Compensation (UC);

(iv) Food Stamps; and

(v) Any State program administered under a plan approved under title I, X, or XIV (the adult categories), or title XVI of the Social Security Act.

(3) State agencies must provide information to those administering the Child Support Program (title IV–D of the Social Security Act) and titles II (Federal Old Age, Survivors, and Disability Insurance Benefits) and XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

(4) Prior to requesting or exchanging information with other agencies, State agencies must execute data exchange agreements with those agencies. The agreements must specify the information to be exchanged and the procedures which will be used in the exchange of information. These agreements are not part of the State agency's Plan of Operation.

(b) *Alternate data sources.* A State agency may continue to use income information from an alternate source or sources to meet any requirement under paragraph (a) of this section.

(c) *Actions on recipient households.* (1) State agency action on information items about recipient households shall include:

(i) Review of the information and comparison of it to case record information;

(ii) For all new or previously unverified information received, contact with the households and/or collateral

contacts to resolve discrepancies as specified in §§ 273.2(f)(4)(iv) and 273.2 (f)(9)(iii) and (f)(9)(iv); and

(iii) If discrepancies warrant reducing benefits or terminating eligibility, notices of adverse action.

(2) State agencies must initiate and pursue the actions on recipient households specified in paragraph (c)(1) of this section so that the actions are completed within 45 days of receipt of the information items. Actions may be completed later than 45 days from the receipt of information if:

(i) The only reason that the actions cannot be completed is the nonreceipt of verification requested from collateral contacts; and

(ii) The actions are completed as specified in § 273.12 of this chapter when verification from a collateral contact is received or in conjunction with the next case action when such verification is not received, whichever is earlier.

(3) When the actions specified in paragraph (c)(1) of this section substantiate an overissuance, State agencies must establish and take actions on claims as specified in § 273.18 of this chapter.

(4) State agencies must use appropriate procedures to monitor the timeliness requirements in paragraph (c)(2) of this section.

(5) Except for the claims actions specified in paragraph (c)(3) of this section, State agencies may exclude from the actions required in paragraph (c) of this section information items pertaining to household members who are participating in one of the other programs listed in paragraph (a)(2) of this section.

(d) *IEVS information and quality control.* The requirements of this section do not relieve the State agency of its responsibility for determining erroneous payments and/or its liability for such payments as specified in part 275 of this chapter (which pertains to quality control) and in guidelines on quality control established under that part.

(e) *Documentation.* The State agency must document, as required by § 273.2(f)(6) of this chapter, information obtained through the IEVS both when an adverse action is and is not instituted.

§ 272.11 [Amended]

7. In 272.11:

a. Paragraph (a) is amended by removing the word, ''shall'' and adding the word ''may'' in its place;

b. Paragraphs (b)(2)(iii), (b)(2)(iv), and (d) are revised; and

c. Paragraph (e)(2) is removed, and paragraph (e)(1) is redesignated as the text of paragraph (e).

The revisions read as follows:

§ 272.11 Systematic Alien Verification for Entitlements (SAVE) Program.

* * * * *

(b) * * *

(2) * * *

(iii) For automated SAVE verification through access to the Alien Status Verification Index (ASVI), a description of the access method and procedures;

(iv) For secondary verification as described in paragraph (d) of this section, the locations of INS District Offices to which verification requests will be directed;

* * * * *

(d) *Method of verification.* The State agency may verify the documentation presented by an alien applicant by completing INS Form G–845 and submitting photocopies of such documentation to the INS for verification as described in § 273.2(f)(10) of this chapter. In States that participate in SAVE, the State agency must use this secondary verification procedure whenever the applicant-individual's documented alien status has not been verified through automated access to the ASVI or significant discrepancies exist between the data on the ASVI and the information provided by the alien applicant.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.1 [Amended]

8. In § 273.1, paragraph (f) is removed.

9. In § 273.2:

a. The section heading is revised, and paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised.

b. Paragraph (b)(4)(iv), added at 65 FR 41775 on July 6, 2000, and effective August 1, 2001, is revised.

c. Paragraph (c)(1) is amended by revising the first sentence and by adding four new sentences after the first sentence.

d. Paragraphs (c)(2)(i), (c)(2)(ii), and (c)(3) are revised.

e. Paragraph (d)(1) is amended by revising the fifth sentence.

f. Paragraph (e), paragraph (f) introductory text and paragraph (f)(1)(ii) are revised.

g. Paragraph (f)(1)(xi) is removed, and paragraphs (f)(1)(xii) and (f)(1)(xiii) are redesignated as paragraphs (f)(1)(xi) and (f)(1)(xii), respectively.

h. Paragraph (f)(2)(ii) is revised.

i. Paragraph (f)(2)(iii) is added.

j. Paragraphs (f)(4)(ii), (f)(4)(iii), and (f)(5)(i) are revised.

k. Paragraph (f)(5)(ii) is amended by adding the words ''in accordance with paragraph (f)(4) of this section'' after the word ''visit'' in the first sentence.

l. Paragraph (f)(9) heading and paragraph (f)(9)(i) are revised.

m. Paragraph (f)(10) heading and introductory text are revised.

n. Paragraph (g)(3) is amended by removing the words ''two scheduled interviews'' in the second sentence and adding in their place the words ''a scheduled interview.''

o. Paragraphs (h)(1)(i)(B) and (h)(1)(i)(D) are revised.

p. Paragraph (i)(4)(i) is amended by adding, in the third sentence of the undesignated text following paragraph (i)(4)(i)(B), the words ''applying for benefits'' after the word ''person'' both times it appears in that sentence.

q. Paragraph (j) introductory text, and paragraphs (j)(1)(i), (j)(1)(ii),(j)(1)(iii), and (j)(1)(v) are revised.

r. Paragraph (j)(1)(iv) is amended by adding the words '' in accordance with § 273.12(c)'' after the word ''eligible'' in the eighth sentence.

s. Paragraph (j)(2) is amended by revising paragraph (j)(2)(i), redesignating paragraphs (j)(2)(ii) through (j)(2)(vii) as (j)(2)(vi) through (j)(2)(xi), respectively, and adding new paragraphs (j)(2)(ii), (j)(2)(iii), (j)(2)(iv), and (j)(2)(v).

t. Newly redesignated paragraph (j)(2)(xi)(F) is removed.

u. Paragraph (j)(3)(i) is amended by removing the word ''shall'' in the first sentence and adding in its place the word ''may.''

v. Paragraph (j)(3)(iii) is removed.

w. Paragraph (j)(4)(iii)(C) is amended by removing the first sentence.

x. A new paragraph (n) is added.

The revisions and additions read as follows:

§ 273.2 Office operations and application processing.

(a) *Operation of food stamp offices and processing of applications*—(1) *Office operations.* State agencies must establish procedures governing the operation of food stamp offices that the State agency determines best serve households in the State, including households with special needs, such as, but not limited to, households with elderly or disabled members, households in rural areas with low-income members, homeless individuals, households residing on reservations, households with adult members who are not proficient in English, and households with earned income (working households). The State agency must provide timely, accurate, and fair service to applicants for, and participants in, the Food Stamp Program. The State agency cannot, as a

condition of eligibility, impose additional application or application processing requirements. The State agency must have a procedure for informing persons who wish to apply for food stamps about the application process and their rights and responsibilities. The State agency must base food stamp eligibility solely on the criteria contained in the Act and this part.

(2) *Application processing.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency must act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. The State agency must make expedited service available to households in immediate need. Specific responsibilities of households and State agencies in the application process are detailed below.

(b) * * * (1) *Content.* Each application form shall contain:

(i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

(ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

(iii) A statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application, including the information concerning citizenship and alien status of the members applying for benefits;

(iv) A place on the front page of the application where the applicant can write his/her name, address, and signature.

(v) In plain and prominent language on or near the front page of the application, notification of the household's right to immediately file the application as long as it contains the applicant's name and address and the signature of a responsible household member or the household's authorized representative. Regardless of the type of system the State agency uses (paper or electronic), it must provide a means for households to immediately begin the application process with name, address and signature;

(vi) In plain and prominent language on or near the front page of the application, a description of the expedited service provisions described in paragraph (i) of this section;

(vii) In plain and prominent language on or near the front page of the application, notification that benefits are provided from the date of application; and

(viii) The following nondiscrimination statement on the application itself even if the State agency uses a joint application form:

''In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, religion, political beliefs, or disability.

''To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250–9410 or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.''; and

(ix) For multi-program applications, contain language which clearly affords applicants the option of answering only those questions relevant to the program or programs for which they are applying.

(2) *Income and eligibility verification system (IEVS).* If the State agency chooses to use IEVS in accordance with paragraph (f)(9) of this section, it must notify all applicants for food stamp benefits at the time of application and at each recertification through a written statement on or provided with the application form that information available through IEVS will be requested, used and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. The regulations at § 273.2(f)(4)(ii) govern the use of collateral contacts. The State agency must also notify all applicants on the application form that the alien status of applicant household members may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information received from INS may affect the household's eligibility and level of benefits.

(3) *Jointly processed cases.* If a State agency has a procedure that allows applicants to apply for the food stamp program and another program at the same time, the State agency shall notify applicants that they may file a joint application for more than one program or they may file a separate application for food stamps independent of their application for benefits from any other program. All food stamp applications, regardless of whether they are joint applications or separate applications, must be processed for food stamp purposes in accordance with food stamp procedural, timeliness, notice, and fair hearing requirements. No household shall have its food stamp benefits denied solely on the basis that its application to participate in another program has been denied or its benefits under another program have been terminated without a separate determination by the State agency that the household failed to satisfy a food stamp eligibility requirement. Households that file a joint application for food stamps and another program and are denied benefits for the other program shall not be required to resubmit the joint application or to file another application for food stamps but shall have its food stamp eligibility determined based on the joint application in accordance with the food stamp processing time frames from the date the joint application was initially accepted by the State agency.

(4) * * *

(iv) Providing the requested information, including the SSN of each household member, is voluntary. However, failure to provide an SSN will result in the denial of food stamp benefits to each individual failing to provide an SSN. Any SSNs provided will be used and disclosed in the same manner as SSNs of eligible household members.

(c) * * * (1) *Household's right to file.* Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative, by fax or other electronic transmission, by mail, or by completing an on-line electronic application. The State agency must provide households that complete an on-line electronic application in person at the food stamp office the opportunity to review the information that has been recorded electronically and must provide them with a copy of that information for their records. Applications signed through the use of electronic signature techniques or applications containing a handwritten signature and then transmitted by fax or other electronic transmission are acceptable. State agencies must document the date the application was filed by recording the date of receipt at the food stamp office. When a resident of an institution is jointly applying for

SSI and food stamps prior to leaving the institution, the filing date of the application that the State agency must record is the date of release of the applicant from the institution. * * *

(2) * * *

(i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance or expresses concerns which indicate food insecurity. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

(ii) Where a project area has designated certification offices to serve specific geographic areas, households may contact an office other than the one designated to service the area in which they reside. When a household contacts the wrong certification office within a project area in person or by telephone, the certification office shall, in addition to meeting other requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. The certification office shall also offer to forward the household's application to the appropriate office that same day if the household has completed enough information on the application to file or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded. The household shall be informed that its application will not be considered filed and the processing standards shall not begin until the application is received by the appropriate office. If the household has mailed its application to the wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day, or forward it the next day by any means that ensures the application arrives at the application office the day it is forwarded.

* * * * *

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households. The State agency shall also provide an application form to anyone who requests the form. Regardless of the type of system the State agency uses (paper or electronic), the State agency must provide a means for applicants to immediately begin the application process with name, address and signature.

* * * * *

(d) * * *

(1) * * * If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied, and the agency shall provide assistance required by paragraph (c)(5) of this section. * * *

* * * * *

(e) *Interviews.* (1) Except for households certified for longer than 12 months, and except as provided in paragraph (e)(2) of this section, households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter. State agencies may not require households to report for an in-office interview during their certification period, though they may request households to do so. For example, State agencies may not require households to report en masse for an in-office interview during their certification periods simply to review their case files, or for any other reason. Interviews may be conducted at the food stamp office or other mutually acceptable location, including a household's residence. If the interview will be conducted at the household's residence, it must be scheduled in advance with the household. If a household in which all adult members are elderly or disabled is certified for 24 months in accordance with § 273.10(f)(1), or a household residing on a reservation is required to submit monthly reports and is certified for 24 months in accordance with § 273.10(f)(2), a face-to-face interview is not required during the certification period. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The applicant may bring any person he or she chooses to the interview. The interviewer must not simply review the information that appears on the application, but must explore and resolve with the household unclear and incomplete information. The interviewer must advise households of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. The interviewer must advise households that are also applying for or receiving PA benefits that time limits and other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. The interviewer must conduct the interview as an official and confidential discussion of household circumstances. The State agency must protect the applicant's right to privacy during the interview. Facilities must be adequate to preserve the privacy and confidentiality of the interview.

(2) The State agency must notify the applicant that it will waive the face-to-face interview required in paragraph (e)(1) of this section in favor of a telephone interview on a case-by-case basis because of household hardship situations as determined by the State agency. These hardship conditions include, but are not limited to: Illness, transportation difficulties, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview. The State agency must document the case file to show when a waiver was granted because of a hardship. The State agency may opt to waive the face-to-face interview in favor of a telephone interview for all households which have no earned income and all members of the household are elderly or disabled. Regardless of any approved waivers, the State agency must grant a face-to-face interview to any household which requests one. The State agency has the option of conducting a telephone interview or a home visit that is scheduled in advance with the household if the office interview is waived.

(i) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its benefits in a timely manner, such as substituting a collateral contact in cases where

documentary verification would normally be provided.

(ii) Waiver of the face-to-face interview may not affect the length of the household's certification period.

(3) The State agency must schedule an interview for all applicant households who are not interviewed on the day they submit their applications. To the extent practicable, the State agency must schedule the interview to accommodate the needs of groups with special circumstances, including working households. The State agency must schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. The State agency must notify each household that misses its interview appointment that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day application processing period, the State agency must schedule a second interview. The State agency may not deny a household's application prior to the 30th day after application if the household fails to appear for the first scheduled interview. If the household requests a second interview during the 30-day application processing period and is determined eligible, the State agency must issue prorated benefits from the date of application.

(f) *Verification.* Verification is the use of documentation or a contact with a third party to confirm the accuracy of statements or information. The State agency must give households at least 10 days to provide required verification. Paragraph (i)(4) of this section contains verification procedures for expedited service cases.

(1) * * *

(ii) *Alien eligibility.* (A) The State agency must verify the eligible status of applicant aliens. If an alien does not wish the State agency to contact INS to verify his or her immigration status, the State agency must give the household the option of withdrawing its application or participating without that member. The Department of Justice (DOJ) Interim Guidance On Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Interim Guidance) (62 FR 61344, November 17, 1997) contains information on acceptable documents and INS codes. State agencies should use the Interim Guidance until DOJ publishes a final rule on this issue. Thereafter, State agencies should consult both the Interim Guidance and the DOJ final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter should control the verification of alien eligibility. As provided in § 273.4, the following information may also be relevant to the eligibility of some aliens: date of admission or date status was granted; military connection; battered status; if the alien was lawfully residing in the United States on August 22, 1996; membership in certain Indian tribes; if the person was age 65 or older on August 22, 1996; if a lawful permanent resident can be credited with 40 qualifying quarters of covered work and if any Federal means-tested public benefits were received in any quarter after December 31, 1996; or if the alien was a member of certain Hmong or Highland Laotian tribes during a certain period of time or is the spouse or unmarried dependent of such a person. The State agency must also verify these factors, if applicable to the alien's eligibility. The SSA Quarters of Coverage History System (QCHS) is available for purposes of verifying whether a lawful permanent resident has earned or can receive credit for a total of 40 qualifying quarters. However, the QCHS may not show all qualifying quarters. For instance, SSA records do not show current year earnings and in some cases the last year's earnings, depending on the time of request. Also, in some cases, an applicant may have work from uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both these cases, the individual, rather than SSA, would need to provide the evidence needed to verify the quarters.

(B) An alien is ineligible until acceptable documentation is provided unless:

(*1*) The State agency has submitted a copy of a document provided by the household to INS for verification. Pending such verification, the State agency cannot delay, deny, reduce or terminate the individual's eligibility for benefits on the basis of the individual's immigration status; or

(*2*) The applicant or the State agency has submitted a request to SSA for information regarding the number of quarters of work that can be credited to the individual, SSA has responded that the individual has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. If SSA indicates that the number of qualifying quarters that can be credited is under investigation, the State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters; or

(*3*) The applicant or the State agency has submitted a request to a Federal agency for verification of information which bears on the individual's eligible alien status. The State agency must certify the individual pending the results of the investigation for up to 6 months from the date of the original request for verification.

(C) The State agency must provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity must be at least 10 days from the date of the State agency's request for an acceptable document. When the State agency fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, the State agency must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible.

* * * * *

(2) * * *

(ii) If a member's citizenship or status as a non-citizen national is questionable, the State agency must verify the member's citizenship or non-citizen national status in accordance with attachment 4 of the DOJ Interim Guidance. After DOJ issues final rules, State agencies should consult both the Interim Guidance and the final rule. Where the Interim Guidance and the DOJ final rule conflict, the latter should control the eligibility determination. The State agency must accept participation in another program as acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the household cannot obtain the forms of verification suggested in attachment 4 of the DOJ Interim Guidance and the household can provide a reasonable explanation as to why verification is not available, the State agency must accept a signed statement, under penalty of perjury, from a third party indicating a reasonable basis for personal knowledge that the member in question is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud. Absent verification or third party attestation of U.S. citizenship or non-citizen national status, the member whose citizenship or non-citizen national status is in question is ineligible to participate until

the issue is resolved. The member whose citizenship or non-citizen national status is in question will have his or her income and resources considered available to any remaining household members as set forth in § 273.11(c).

(iii) Homeless households claiming shelter expenses may provide verification of their shelter expenses to qualify for the homeless shelter deduction if the State agency has such a deduction. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people, for shelter, the caseworker may decide to accept this information as adequate information and not require further verification.

* * * * *

(4) * * *

(ii) *Collateral contacts.* A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The State agency may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the State agency. Examples of acceptable collateral contacts may include employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third-party verification. When talking with collateral contacts, State agencies should disclose only the information that is absolutely necessary to get the information being sought. State agencies should avoid disclosing that the household has applied for food stamps, nor should they disclose any information supplied by the household, especially information that is protected by § 273.1(c), or suggest that the household is suspected of any wrong doing.

(iii) *Home visits.* Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household. Home visits are to be used on a case-by-case basis where the supplied documentation is insufficient. Simply because a household fits a profile of an error-prone household does not constitute lack of verification. State agencies shall assist households in obtaining sufficient verification in accordance with paragraph (c)(5) of this section.

* * * * *

(5) * * *

(i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency must assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. Households may supply documentary evidence in person, through the mail, by facsimile or other electronic device, or through an authorized representative. The State agency must not require the household to present verification in person at the food stamp office. The State agency must accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application.

* * * * *

(9) *Optional use of IEVS.* (i) The State agency may obtain information through IEVS in accordance with procedures specified in § 272.8 of this chapter and use it to verify the eligibility and benefit levels of applicants and participating households.

* * * * *

(10) *Optional use of SAVE.* Households are required to submit documents to verify the immigration status of applicant aliens. State agencies that verify the validity of such documents through the INS SAVE system in accordance with § 272.11 of this chapter must use the following procedures:

* * * * *

(h) * * *

(1) * * *

(i) * * *

(B) If one or more members of the household have failed to register for work, as required in § 273.7, the State agency must have informed the household of the need to register for work, determined if the household members are exempt from work registration, and given the household at least 10 days from the date of notification to register these members.

* * * * *

(D) For households that have failed to appear for an interview, the State agency must notify the household that it missed the scheduled interview and that the household is responsible for rescheduling a missed interview. If the household contacts the State agency within the 30 day processing period, the State agency must schedule a second interview. If the household fails to schedule a second interview, or the subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay shall be the fault of the household. If the household has failed to appear for the first interview, fails to schedule a second interview, and/or the subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay shall be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay shall be the fault of the household.

* * * * *

(j) *PA, GA and categorically eligible households.* The State agency must notify households applying for public assistance (PA) of their right to apply for food stamp benefits at the same time and must allow them to apply for food stamp benefits at the same time they apply for PA benefits. The State agency must also notify such households that time limits or other requirements that apply to the receipt of PA benefits do not apply to the receipt of food stamp benefits, and that households which cease receiving PA benefits because they have reached a time limit, have begun working, or for other reasons, may still qualify for food stamp benefits. If the State agency attempts to discourage households from applying for cash assistance, it shall make clear that the disadvantages and requirements of applying for cash assistance do not apply to food stamps. In addition, it shall encourage applicants to continue with their application for food stamps. The State agency shall inform households that receiving food stamps will have no bearing on any other program's time limits that may apply to the household. The State agency may process the applications of such households in accordance with the requirements of paragraph (j)(1) of this section, and the State agency must base their eligibility solely on food stamp eligibility criteria unless the household is categorically eligible, as provided in paragraph (j)(2) of this section. If a State has a single Statewide GA application form, households in which all members

are included in a State or local GA grant may have their application for food stamps included in the GA application form. State agencies may use the joint application processing procedures described in paragraph (j)(1) of this section for GA recipients in accordance with paragraph (j)(3) of this section. The State agency must base eligibility of jointly processed GA households solely on food stamp eligibility criteria unless the household is categorically eligible as provided in paragraph (j)(4) of this section. The State agency must base the benefit levels of all households solely on food stamp criteria. The State agency must certify jointly processed and categorically eligible households in accordance with food stamp procedural, timeliness, and notice requirements, including the 7-day expedited service provisions of paragraph (i) of this section and normal 30-day application processing standards of paragraph (g) of this section. Individuals authorized to receive PA, SSI, or GA benefits but who have not yet received payment are considered recipients of benefits from those programs. In addition, individuals are considered recipients of PA, SSI, or GA if their PA, SSI, or GA benefits are suspended or recouped. Individuals entitled to PA, SSI, or GA benefits but who are not paid such benefits because the grant is less than a minimum benefit are also considered recipients. The State agency may not consider as recipients those individuals not receiving GA, PA, or SSI benefits who are entitled to Medicaid only.

(1) * * * (i) If a joint PA/food stamp application is used, the application may contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility must be contained in the PA form or must be an attachment to it. The joint PA/food stamp application must clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section.

(ii) The State agency may conduct a single interview at initial application for both public assistance and food stamp purposes. A household's eligibility for food stamp out-of-office interview provisions in paragraph (e)(2) of this section does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iii) For households applying for both PA and food stamps, the State agency must follow the verification procedures described in paragraphs (f)(1) through (f)(8) of this section for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, if the household has provided the State agency sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section, but has failed to provide sufficient verification to meet the PA verification rules, the State agency may not use such failure as a basis for denying the household's food stamp application or failing to comply with processing requirements of paragraph (g) of this section. Under these circumstances, the State agency must process the household's food stamp application and determine eligibility based on its compliance with the requirements of paragraphs (f)(1) through (f)(8) of this section.

* * * * *

(v) The State agency may not require households which file a joint PA/food stamp application and whose PA applications are denied to file new food stamp applications. Rather, the State agency must determine or continue their food stamp eligibility on the basis of the original applications filed jointly for PA and food stamp purposes. In addition, the State agency must use any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

(2) * * *

(i) The following households are categorically eligible for food stamps unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps.

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive cash through a PA program funded in full or in part with Federal money under Title IV–A or with State money counted for maintenance of effort (MOE) purposes under Title IV–A;

(B) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to forward purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104–193.

(C) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind benefits or services from a program that is more than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the TANF block grant, as set forth in Section 401 of P.L. 104–193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(D) Any household in which all members receive or are authorized to receive SSI benefits, except that residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), are not categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The State agency must consider the individuals categorically eligible at such time as SSA makes a final SSI eligibility and the institution has released the individual.

(E) Any household in which all members receive or are authorized to receive PA and/or SSI benefits in accordance with paragraphs (j)(2)(i)(A) through (j)(2)(i)(D) of this section.

(ii) The State agency, at its option, may extend categorical eligibility to the following households only if doing so will further the purposes of the Food Stamp Act:

(A) Any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes one and two of the TANF block grant, as set forth in Section 401 of P.L. 104–193. States must inform FNS of the TANF services under this paragraph that they are determining to confer categorical eligibility.

(B) Subject to FNS approval, any household (except those listed in paragraph (j)(2)(vii) of this section) in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with State money counted for MOE purposes under Title IV–A or Federal money under Title IV–A and that is designed to further purposes three and four of the

TANF block grant, as set forth in Section 401 of P.L 104–193, and requires participants to have a gross monthly income at or below 200 percent of the Federal poverty level.

(iii) Any household in which one member receives or is authorized to receive benefits according to paragraphs (j)(2)(i)(B), (j)(2)(i)(C), (j)(2)(ii)(A) and (j)(2)(ii)(B), of this section and the State agency determines that the whole household benefits.

(iv) For purposes of paragraphs (j)(2)(i), (j)(2)(ii),and (j)(2)(iii) of this section, ''authorized to receive'' means that an individual has been determined eligible for benefits and has been notified of this determination, even if the benefits have been authorized but not received, authorized but not accessed, suspended or recouped, or not paid because they are less than a minimum amount.

(v) The eligibility factors which are deemed for food stamp eligibility without the verification required in paragraph (f) of this section because of PA/SSI status are the resource, gross and net income limits; social security number information, sponsored alien information, and residency. However, the State agency must collect and verify factors relating to benefit determination that are not collected and verified by the other program if these factors are required to be verified under paragraph (f) of this section. If any of the following factors are questionable, the State agency must verify, in accordance with paragraph (f) of this section, that the household which is considered categorically eligible:

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph (j) of this section;

(B) Meets the household definition in § 273.1(a);

(C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and

(D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(vi) of this section.

* * * * *

(n) *Authorized representatives.* Representatives may be authorized to act on behalf of a household in the application process, in obtaining food stamp benefits, and in using food stamp benefits.

(1) *Application processing and reporting.* The State agency shall inform applicants and prospective applicants that indicate that they may have difficulty completing the application process, that a nonhousehold member may be designated as the authorized representative for application processing purposes. The household member or the authorized representative may complete work registration forms for those household members required to register for work. The authorized representative designated for application processing purposes may also carry out household responsibilities during the certification period, such as reporting changes in the household's income or other household circumstances in accordance with § 273.12(a) and § 273.21. Except for those situations in which a drug and alcohol treatment center or other group living arrangement acts as the authorized representative, the State agency must inform the household that the household will be held liable for any overissuance that results from erroneous information given by the authorized representative.

(i) A nonhousehold member may be designated as an authorized representative for the application process provided that the person is an adult who is sufficiently aware of relevant household circumstances and the authorized representative designation has been made in writing by the head of the household, the spouse, or another responsible member of the household. Paragraph (n)(4) of this section contains further restrictions on who can be designated an authorized representative.

(ii) Residents of drug or alcohol treatment centers must apply and be certified through the use of authorized representatives in accordance with § 273.11(e). Residents of group living arrangements have the option to apply and be certified through the use of authorized representatives in accordance with § 273.11(f).

(2) *Obtaining food stamp benefits.* An authorized representative may be designated to obtain benefits. Even if the household is able to obtain benefits, it should be encouraged to name an authorized representative for obtaining benefits in case of illness or other circumstances which might result in an inability to obtain benefits. The name of the authorized representative must be recorded in the household's case record and on the food stamp identification (ID) card, as provided in § 274.10(a)(1) of this chapter. The authorized representative for obtaining benefits may or may not be the same individual designated as an authorized representative for the application process or for meeting reporting requirements during the certification period. The State agency must develop a system by which a household may designate an emergency authorized representative in accordance with § 274.10(c) of this chapter to obtain the household's benefits for a particular month.

(3) *Using benefits.* A household may allow any household member or nonmember to use its ID card and benefits to purchase food or meals, if authorized, for the household. Drug or alcohol treatment centers and group living arrangements which act as authorized representatives for residents of the facilities must use food stamp benefits for food prepared and served to those residents participating in the Food Stamp Program (except when residents leave the facility as provided in § 273.11(e) and (f)).

(4) *Restrictions on designations of authorized representatives.* (i) The State agency must restrict the use of authorized representatives for purposes of application processing and obtaining food stamp benefits as follows:

(A) State agency employees who are involved in the certification or issuance processes and retailers who are authorized to accept food stamp benefits may not act as authorized representatives without the specific written approval of a designated State agency official and only if that official determines that no one else is available to serve as an authorized representative.

(B) An individual disqualified for an intentional Program violation cannot act as an authorized representative during the disqualification period, unless the State agency has determined that no one else is available to serve as an authorized representative. The State agency must separately determine whether the individual is needed to apply on behalf of the household, or to obtain benefits on behalf of the household.

(C) If a State agency has determined that an authorized representative has knowingly provided false information about household circumstances or has made improper use of coupons, it may disqualify that person from being an authorized representative for up to one year. The State agency must send written notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification must specify the reason for the proposed action and the household's right to request a fair hearing. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes which act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living

arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households circumstances, may be prosecuted under applicable Federal and State statutes for their acts.

(D) Homeless meal providers, as defined in § 271.2 of this chapter, may not act as authorized representatives for homeless food stamp recipients.

(ii) In order to prevent abuse of the program, the State agency may set a limit on the number of households an authorized representative may represent.

(iii) In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, the State agency should exercise caution to assure that each household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, the household is receiving the correct amount of benefits and that the authorized representative is properly using the benefits.

10. § 273.4 is revised to read as follows:

§ 273.4 Citizenship and alien status.

(a) *Household members meeting citizenship or alien status requirements.* No person is eligible to participate in the Program unless that person is:

(1) A U.S. citizen [1];

(2) A U.S. non-citizen national [1]

(3) An individual who is:

(i) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(ii) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) An individual who is:

(i) Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(ii) The spouse, or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(iii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 18 or if a full-time student under the age of 22; an unmarried child under the age of 18 or if a full time student under the age of 22 of such a deceased Hmong or Highland Laotian provided the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday. For purposes of this paragraph (a)(4)(iii), child means the legally adopted or biological child of the person described in paragraph (a)(4)(i) of this section, or

(5) An individual who is *both* a qualified alien as defined in paragraph (a)(5)(i) of this section and an eligible alien as defined in paragraph (a)(5)(ii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;

(B) An alien who is granted asylum under section 208 of the INA;

(C) A refugee who is admitted to the United States under section 207 of the INA;

(D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(E) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(F) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(G) an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered [2]; or

(H) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(5)(i) of this section, must also be at least one of the following to be eligible to receive food stamps:

(A) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(*1*) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility. However, if the State agency determines eligibility of an alien based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the State agency must determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(*2*) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. The State agency must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. The State agency must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the alien (or the parent(s) or spouse of the alien) received Federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the alien in that calendar year. However, if the alien earns the 40th quarter of coverage prior to applying for food stamps or any other Federal means-tested public benefit in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total.

(B) An alien admitted as a refugee under section 207 of the INA. Eligibility is limited to 7 years from the date of the alien's entry into the U.S.

(C) An alien granted asylum under section 208 of the INA. Eligibility is limited to 7 years from the date asylum was granted.

(D) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under

[1] For guidance, see the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

[2] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published on November 17, 1997 (62 FR 61344).

section 241(b)(3) or the INA. Eligibility is limited to 7 years from the date deportation or removal was withheld.

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980). Eligibility is limited to 7 years from the date the status as a Cuban or Haitian entrant was granted.

(F) An Amerasian admitted pursuant to section 584 of Public Law 100–202, as amended by Public Law 100–461. Eligibility is limited to 7 years from the date admitted as an Amerasian.

(G) An alien with one of the following military connections:

(*1*) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service. The definition of veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(*2*) An individual on active duty in the Armed Forces of the U.S. (other than for training); or

(*3*) The spouse and unmarried dependent children of a person described in paragraphs (a)(5)(ii)(G)(*1*) or (G)(*2*) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(5)(ii)(G)(*3*) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(5)(ii)(G)(*3*), child means the legally adopted or biological child of the person described in paragraph (a)(5)(ii)(G)(*1*) or (G)(*2*) of this section.

(H) An individual who on August 22, 1996, was lawfully residing in the U.S., and is now receiving benefits or assistance for blindness or disability (as specified in § 271.2 of this chapter).

(I) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(J) An individual who on August 22, 1996, was lawfully residing in the U.S. and is now under 18 years of age.

(iii) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

(6) For purposes of determining eligible alien status in accordance with paragraphs (a)(4) and (a)(5)(ii)(H) through (a)(5)(ii)(J) of this section ''lawfully residing in the U.S.'' means that the alien is lawfully present as defined at 8 CFR 103.12(a).

(b) *Reporting illegal aliens.* (1) The State agency must inform the local INS office immediately whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the U.S. in violation of the INA. The State agency may meet this requirement by conforming with the Interagency Notice providing guidance for compliance with PRWORA section 404 published on September 28, 2000 (65 FR 58301).

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, the State agency must classify that member as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, the State agency must classify that person as an ineligible alien. In such cases the State agency must not continue efforts to obtain that documentation.

(c) *Households containing sponsored alien members*—(1) *Definition.* A sponsored alien is an alien for whom a person (the sponsor) has executed an affidavit of support (INS Form I–864 or I–864A) on behalf of the alien pursuant to section 213A of the INA.

(2) *Deeming of sponsor's income and resources.* For purposes of this paragraph (c)(2), only in the event a sponsored alien is an eligible alien in accordance with paragraph (a) of this section will the State agency consider available to the household the income and resources of the sponsor and spouse. For purposes of determining the eligibility and benefit level of a household of which an eligible sponsored alien is a member, the State agency must deem the income and resources of sponsor and the sponsor's spouse, if he or she has executed INS Form I–864 or I–864A, as the unearned income and resources of the sponsored alien. The State agency must deem the sponsor's income and resources until the alien gains U. S. citizenship, has worked or can receive credit for 40 qualifying quarters of work as described in paragraph (a)(5)(ii)(A) of this section, or the sponsor dies.

(i) The monthly income of the sponsor and sponsor's spouse (if he or she has executed INS Form I–864 or I–864A) deemed as that of the eligible sponsored alien must be the total monthly earned and unearned income, as defined in § 273.9(b) with the exclusions provided in § 273.9(c) of the sponsor and sponsor's spouse at the time the household containing the sponsored alien member applies or is recertified for participation, reduced by:

(A) A 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse; and

(B) An amount equal to the Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(ii) If the alien has already reported gross income information on his or her sponsor in compliance with the sponsored alien rules of another State agency administered assistance program, the State agency may use that income amount for Food Stamp Program deeming purposes. However, the State agency must limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien to amounts specified in paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) of this section.

(iii) The State agency must consider as income to the alien any money the sponsor or the sponsor's spouse pays to the eligible sponsored alien, but only to the extent that the money exceeds the amount deemed to the eligible sponsored alien in accordance with paragraph (c)(2)(i) of this section.

(iv) The State agency must deem as available to the eligible sponsored alien the total amount of the resources of the sponsor and sponsor's spouse as determined in accordance with § 273.8, reduced by $1,500.

(v) If a sponsored alien can demonstrate to the State agency's satisfaction that his or her sponsor is the sponsor of other aliens, the State agency must divide the income and resources deemed under the provisions of paragraphs (c)(2)(i) and (c)(2)(iii) of this

section by the number of such sponsored aliens.

(3) *Exempt aliens.* The provisions of paragraph (c)(2) of this section do not apply to:

(i) An alien who is a member of his or her sponsor's food stamp household;

(ii) An alien who is sponsored by an organization or group as opposed to an individual;

(iii) An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;

(iv) An indigent alien that the State agency has determined is unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s). For purposes of this paragraph (c)(3)(iv), the phrase ''is unable to obtain food and shelter'' means that the sum of the eligible sponsored alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the poverty income guideline for the household's size. The State agency must determine the amount of income and other assistance provided in the month of application. If the alien is indigent, the only amount that the State agency must deem to such an alien will be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewable for additional 12-month periods. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved;

(v) A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after the State agency determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer.[3] After 12 months, the State agency must not deem the batterer's income and resources if the battery is recognized by a court or the INS and has a substantial connection to the need for benefits, and the alien does not live with the batterer.

(4) *Eligible sponsored alien's responsibilities.* During the period the alien is subject to deeming, the eligible sponsored alien is responsible for obtaining the cooperation of the sponsor and for providing the State agency at the time of application and at the time of recertification with the information and documentation necessary to calculate deemed income and resources in accordance with paragraphs (c)(2)(i) through (c)(2)(v) of this section. The eligible sponsored alien is responsible for providing the names and other identifying factors of other aliens for whom the alien's sponsor has signed an affidavit of support. The State agency must attribute the entire amount of income and resources to the applicant eligible sponsored alien until he or she provides the information specified under this paragraph (c)(4). The eligible sponsored alien is also responsible for reporting the required information about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period and for reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period. The State agency must handle such changes in accordance with the timeliness standards described in § 273.12 or § 273.21, as appropriate.

(5) *Awaiting verification.* Until the alien provides information or verification necessary to carry out the provisions of paragraph (c)(2) of this section, the sponsored alien is ineligible. The State agency must determine the eligibility of any remaining household members. The State agency must consider available to the remaining household members the income and resources of the ineligible alien (excluding the deemed income and resources of the alien's sponsor and sponsor's spouse) in determining the eligibility and benefit level of the remaining household members in accordance with § 273.11(c). If the sponsored alien refuses to cooperate in providing information or verification, other adult members of the alien's household are responsible for providing the information or verification required in accordance with the provisions of § 273.2(d). If the State agency subsequently receives information or verification, it must act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12 or § 273.21, as appropriate. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the household provides the needed sponsor information or verification. The State agency must assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(6) *Demands for restitution.* The State agency must exclude any sponsor who is participating in the Program from any demand made under 8 CFR 213a.4(a) for the value of food stamp benefits issued to an eligible sponsored alien he or she sponsors.

11. In § 273.8:

a. A new paragraph (e)(3)(i)(G) is added.

b. Paragraphs (c)(3), (e)(17), (e)(18), and (f)(2) are revised.

The addition and revisions read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(c) * * *

(3) For a household containing a sponsored alien, the State agency must deem the resources of the sponsor and the sponsor's spouse in accordance with § 273.4(c)(2).

* * * * *

(e) * * *

(3) * * *

(i) * * *

(G) The value of the vehicle is inaccessible, in accordance with paragraph (e)(18) of this section, because its sale would produce an estimated return of not more than $1,500.

* * * * *

(17) The resources of a household member who receives SSI or PA benefits. A household member is considered a recipient of these benefits if the benefits have been authorized but not received, if the benefits are suspended or recouped, or if the benefits are not paid because they are less than a minimum amount. For purposes of this paragraph (e)(17), if an individual receives non-cash or in-kind services from a program specified in §§ 273.2(j)(2)(i)(B), 273.2(j)(2)(i)(C), 273.2(j)(2)(ii)(A), or 273.2(j)(2)(ii)(B), the State agency must determine whether the individual or the household benefits from the assistance provided, in accordance with § 273.2(j)(2)(iii). Individuals entitled to Medicaid benefits only are not considered recipients of SSI or PA.

(18) The State agency must develop clear and uniform standards for identifying kinds of resources that, as a practical matter, the household is unable to sell for any significant return because the household's interest is relatively slight or the costs of selling the household's interest would be relatively great. The State agency must so identify a resource if its sale or other disposition is unlikely to produce any

[3] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

significant amount of funds for the support of the household or the cost of selling the resource would be relatively great. This provision does not apply to financial instruments such as stocks, bonds, and negotiable financial instruments. The determination of whether any part of the value of a vehicle is included as a resource must be made in accordance with the provisions of paragraphs (e)(3) and (f) of this section. The State agency may require verification of the value of a resource to be excluded if the information provided by the household is questionable. The State agencies must use the following definitions in developing these standards:

(i) ''Significant return'' means any return, after estimating costs of sale or disposition, and taking into account the ownership interest of the household, that the State agency determines are more than $1,500; and

(ii) ''Any significant amount of funds'' means funds amounting to more than $1,500.

(f) * * *

(2) Only the following vehicles are exempt from the equity value test outlined in paragraph (f)(1)(iii) of this section:

(i) Vehicles excluded under paragraph (e)(3)(i) of this section;

(ii) One licensed vehicle per adult household member (or an ineligible alien or disqualified household member whose resources are being considered available to household), regardless of the use of the vehicle; and

(iii) Any other vehicle a household member under age 18 (or an ineligible alien or disqualified household member under age 18 whose resources are being considered available to household) drives to commute to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This equity exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to commute to and from employment.

* * * * *

12. In § 273.9:

a. Paragraphs (b)(1)(v) and (b)(4) are revised.

b. Paragraph (c)(1)(i)(E) is removed and paragraphs (c)(1)(i)(F) and (c)(1)(i)(G) are redesignated as paragraphs (c)(1)(i)(E) and (c)(1)(i)(F), respectively.

c. Paragraphs (c)(1)(ii)(A) and (c)(1)(ii)(E) are removed and paragraphs (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D), (c)(1)(ii)(F) and (c)(1)(ii)(G) are redesignated as paragraphs (c)(1)(ii)(A), (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D) and (c)(1)(ii)(E), respectively.

d. The first sentence of paragraph (c)(7) is amended by removing the number ''22'' and adding the number ''18'' in its place.

e. A new sentence is added before the last sentence in paragraph (c)(8).

f. Paragraph (c)(11) is revised.

g. Paragraphs (d)(6) and (d)(8) are removed.

h. Paragraph (d)(5) is redesignated as paragraph (d)(6) and paragraph (d)(7) is redesignated as paragraph (d)(5).

i. Newly redesignated paragraph (d)(6) is revised in its entirety.

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) * * *

(1) * * *

(v) Earnings to individuals who are participating in on-the-job training programs under section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment as discussed in paragraph (c)(7) of this section. For the purpose of this provision, earnings include monies paid under the Workforce Investment Act and monies paid by the employer.

* * * * *

(4) For a household containing a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with § 273.4(c)(2).

* * * * *

(c) * * *

(8) * * * TANF payments made to divert a family from becoming dependent on welfare may be excluded as a nonrecurring lump-sum payment if the payment is not defined as assistance because of the exception for non-recurrent, short-term benefits in 45 CFR 261.31(b)(1).* * *

* * * * *

(11) Energy assistance as follows:

(i) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), including utility reimbursements made by the Department of Housing and Urban Development and the Rural Housing Service, or

(ii) A one-time payment or allowance applied for on an as-needed basis and made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down-payment followed by a final payment upon completion of the work will be considered a one-time payment for purposes of this provision.

* * * * *

(d) * * *

(6) *Standard utility allowance.*

(i) *Homeless shelter deduction.* A State agency may develop a standard homeless shelter deduction up to a maximum of $143 a month for shelter expenses specified in paragraphs (d)(6)(ii)(A), (d)(6)(ii)(B) and (d)(6)(ii)(C) of this section that may reasonably be expected to be incurred by households in which all members are homeless individuals but are not receiving free shelter throughout the month. The deduction must be subtracted from net income in determining eligibility and allotments for the households. The State agency may make a household with extremely low shelter costs ineligible for the deduction. A household receiving the homeless shelter deduction cannot have its shelter expenses considered under paragraphs (d)(6)(ii) or (d)(6)(iii) of this section. However, a homeless household may choose to claim actual costs under paragraph (d)(6)(ii) of this section instead of the homeless shelter deduction if actual costs are higher and verified.

(ii) *Excess shelter deduction.* Monthly shelter expenses in excess of 50 percent of the household's income after all other deductions in paragraphs (d)(1) through (d)(5) of this section have been allowed. If the household does not contain an elderly or disabled member, as defined in § 271.2 of this chapter, the shelter deduction cannot exceed the maximum shelter deduction limit established for the area. FNS will notify State agencies of the amount of the limit. Only the following expenses are allowable shelter expenses:

(A) Continuing charges for the shelter occupied by the household, including rent, mortgage, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(B) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(C) The cost of fuel for heating; cooling (*i.e.,* the operation of air conditioning systems or room air conditioners); electricity or fuel used for purposes other than heating or cooling;

water; sewerage; well installation and maintenance; septic tank system installation and maintenance; garbage and trash collection; all service fees required to provide service for one telephone, including, but not limited to, basic service fees, wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and fees charged by the utility provider for initial installation of the utility. One-time deposits cannot be included.

(D) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(E) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(iii) *Standard utility allowances.*

(A) With FNS approval, a State agency may develop the following standard utility allowances (standards) to be used in place of actual costs in determining a household's excess shelter deduction: an individual standard for each type of utility expense; a standard utility allowance for all utilities that includes heating or cooling costs (HCSUA); and, a limited utility allowance (LUA) that includes electricity and fuel for purposes other than heating or cooling, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. The LUA must include expenses for at least two utilities. However, at its option, the State agency may include the excess heating and cooling costs of public housing residents in the LUA if it wishes to offer the lower standard to such households. The State agency may use different types of standards but cannot allow households the use of two standards that include the same expense. In States in which the cooling expense is minimal, the State agency may include the cooling expense in the electricity component. The State agency may vary the allowance by factors such as household size, geographical area, or season. Only utility costs identified in paragraph (d)(6)(ii)(C) of this section must be used in developing standards.

(B) The State agency must review the standards annually and make adjustments to reflect changes in costs, rounded to the nearest whole dollar. State agencies must provide the amounts of standards to FNS when they are changed and submit methodologies used in developing and updating standards to FNS for approval when the methodologies are developed or changed.

(C) A standard with a heating or cooling component must be made available to households that incur heating or cooling expenses separately from their rent or mortgage and to households that receive direct or indirect assistance under the Low Income Home Energy Assistance Act of 1981 (LIHEAA). A heating or cooling standard is available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, households in public housing units which have central utility meters and which charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage. Households that receive direct or indirect energy assistance that is excluded from income consideration (other than that provided under the LIHEAA) are entitled to a standard that includes heating or cooling only if the amount of the expense exceeds the amount of the assistance. Households that receive direct or indirect energy assistance that is counted as income and incur a heating or cooling expense are entitled to use a standard that includes heating or cooling costs. A household that has both an occupied home and an unoccupied home is only entitled to one standard.

(D) At initial certification, recertification, and when a household moves, the household may choose between a standard or verified actual utility costs for any allowable expense identified in paragraph (d)(6)(ii)(C) of this section (except the telephone standard), unless the State agency has opted, with FNS approval, to mandate use of a standard. The State agency may require use of the telephone standard for the cost of basic telephone service even if actual costs are higher. Households certified for 24 months may also choose to switch between a standard and actual costs at the time of the mandatory interim contact required by § 273.10(f)(1)(i), if the State agency has not mandated use of the standard.

(E) A State agency may mandate use of standard utility allowances for all households with qualifying expenses if the State has developed one or more standards that include the costs of heating and cooling and one or more standards that do not include the costs of heating and cooling, the standards will not result in increased program costs, and FNS approves the standard. The prohibition on increasing Program costs does not apply to necessary increases to standards resulting from utility cost increases. Under this option households entitled to the standard may not claim actual expenses, even if the expenses are higher than the standard. Households not entitled to the standard may claim actual allowable expenses. Households in public housing units that have central utility meters and charge households only for excess heating or cooling costs are not entitled to the HCSUA but, at State agency option, may claim the LUA. Requests for approval to use a standard for a single utility must include the cost figures upon which the standard is based. Requests to use an LUA should include the approximate number of food stamp households that would be entitled to the nonheating and noncooling standard, the average utility costs prior to use of the mandatory standard, the proposed standards, and an explanation of how the standards were computed.

(F) If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency must prorate a standard that includes heating or cooling expenses among the household and the other individual, household, or both. However, the State agency may not prorate the SUA if all the individuals who share utility expenses but are not in the food stamp household are excluded from the household only because they are ineligible.

13. In § 273.10,

a. The third and fourth sentences of paragraph (a)(1)(ii) are revised.

b. Paragraph (a)(1)(iv) is removed.

c. The third sentence of paragraph (a)(2) is amended by removing the words ''an application for recertification is submitted more than one month'' and adding in their place, ''a household, other than a migrant or seasonal farmworker household, submits an application'' and by adding a new sentence after the third sentence.

d. Three sentences are added to the end of paragraph (d)(3).

e. The second sentence of paragraph (e)(1)(i)(E) is removed.

f. Paragraphs (e)(1)(i)(G) and (e)(1)(i)(H) are redesignated as paragraphs (e)(1)(i)(H) and (e)(1)(i)(I), respectively, and a new paragraph (e)(1)(i)(G) is added.

g. Newly redesignated paragraph (e)(1)(i)(H) is revised.

h. Paragraph (e)(2)(i)(E) is amended by removing the number ''22'' wherever it appears and adding in its place the number ''18''.

i. Paragraph (f) is revised.

The additions and revisions read as follows:

§ 273.10 Determining household eligibility and benefit levels.

(a) * * *

(1) * * *

(ii) * * * As used in this section, the term ''initial month'' means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of migrant and seasonal farmworker households, the term ''initial month'' means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 1 month during which the household was not certified for participation. * * *

* * * * *

(2) * * * If a household's failure to timely apply for recertification was due to an error of the State agency and therefore there was a break in participation, the State agency shall follow the procedures in § 273.14(e).

* * *

* * * * *

(d) * * *

(3) * * * For households certified for 24 months that have one-time medical expenses, the State agency must use the following procedure. In averaging any one-time medical expense incurred by a household during the first 12 months, the State agency must give the household the option of deducting the expense for one month, averaging the expense over the remainder of the first 12 months of the certification period, or averaging the expense over the remaining months in the certification period. One-time expenses reported after the 12th month of the certification period will be deducted in one month or averaged over the remaining months in the certification period, at the household's option.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(G) Subtract the homeless shelter deduction, if any, up to the maximum of $143.

(H) Total the allowable shelter expenses to determine shelter costs, unless a deduction has been subtracted in accordance with paragraph (e)(1)(i)(G) of this section. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (e)(1)(i)(I) of this section.

* * * * *

(f) *Certification periods.* The State agency must certify each eligible household for a definite period of time. State agencies must assign the longest certification period possible based on the predictability of the household's circumstances. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months, except as specified in paragraphs (f)(1) and (f)(2) of this section:

(1) *Households in which all adult members are elderly or disabled.* The State agency may certify for up to 24 months households in which all adult members are elderly or disabled. The State agency must have at least one contact with each household every 12 months. The State agency may use any method it chooses for this contact.

(2) *Households residing on a reservation.* The State agency must certify for 24 months those households residing on a reservation which it requires to submit monthly reports in accordance with § 273.21, unless the State agency obtains a waiver from FNS. In the waiver request the State agency must include justification for a shorter period and input from the affected Indian tribal organization(s). When households move off the reservation, the State agency must either continue their certification periods until they would normally expire or shorten the certification periods in accordance with paragraph (f)(4) of this section.

(3) *Certification period length.* The State agency should assign each household the longest certification period possible, consistent with its circumstances.

(i) Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.

(ii) Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned certification periods consistent with their circumstances, but generally no less than 3 months.

(iii) Households may be assigned 1- or 2-month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.

(4) *Shortening certification periods.* The State agency may not end a household's certification period earlier than its assigned termination date, unless the State agency receives information that the household has become ineligible, or the household has not complied with the requirements of § 273.12(c)(3). Loss of public assistance or a change in employment status is not sufficient in and of itself to meet the criteria necessary for shortening the certification period. The State agency must close the household's case or adjust the household's benefit amount in accordance with § 273.12(c)(1) or (c)(2) in response to reported changes. The State agency may not use the Notice of Expiration to shorten a certification period.

(5) *Lengthening certification periods.* State agencies may lengthen a household's current certification period once it is established, as long as the total months of the certification period do not exceed 24 months for households in which all adult members are elderly or disabled, or 12 months for other households. If the State agency extends a household's certification period, it must advise the household of the new certification ending date with a notice containing the same information as the notice of eligibility set forth in paragraph (g)(1)(i)(A) of this section.

* * * * *

14. In § 273.11,

a. Paragraphs (a) and (b) are revised.

b. The heading and introductory text of paragraph (c)(2) are revised, paragraph (c)(3) is redesignated as paragraph (c)(4) and a new paragraph (c)(3) is added.

c. The heading of paragraph (e) and paragraphs (e)(1) through (e)(5) are revised.

d. Paragraphs (f)(1) and (f)(7) are revised.

e. Paragraph (g)(5) is revised.

f. Paragraph (j) is removed and paragraph (k) is redesignated as paragraph (j).

The revisions and additions read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* The State agency must calculate a household's self-employment income as follows:

(1) *Averaging self-employment income.* (i) Self-employment income must be averaged over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, the State agency must calculate the self-employment income on the basis of anticipated, not prior, earnings.

(ii) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(iii) Notwithstanding the provisions of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, households subject to monthly reporting and retrospective budgeting who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency must add all gross self-employment income (either actual or anticipated, as provided in paragraph (a)(1)(i) of this section) and capital gains (according to paragraph (a)(3) of this section), exclude the costs of producing the self-employment income (as determined in paragraph (a)(4) of this section), and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. The monthly net self-employment income must be added to any other earned income received by the household to determine total monthly earned income.

(ii) If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer (defined for the purposes of this paragraph (a)(2)(ii) as a self-employed farmer who receives or anticipates receiving annual gross proceeds of $1,000 or more from the farming enterprise), such losses must be prorated in accordance with paragraph (a)(1) of this section, and then offset against countable income to the household as follows:

(A) Offset farm self-employment losses first against other self-employment income.

(B) Offset any remaining farm self-employment losses against the total amount of earned and unearned income *after* the earned income deduction has been applied.

(iii) If a State agency determines that a household is eligible based on its monthly net income, the State may elect to offer the household an option to determine the benefit level by using either the same net income which was used to determine eligibility, or by unevenly prorating the household's total net income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If income is prorated, the net income assigned in any month cannot exceed the maximum monthly income eligibility standards for the household's size.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment must be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency must count the full amount of the capital gain as income for food stamp purposes. For households whose self-employment income is calculated on an anticipated (rather than averaged) basis in accordance with paragraph (a)(1) of this section, the State agency must count the amount of capital gains the household anticipates receiving during the months over which the income is being averaged.

(b) *Allowable costs of producing self-employment income.* (1) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor; stock; raw material; seed and fertilizer; payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; interest paid to purchase income-producing property; insurance premiums; and taxes paid on income-producing property.

(2) In determining net self-employment income, the following items are not allowable costs of doing business:

(i) Net losses from previous periods;

(ii) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20 percent earned income deduction specified in § 273.9(d)(2);

(iii) Depreciation; and

(iv) Any amount that exceeds the payment a household receives from a boarder for lodging and meals.

(3) When calculating the costs of producing self-employment income, State agencies may elect to use actual costs for allowable expenses in accordance with paragraphs (b)(1) and (b)(2) of this section or determine self-employment expenses as follows:

(i) For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program or a standard amount based on estimated per-meal costs.

(ii) For income from boarders, other than those in commercial boarding houses or from foster care boarders, use:

(A) The maximum food stamp allotment for a household size that is equal to the number of boarders; or

(B) A flat amount or fixed percentage of the gross income, provided that the method used to determine the flat amount or fixed percentage is objective and justifiable and is stated in the State's food stamp manual.

(iii) For income from foster care boarders, refer to § 273.1(c)(6).

(iv) Use the standard amount the State uses for its TANF program.

(v) Use an amount approved by FNS. State agencies may submit a proposal to FNS for approval to use a simplified self-employment expense calculation method that does not result in increased Program costs. Different methods may be proposed for different types of self-employment. The proposal must include a description of the proposed method, the number and type of households and percent of the caseload affected, and documentation indicating that the proposed procedure will not increase Program costs.

(c) * * *

(2) *SSN disqualification.* The eligibility and benefit level of any remaining household members of a household containing individuals who are disqualified for refusal to obtain or provide an SSN must be determined as follows:

* * * * *

(3) *Ineligible alien.* The State agency must determine the eligibility and benefit level of any remaining household members of a household containing an ineligible alien as follows:

(i) The State agency must count all or, at the discretion of the State agency, all but a pro rata share, of the ineligible

alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(i), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata share to apply the net income test and determine level of benefits. This paragraph (c)(3)(i) does not apply to an alien:

(A) Who is lawfully admitted for permanent residence under the INA;

(B) Who is granted asylum under section 208 of the INA;

(C) Who is admitted as a refugee under section 207 of the INA;

(D) Who is paroled in accordance with section 212(d)(5) of the INA;

(E) Whose deportation or removal has been withheld in accordance with section 243 of the INA;

(F) Who is aged, blind, or disabled in accordance with section 1614(a)(1) of the Social Security Act and is admitted for temporary or permanent residence under section 245A(b)(1) of the INA; or

(G) Who is a special agricultural worker admitted for temporary residence under section 210(a) of the INA.

(ii) For an ineligible alien within a category described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section, State agencies may either:

(A) Count all of the ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses; or

(B) Count all of the ineligible alien's resources, count none of the ineligible alien's income and deductible expenses, count any money payment (including payments in currency, by check, or electronic transfer) made by the ineligible alien to at least one eligible household member, not deduct as a household expense any otherwise deductible expenses paid by the ineligible alien, but cap the resulting benefit amount for the eligible members at the allotment amount the household would receive if the household member within the one of the categories described in paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section were still an eligible alien. The State agency must elect one State-wide option for determining the eligibility and benefit level of households with members who are aliens within the categories described paragraphs (c)(3)(i)(A) through (c)(3)(i)(G) of this section.

(iii) For an alien who is ineligible under § 273.4(a) because the alien's household indicates inability or unwillingness to provide documentation of the alien's immigration status, the State agency must count all or, at the discretion of the State agency, all but a pro rata share of the ineligible alien's income and deductible expenses and all of the ineligible alien's resources in accordance with paragraphs (c)(1) or (c)(2) of this section. In exercising its discretion under this paragraph (c)(3)(iii), the State agency may count all of the alien's income for purposes of applying the gross income test for eligibility purposes while only counting all but a pro rata to apply the net income test and determine level of benefits.

(iv) The State agency must compute the income of the ineligible aliens using the income definition in § 273.9(b) and the income exclusions in § 273.9(c).

(v) For purposes of this paragraph (c)(3), the State agency must not include the resources and income of the sponsor and the sponsor's spouse in determining the resources and income of an ineligible sponsored alien.

* * * * *

(e) *Residents of drug and alcohol treatment and rehabilitation programs.* (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug addict or alcoholic (DAA) treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Applications must be made through an authorized representative who is employed by the DAA center and designated by the center for that purpose. The State agency may require the household to designate the DAA center as its authorized representative for the purpose of receiving and using an allotment on behalf of the household. Residents must be certified as one-person households unless their children are living with them, in which case their children must be included in the household with the parent.

(2)(i) Prior to certifying any residents for food stamps, the State agency must verify that the DAA center is authorized by FNS as a retailer in accordance with § 278.1(e) of this chapter or that it comes under part B of title XIX of the Public Health Service Act, 42 U.S.C. 300x *et seq.*, (as defined in ''Drug addiction or alcoholic treatment and rehabilitation program'' in § 271.2 of this chapter).

(ii) Except as otherwise provided in this paragraph (e)(2), the State agency must certify residents of DAA centers by using the same provisions that apply to all other households, including, but not limited to, the same rights to notices of adverse action and fair hearings.

(iii) DAA centers in areas without EBT systems may redeem the households' paper coupons through authorized food stores. DAA centers in areas with EBT systems may redeem benefits in various ways depending on the State's EBT system design. The designs may include DAA use of individual household EBT cards at authorized stores, authorization of DAA centers as retailers with EBT access via POS at the center, DAA use of a center EBT card that is an aggregate of individual household benefits, and other designs. Guidelines for approval of EBT systems are contained in § 274.12 of this chapter.

(iv) The treatment center must notify the State agency of changes in the household's circumstances as provided in § 273.12(a).

(3) The DAA center must provide the State agency a list of currently participating residents that includes a statement signed by a responsible center official attesting to the validity of the list. The State agency must require submission of the list on either a monthly or semimonthly basis. In addition, the State agency must conduct periodic random on-site visits to the center to assure the accuracy of the list and that the State agency's records are consistent and up to date.

(4) The State agency may issue allotments on a semimonthly basis to households in DAA centers.

(5) When a household leaves the center, the center must notify the State agency and the center must provide the household with its ID card. If possible, the center must provide the household with a change report form to report to the State agency the household's new address and other circumstances after leaving the center and must advise the household to return the form to the appropriate office of the State agency within 10 days. After the household leaves the center, the center can no longer act as the household's authorized representative for certification purposes or for obtaining or using benefits.

(i) The center must provide the household with its EBT card if it was in the possession of the center, any untransacted ATP, or the household's full allotment if already issued and if no coupons have been spent on behalf of that individual household. If the household has already left the center, the center must return them to the State agency. These procedures are applicable at any time during the month.

(ii) If the coupons have already been issued and any portion spent on behalf of the household, the following procedures must be followed.

(A) If the household leaves prior to the 16th of the month and benefits are not issued under an EBT system, the center must provide the household with one-half of its monthly coupon allotment unless the State agency issues semi-monthly allotments and the second half has not been turned over to the center. If benefits are issued under an EBT system, the State must ensure that the EBT design or procedures for DAAs prohibit the DAA from obtaining more than one-half of the household's allotment prior to the 16th of the month or permit the return of one-half of the allotment to the household's EBT account through a refund, transfer, or other means if the household leaves prior to the 16th of the month.

(B) If the household leaves on or after the 16th day of the month, the State agency, at its option, may require the center to give the household a portion of its allotment. Under an EBT system where the center has an aggregate EBT card, the State agency may, but is not required to transfer a portion of the household's monthly allotment from a center's EBT account back to the household's EBT account. However, the household, not the center, must be allowed to receive any remaining benefits authorized by the household's HIR or ATP or posted to the EBT account at the time the household leaves the center.

(iii) The center must return to the State agency any EBT card or coupons not provided to departing residents by the end of each month. These coupons include those not provided to departing residents because they left either prior to the 16th and the center was unable to provide the household with the coupons or the household left on or after the 16th of the month and the coupons were not returned to the household.

* * * * *

(f) * * *

(1) Disabled or blind residents of a group living arrangement (GLA) (as defined in § 271.2 of this chapter) may apply either through use of an authorized representative employed and designated by the group living arrangement or on their own behalf or through an authorized representative of their choice. The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Some residents of the GLA may apply on their own behalf while other residents of the same GLA may apply through the GLA's representative. Prior to certifying any residents, the State agency must verify that the GLA is authorized by FNS or is certified by the appropriate agency of the State (as defined in § 271.2 of this chapter) including the agency's determination that the center is a nonprofit organization.

(i) If the residents apply on their own behalf, the household size must be in accordance with the definition in § 273.1. The State agency must certify these residents using the same provisions that apply to all other households. If FNS disqualifies the GLA as an authorized retail food store, the State agency must suspend its authorized representative status for the same time; but residents applying on their own behalf will still be able to participate if otherwise eligible.

(ii) If the residents apply through the use of the GLA's authorized representative, their eligibility must be determined as a one-person household.

* * * * *

(7) If the residents are certified on their own behalf, the food stamp benefits may either be returned to the GLA to be used to purchase meals served either communally or individually to eligible residents or retained and used to purchase and prepare food for their own consumption. The GLA may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at a central location as part of the GLA's service or if meals are prepared at a central location for delivery to the individual residents. If personalized meals are prepared and paid for with food stamps, the GLA must ensure that the resident's food stamp benefits are used for meals intended for that resident.

(g) * * *

(5) State agencies must take prompt action to ensure that the former household's eligibility or allotment reflects the change in the household's composition. Such action must include acting on the reported change in accordance with § 273.12 or § 273.21, as appropriate, by issuing a notice of adverse action in accordance with § 273.13.

* * * * *

15. In § 273.12:

a. New paragraphs (a)(1)(vii) and (c)(3) are added.

b. Paragraphs (f)(3) and (f)(4) are revised, and paragraph (f)(5) is removed.

The additions and revisions read as follows:

§ 273.12 Reporting changes.

(a) * * *

(1) * * *

(vii) State agencies may opt to require households with earned income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline for their household size.

(A) Households with earned income certified for 6 months in accordance with paragraph (a)(1)(vii) of this section must not be required to report changes in accordance with paragraphs (a)(1)(ii) through (a)(1)(vi) of this section. The State agency must act on any change reported by such households that would increase their benefits in accordance with paragraph (c)(1) of this section. The State agency must not act on changes that would result in a decrease in benefits unless:

(*1*) The household has voluntarily requested that its case be closed in accordance with § 273.13(b)(12);

(*2*) The State agency has information about the household's circumstances considered verified upon receipt; or

(*3*) There has been a change in the household's PA grant, or GA grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2).

(B) Households with earned income certified for longer than 6 months under this option shall be required to submit an interim report at 6 months in accordance with paragraphs (a)(1)(i) through (a)(1)(vi) of this section. The State agency must act on any change reported by such households on the interim report in accordance with paragraph (c) of this section. If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that it will be received by the household no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

* * * * *

(c) * * *

(3) *Unclear information.* During the certification period, the State agency may obtain information about changes in a household's circumstances from which the State agency cannot readily determine the effect of the change on the household's benefit amount. The State agency might receive such unclear

information from a third party or from the household itself. The State agency must pursue clarification and verification of household circumstances using the following procedure:

(i) The State agency must issue a written request for contact (RFC) which clearly advises the household of the verification it must provide or the actions it must take to clarify its circumstances, which affords the household at least 10 days to respond and to clarify its circumstances, either by telephone or by correspondence, as the State agency directs, and which states the consequences if the household fails to respond to the RFC.

(ii) If the household does not respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency must issue a notice of adverse action as described in § 273.13 which terminates the case, explains the reasons for the action, and advises the household of the need to submit a new application if it wishes to continue participating in the program. When the household responds to the RFC and provides sufficient information, the State agency must act on the new circumstances in accordance with paragraphs (c)(1) or (c)(2) of this section.

(iii) If the household does not respond to the RFC, or does respond but refuses to provide sufficient information to clarify its circumstances, the State agency may elect to issue a notice of adverse action as described in § 273.13 which suspends the household for 1 month before the termination becomes effective, explains the reasons for the action, and advises the household of the need to submit a new application if it wishes to continue participating in the program. If a household responds satisfactorily to the RFC during the period of suspension, the State agency must reinstate the household without requiring a new application, issue the allotment for the month of suspension, and if necessary, adjust the household's participation with a new notice of adverse action.

* * * * *

(f) * * *

(3) The State agency may not terminate a household's food stamp benefits solely because it has terminated the household's PA benefits without a separate determination that the household fails to satisfy the eligibility requirements for participation in the Program. Whenever a change results in the reduction or termination of a household's PA benefits within its food stamp certification period, the State agency must follow the procedures set forth below:

(i) If a change in household circumstances requires a reduction or termination in the PA payment and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency must take the following actions:

(A) If the change requires a reduction or termination of food stamp benefits, the State agency must issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the State agency must continue the household's food stamp benefits on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the State agency must conduct the hearing according to PA procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the State agency must make the change effective in accordance with the procedures specified in paragraph (c) of this section.

(B) If the household's food stamp benefits will increase as a result of the reduction or termination of PA benefits, the State agency must issue the PA notice of adverse action, but must not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the PA adverse action. If the household decides to appeal and its PA benefits are continued, the household's food stamp benefits must continue at the previous level. If the household does not appeal, the State agency must make the change effective in accordance with the procedures specified in paragraph (c) of this section, except that the time limits for the State agency to act on changes which increase a household's benefits must be calculated from the date the PA notice of adverse action period expires.

(ii) Whenever a change results in the termination of a household's PA benefits within its food stamp certification period, and the State agency does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, and the household asks to have its TANF case closed without providing any information on the income of the new household member), the State agency must take the following action:

(A) If the situation requires a reduction or termination of PA benefits, the State agency must issue a request for contact (RFC) in accordance with paragraph (c)(3)(i) of this section at the same time it sends a PA notice of adverse action. Before taking further action, the State agency must wait until the household's PA notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and elects to have its PA benefits continued pending the appeal, the State agency must continue the household's food stamp benefits at the same level. If the household decides not to request a fair hearing and continuation of its PA benefits, the State agency must resume action on the changes as required in paragraph (c)(3) of this section.

(B) If the situation does not require a PA notice of adverse action, the State agency must issue a RFC and take action in accordance with paragraph (c)(3) of this section.

(iii) Depending on the household's response to the RFC, the State agency must take appropriate action, if necessary, to close the household's case or adjust the household's benefit amount.

(4) *Transitional Benefits Alternative.* The State agency may elect to provide households leaving TANF with transitional food stamp benefits as provided in this paragraph (f)(4). A State agency electing the Transitional Benefits Alternative (TBA) must provide transitional benefits, at a minimum, to all families with earnings who leave TANF. The State agency may not provide transitional benefits to a household which is leaving TANF when: the State agency has determined that the household is noncompliant with TANF requirements and the State agency is imposing a comparable food stamp sanction in accordance with § 273.11; the State agency has determined that the household has violated a food stamp work requirement in accordance with § 273.7; the State agency has determined that a household member has committed an intentional Program violation in accordance with § 273.16, or the State agency is closing the household's TANF case in response to information indicating the household failed to comply with food stamp reporting requirements. The State agency must use procedures at paragraph (f)(3) of this section to determine the continued eligibility and benefit level of households denied

transitional benefits under this paragraph (f)(4).

(i) When a household leaves TANF, the State agency may freeze for up to 3 months the household's benefit amount at the level the household received when it was receiving TANF. This is the household's transition period. If the household is losing income as a result of leaving TANF, the State agency must adjust the food stamp benefit amount before initiating the transition period. To provide the transition period, the State agency may extend the certification period for up to 3 months, not to exceed the maximum periods specified in § 273.10(f)(1) and (f)(2).

(ii) The State agency must issue a transition notice (TN) advising the household of the following: that the State agency must reevaluate its food stamp case no more than 3 months from the effective date of the TANF case closing; that its benefit amount will remain the same as when it was receiving cash assistance (or that the State agency has adjusted the food stamp benefit amount if the household's income is decreasing as the result of leaving cash assistance); that it is not required to report and provide verification for any changes in household circumstances until the deadline established in accordance with paragraph (c)(3) of this section (or its recertification interview, if the certification period is expiring); and that it may report changes if income decreases or expenses or household size increase.

(iii) If the household does report changes in its circumstances during the transition period, the State agency must adjust the household's benefit amount in accordance with paragraph (c) of this section, *except that*, if the reported change would cause a reduction in the household's benefit amount, the State agency must make the change effective the month following the last month of the transition period.

(iv) Before the end of the transition period, the State agency must issue the RFC specified in paragraph (c)(3) of this section and act on any information it has about the household's new circumstances in accordance with paragraph (c)(3) of this section, or recertify the household in accordance with § 273.14. At the end of the transition period, the State agency may extend the household's certification period in accordance with § 273.10(f)(5).

16. In § 273.14:

a. Paragraph (b)(1) is amended by removing the second sentence of the introductory text of paragraph (b)(1)(ii)and revising paragraph (b)(1)(iii).

b. Paragraph (b)(2) is revised.

c. Paragraph (b)(3) is amended by revising paragraph (b)(3)(i), removing the second sentence of paragraph (b)(3)(ii), and revising paragraph (b)(3)(iii).

d. Paragraph (b)(4) is amended by adding the words ''and benefits cannot be prorated'' at the end of the paragraph.

e. Paragraph (e) is revised.

The revisions read as follows:

§ 273.14 Recertification.

* * * * *

(b) * * *

(1) * * *

(iii) To expedite the recertification process, State agencies are encouraged to send a recertification form, an interview appointment letter that allows for either in-person or telephone interviews, and a statement of needed verification required by § 273.2(c)(5) with the NOE.

(2) *Application.* The State agency must develop an application to be used by households when applying for recertification. It may be the same as the initial application, a simplified version, a monthly reporting form, or other method such as annotating changes on the initial application form. A new household signature and date is required at the time of application for recertification. The recertification process can only be used for those households which apply for recertification prior to the end of their current certification period, except for delayed applications as specified in paragraph (e)(3) of this section. The process, at a minimum, must elicit from the household sufficient information that, when added to information already contained in the casefile, will ensure an accurate determination of eligibility and benefits. The State agency must notify the applicant of information which is specified in § 273.2(b)(2), and provide the household with a notice of required verification as specified in § 273.2(c)(5).

(3) * * *

(i) As part of the recertification process, the State agency must conduct a face-to-face interview with a member of the household or its authorized representative at least once every 12 months for households certified for 12 months or less. The provisions of § 273.2(e) also apply to interviews for recertification. The State agency may choose not to interview the household at interim recertifications within the 12-month period. The requirement for a face-to-face interview once every 12 months may be waived in accordance with § 273.2(e)(2).

* * * * *

(iii) State agencies shall schedule interviews so that the household has at least 10 days after the interview in which to provide verification before the certification period expires. If a household misses its scheduled interview, the State agency shall send the household a Notice of Missed Interview that may be combined with the notice of denial. If a household misses its scheduled interview and requests another interview, the State agency shall schedule a second interview.

* * * * *

(e) *Delayed processing.* (1) If an eligible household files an application before the end of the certification period but the recertification process cannot be completed within 30 days after the date of application because of State agency fault, the State agency must continue to process the case and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(2) If a household files an application before the end of the certification period, but fails to take a required action, the State agency may deny the case at that time, at the end of the certification period, or at the end of 30 days. Notwithstanding the State's right to issue a denial prior to the end of the certification period, the household has 30 days after the end of the certification period to complete the process and have its application be treated as an application for recertification. If the household takes the required action before the end of the certification period, the State agency must reopen the case and provide a full month's benefits for the initial month of the new certification period. If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, the State agency shall reopen the case and provide benefits retroactive to the date the household takes the required action. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.3(h)(1).

(3) If a household files an application within 30 days after the end of the certification period, the application shall be considered an application for recertification; however, benefits must be prorated in accordance with § 273.10(a). If a household's application for recertification is delayed beyond the first of the month of what would have

been its new certification period through the fault of the State agency, the household's benefits for the new certification period shall be prorated based on the date of the new application, and the State agency shall provide restored benefits to the household back to the date the household's certification period should have begun had the State agency not erred and the household been able to apply timely.

* * * * *

17. In § 273.15 paragraphs (j) and (k)(2) are revised to read as follows:

§ 273.15 Fair hearings.

* * * * *

(j) *Denial or dismissal of request for hearing.* (1) The State agency must not deny or dismiss a request for a hearing unless:

(i) The State agency does not receive the request within the appropriate time frame specified in paragraph (g) of this section, provided that the State agency considers untimely requests for hearings as requests for restoration of lost benefits in accordance with § 273.17;

(ii) The household or its representative fails, without good cause, to appear at the scheduled hearing;

(iii) The household or its representative withdraws the request in writing; or

(iv) The household or its representative orally withdraws the request and the State agency has elected to allow such oral requests.

(2) The State agency electing to accept an oral expression from the household or its representative to withdraw a fair hearing may discuss the option with the household when it appears that the State agency and household have resolved issues related to the fair hearing. However, the State agency is prohibited from coercion or actions which would influence the household or its representative to withdraw the household's fair hearing request. The State agency must provide a written notice to the household within 10 days of the household's request confirming the withdrawal request and providing the household with an opportunity to request a hearing. The written notice must advise the household it has 10 days from the date it receives the notice to advise the State agency of its desire to request, or reinstate, the hearing. If the household timely advises the State agency that it wishes to reinstate the fair hearing, the State agency must provide the household with a fair hearing, within the time frames specified in paragraph (c) of this section and beginning the date the household advises the State agency that it wishes to reinstate its request. The State agency must reinstate a fair hearing as requested from a household at least once. The State agency must not deny a household's request for a fair hearing if the household is aggrieved by a State agency action that differs from the reinstated action.

(k) * * *

(2) Once continued or reinstated, the State agency must not reduce or terminate benefits prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law or regulation and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action;

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending; or

(v) The household, or its representative, orally withdrew its request for a fair hearing and did not advise the State agency of its desire to reinstate the fair hearing within the time frame specified in paragraph (j)(2) of this section.

* * * * *

§ 273.21 [Amended]

18. In § 273.21:

a. Paragraph (a)(3) is removed and paragraph (a)(4) is redesignated as paragraph (a)(3).

b. Paragraph (j)(1)(vii)(A) is amended by removing the number ''22'' at the end of the second sentence and adding in its place the number ''18''.

c. Paragraph (t)(2) is removed and paragraphs (t)(3) through (t)(6) are redesignated as paragraphs (t)(2) through (t)(5).

19. § 273.25 is added to read as follows:

§ 273.25 Simplified Food Stamp Program.

(a) *Definitions.* For purposes of this section:

(1) Simplified Food Stamp Program (SFSP) means a program authorized under 7 U.S.C. 2035.

(2) Temporary Assistance for Needy Families (TANF) means a State program of family assistance operated by an eligible State under its TANF plan as defined at 45 CFR 260.30.

(3) Pure-TANF household means a household in which all members receive assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

(4) Mixed-TANF household means a household in which 1 or more members, but not all members, receive assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*).

(5) Assistance under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) means ''assistance'' as defined in regulations at 45 CFR 260.31.

(b) *Limit on benefit reduction for mixed-TANF households under the SFSP.* If a State agency chooses to operate an SFSP and includes mixed-TANF households in its program, the following requirements apply in addition to the statutory requirements governing the SFSP.

(1) If a State's SFSP reduces benefits for mixed-TANF households, then no more than 5 percent of these participating households can have benefits reduced by 10 percent of the amount they are eligible to receive under the regular FSP and no mixed-TANF household can have benefits reduced by 25 percent or more of the amount it is eligible to receive under the regular FSP. Reductions of $10 or less will be disregarded when applying this requirement.

(2) The State must include in its State SFSP plan an analysis showing the impact its program has on benefit levels for mixed-TANF households by comparing the allotment amount such households would receive using the rules and procedures of the State's SFSP with the allotment amount these households would receive if certified under regular Food Stamp Program rules and showing the number of households whose allotment amount would be reduced by 9.99 percent or less, by 10 to 24.99 percent, and by 25 percent or more, excluding those households with reductions of $10 or less. In order for FNS to accurately evaluate the program's impact, States must describe in detail the methodology used as the basis for this analysis.

(3) To ensure compliance with the benefit reduction requirement once an SFSP is operational, States must describe in their plan and have approved by FNS a methodology for measuring benefit reductions for mixed-TANF households on an on-going basis

throughout the duration of the SFSP. In addition, States must report to FNS on a periodic basis the amount of benefit loss experienced by mixed-TANF households participating in the State's SFSP. The frequency of such reports will be determined by FNS taking into consideration such factors as the number of mixed-TANF households participating in the SFSP and the amount of benefit loss attributed to these households through initial or on-going analyses.

(c) *Application processing standards.* Under statutory requirements, a household is not eligible to participate in an SFSP unless it is receiving TANF assistance. If a household is not receiving TANF assistance (payments have not been authorized) at the time of its application for the SFSP, the State agency must process the application using the regular Food Stamp Program requirements of § 273.2, including processing within the 30-day regular or 7-day expedited time frame, and screening for and provision of expedited service if eligible. The State agency must determine under regular food stamp rules the eligibility and benefits of any household that it has found ineligible for TANF assistance because of time limits, more restrictive resource standards, or other rules that do not apply to food stamps.

(d) *Standards for shelter costs.* Legislation governing the SFSP requires that State plans must address the needs of households with high shelter costs relative to their income. If a State chooses to standardize shelter costs under the SFSP, it must, therefore, use multiple standards that take into consideration households with high shelter costs versus those with low shelter costs. A State is prohibited from using a single standard based on average shelter costs for all households participating in an SFSP.

(e) *Opportunity for public comment.* States must provide an opportunity for public input on proposed SFSP plans (with special attention to changes in benefit amounts that are necessary in order to ensure that the overall proposal not increase Federal costs) through a public comment period, public hearings, or meetings with groups representing participants' interests. Final approval will be given after the State informs the Department about the comments received from the public. After the public comment period, the State agency must inform the Department about the comments received from the public and submit its final SFSP plan for Departmental approval.

PART 274—ISSUANCE AND USE OF COUPONS

19. In § 274.2:

a. The last sentence in paragraph (a) is removed; and

b. Paragraph (g) is revised to read as follows:

§ 274.2 Providing benefits to participants.

* * * * *

(g) *Issuance in rural areas.* Unless the area is served by an electronic benefit transfer system, State agencies must use direct-mail issuance in any rural areas where the State agency determines that recipients face substantial difficulties in obtaining transportation in order to obtain their food stamp benefits by methods other than direct-mail issuance. State agencies must report any exceptions to direct-mail issuance as specified under § 272.3(a)(2) and (b)(2) of this chapter.

§ 274.5 [Removed and Reserved]

20. Section 274.5 is removed and reserved.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

21. In § 277.4, two sentences are added to the end of paragraph (b) introductory text to read as follows:

§ 277.4 Funding.

* * * * *

(b) Federal reimbursement rate. * * * This rate includes reimbursement for food stamp informational activities but not for recruitment activities. Recruitment activities are those activities designed to persuade an individual who has made an informed choice not to apply for food stamps to change his or her decision and apply.

* * * * *

Dated: November 9, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00–29355 Filed 11–20–00; 8:45 am]

BILLING CODE 3410–30–P

Federal Register

Tuesday,
November 21, 2000

Part IV

Department of Housing and Urban Development

24 CFR Part 570
CDBG Program Regulations on Pre-Award Costs and New Housing Construction; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4559–F–01]

RIN 2506–AC06

CDBG Program Regulations on Pre-Award Costs and New Housing Construction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule changes the Community Development Block Grant (CDBG) program to permit a new CDBG grantee without a consolidated plan to be reimbursed for costs for activities related to the development and preparation of its first consolidated plan, and to permit homeownership activities, to the extent authorized by statute, to be funded in connection with new construction.

EFFECTIVE DATE: December 21, 2000.

FOR FURTHER INFORMATION CONTACT: Sue Miller, Entitlement Communities Division, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–1577. (This is not a toll-free number). Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal information relay service during working hours at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This rule makes three changes to the regulations for the Community Development Block Grant (CDBG) program. It permits a new CDBG grantee without a consolidated plan to incur costs for activities related to the development and preparation of its first consolidated plan, and to be reimbursed from CDBG funds for those costs. The rule allows homeownership activities, to the extent authorized by statute, to be funded in connection with new construction. Finally, the rule makes a related technical correction by removing the specific statutory reference for homeownership activities.

Costs for First Consolidated Plan

A CDBG grantee is allowed reimbursement from grant funds for costs incurred prior to the effective date of the grant agreement when certain requirements stated in the regulations are met. One of those requirements is that the activity must be included in a consolidated plan action plan, or an amended consolidated plan action plan, prior to the costs being incurred. As a result, a new CDBG grantee that does not yet have a consolidated plan cannot obtain reimbursement for costs related to the development and preparation of its first consolidated plan without obtaining a regulatory waiver. This outcome is an unintended consequence of a previous rule regarding CDBG pre-award costs (60 FR 56892, November 9, 1995). Grantees ordinarily are able to fund their development and preparation costs for a future year's consolidated plan by including that activity in the current year's consolidated plan, but the 1995 change did not take into account the special needs of new grantees. Failure to permit a new grantee to fund these costs from CDBG funds could negatively impact the implementation of its CDBG program and its ability to effectively carry out activities that will benefit low- and moderate-income residents. Although HUD could continue to address this problem through waivers, that is an inefficient approach and one that leaves a new grantee uncertain of funding until a waiver is granted. HUD and new grantees will benefit from a regulations change to permit routine reimbursement for a new grantee for its pre-award costs for development and preparation of its first consolidated plan, and there will be no adverse effect from this change.

Homeownership Activities for New Construction

In general, CDBG assistance is not available for new construction activities. However, a statutory provision (discussed below) does allow certain forms of direct homeownership assistance to low- and moderate-income households. To date, HUD has applied a conservative interpretation to this statutory provision that did not permit the use of CDBG funds for homeownership assistance that directly assisted the construction of new housing. We have reconsidered this interpretation, in part because homeownership assistance (originally approved as an eligible activity only for certain years) is now permanently authorized, and because of the important role that CDBG assistance can play in the development of new affordable housing with increased opportunities for homeownership for low- and moderate-income persons. HUD has concluded that neither the statutory text nor the legislative history behind the provisions for CDBG homeownership assistance require that the availability of homeownership assistance be affected by whether or not the home was previously constructed. Therefore, the regulations will now reflect this revised interpretation.

Revision to Statutory Reference

In connection with the change discussed above, we are revising the current statutory reference for homeownership assistance that appears in § 570.201(n). It cites ''section 105(a)(25)'' of the Housing and Community Development Act of 1974. However, due to intervening statutory changes, a different provision regarding lead-based paint hazard evaluation and reduction is now designated as section 105(a)(25) and the correct citation for the homeownership assistance provision is not completely certain. For example, the United States Code Annotated designates the provision as 42 U.S.C. 5305(a)(24) [corresponding to a section 105(a)(24) of the 1974 Act], but the current ''Basic Laws on Housing and Community Development'' printed as Committee Print 106–1 for use of the House of Representatives' Committee on Banking and Financial Services expressly states that there is no section 105(a)(24). Despite the uncertainty regarding correct citation, there is no dispute over the fact that the homeownership assistance provision is now permanently authorized as eligible activity for the CDBG program. This rule thus revises the citation in § 570.201(n) from the current specific reference to section 105(a)(25) to a more general reference to section 105(a).

Other Matters

Justification for Final Rulemaking

It is the general practice of the Department to provide a 60-day public comment period on all rules in accordance with 24 CFR part 10. However, a public comment procedure may be omitted under § 10.1 if the Department determines that is impracticable, unnecessary, or contrary to the public interest. It may also be omitted for interpretive rules. The Department has decided that public comment is both unnecessary and contrary to the public interest regarding both the change on pre-award costs for consolidated plan preparation and development by first-time grantees, and eligibility for homeownership assistance in connection with new construction. Delay is issuance of a final rule could adversely affect first-time grantees and interfere with the achievement of the purposes of the program, with no corresponding public benefit because the changes are simple ones without a substantive adverse effect on anyone. In addition, the change regarding homeownership assistance qualifies as an interpretive rule reflecting a revision in our interpretation of statutory limits. Public comment regarding the third

change (deletion of an incorrect statutory reference) is clearly not needed due to complete lack of substantive effect.

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities.

Executive Order 13132, Federalism

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, the Department hereby amends 24 CFR part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

2. Section 570.200 is amended by revising paragraph (h)(1)(i) to read as follows:

§ 570.200 General policies.

* * * * *

(h) * * *

(1) * * *

(i) The activity for which the costs are being incurred is included, prior to the costs being incurred, in a consolidated plan action plan, an amended consolidated plan action plan, or an application under subpart M of this part, except that a new entitlement grantee preparing to receive its first allocation of CDBG funds may incur costs necessary to develop its consolidated plan and undertake other administrative actions necessary to receive its first grant, prior to the costs being included in its consolidated plan;

* * * * *

2. Section 570.201 is amended by revising paragraph (n) to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(n) *Homeownership assistance.* CDBG funds may be used to provide direct homeownership assistance to low- or moderate-income households in accordance with section 105(a) of the Act.

* * * * *

3. Section 570.207 is amended by revising paragraph (b)(3)(ii) to read as follows:

§ 570.207 Ineligible activities.

* * * * *

(b) * * *

(3) * * *

(ii) As authorized under § 570.201(m) or (n);

* * * * *

Dated: August 24, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 00–29675 Filed 11–20–00; 8:45 am]

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Federal Register

Tuesday,

November 21, 2000

Part V

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Part 393

Parts and Accessories Necessary for Safe Operation; Manufactured Home Tires; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–97–2341]

RIN 2126–AA65 [Formerly FHWA RIN 2125–AD41]

Parts and Accessories Necessary for Safe Operation; Manufactured Home Tires

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA delays the termination date of the rule allowing the overloading of certain tires. Currently, tires used for the transportation of manufactured homes may be loaded up to 18 percent over the load rating marked on the sidewall of the tires, or in the absence of such a marking, 18 percent above the load rating specified in publications of certain organizations specializing in tires. The regulatory language allowing this overloading is scheduled to expire November 20, 2000, unless extended by mutual consent of the FMCSA and the Department of Housing and Urban Development (HUD). The delay of the termination date will enable motor carriers transporting manufactured homes to continue loading tires up to 18 percent above the load rating until December 31, 2001. In a separate document published elsewhere in today's **Federal Register**, HUD is taking the necessary action to delay its requirements for builders of manufactured homes. This action is in response to a petition for rulemaking from the Manufactured Housing Institute (MHI).

DATES: This rule is effective as of November 14, 2000.

ADDRESSES: You may submit written, signed comments, including the docket number that appears in the heading of this document, to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or submit electronically at *http://dmses.dot.gov/submit.* All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to be notified that we received your comments, you must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–1790; or Mr. Charles E. Medalen, Office of the Chief Counsel, MC–CC, (202) 366–1354, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can access this document and all documents referenced in it by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Background

On February 18, 1998, the Federal Highway Administration (FHWA) [1] and the Department of Housing and Urban Development (HUD) jointly published a final rule amending, respectively, the Federal Motor Carrier Safety Regulations (FMCSRs) and an interpretation of the Manufactured Home Construction and Safety Standards (see 63 FR 8330). The FHWA and HUD reduced the amount of tire overloading allowed (at the time up to 50 percent above the tire manufacturer's load rating) on tires used to transport manufactured homes. As a result of the rulemaking, the maximum amount of loading on a manufactured home tire was reduced so that it cannot exceed the tire manufacturer's load rating by more than 18 percent. Manufactured homes transported on tires overloaded by 9 percent or more may not be operated at speeds exceeding 80 kilometers per hour (km/hr) (50 mph). The final rule allowed 18-percent tire overloading for a two-year period. The two-year period began on November 16, 1998, the effective date of the final rule, and will end on November 20, 2000.

In publishing the final rule and interpretative bulletin, the agencies indicated there was sufficient data to support the premise that overloading tires may be potentially unsafe. The agencies also indicated that unless both of them were persuaded by the end of the 2-year period that 18 percent overloading does not pose a risk to the traveling public, or have an adverse impact on safety or the ability of motor carriers to transport manufactured homes, any overloading of tires beyond their design capacity would be prohibited after November 20, 2000.

MHI's Petition for Rulemaking

On August 7, 2000, the MHI filed a petition for rulemaking with the FMCSA and HUD to initiate a joint rulemaking to amend the agencies' rules to enable the manufactured home industry to continue to exceed the tire manufacturer's load rating by up to 18 percent, indefinitely. The MHI requested the following: (1) That the FMCSA amend 49 CFR 393.75(g), and (2) that HUD revise Interpretative Bulletin J–1–76 to 24 CFR 3280. The MHI recognized that it would be difficult, if not impossible, for the FMCSA and HUD to act on the petition and, if granted, complete the rulemaking before November 20, 2000. Therefore, the MHI also petitioned the FMCSA and HUD to provide interim regulatory relief from the November 20, 2000, deadline until the agencies could act on the petition. A copy of the MHI's petition for rulemaking is included in the docket referenced at the top of this document.

The MHI indicated that during the first 18 months of the two-year period in which 18-percent overloading was allowed, it sponsored studies of the safety risk associated with tire overloading. This work included a study of the movement of manufactured homes under actual operating conditions and a survey of principal manufacturers, transporters, and suppliers. The study involved observing and recording the results of 503 shipments of manufactured homes during a 12-month period from June 1999 through June 2000. The MHI believes the results of the study demonstrate that tire performance improved when the industry operated under the 18-percent overloading rule.

The MHI indicated that of the 3,708 tires used on the 503 manufactured home sections transported, there were 81 tire failures (a 2.2 percent tire failure rate). Only a fraction of these failures were attributed, in whole or in part, to the tires being overloaded. Of the 81 tire failures, 62 (76.5 percent) involved used tires indicating that ''repeated usage'' of tires may be more of a factor in the tire failure rate than tire overloading. The MHI believes the 2.2 percent tire failure rate represents a significant improvement given the estimated eight percent tire failure rate the FHWA and HUD presented in the April 23, 1996, notice of proposed rulemaking to establish the current tire loading rule (61 FR 18014). None of the 81 tire failures resulted in an accident causing

[1] The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, at 1750) established the FMCSA in the Department of Transportation. Rulemaking, enforcement, and other activities of the Office of Motor Carriers while part of the Federal Highway Administration, and briefly while operating indepdently of the FHWA as the Office of Motor Carrier Safety, are now the responsibility of the FMCSA.

damage to a manufactured home, other property, or personal injury. The 81 tire failures occurred on 61 of the 503 sections transported. The MHI stated:

> The dramatic decrease in tire failures attributable, in whole or in part, to tire overloading beyond tire load ratings and the total absence of any accidents resulting in damage to the manufactured home, other property, or personal injury, based upon a representative sampling of manufactured homes transported throughout the country, demonstrates the lack of any safety risk associated with the permanent removal of the November 20, 2000 ''sunset'' date for the 118% Rule.

Delay of Termination Date

The FMCSA has met with officials from HUD to discuss the MHI's request. Both agencies believe that MHI's petition and its supporting documentation warrant a thorough review, but neither is able to complete an analysis before November 20, 2000, the termination date established by the 1998 final rule. The MHI reported that the tire failures observed during its data collection effort caused no property damage or personal injury. The FMCSA and HUD have no information from other sources about accidents involving the transportation of manufactured homes equipped with overloaded tires.

The FMCSA is therefore delaying the termination date of 49 CFR 393.75(g)—which allows 18 percent overloading of tires used to transport manufactured homes—from November 20, 2000, to December 31, 2001, to enable the FMCSA and HUD to review carefully the statistical data submitted by the MHI. If the two agencies decide that up to 18 percent should be made permanent, the FMCSA will issue a notice of proposed rulemaking (NPRM) and ask for public comment. In a separate document published elsewhere in today's **Federal Register**, HUD has taken action to extend authority for builders of manufactured homes to use axle and tire configurations permitted under the 18-percent rule.

Rulemaking Analysis and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest.

In this case, notice and comment are impracticable and unnecessary. Because the MHI submitted its petition and data so late that the FMCSA and HUD were unable to perform a comprehensive review and analysis before the expiration of the 18 percent overloading rule on November 20, 2000, the FMCSA had determined that notice and comment rulemaking to evaluate the data and then extend the overloading rule would be impracticable. Notice and comment is also unnecessary since the delay does not change the substance of 49 CFR 393.75(g), and the available information suggests that the failure rate of tires used to transport manufactured homes has declined in the last two years; the failures that have occurred are not known to have caused accidents or injuries. The delay of the overloading rule to December 31, 2001, allows the agency to consider the data and request submitted by the MHI in a more orderly and thorough manner, without forcing the industry to make significant changes in their operations before we complete that process. Therefore, the FMCSA finds good cause under 5 U.S.C. 553(b) to dispense with prior notice and an opportunity to comment.

For the same reasons, the FMCSA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the final rule effective upon issuance. Because the tire overloading prohibition in § 393.75(g) becomes effective on November 20, 2000, the final rule must be effective on or before that date. The delay will remain in effect until December 31, 2001.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. The final rule delays the termination date of § 393.75(g) until December 31, 2001, retaining the current rules concerning tire loading restrictions applicable to the interstate transportation of manufactured homes. Although the 1998 final rule establishing the current requirements was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this partial delay of the final rule as a significant action. Thus, the Office of the Secretary of Transportation and OMB have concurred in the FMSCA's finding that this final rule is nonsignificant and they have declined review of this document.

Regulatory Flexibility Act

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.*) and 1996 amendments (enacted as chapter 8 of title 5, U.S. Code) because the original requirements did not have a significant effect on a substantial number of small entities, and this delay does not change those requirements. Any future regulatory action on this issue will address any economic impacts, including impact on small businesses.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FMCSA has determined that the action does not have a substantial direct effect on the States or federalism implications that would significantly limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation, though States that accept Motor Carrier Safety Assistance Program (MCSAP) funds are required to adopt compatible motor carrier safety regulations applicable to intrastate commerce, including rules compatible with those in 49 CFR Part 393. This action will not have a significant effect on the States' ability to execute traditional governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*) that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this action does not affect any requirements under the PRA.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et. seq.*) and

has determined that this action would not have any effect on the quality of the environment.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

List of Subjects in 49 CFR Part 393

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

For the reasons discussed in the preamble, the FMCSA amends title 49, Code of Federal Regulations, chapter III, part 393 as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 is revised to read as follows:

Authority: Sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.73.

2. Amend § 393.75 to revise paragraph (g) to read as follows:

§ 393.75 Tires.

* * * * *

(g) *Tire loading restrictions for manufactured homes.* Tires used for the transportation of manufactured homes (i.e., tires marked or labeled 7–14.5MH and 8–14.5MH) may be loaded up to 18 percent over the load rating marked on the sidewall of the tire or, in the absence of such a marking, 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b)). Manufactured homes which are labeled (24 CFR 3282.7(r)) on or after November 16, 1998, must comply with this requirement. Manufactured homes transported on tires overloaded by 9 percent or more must not be operated at speeds exceeding 80 km/hr (50 mph). This provision will expire on December 31, 2001, unless extended by mutual consent of the Federal Motor Carrier Safety Administration and the Department of Housing and Urban Development after review of appropriate tests or other data submitted by the industry or other interested parties.

Issued on: November 14, 2000.

Julie Anna Cirillo,

Acting Assistant Administrator.

[FR Doc. 00–29751 Filed 11–17–00; 9:53 am]

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Federal Register

Tuesday,
November 21, 2000

Part VI

Department of Housing and Urban Development

24 CFR Part 3280

Manufactured Home Construction and Safety Standards; Manufactured Home Tires; Amendment of HUD Interpretative Bulletin J–1–76; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–4622–F–01]

Manufactured Home Construction and Safety Standards; Manufactured Home Tires; Amendment of HUD Interpretative Bulletin J–1–76

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Amendment of Interpretative Bulletin.

SUMMARY: HUD is amending Interpretative Bulletin J–1–76 to remove a paragraph that references an expiration date applicable to one part of the Interpretative Bulletin. After that date the part of the Interpretative Bulletin that permits tires used to transport manufactured homes to be loaded to a maximum of 18 percent above their rated load capacity would no longer be effective. Similarly, elsewhere in today's **Federal Register**, the Federal Motor Carrier Safety Administration (''FMCSA'') of the Department of Transportation is publishing a final rule delaying the date for the expiration of its regulations permitting the same loading of tires for manufactured homes. Consistent with an earlier joint rulemaking, these actions are being taken mutually by HUD and the FMCSA in response to information that the current requirements achieve an appropriate level of safety.

EFFECTIVE DATE: November 15, 2000.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Holtz, Acting Director, Office of Consumer and Regulatory Affairs, Room 9146, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone 202–708–0502 (this is not a toll-free number). Hearing-or speech-impaired individuals may call 1–800–877–8339 (Federal Information Relay Service TTY, which is a toll-free number).

SUPPLEMENTARY INFORMATION: On February 18, 1998 (63 FR 8330), the Federal Highway Administration (''FHWA'') (the FMCSA is the successor authority for this rulemaking) amended its regulations concerning the amount of load on a manufactured home tire. On that same day and in that same publication, HUD amended its Manufactured Home Construction and Safety Standards Interpretative Bulletin that addressed the same subject (63 FR 8330, 8339).

Through these amendments, the FHWA and HUD reduced the amount of tire overloading allowed (at the time up to 50 percent above the tire manufacturers' load ratings) on tires used to transport manufactured homes. As a result of the rulemaking, the maximum amount of loading on a manufactured home tire was reduced so that it cannot exceed the tire manufacturer's load rating by more than 18 percent. Manufactured homes transported on tires overloaded by 9 percent or more may not be operated at speeds exceeding 80 km/hr (50mph). The rulemaking allowed 18 percent tire overloading for a 2-year period, which will end on November 20, 2000.

In that initial rulemaking, the FHWA and HUD indicated that unless both agencies are persuaded that 18 percent overloading does not pose a risk to the traveling public or have an adverse impact on safety or the ability of motor carriers to transport manufactured homes, any overloading of tires beyond their design capacities will be prohibited after November 20, 2000.

HUD and FMCSA have agreed that there is sufficient basis to extend the date for allowing 18 percent overloading of tires used to transport manufactured homes. Elsewhere in today's **Federal Register**, the FMCSA is publishing a final rule that delays until December 31, 2001, the termination date, after which the FMCSA regulations would not continue to permit overloading of tires. HUD is amending its Interpretative Bulletin (IB) J–1–76 to be consistent with the FMCSA action. As discussed in the FMCSA final rule, both FMCSA and HUD believe that additional time, beyond the November 20, 2000, expiration date, is needed to review available data and information more thoroughly before permanent action can be taken to define permissible loading of such tires. HUD and the FMCSA will continue to coordinate review of this matter, and interested persons are encouraged to refer to the FMCSA final rule for additional information.

In amending IB J–1–76 to remove the reference to the expiration date, HUD will continue to permit, as allowed under current law, tires used to transport manufactured homes to be inflated to a maximum of 18 percent above their rated load capacity. Because this action must be taken quickly to avoid a period of time in which the requirements intended by HUD (and the FMCSA) would not be in effect, and in which industry and the public would not be certain of the applicable requirements, HUD has deemed that it would not be in the public interest to issue this amendment of the IB for public comment. If HUD and FMCSA subsequently determine that the requirements relating to overloading of tires used to transport manufactured homes need to be changed, those changes will be adopted in accordance with law and published in the **Federal Register**.

The paragraph that is removed from Section D of IB J–1–76 currently reads:

[This Section D is effective November 16, 1998.] Manufactured homes that are labeled on or after the effective date must comply with this Section D. This provision will expire November 20, 2000, unless extended by mutual consent of the Federal Highway Administration and HUD during any subsequent rulemaking.]

Accordingly, Interpretative Bulletin J–1–76 is amended by revising Section D, as follows:

Note: This bulletin does not appear in the Code of Federal Regulations.

Interpretative Bulletin J–1–76, Transportation—Subpart J of Part 3280

* * * * *

D. Section 3280.904(b)(8)—Tires, Wheels, And Rims

Tires and rims shall be sized and fitted to axles in accordance with the gross axle weight rating determined by the manufactured home manufacturer. The permissible tire loading may be increased up to a maximum of 18 percent over the rated load capacity of the manufactured home tire marked on the sidewall of the tire or increased up to a maximum of 18 percent over the rated load capacity specified for the tire in any of the publications of any of the organizations listed in Federal Motor Vehicle Safety Standard (FMVSS) No. 119 (49 CFR 571.119, S5.1(b)).

Used tires may also be sized in accordance with the above criteria whenever the tread depth is at least 2/32 of an inch as determined by a tread wear indicator. The determination as to whether a particular used tire is acceptable shall also include a visual inspection of thermal and structural defects (*e.g.*, dry rotting, excessive tire sidewall splitting, etc.). Wheels and rims shall be sized in accordance with the tire manufacturer's recommendations as suitable for use with the tires selected.

The load and cold inflation pressure imposed on the rim or wheel must not exceed the rim and wheel manufacturer's instructions even if the tire has been approved for a higher load or inflation. Tire cold inflation pressure limitations and the inflation pressure measurement correction for heat shall be as specified in 49 CFR 393.75(h).

* * * * *

Authority: 42 U.S.C. 3535(d) and 5424.

Dated: November 15, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–29752 Filed 11–17–00; 9:53 am]

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Federal Register

Tuesday,
November 21, 2000

Part VII

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2520

Amendments to Summary Plan Description Regulations; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA69; RIN 1210–AA55

Amendments to Summary Plan Description Regulations

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule amending the regulations governing the content of the Summary Plan Description (SPD) required to be furnished to employee benefit plan participants and beneficiaries under the Employee Retirement Income Security Act of 1974, as amended (ERISA). These amendments implement information disclosure recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, as set forth in their November 20, 1997, report, ''Consumer Bill of Rights and Responsibilities.'' Specifically, the amendments clarify benefit, medical provider, and other information required to be disclosed in, or as part of, the SPD of a group health plan and repeal the limited exemption with respect to SPDs of welfare plans providing benefits through qualified health maintenance organizations (HMOs). In addition, this document contains several amendments updating and clarifying provisions relating to the content of SPDs that affect both pension and welfare benefit plans. This document also adopts in final form certain regulations that were effective on an interim basis implementing amendments to ERISA enacted as part of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This final rule will affect employee pension and welfare benefit plans, including group health plans, as well as administrators, fiduciaries, participants and beneficiaries of such plans.

DATES: The amendments contained herein will be effective January 20, 2001. Except as otherwise provided, the amendments contained herein will be applicable as of the first day of the second plan year beginning on or after January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Nalini Close, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC (202) 219–8521. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On September 9, 1998, the Department published in the **Federal Register** (63 FR 48376) proposed amendments to 29 CFR 2520.102–3 and 2520.102–5, governing the content of the Summary Plan Description (SPD). A number of these amendments were proposed to implement recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry for improved disclosure by group health plans. The Commission's recommendations were set forth in its November 20, 1997 report, entitled ''Consumer Bill of Rights and Responsibilities.'' The Department also proposed several additional amendments to the SPD requirements intended to generally update and clarify the information required to be disclosed by welfare and pension plans.

Other amendments affecting the SPD requirements were published in the **Federal Register** on April 8, 1997 (62 FR 16979). These amendments, published as interim rules, served to implement amendments to ERISA's disclosure rules enacted as part the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The interim rules addressed certain content requirements for SPDs of group health plans and the furnishing of summaries of material reductions in covered services or benefits.

After consideration of the public comments received on both the proposed and the interim rules referenced above, the Department is adopting final rules affecting the content of SPDs (§ 2520.102–3), the limited exception for SPDs of welfare plans providing benefits through a qualified HMO (§ 2520.102–5), and the furnishing of summaries of material reductions in covered services or benefits by group health plans (§ 2520.104b–3).[1] A discussion of the specific amendments and the public comments follow.

B. Amendments Relating to the Content of SPD

1. Section 2520.102–3 (d)—Type of Plan

Section 2520.102–3(d) currently requires plan administrators to specify in the summary plan description the type of welfare or pension plan they administer. In an effort to update that requirement, the Department proposed adding ''ERISA section 404(c) plans'' to the list of examples of types of pension plans and ''group health plans'' to the list of examples of types of welfare plans. One commenter expressed the view that the specific disclosures required under the regulation section governing section 404(c) plans (29 CFR 2550.404c–1(b)) should be adequate to inform participants and beneficiaries as to the nature of the plan and that, in some instances, the relief provided by section 404(c) may not extend to the entire plan. Other commenters suggested adding categories of plans to the list of examples, such as defined contribution plans, 401(k) plans, ''cash balance'' plans, etc. Upon consideration of these comments, the Department has, for purposes of the final regulation, decided to retain ''ERISA section 404(c) plan'' as an example in the list of types of pension plan, and to further add ''defined contribution plan,'' ''401(k) plan,'' and ''cash balance plan'' to that list. The list of examples is not intended to be exhaustive. Rather, section 2520.102–3(d) requires plan administrators to clearly communicate in the SPD information to participants and beneficiaries about the type of plan in which they participate and the features of such plan. In this regard, the Department notes that where section 404(c) is intended to apply to only certain aspects of a plan or where participants have the right to direct only certain investments in their account, such information should be communicated in the SPD in a clear, understandable manner. There were no comments raising concerns regarding the addition of ''group health plan'' as an example of welfare plan. Accordingly, that change is being adopted as proposed.

With regard to cash balance plans, the Department notes that two recent reports issued by the General Accounting Office (GAO) recommend changes to the SPD requirements that the GAO believes will serve to better inform participants and beneficiaries covered by such plans, or involved in a conversion to such a plan, of their rights and benefits under the plan.[2] The

[1] Rules governing the use of electronic media for distribution of SPD and similar documents will be published separately. In this regard, the Department intends to address the interim rule in 29 CFR 2520.104b–1(c) regarding the use of electronic media for furnishing SPDs, SMMs and updated SPDs to participants in group health plans in conjunction with the promulgation of a final rule on the use of electronic communications and recordkeeping technologies by employee benefit plans generally (*See* 64 FR 4506, January 28, 1999).

[2] See ''CASH BALANCE PLANS—Implications for Retirement Income'' (GAO/HEHS–00–207, dated September 29, 2000) and ''PRIVATE PENSIONS—Implications of Conversions to Cash Balance Plans'' (GAO/HEHS–00–185, dated September 29, 2000). Both GAO reports are available for viewing at www.gao.gov. The GAO's recommendations were for the Department to amend the disclosure regulations under ERISA to require that SPDs/

Department notes that the requirements governing the content of SPDs currently require the disclosure of information regarding a pension plan's requirements concerning eligibility for participation and benefits; a statement of conditions that must be met for eligibility to receive benefits; a summary of the benefits; circumstances that may result in ineligibility, loss of denial of benefits that a participant might otherwise reasonably expect the plan to provide on the basis of the description of benefits; and a description of the service required to accrue full benefits.[3] The Department further notes that the required information must be sufficiently comprehensive to reasonably apprise the plan's participants and beneficiaries of their rights and obligations under the plan and must be written in a manner calculated to be understood by the average plan participant.[4] The Department believes that the foregoing SPD provisions require a reasonably comprehensive and clear description of the provisions of a cash balance plan and how a prior conversion may have affected benefits that classes of participants may have reasonably expected the plan to provide. In this regard, the Department encourages sponsors of cash balance plans to review their SPDs to ensure compliance with current disclosure requirements. The Department, however, also shares the concerns raised by the GAO and agrees that more needs to be done to ensure that participants fully understand plan changes and the impact of such changes on their benefits under the plan. In this regard, the Department invites the views of interested persons on whether, and to what extent, changes to the SPD requirements would help ensure better communications with participants and beneficiaries about a cash balance plan and cash balance plan conversions. The Department also invites views on whether standardized language should be develop for the disclosure of such information to participants and beneficiaries. Suggestions for such language also are invited.

2. Section 2520.102–3(j)—Eligibility for Participation and Benefits

a. Procedures Governing QDRO and QMCSO Determinations

The Department proposed to amend § 2520.102–3(j)(1) to require that the SPD of a pension plan include either a description of the plan's procedures governing qualified domestic relations order (QDRO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator. Similarly, the Department proposed amending paragraph (j)(2) to require that the SPD of group health plans include either a description of the plan's procedures governing qualified medical child support order (QMCSO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan. The Department did not receive any comments requesting modification of these provisions; accordingly, these amendments are being adopted as proposed.

b. Pension Plan Disclosures

A number of commenters suggested that paragraph (j)(2) of § 2520.102–3 be changed to expressly require plan administrators to explain in pension plan SPDs the difference between the plan's requirements for eligibility to participate in a plan and the requirements for eligibility to receive benefits. These commenters stated that many participants in pension plans do not understand that satisfying eligibility requirements to participate in a plan does not necessarily mean that the participants are necessarily vested in the benefits provided by the plan. The current regulation requires that pension plan SPDs describe ''the plan's provisions relating to eligibility to participate in the plan, such as age or years of service requirements,'' and include ''a statement describing any other conditions which must be met before a participant will be eligible to receive benefits.'' Accordingly, it is the Department's view that the current regulation already requires that SPDs include a description, written in a manner calculated to be understood by the average plan participant, both of the requirements for eligibility to participate in a plan and of any additional conditions for eligibility to receive benefits. The Department, therefore, has determined that the requested clarification is not necessary.

c. Group Health Plan Disclosures

In responding to recommendations of the Health Care Commission, the Department proposed amending paragraph (j) of § 2520.102–3 to add a new subparagraph (3) clarifying the information that must be included in the SPD of a group health plan.[5] Specifically, subparagraph (3), as proposed, would require that the SPD of a group health plan describe: any cost-sharing provisions, including premiums, deductibles, coinsurance, and copayment amounts for which the participant or beneficiary will be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive services are covered under the plan; whether, and under what circumstances, existing and new drugs are covered under the plan; whether, and under what circumstances, coverage is provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network and whether, and under what circumstances, coverage is provided for out-of-network services; any conditions or limits on the selection of primary care providers or providers or specialty medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan. Subparagraph (3) also provided that, in the case of plans with provider networks, the listing of providers may be furnished to participants and beneficiaries as a separate document, provided that the SPD contains a general description of the provider network and indicates that provider lists are furnished, without charge, in a separate document. In discussing the new subparagraph (3) in the preamble to the proposal, the Department expressed its view that the information more specifically delineated in the new subparagraph is already required to be disclosed pursuant to paragraph (j)(2) of § 2520.102–3, and that the amendment is merely intended to remove any ambiguity as to the disclosure

SMMs include: (i) a clear statement regarding the difference between the hypothetical account balance and the accrued benefit payable at normal retirement age under the cash balance plan; (ii) specific information about the impact timing of interest crediting has on deferred pension benefits for terminating workers; (iii) standardized language providing plan participants with their rights to contact PWBA and/or IRS if they are unable to understand the information provided and the relevant addresses and telephone numbers necessary for such contacts; (iv) a clear statement regarding the hypothetical nature of cash balance accounts, including that employees do not own the accounts and how such accounts differ from any defined contribution accounts an employer may also provide; and (v) a clear statement identifying the potential of the conversion to reduce future pensions accruals and early retirement benefits and under what circumstances such reductions are likely to occur.

[3] See: 29 CFR 2520.102–3(j), (l), and (n), respectively.

[4] See: 29 CFR 252.102–2(a).

[5] The term ''group health plan'' is defined in ERISA section 733(a).

requirements applicable to group health plans.

The Department received a number of comments relating to the requirements of proposed paragraph (j)(3). While many commenters agreed that much of the information delineated in the proposal is currently provided to participants and beneficiaries, a number of the commenters indicated that the information is not provided as part of an SPD. In this regard, commenters expressed concern that requiring specific detailed information relating to covered drugs, preventive services, cost-sharing provisions, and provider networks to be included in the SPD itself will be burdensome and costly to plans and not helpful for participants and beneficiaries. Some commenters indicated that having to amend SPDs to reflect frequent changes in specific benefits, such as the addition of new drugs, medical tests or devices, would also increase burdens and costs for plans. Other commenters expressed concern about having to provide all plan participants and beneficiaries with an SPD containing all the required disclosures when the plan provides different insurance or HMO options or different premium or cost-sharing provisions applicable to different categories of participants.

Under ERISA, the SPD is the primary vehicle for informing participants and beneficiaries about their rights and benefits under the employee benefit plans in which they participate. It is the view of the Department, therefore, that the SPD is the appropriate vehicle for providing participants and beneficiaries the information described in proposed paragraph (j)(3). It is important to note, however, that the Department did not intend paragraph (j)(3) to be construed as requiring the SPD to list each and every drug, test, device, or procedure covered by a group health plan. Rather, paragraph (j)(3) is intended to ensure that SPDs adequately inform participants and beneficiaries whether and under what circumstances the benefits referenced in paragraph (j)(3) will or will not be covered by the plan, and to direct participants and beneficiaries as to where additional information may be obtained, free-of-charge, about plan coverage of a specific benefit, i.e., a particular drug, treatment, test, *etc.* It is the view of the Department that paragraph (j)(2) of § 2520.102–3 continues to govern the required disclosure of detailed schedules of benefits, including schedules and listings of specific preventive services, drugs, tests, devices, procedures, and other benefits described in (j)(3), by group health plans. In this regard, § 2520.102–3(j)(2) provides, among other things, that ''[i]n the case of a welfare plan providing extensive schedules of benefits (a group health plan, for example) only a general description of such benefits is required if reference is made to detailed schedules of benefits which are available, without cost to any participant or beneficiary who so requests.''

The Department also believes that its current law and regulations provide group health plans with sufficient flexibility so that they will not have increased burdens and costs resulting from having to amend SPDs to reflect frequent changes in specific benefits, such as the addition of new drugs, medical tests or devices. Rather, to the extent that there is a material modification in the terms of the plan or a change in the information required to be included in the SPD, ERISA section 104(b)(1) and the Department's regulations allow the administrator to furnish participants covered under the plan and beneficiaries receiving benefits with a summary of material modification, or SMM.

A few commenters requested that Department define specific itemized terms, such as ''preventive services'' and ''provider network.'' Because the meaning of such terms or concepts may vary from plan to plan, the Department believes that, in the context of describing covered benefits, such terms are best defined by reference to applicable plan provisions, rather than by regulation. Accordingly, the Department has not adopted these suggestions.

With regard to descriptions of group health plan provisions requiring preauthorization or utilization review as a condition to obtaining a benefit or service under the plan, the Department notes that, while only a summary of these provisions is required, the summary must be sufficient to apprise participants and beneficiaries of their rights and obligations under such provisions. With regard to the disclosure of cost sharing information, the Department notes that, while specific premium amounts would not have to be disclosed in the SPD, the SPD must clearly communicate the circumstances and extent to which participants and beneficiaries will be liable under the plan for premiums, deductibles, copayments, etc. Deductibles, copayments, benefit caps or limits on the benefits payable under the plan should be set forth in sufficient detail to reasonably enable participants and beneficiaries to assess their responsibility for medical care, hospital and other costs under the plan.

For the above reasons, the Department does not believe that requiring inclusion of the benefit information described in paragraph (j)(3) will either impose undue burdens on plans or undermine the usefulness of the SPD for plan participants and beneficiaries. To the contrary, the Department believes that inclusion of such information in the SPD is necessary to ensure that participants and beneficiaries are provided basic information concerning their plan's coverage of preventive medical services, drugs, tests , devices, etc., even if more detailed information concerning specific benefits is available on request.

The Department continues to believe, however, that, unlike schedules and listings of specific benefits that may be furnished upon request, complete listings of network providers should be furnished automatically to each participant and beneficiary. The Department believes that, where the availability of specific medical services or benefits under a plan may depend in whole or in part on knowing the specific service provider from whom services may be obtained, the selection of a service provider becomes a particularly significant benefit decision. The Department believes that, under such circumstances, participants and beneficiaries will be in the best position to evaluate and assess their medical provider options when they can review a complete listing of the providers available to them under the terms of the plan, rather than having to inquire on a service-by-service or provider-by-provider basis. For this reason, the Department is retaining the requirement that detailed provider lists be furnished automatically, without charge, to participants. The Department recognizes, however, that requiring all providers to be listed in an SPD may undermine the usefulness of SPDs as a disclosure document. The Department, therefore, is also retaining the proposed provision in paragraph (j)(3) permitting the network provider listings to be furnished in a separate document, provided that the SPD contains a general description of the provider network and, as noted, that provider lists are furnished automatically, without charge.

In response to commenter concerns about having to provide participants and beneficiaries with an SPD containing detailed benefit, premium, network provider, and other information that may not be equally relevant to all participants and beneficiaries, the Department notes that plan

administrators may utilize different SPDs for different classes of participants and beneficiaries, as described at 29 CFR 2520.102–4. In general, the regulation provides that where an employee benefit plan provides different benefits for various classes of participants and beneficiaries, the plan administrator may fulfill the requirement to furnish an SPD by furnishing each class of participant and beneficiary a copy of the SPD appropriate to that class. The regulation further provides that, while the SPD may omit information not applicable to the class of participants and beneficiaries to which it is furnished, the SPD must clearly identify on the first page of text the class of participants and beneficiaries for which the SPD was prepared and the plan's coverage of other classes. It is the view of the Department that where a plan has varying premium structures or benefits for different classes of participants and beneficiaries, different SPDs can be prepared and furnished in accordance with § 2520.102–4. For example, for purposes of § 2520.102–4, participants and beneficiaries may be classified by the benefit coverages they select under the plan (e.g., fee-for-service option or HMO option), thereby permitting separate SPDs to be prepared for each coverage option available under the plan.

3. Section 2520.102–3(1)—Disclosure of Plan Termination Information

The Department proposed to amend paragraph (1) of § 2520.102–3 to incorporate principles set forth in Technical Release 84–1 and to clarify the application of those principles to plan amendments. Specifically, the proposal would require that SPDs include the following information: (1) A summary of any plan provisions governing the authority of the plan sponsor or others to terminate the plan or to eliminate, in whole or in part, benefits under the plan, and the circumstances, if any, under which the plan may be terminated and benefits amended or eliminated; (2) a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination of the plan; and (3) a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination of the plan.

Several commenters argued against adopting this provision on the basis that it would be difficult for plan administrators to anticipate and describe in an SPD all the possible circumstances under which plans may be terminated or benefits eliminated. The Department does not view the proposed amendment of paragraph (1) as requiring an exhaustive listing or description of every circumstance that might result in the elimination of benefits or termination of the plan. Rather, SPDs should include a clear, understandable summary of the sponsor's authority under the plan, as well as limitations thereon, to eliminate benefits or terminate the plan. The level of detail provided in the SPD, however, may vary depending on the nature of the plan and the plan provisions involved. The Department continues to believe, as it has since the issuance of Technical Release 84–1, that the disclosure of the information relating to the circumstances under which benefits might be eliminated or the plan terminated, and the effects of such actions on benefits, is of significant importance to participants and beneficiaries. For this reason, the Department is adopting, without change, the proposed amendment to paragraph (1) of § 2520.102–3.

A few commenters suggested that the regulations should prohibit conflicts between provisions of the SPD and the plan document by requiring the use of clear terminology and definitions, prohibiting the use of disclaimers in SPDs, and providing that ambiguous SPD provisions will be interpreted against the drafter. To the extent these comments concern the understandability of SPDs to plan participants and beneficiaries, the Department believes that its current general standards on style and format of SPDs in 29 CFR 2520.102–2 are appropriate and further regulatory guidance is not necessary. Some of these comments, such as the request to prohibit ''disclaimers'' in SPDs and establishing a rule calling for interpreting ambiguous provisions in SPDs against the drafter, raise issues that are beyond the scope of these SPD regulations.

Several commenters suggested that the Department clarify the requirement regarding disclosure of subrogation provisions in a plan's SPD. It is the Department's view that subrogation, reimbursement, and other provisions of a plan that may serve to eliminate, reduce, offset or otherwise adversely affect the amount of benefits to which a participant or beneficiary is entitled must be disclosed in the SPD pursuant to § 2520.102–3(l). Similarly, it is the view of the Department that, for purposes of satisfying § 2520.102–3(l), the SPD must include a description of any fees or charges that may be imposed on a participant or beneficiary, or their individual account, as a condition to receiving a benefit, inasmuch as any such fee or charge may, directly or indirectly, serve to reduce the benefits the participant or beneficiary might otherwise reasonably expect to receive. Paragraph (l) has been clarified in this regard.

4. Section 2520.102–3(m)—PBGC Coverage

Section 2520.102–3(m) requires pension plan SPDs to include a statement indicating whether benefits of the plan are insured under Title IV of ERISA and, if insured, a description of the pension benefit guaranty provisions of Title IV and a statement indicating that further information can be obtained from the plan administrator or the Pension Benefit Guaranty Corporation (PBGC). The regulation provides that a SPD is deemed to meet the requirements of paragraph (m)(2) if it includes a model statement included in the regulation. The Department proposed to amend the model statement in accordance with changes provided by the PBGC to more accurately reflect the benefits guaranteed under Title IV, as well as update the information relating to the PBGC.

A commenter stated that the model statement was not appropriate for use in SPDs of multiemployer plans because a broader range of circumstances can give rise to a plan termination and the level of guaranteed benefits may be substantially below the level of benefits promised under the plan. In response to this comment, the PBGC prepared separate model statements for single-employer plans and multiemployer plans, and the Department modified the proposal to include the model statement for single-employer plans in paragraph (m)(3) and the model statement for multiemployer plans in paragraph (m)(4).

5. Section 2520.102–3(o)—COBRA Rights

Under the proposal, paragraph (o) of § 2520.102–3 would be amended to address the requirement that participants and beneficiaries in group health plans subject to the COBRA continuation coverage provisions of Part 6 of Title I of ERISA be provided information concerning their rights and obligation under those provisions.

Two commenters expressed concern about having to provide detailed COBRA information in the SPD. One of the commenters suggested permitting the information to be furnished in a separate document, like the disclosures permitted with respect to QDRO and QMCSO determination procedures. The COBRA provisions confer important substantive rights upon participants and beneficiaries concerning the continuation of their health plan coverage. For this reason, the Department continues to believe that participants and beneficiaries should be informed about these rights, and their obligations with respect to the exercise of these rights, in the summary plan description. The Department, therefore, is adopting the proposed amendment of paragraph (o) of § 2520.102–3 without change.

One commenter requested a clarification as to whether the section 606(a)(1) COBRA notice provided through the SPD should be provided at the time the participant first becomes covered under the plan or when the participant becomes eligible for COBRA continuation coverage. Pursuant to ERISA section 104(b)(1), and the Department's regulations issued thereunder, an administrator must distribute an SPD within 90 days of an individual's becoming a participant or beneficiary under the plan. ERISA section 606(a)(1), however, requires group health plans to provide covered employees and spouses, if any, with notification of their COBRA rights at the time of commencement of coverage under the plan, i.e., when the individual becomes a participant or beneficiary. As noted in the preamble to the proposed regulation, the Department has taken the position that the disclosure obligation under section 606(a)(1) will be satisfied by furnishing to the covered employee and spouse, at the time coverage commences under the plan, an SPD that includes the COBRA continuation coverage information required by section 606(a)(1).[6]

Two commenters raised issues concerning spousal notification. One commenter inquired whether hand delivery of an SPD with COBRA information to a participant at a worksite location with written instructions to share the SPD with the spouse would satisfy the section 606(a)(l) disclosure requirement. The other commenter expressed concern that including COBRA information in the SPD may lead some to conclude that spousal notification is not required. The mere fact that COBRA information is required to be set forth in the SPD does not relieve group health plan administrators from their obligation to provide notice to an employee's covered spouse under 606(a)(1). The Department, however, has taken the position that where a spouse's last known address is the same as the covered employee's, a single mailing of the required COBRA disclosure (which could be in the form of an SPD), addressed to both the employee and the spouse, will constitute good faith compliance with the COBRA notice requirements of section 606(a)(1) (*See* Technical Release No. 86–2). It is the view of the Department that, in the absence of specific contrary regulations, in-hand delivery to an employee at his or her worksite location of an SPD containing COBRA information would not constitute adequate notice to the spouse of that employee for purposes of section 606(a)(1).

6. Section 2520.102–3(q)—Funding Medium Information for Group Health Plans

On April 8, 1997, the Department published in the **Federal Register** (62 FR 16970) an amendment to paragraph (q) of § 2520.102–3 implementing statutory changes to the SPD disclosure requirements enacted as part of the Health Insurance Portability and Accountability Act of 1996. The amendment was intended to ensure that SPDs clearly inform participants and beneficiaries about the role of health insurance issuers in their group health plan, particularly in those cases where the plan is self-funded and an insurer is serving as a contract administrator or claims payor, rather than as an insurer. In the preamble to the September 9, 1998, proposed SPD amendments (63 FR 48386), the Department noted that it intended to adopt paragraph (q) as a final regulation in conjunction with the adoption of other amendments to the SPD requirements.

One commenter suggested that paragraph (q) should require that SPDs include an explanation of the importance of whether health benefits provided by a plan are guaranteed by an insurer, including a disclosure that participants and beneficiaries in self-insured group health plans do not have access to the consumer protections afforded to participants and beneficiaries of plans utilizing state-licensed insurers and HMOs (for example, solvency requirements and governmental administrative assistance in the event of disputes over coverage). The Department does not believe that the SPD is the appropriate vehicle for comparing various types of funding arrangements, without regard to whether such arrangements are actually utilized by the plan. The Department, therefore, is adopting paragraph (q) of § 2520.102–3, without change and as it was adopted in interim form, as a final rule.

7. Section 2520.102–3(s)—Claims Procedure Information

The Department proposed to amend paragraph (s) of § 2520.102–3 to make clear that the claims procedure in the SPD of a group health plan must include any plan procedures for preauthorization, approval, or utilization review. The proposed amendment also made clear that a plan is not precluded from furnishing the plan's claims procedures as a separate document that accompanies the plan's SPD, provided that the separate document satisfies the style and format requirements of § 2520.102–2, and, provided further that the SPD contains a statement that the plan's claims procedures are furnished automatically, without charge, as a separate document. While commenters generally supported the provision allowing the plan's claims procedures to be provided in a separate document, a few commenters argued that, given the importance of the claims procedures to participants and beneficiaries, the full claims procedures should be required to be in the SPD.

The Department agrees that the procedures governing a plan's benefit claims and appeal processes are of critical importance to participants and beneficiaries. The Department also recognizes that requiring incorporation of detailed claims procedures in the SPD, which contains a wide variety of benefit-related information, may in some instances minimize the importance of the procedures or overwhelm some participants. It is the view of the Department that the proposed conditions for utilizing a separate document for purposes of disclosing a plan's benefit claims and appeals procedures will ensure that participants and beneficiaries receive clear and complete information about their plan's benefit claims procedures, while providing plan administrators the flexibility to choose which method of communication, integration in an SPD or furnishing a separate document with the SPD, will best serve their plan's participants and beneficiaries. The Department, therefore, is adopting the

[6] The Department is currently considering the issuance of additional guidance, in form of regulations, that would serve to clarify the information disclosure and notification requirements under the continuation coverage provisions of Part 6 of Title I, including the requirements of section 606(a)(1) of ERISA.

proposed amendment to paragraph (s) of § 2520.102–3 without change.

8. Section 2520.102–3(t)—Statement of ERISA Rights

The proposal would amend paragraph (t)(2) of § 2520.102–3 to improve and update the model statement of ERISA rights that plans may use to satisfy the requirement to furnish participants and beneficiaries with the statement of ERISA rights described in section 104(c) of the Act. Specifically, the Department proposed to amend the model statement to incorporate references to participant rights under the COBRA continuation provisions of Part 6 of ERISA and the portability provisions of Part 7 of ERISA. The proposal also would extend to all employee benefit plans the model statement changes applicable to group health plans on an interim basis as a result of amendments to ERISA enacted as part of the Health Insurance Portability and Accountability Act of 1996. It does so with the addition of a sentence to the model statement directing participants and beneficiaries who have questions about their ERISA rights to the nearest office of the Pension and Welfare Benefits Administration or the Division of Technical Assistance and Inquiries in Washington, D.C. Other changes to the statement include: modifying the reference of ''up to $100 a day'' to ''up to $110 a day,'' to reflect the fact the civil monetary amount under ERISA section 502(c)(1) has been increased to take inflation into account, as required by the Debt Collection Improvement Act of 1996; [7] clarifications to the language discussing the types of documents participants and beneficiaries have the right to examine and receive copies of upon request; the addition of a sentence indicating that issues involving the qualified status of domestic relations orders and medical child support orders may be resolved in Federal court; and clarifying the rights of participants and beneficiaries under the plan's claims procedures.

A number of commenters suggested that the style and readability of the model statement could be improved by, for example, varying font sizes and using headings and indented text. Other commenters suggested that the Department include information concerning the availability of Departmental assistance in obtaining SPDs and copies of plan documents, while others requested that the Department include a statement urging participants and beneficiaries to contact their plans before filing complaints with the Department or suing regarding problems with claim denials or issues on benefit entitlements.

In response to these comments, the Department has added headings to the model statement that are intended to make the statement easier to read. Administrators are encouraged to explore other steps that might be taken to enhance readability, without compromising or undermining the substantive information provided in the model statement. The Department also has modified the proposed model statement to include provisions informing participants and beneficiaries that they may obtain copies of annual reports (Form 5500s) filed for their plan from the Public Disclosure Room of the Pension and Welfare Benefits Administration (PWBA) and a notice that assistance is available from PWBA's regional offices in obtaining from plan administrators documents under which the plan is established or operated.

With respect to the suggestion that participants be encouraged to contact their plans about claims and benefit issues prior to contacting the Department of Labor, the Department believes that language of the proposed statement—directing plan questions to the plan administrator—provides direction to plan participants without inhibiting their pursuing issues with the Department. Accordingly, no changes to the model statement are being made in this regard.

9. Section 2520.102–3(u)—Newborns' and Mothers' Health Protection Act Disclosure

On September 9, 1998, the Department published in the **Federal Register** (63 FR 48372) a revised interim rule setting forth the information required to be disclosed in the SPD concerning the provisions of the Newborns' and Mothers' Health Protection Act (Newborns' Act), codified at section 711 of ERISA. A concern was expressed to the Department that the interim rule in § 2520.102–3(u) required all Title I group health plans to include information in their SPDs about federal law requirements under the Newborns' Act while section 711(f) provides an exception from those requirements for health insurance coverage in certain states. Specifically, section 711(f) provides that the requirements of section 711 shall not apply with respect to health insurance coverage if a state law regulating the coverage: (1) requires such coverage to provide for at least a 48-hour hospital length of stay following a vaginal delivery and at least a 96-hour hospital length of stay following a cesarean section; (2) requires such coverage to provide for maternity and pediatric care in accordance with guidelines established by the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, or other established professional medical associations; or (3) requires, in connection with such coverage for maternity care, that the hospital length of stay for such care is left to the decision of (or required to by made by) the attending provider in consultation with the mother. The commenter expressed concern that participants and beneficiaries could be confused by an SPD disclosure describing federal law requirements in situations where only state law applies.

The Department agrees that plans that are exempt from the federal law requirements of section 711 because state law requirements apply should be able to focus their SPD disclosure on the applicable state law requirements for hospital length of stay following newborn deliveries. The final rule therefore modifies the requirement in § 2520.102–3(u) to provide that, for a group health plan, as defined in section 733(a)(1) of the Act, that provides maternity or newborn infant coverage, the SPD must contain a statement describing the federal or state law requirements applicable to the plan or any health insurance coverage offered under the plan, relating to hospital length of stay in connection with childbirth for the mother or newborn child. The final rule makes it clear that if federal law applies in some areas in which the plan operates and state laws apply in others, the SPD must describe the federal and state law requirements that apply in each area covered by the plan. The final rule also sets forth a model statement that group health plans subject to section 711 of the Act may use to comply with paragraph (u) of this section relating to the required description of federal law requirements.

C. Repeal of Limited Exemption for SPDs of Plans Providing Benefits Through a Federally Qualified HMO

The proposal would repeal the limited exemption, at 29 CFR 2520.102–5, for SPDs of welfare benefit plans providing benefits through a qualified HMO, as defined in section 1310(d) of the Public Health Act, 42 U.S.C. 300e–9(d). Such SPDs are not required to include the information described in §§ 2520.102–3(j)(2), (l), (q) and (s), provided certain conditions are met. Several commenters objected to the repeal of § 2520.102–5, expressing concern that this change would result in

[7] *See* 62 FR 40696 (July 29, 1997).

voluminous and unhelpful SPDs. Specifically, they stated that HMOs already provide much of the information described in §§ 2520.102–3(j)(2), (l), (q), and (s) directly to participants and beneficiaries, that a typical group health plan could provide a choice among benefits under a large number of different HMOs, and, in such a case, the plan's SPD would have to include extensive and, for some participants and beneficiaries, potentially irrelevant information on each of the HMOs. Commenters also argued that HMO information changes frequently, which would require frequent amendment to SPDs. The elimination of § 2520.102–5 would, according to those commenters, result in increased plan expenses. Other commenters complained that it would be unfair to require plan administrators to be responsible for providing information on HMOs to participants and beneficiaries because typical HMO contracts preclude the employer from having access to such information.

The Department continues to believe that, given the legislative and other changes affecting the operation of group health plans since the adoption of § 2520.102–5 in 1981,[8] the information required to be disclosed through the SPD and summaries of changes thereto are as important to participants and beneficiaries electing coverage through a federally qualified HMO as any other group health plan participant or beneficiary. The Department is not convinced that the disclosure obligations otherwise applicable to federally qualified HMO are adequate to ensure that participants and beneficiaries receive both timely and useful information.

Moreover, as noted earlier, plan administrators may, pursuant to § 2520.102–4, utilize different SPDs for different classes of participants within a single plan. Where a group health plan offers multiple benefit options, it is the view of the Department that participants and beneficiaries may be classified by the benefit coverages they elect under the plan (e.g., fee-for-service option or HMO option), thereby permitting separate SPDs to be prepared pursuant to § 2520.102–4 for each coverage option available under the plan. The Department believes that this flexibility permits plan administrators to avoid the problems raised by commenters, while ensuring that participants and beneficiaries receive relevant information about their coverage. With respect to the comments expressing concern about administrators being responsible for the information provided about federally qualified HMOs, the Department notes that administrators currently are responsible for the information provided to participants and beneficiaries under non-federally qualified HMO coverage and benefit options offered by group health plans. For the reasons discussed above, the Department continues to believe that extending that same responsibility to the information provided about federally qualified HMOs is appropriate.

Finally, certain commenters argued that the proposal exceeded the Department's authority because it is the option to join the HMO that is the plan benefit and not the medical coverage provided by the HMO. Therefore, the commenters contended, the only HMO information that the Department can require to be included in the SPD is information regarding eligibility to join the HMO. The Department disagrees with this view. As the Department stated in the preamble to its 1981 rule providing limited relief to welfare benefit plans that include membership in a qualified HMO as an option, ERISA applies to a plan that offers benefits listed under section 3(1) of ERISA, regardless of whether the benefits are offered through a qualified HMO or otherwise. *See* 46 FR 5882 (January 21, 1981).

As a result, the Department is adopting the proposal without change.

D. Amendments Relating to Furnishing Summaries of Material Reductions in Covered Services or Benefits

Section 104(b)(1) of ERISA requires, among other things, that the administrator furnish to each participant, and each beneficiary receiving benefits under the plan, copies of modifications in the terms of their plans and changes in the information required to be included in the SPD not later than 210 days after the end of the plan year in which the change is adopted. Section 101(c)(1) of HIPAA amended ERISA section 104(b)(1) to provide that, in the case of any modification or change that is a ''material reduction in covered services or benefits provided under a group health plan,'' participants and beneficiaries must be furnished the summary of such modification or change not later than 60 days after the adoption of the modification or change, unless the plan sponsor provides summaries of modifications or changes at regular intervals of not more than 90 days.

On April 8, 1997, the Department published an interim rule (62 FR 16985) amending 29 CFR 2520.104b–3 by adding a new paragraph (d) to implement the statutory change to section 104(b)(1). Specifically, section 2520.104b–3(d)(1) provides that summaries of any modification to the plan or change in the information required to be included in the SPD that is a material reduction in covered services or benefits must be furnished by administrators of group health plans to each participant covered under the plan, and each beneficiary receiving benefits under the plan, not later than 60 days after the date of adoption of the modification or change. Section 2520.104b–3(d)(2) provides that the 60-day period for providing such summaries does not apply to any participant or beneficiary who would reasonably be expected to be furnished such summary in connection with a system of communication maintained by the plan sponsor or administrator, with respect to which plan participants and beneficiaries are provided information concerning their plan, including modifications and changes thereto, at regular intervals of not more than 90 days. Section 2520.104b–3(d)(3)(i) defines a ''material reduction in covered services or benefits'' to mean any modification to the plan or change in the information required to be included in the SPD that, independently or in conjunction with other contemporaneous modifications or changes, would be considered by the average plan participant to be an important reduction in covered services or benefits. To facilitate compliance, paragraph (d)(3)(ii) set forth a listing of modifications or changes that generally would constitute a ''reduction in covered services or benefits.''

One commenter expressed confusion over the requirement to provide these disclosures to ''beneficiaries receiving benefits under the plan'' given the fact that pursuant to 29 CFR 2520.104b–2 only beneficiaries receiving benefits under a pension plan are required to be furnished a summary plan description. While the included language regarding beneficiaries tracks the language of § 2520.104b–3(a), the Department agrees with the commenter that the reference to ''beneficiaries receiving benefits under the plan'' appears to conflict with other regulatory provisions that indicate that beneficiaries receiving benefits under a welfare plan are excepted from the disclosure requirement. In addition to the provisions in § 2520.104b–2 noted by the commenter, the Department notes that 29 CFR 2520.104b–1(a), governing the furnishing of documents required to be furnished by direct operation of law

[8] *See* 46 FR 5884, January 21, 1981.

(such as SPDs and SMMs), specifically excepts from that disclosure obligation ''beneficiaries under a welfare plan.'' Accordingly, the Department is eliminating the reference to ''each beneficiary receiving benefits under the plan'' from paragraph (d) of § 2520.104b–3. The Department, nonetheless, would be interested in receiving comments from interested persons on whether, and under what circumstance, the current regulations should be amended to require disclosure of SPD and related information to beneficiaries receiving benefits under a welfare plan.

With respect to the provision in the interim rule defining ''material reduction in covered services or benefits,'' one commenter suggested that the ''average plan participant'' standard contained in the definition is too strict for chronically ill patients. Another commenter recommended that the Department adopt a standard that is more objective and easier to ascertain. The ''average plan participant'' standard has been the standard that plan administrators have used for more than twenty years in determining whether an SPD satisfies the requirements of § 2520.102–2(a). That general standard is warranted because of the variety of plan participants and the impossibility of adopting a standard that accounts for all of the circumstances of individual plan participants. Therefore, it is the Department's view that the ''average plan participant'' standard should be used in determining whether a modification or a change is a material reduction in covered services or benefits.

E. Applicability Dates

The Department expressed its view in the proposal that the information delineated in paragraph (j)(3), applicable to group health plans, paragraph (j)(1) and paragraph (l) of § 2520.102–3 is currently required to be disclosed under the disclosure framework of ERISA. Accordingly, the Department considered the proposed addition of the new paragraph (j)(3) and the amendment of paragraphs (j)(1) and (l) as clarifications of existing law, rather than new disclosure requirements. With regard to the other proposed amendments, the Department proposed to require plans to comply with the new requirements no later than the earlier of: (1) The date on which the first summary of material modification (or updated SPD) is required to be furnished participants and beneficiaries following the effective date of the amendments or (2) the first day of the second plan year beginning after the effective date of the final rule.

Several commenters disagreed with the Department's view of paragraphs (j)(3), (j)(1) and (l) of § 2520.102–3, and requested additional time to comply with these paragraphs of the regulation. Commenters also asked the Department to coordinate the applicability date of these regulations with that of the Department's final regulations governing plans' benefit claims procedures to make it possible for plans to coordinate the revision of their claims procedures with the revision of their SPDs. Additionally, one commenter suggested coordinating the applicability date of this regulation with the date that qualified plans subject to ERISA must be restated under the Small Business Jobs Protection Act (SBJPA) and the Taxpayer Relief Act of 1997 (TRA '97). The commenter expressed concern that if the applicability date is not coordinated, many plans may have to revise their SPDs twice in a very short period of time leading to confusion and needless expenditure of plan assets.

The Department continues to adhere to its view that the information delineated in paragraphs (j)(3), (j)(1) and (l) of § 2520.102–3 is currently required to be disclosed under the existing disclosure framework of ERISA. In response to the other comments, however, the Department has determined to modify the proposal and to adopt a single applicability date for the new SPD disclosures in the proposal. Specifically, plans will be required to comply with the new SPD content requirements being adopted in this regulation no later than the first day of the second plan year beginning after the effective date of the final rule.

Finally, the interim rules that are being finalized in this notice are already effective, and accordingly, a special applicability date is not required. Rather, the special applicability dates for the interim rules codified in paragraph (v) of § 2520.102–3 are obsolete and, accordingly, are being removed as part of this final rule.

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 Executive Order 12866, it has been determined that this action is consistent with the President's priorities with respect to ensuring that all participants in group health plans receive understandable information about their plans, as described in the report of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry entitled, ''Consumer Bill of Rights and Responsibilities.'' The added cost estimated to be associated with the amendments to existing regulations implemented in this final rule total $208 million in 2002, the year in which these amendments are expected to be applicable for the majority of plans. Therefore, this notice is ''significant'' and subject to OMB review under Sections 3(f)(1) and 3(f)(4) of the Executive Order.

Accordingly, the Department has undertaken to assess the costs and benefits of this regulatory action. The Department's assessment, and the analysis underlying that assessment, is detailed following the statements concerning the Regulatory Flexibility Act and the Paperwork Reduction Act.

The Consumer Bill of Rights and Responsibilities states that, ''Consumers have the right to receive accurate, easily understood information about their health plans, facilities and professionals to assist them in making informed health care decisions.'' The purpose of this final rule is to implement this principle within the framework of existing disclosure requirements under ERISA, based on the September 9, 1998 proposal and comments received in response, as well as to generally update the disclosure requirements for both welfare and pension plans.

Currently available information supports the conclusion that many group health plans already provide the majority of information identified in these amendments, including benefits and limitations, whether drug formularies are used and how drugs and

procedures are deemed experimental, information on cost sharing, and appeal procedures.[9] Comments received in response to the proposal support this conclusion as well, although they point out, and the respondents to the GAO survey included in its report on the Commission's disclosure recommendations agree, that some group health plans rely on a combination of documents to make disclosures. However, it is understood that while many plans may conform with or exceed a minimum standard of information disclosure, some portion of the very large number of group health plans do not currently meet this standard. To the extent that plans do not currently provide the required information, they will be caused by these amendments to revise their disclosure documents and distribute additional or modified information to participants.

Although the amendments pertinent to pension plans are substantially more limited, many are expected to require certain additions or revisions to their disclosure documents as a result of this final rule. It is anticipated that these revisions will be readily made either in connection with routine updating of these documents, or through distribution of an SMM.

Based on the applicability date of the final rule, and an assumption as to current compliance, it is estimated that approximately 30 percent of pension plans and 50 percent of group health plans will be required to modify and distribute revised disclosure materials by the end of calendar year 2002. The expenses expected to be associated with the preparation and distribution of these additions and revisions are relatively easily quantified, and constitute the estimated cost of the regulation.

The Department estimates the cost of these amendments to be $47 million in 2001, rising to $208 million in 2002, falling to $24 million in 2003 and in each year thereafter. The peak cost in 2002 reflects $32 million for the preparation of 155,000 different SPDs describing 1.2 million pension and welfare plans and $176 million for the distribution of those SPDs to 36 million participants. The variation in cost over this period reflects the interaction of the final rule's effective date with the distribution of the recordkeeping years used by pension and health plans years across the months of the year. Because more than half of plans use a calendar plan year, the final rule will be effective for a majority of plans in 2002. It is also assumed that plans that would be making changes to their disclosure materials prior to 2002, even absent the final rule, will elect to make both those changes and revisions necessary as a result of this final rule at the same time.

The benefits of the regulation are more qualitative in nature, but are nevertheless significant for participants and beneficiaries, plan sponsors, and the performance of the health care system in general. The regulation will ensure that participants have better access to more complete information about their benefit plans. Such information is important to participants' ability to understand and secure their rights under their plans at critical decision points, such as when illness arises, when they must decide whether to participate in a plan, or when they must determine which benefit package option might be most suitable to individual or family needs. Participants generally desire health care benefits which support their health and limit their exposure to financial risk. In 1998, 131 million participants and dependents had private employment-based health care coverage [10], for which they contributed an average of $123 per month for family coverage, and $29 per month for single coverage. [11] Adherence to disclosure standards will enable participants to make effective choices concerning this substantial investment, taking into consideration their knowledge of their own health and financial circumstances, and accurate information about their plans.

These amendments will also assist plan administrators to meet their statutory disclosure obligations with greater certainty, which is expected to be helpful given the many changes that have occurred since guidance on the required content of SPDs was originally issued in 1977. In addition to their compliance with statutory and regulatory disclosure obligations, plan sponsors are also concerned about the pricing and availability of appropriate coverage options. Private employers play a significant role in the acquisition of health care coverage. Over 64 percent of the total population had private employment-based health care coverage in 1998, for which employers contributed an average of $318 per active employee. [12] Better information will also enhance the ability of plan sponsors to purchase products that are appropriate to both their needs and the health and financial needs of their employees.

Information will promote the efficiency of the competitive market through which this array of needs is met. There is wide-spread agreement that the efficiency of the health care market can be improved if purchasers, consumers, and patients are provided with better information. Improved information is expected to promote efficiency by fostering competition based on considerations beyond pricing alone, and by encouraging providers to enhance quality and reduce costs for value-conscious consumers. Complete disclosure will limit competitive disadvantages that arise when, for example, incomplete or inaccurate information on different benefit option packages is used for decision making purposes. Information disclosure also promotes accountability by ensuring adherence to standards.

Equally importantly, information disclosure under the SPD regulation, if combined with additional disclosures pertaining to plan and provider performance, and with other health system reforms that promote efficient, competitive choices in the health care market, could yield even greater benefits. The Lewin report points out that such reformed systems, as exemplified by CalPERS and other examples of privately sponsored ''managed competition,'' have successfully reduced health care inflation, producing savings that dwarf the cost of these amendments and other pro-competitive reforms. Better information, clarified guidance to plan administrators, and improved market efficiency thus constitute the benefits of the regulation.

The Department believes, therefore, that the benefits of this regulation will substantially outweigh its costs. The disclosures it describes are a component of evolving legislative, regulatory, and

[9] *See* ''Consumer Bill of Rights and Responsibilities Costs and Benefits: Information Disclosure and Internal Appeals,'' The Lewin Group, November 15, 1997; and ''CONSUMER HEALTH CARE INFORMATION—Many Quality Commission Disclosure Recommendations Are Not Current Practice'' (GAO/HEHS–98–137, April 1998). The GAO report indicates that only about half of the information recommended by the Commission to be provided to consumers is currently provided by large purchasers. However, it is information on health plan features such as covered benefits, cost-sharing, access to emergency services and specialists, and appeal processes which is currently routinely provided, while information about health care facilities and the business relationships and financial arrangements among health professionals, and quality and performance measures is not typically provided. Although the Commission's recommendations go beyond current practice, the provisions of this final rule are considered to be reasonably consistent with the current practices of the large purchasers surveyed by GAO.

[10] March 1999 Current Population Survey

[11] Average employee and employer monthly contribution figures as reported in, ''Health Benefits in 1998,'' KPMG.

[12] ''National Survey of Employer-sponsored Health Plans,'' Foster Higgins, 1998.

voluntary private reforms that together are already improving health care market efficiency.

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 final rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis describing the impact of the rule on small entities at the time of publication of the notice of final rulemaking. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA continues 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 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 simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans.

PWBA believes that assessing the impact of this rule on small plans is an appropriate substitute for evaluating the effect on small entities. Because this definition differs from the 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 (5 U.S.C. 631 *et seq.*), PWBA solicited comments on the use of this standard for evaluating the effects of the proposal on small entities. One commenter was concerned that prior to adopting the proposed size standard, the Department first consult with the Office of Advocacy of the Small Business Administration (SBA) and provide an opportunity for public comment. The Department consulted with the SBA regarding its proposed size standard prior to publication of the proposed amendments to the SPD regulation and its proposed regulation relating to employee benefit plan claims procedures under ERISA, which was also published on September 9, 1998 (63 FR 48390). The SBA has agreed with PWBA's use of the proposed alternate size standard, indicating in the claims regulation and other contexts that the Department has provided a reasonable justification for its definition. We are using the same justification in connection with this final rule. No other comments were received with respect to this size standard. A summary of the final regulatory flexibility analysis based on the 100 participant size standard is presented below.

This regulation applies to all small employee benefit plans covered by ERISA. Employee benefit plans with fewer than 100 participants include 693,000 pension plans, 2.8 million health plans, and 3.4 million non-health welfare plans (mainly life and disability insurance plans).

The final rule amends the Department's existing SPD regulation, which implements ERISA's statutory SPD requirements. Both ERISA and the existing regulation require plans to provide SPDs that include certain information and adhere to certain formats to participants according to statutory schedules. The compliance requirements assumed for purposes of this regulation consist of revising SPDs and preparing SMMs consistent with the regulation's requirements, and distributing them to participants consistent with the regulation's applicability date. An extensive list of authorities may be found in the Statutory Authority section, below.

The objective of this revised regulation is to ensure that employee benefit plan participants and beneficiaries have complete and up-to-date information about their plans. Certain provisions pertaining to group health plans are being implemented in accordance with recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry in its November 20, 1997 report entitled ''Consumer Bill of Rights and Responsibilities.''

The Department believes that revising an SPD or describing changes in an SMM requires a combination of professional and clerical skills. Professional skills pertaining to employee benefits law and plan design and administration are needed to draft language for inclusion in an SPD, and therefore an average rate which takes into account wage rates and overhead for attorneys and financial managers ($56 per hour) is used to estimate the costs of needed professional services. Clerical skills are needed to type, assemble and format SPD materials, and to reproduce the materials and either mail or transmit materials electronically to participants. A wage and overhead rate of $21 per hour is used to estimate the cost of these functions.

The Department has estimated that about 30 percent of pension plans and 50 percent of group health plans will be required to revise and distribute SPDs or SMMs in response to this final rule, regardless of plan size. The cost for small plans is moderated by the fact that small welfare plans, the number of which is approximately 2.75 million, are known to make use of a relatively small number of providers of service to design plans and provide disclosure materials, which tends to increase administrative efficiency and lower costs for small plans.

The cost of these amendments for small plans may be borne in a variety of ways, depending upon a plan's governing rules, cost sharing provisions of the plan, administrative practices, the terms of contracts in place with administrators and insurers, and the magnitude of the actual compliance cost. Insurers and administrators may choose to absorb some costs to maintain competitive products, or may pass on administrative or premium charges to policyholders. Sponsors may elect to finance such cost increases, or may pass them along to participants. The ultimate allocation of these costs cannot be accurately predicted.

The Department's assessment of the regulation's costs and benefits, and the extent to which the Department has minimized the impact on small entities, is detailed below, following the discussion of the Paperwork Reduction Act. The Department estimates that the added cost to small plans of complying with the regulation will amount to $17 million in 2001, $38 million in 2002, and $4 million in 2003 and subsequent years. The peak year cost of $38 million in 2002 consists of $3 million to prepare 124,000 unique SPDs describing 1.1 million plans, and $35 million to distribute these SPDs to 8 million participants. These costs amount to $34 per affected small plan and $5.08 per affected small plan participant. By contrast, the added cost to large plans in 2002 is estimated at $170 million, or $5,549 per affected large plan and $5.93 per affected large plan participant. The principal reason for the substantially greater per-plan cost for large plans is the cost of distribution to greater numbers of plan participants.

The cost estimates for small plans are modest in large part because the features of the majority of small health and other welfare plans are chosen from a finite menu of products offered by insurers and HMOs. The insurers and HMOs

prepare the majority of SPD material, describing their small plan products, and provide that material to their small plan customers. Thus, the cost of preparing a relatively small number of unique SPDs is spread over a far larger number of small plans.

Finally, in promulgating this final rule, the Department has minimized the economic impact on small entities by adopting a delayed applicability date that lets plan administrators avoid the largest component of the cost of a regulatory change in the SPD content requirements (i.e., distribution expenses) by allowing them to incorporate the required revisions into the periodic SPD updates that they would otherwise be distributing as part of their usual and customary business practices.

The Department is not aware of any rules or requirements which overlap or duplicate the requirements of this final rule. State insurance statutes typically require that certain disclosures be made to policyholders, but these disclosures either do not overlap with the requirements described in this regulation, or a single disclosure package can be used to satisfy both state and federal requirements.

Paperwork Reduction Act

On September 9, 1998, the Pension and Welfare Benefits Administration published a Notice of Proposed Rulemaking (September 9 proposal) concerning Amendments to Summary Plan Description Regulations (63 FR 48376), which included a request for comments on its information collection provisions. That proposal, if adopted as proposed, would have revised the information collection request (ICR) included in existing regulations relating to the content of Summary Plan Descriptions under ERISA. Also on September 9, 1998, the Department submitted the revised ICR to OMB for review and clearance under the Paperwork Reduction Act of 1995 (PRA 95), and solicited public comments concerning the revision of the information collection request (ICR) included in the proposal.

Further, the Department submitted a revised ICR to OMB for emergency clearance in connection with its Interim Rule Amending Summary Plan Description for the Newborns' and Mothers' Health Protection Act (63 FR 48372, September 9, 1998). OMB subsequently approved the request for emergency clearance; OMB's consideration of the revisions proposed in connection with the September 9 proposal was deferred to the publication of the final rule and submission to OMB of the ICR included in the final rule. The Department had also previously submitted and received OMB's approval of the Summary Plan Description ICR as amended in connection with the Interim Rules Amending ERISA Disclosure Requirements for Group Health Plans (62 FR 16979, April 8, 1997). This final rule implements the information collection provisions of the September 9, 1998 proposal, as modified in the final rule, along with those of the April 8, 1997 Interim Final Rules as they pertain to SPDs under ERISA.

An additional revision to the Summary Plan Description ICR was subsequently made in connection with PWBA's Proposed Rule on the Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans (64 FR 4506, January 28, 1999). This proposal included guidance on the use of electronic technologies to satisfy notice and disclosure requirements of ERISA. OMB approved the submission of this revised ICR which addressed electronic communication of SPDs on June 1, 1999.

OMB has approved the ICR included in this Notice of Final Rule relating to Amendments to Summary Plan Description Regulations. A copy of the ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor, Departmental Clearance Officer, Ira Mills, at (202) 693–4122. (This is not a toll-free number.)

Statute and Existing Regulations

Pursuant to ERISA section 101(a)(1), the administrator of an employee benefit plan is required to furnish a Summary Plan Description (SPD) to each participant covered under the plan and each beneficiary who is receiving benefits under the plan. The SPD is required to be written in a manner calculated to be understood by the average plan participant, and must be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. To the extent that there is a material modification in the terms of the plan or a change in the information required to be included in the SPD, ERISA requires that the administrator furnish participants covered under the plan and beneficiaries receiving benefits with a summary of such changes (Summary of Material Modification, or SMM).

ERISA section 102(b) describes the types of information specifically required to be included in the SPD. The Department has previously issued guidance concerning the required contents of summary plan descriptions in regulations at 29 CFR 2520.102–3.

Proposed Revisions and Final Rule

As described in the September 9, 1998 publication, revisions proposed for §§ 2520.102–3 and 2520.102–5 would have modified the required contents of summary plan descriptions in a number of ways that would be expected to affect the nature and burden of the information collection under PRA 95. The proposal included amendments to §§ 2520.102–3(j) and (s) and § 2520.102–5 that were designed to implement certain recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry as incorporated in the Consumer Bill of Rights with respect to ERISA covered group health plans. Specifically, the proposal provided that group health plans would not be deemed to have satisfied content requirements unless they had provided understandable information in their SPDs concerning any cost-sharing provisions, including premiums, deductibles, coinsurance, and copayment amounts for which the participant or beneficiary would be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive services would be covered under the plan; whether, and under what circumstances, existing and new drugs would be covered under the plan; whether, and under what circumstances, coverage would be provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network and whether, and under what circumstances, coverage would be provided for out-of-network services; any conditions or limits on the selection of primary care providers or providers of speciality medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan.

The April 8, 1997 Interim Final Rules implemented changes finalized here with respect to the content and timing of disclosures by group health plans, specifically, the timing of providing participants with summaries of material reductions in coverage, disclosure of the role of health insurance issuers, and disclosure of the availability of assistance from the Department.

As explained earlier in this preamble, after consideration of comments received in response to the proposal, the

Department has determined that it is appropriate to adopt the proposed and interim final regulations essentially as published, with certain clarifications, and modification of the proposed applicability date. Although the underlying requirements are on the whole unchanged from the proposal, the burden hour and cost estimates have been significantly modified in response to public comment.

Specifically, changes in burden estimates have resulted from adjustments to certain of the Department's underlying assumptions. For example, commenters indicated that the 17 hours estimated for a plan which must incorporate the changes recommended in the Consumer Bill of Rights was understated. Although comments indicate that many plans in fact presently provide the recommended Consumer Bill of Rights disclosures, the Department finds these comments persuasive with respect to those plans that have not yet undertaken to provide the recommended disclosures, and has adjusted this assumption to an average of 25 hours.

In response to specific comments, the Department has also added previously omitted estimated printing costs (an average of $2.25 per SMM or SPD for pension plans, and $3.50 for group health plans) to the cost of distributing SMMs and SPDs, although this change does not affect the incremental cost of this final rule except to the extent that more printing is likely to be required as a result of these amendments. Health plan materials are assumed to require an additional $1.00 in printing costs in those circumstances in which SPDs have not yet been revised to include the Consumer Bill of Rights disclosures.

The assumed printing costs are lower than the $7 to $12 unit printing costs reported by the commenters because it is assumed that some plans will be able to comply by providing SMMs, which would be substantially less costly to print. The use of lower estimates is also intended to account for the fact that some portion of the total printing cost would be likely to be incurred as a usual business practice in the absence of the statutory or regulatory requirements as to SPD content. This assumption change has a very significant impact on the total operating and maintenance costs for this ICR, more than doubling the aggregate cost of the regulation.

Assumptions with respect to the rate of hourly wages have been adjusted in response to comments upward from the $50 blended professional rate and $11 clerical rate previously used in the estimates for the proposal to $56 and $21, respectively. Adjustments were also made based on updated data for enrollment in health plans, numbers of pension plans, and rates of growth in wage and salary employment.

Numerous comments indicating that plans already comply with the proposed revisions, although not necessarily in exactly the manner commenters construed the proposal to require (as to matters such as the level of detail, or including numerous benefit options in a single SPD) support the Department's original view that some portion of plans will be unaffected by these amendments because they already comply. At the time of the proposal, however, and in the absence of specific evidence on the rate of current compliance in the record, the Department used the conservative estimate that 100% of plans would be required to revise SPDs or issue substantial SMMs. The Department has now revised this assumption to reflect the estimate that in the aggregate only about 30 percent of pension plans and 50 percent of group health plans will be required to revise SPDs or issue substantial SMMs as a result of changes implemented by this final rule.

In addition to commenters' questions about the appropriateness of the assumptions used in the Department's analysis of the proposal, a number of commenters also expressed concern that certain revisions proposed would generate additional and unnecessary expense, and would limit the usefulness of the SPD. Commenters indicated, for example, that the SPD was not an appropriate vehicle for communicating time-sensitive or frequently changing information because other communication vehicles already provide the needed information promptly and efficiently. Others stated that requiring a significant amount of detail in an SPD on such matters as provider networks, premium and cost sharing rates, coverage of experimental or investigational treatments and drugs, would be costly and unnecessary, and would result in more frequent change to maintain current information in such detail.

The Department has discussed its responses to these comments in detail earlier in this preamble. In general, the Department has clarified that certain required disclosures, such as claims procedures, provider listings or extensive benefit schedules, may be provided separately provided that the SPD directs participants and beneficiaries to where additional information can be found. The Department has also indicated that it did not intend the provisions of the proposal to be construed to require an SPD to list every drug, test, device or procedure, nor necessarily the dollar amount of premium or employee contributions required for coverage, so long as a summary or description is included that is adequate to communicate participants' rights under the plan, and the manner in which they will become responsible for expenses incurred under the plan. The Department also notes that plan administrators may under existing regulations prepare separate SPDs for different classes of participants, and may make use of an SMM to inform participants of material changes in the information required to be included in the SPD. Each of these options may have a moderating effect on the cost of preparing and distributing disclosure materials in accordance with these final rules.

Because the Department viewed the revised disclosure requirements as proposed as requiring a more limited level of detail than apparently understood by these commenters, on the basis of these clarifications, the Department believes that SPDs amended pursuant to the requirements of the final rules will provide participants and beneficiaries with an appropriate level of detail and not result in unwarranted ongoing expense. As a consequence, the analysis of the impact of these amendments has not been changed, except as to the assumptions specifically identified above.

With respect to the proposed elimination of the exemption from SPD requirements for federally qualified HMOs, commenters stated that causing a single SPD to be prepared to include information currently provided by HMOs to enrollees but consistent with the style, format and content requirements of the regulation would result in significant costs and duplication of effort. Commenters also indicated that causing all HMO options and other benefit options to be described in a single SPD would result in unnecessary costs and unusably large and complex documents. More than one commenter expressed the view that the increased costs arising from this requirement would ultimately result in elimination of HMO options currently available to participants and beneficiaries.

The Department has responded to concerns that the inclusion of all options in a single document would result in unwarranted costs, impractical disclosure vehicles, and more limited benefit options by noting that plan administrators may use different SPDs for different classes of participants, including those classes identified by their elected benefit coverages.

Furthermore, in the Department's view, the information required to be incorporated in the SPD is important to participants and beneficiaries electing coverage through a federally qualified HMO, even though an expense may be associated with bringing the HMO disclosure material into compliance. Accordingly, the Department has not modified its cost estimates in response to these comments.

The resulting burden estimates are summarized below. A more detailed description of the assumptions and methodology underlying these estimates will be found below in the Analysis of Costs.

Agency: Pension and Welfare Benefits Administration.

Title: Regulations Regarding Required Contents of Summary Plan Descriptions for Employee Benefit Plans (Final Amendments to Summary Plan Description Regulations).

OMB Number: 1210–0039.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 943,779 (2001); 1,790,161 (2002).

Total Responses: 52,771,000 (2001); 88,911,000 (2002).

Estimated Burden Hours: 710,134 (2001); 1,117,801 (2002).

Estimated Annual Costs (Operating and Maintenance): $243,226,000 (2001); $400,056,000 (2002).

Persons are not required to respond to the revised information collection unless it displays a currently valid OMB control number.

Analysis of Cost

The Department performed a comprehensive, unified analysis to estimate the costs of the regulation for purposes of compliance with Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The methods and results of that analysis are summarized below, along with a discussion of comments received on the analysis included in the original proposal.

To estimate the costs, it was necessary to estimate the number of SPDs in the ERISA-covered employee benefit plan universe, the frequency with which those SPDs are updated and distributed, and the number of participants to whom they must be distributed. It was also necessary to make certain assumptions about the cost of preparing and distributing SPDs, in particular the cost of bringing SPDs into compliance with the regulation's provisions. The Department separately estimated the baseline cost of its existing SPD regulation and the incremental cost of this final rule.

In response to its proposed rulemaking, the Department received a number of comments bearing on the estimates of the economic impact of the regulation. Several commenters stated the general view that the SPD was not an appropriate vehicle for communicating time-sensitive or frequently changing information because other communication vehicles already in use provide the needed information promptly and efficiently. Others indicated that requiring a significant amount of detail in an SPD on such matters as provider networks, premium and cost sharing rates, coverage of experimental or investigational treatments and drugs, would be costly and unnecessary, and would result in more frequent change in the future. Commenters also indicated that the speed with which they would be required to make the very substantial revisions to SPDs would increase the cost to comply.

With respect to the elimination of the exemption from SPD requirements for federally qualified HMOs, commenters stated that causing a single SPD to be prepared to include the information currently provided by HMOs to enrollees but consistent with the style, format and content requirements of the regulation would result in significant costs and duplication of effort. Commenters also indicated that causing all HMOs and other benefit options to be described in a single SPD would result in unnecessary costs and unusably large and complex documents. More than one commenter expressed the view that the increased costs arising from this requirement would ultimately result in elimination of HMO options currently available to participants and beneficiaries.

Other comments indicated that in light of the very significant new requirements, the Department's cost estimates were substantially understated, despite the commenters' assertions that much of the information is already provided. Concerns were expressed about the time required and timing of the required revisions, the hourly wage rates, and the omission of printing costs from the Department's estimates. The Department has considered these comments in view of commenters' apparent interpretations of the requirements of the proposed rules, and has adjusted a number of its assumptions as specifically detailed below to address comments on required resources, wage rates, and printing costs. A revision was also made to the final rule's effective date to address issues of flexibility and efficiency in plan administrators' implementation of required revisions.

In response to concerns raised about the potential for the proposed revisions to generate additional and unnecessary expense, and to result in SPDs of limited usefulness, the Department has earlier in this preamble expressed its views concerning the level of detail required to be included in an SPD. In general, the Department has clarified that certain required disclosures, such as claims procedures, provider listings or extensive benefit schedules, may be provided separately, provided that the SPD directs participants and beneficiaries to where additional information can be found. The Department has also indicated that it did not intend the provisions of the proposal to be construed to require an SPD to list every drug, test, device or procedure, nor necessarily the dollar amount of premium or employee contributions required for coverage, so long as a summary or description is included that is adequate to communicate participants' rights under the plan, and the manner in which they will become responsible for expenses incurred under the plan. The Department also notes that plan administrators may under existing regulations prepare separate SPDs for different classes of participants, and may make use of an SMM to inform participants of material changes in the information required to be included in the SPD. Each of these options may have a moderating effect on the cost of preparing and distributing disclosure materials in accordance with these final rules.

Because the Department viewed the revised disclosure requirements as proposed as requiring a more limited level of detail than apparently understood by these commenters, on the basis of these clarifications, the Department believes that SPDs amended pursuant to the requirements of the final rules will provide participants and beneficiaries with an appropriate level of detail and not result in unwarranted ongoing expense. As a consequence, the analysis of the impact of these amendments has not been changed, except as to the assumptions specifically identified below.

With respect to the proposed elimination of the exemption from SPD requirements for federally qualified HMOs, commenters stated that causing a single SPD to be prepared to include information currently provided by HMOs to enrollees but consistent with the style, format and content requirements of the regulation would

result in significant costs and duplication of effort. Commenters also indicated that causing all HMO options and other benefit options to be described in a single SPD would result in unnecessary costs and unusably large and complex documents. More than one commenter expressed the view that the increased costs arising from this requirement would ultimately result in elimination of HMO options currently available to participants and beneficiaries.

The Department has responded to concerns that the inclusion of all options in a single document would result in unwarranted costs, impractical disclosure vehicles, and more limited benefit options by noting that plan administrators may use different SPDs for different classes of participants, including those classes identified by their elected benefit coverages. Furthermore, in the Department's view, the information required to be incorporated in the SPD is important to participants and beneficiaries electing coverage through a federally qualified HMO, even though an expense may be associated with bringing the HMO disclosure material into compliance. Accordingly, the Department has not modified its cost estimates in response to these comments concerning the federally qualified HMO disclosure requirements.

As a result, the basic framework and assumptions used in the analysis are generally unchanged. However, certain specific assumptions have been revised in response to comments received, or based on the availability of more recent or more complete data. The modification of the applicability date should allow many plans a somewhat longer period of time to come into compliance, and lessen their overall cost to comply by providing flexibility in their use of resources. The Department has increased its assumption concerning the amount of professional time required to effect compliance with the Consumer Bill of Rights disclosure provisions, and has altered its original assumption as to the proportion of plans that currently comply based on a number of comments indicating current compliance in substance. Professional and clerical wage rates have been adjusted upward, and an estimate of previously omitted printing costs has been included. Details of the analysis of costs follow.

The Department's estimates of both the pension and health universes have been updated based on current data, the overall effect of which is the use of slightly larger numbers of pension plans, and substantially higher numbers of health plans than used for estimates of the impact of the proposal (specifically, 2.8 million plans compared with the 2.5 million plans at the time of the proposal). The Department estimated the number of plans, SPDs and the number of participants based on 1995 Form 5500 Series data, the March 1999 Current Population Survey (CPS), the 1996 Medical Expenditure Panel Survey (MEPS), and 1995 Census Bureau data on firms and establishments. Each pension plan is estimated to maintain one SPD, and Form 5500 data demonstrates the number of pension plans and participants. The number of welfare plans is more difficult to determine because the majority of welfare plans are exempt from the requirement to file Form 5500 due to their having fewer than 100 participants and being unfunded or fully insured. The 1996 data from MEPS on health plans offered by establishments was converted from establishments to firms using 1995 Census Bureau data, and then converting the estimate of firms to plans using Form 5500 pension data estimates on the number of multiemployer plans. The number of participants was generated using March 1999 CPS data inflated to 2002 using BLS employment projections. Form 5500 data for 1995 was used to distribute the CPS aggregate between large and small plans.

With respect to group health plans, the number of SPDs is estimated to be smaller than the number of plans because small plans typically buy standard products from vendors. In addition, individual plan sponsors often sponsor more than one plan and/or offer more than one kind of benefit (such as retirement and disability) under a single plan, but describe two or more of their plans or benefit types in a single SPD. The Department assumes that pension plans and health plans (or products) maintain separate SPDs, but that non-health welfare benefits are either offered together with health benefits as part of unified welfare plans or are maintained as separate plans but described along with accompanying health plans in a single combined SPD.

Pursuant to these assumptions, the Department estimates that the universe includes a total of 693,000 unique pension plan SPDs. The estimate of 84,900 unique health plan SPDs is assumed to encompass all other welfare plan SPDs. The estimated number of unique health plan SPDs has been increased for the purposes of analysis of this final rule based on updated and more detailed information on the numbers of plans, rates of self-funding, and numbers of group health plan issuers of insurance policies.

With respect to the frequency of updating and distributing SPDs, plans filing the Form 5500 indicate whether they amended and distributed their SPDs in the preceding year. About 30 percent of plans so report. This figure is interpreted to represent a baseline level of SPD modification and distribution activity. The amendments implemented by this final rule are not expected to change the baseline rate of SPD modification for pension plans, but are expected to cause some health plans to make changes to SPDs sooner than they would otherwise have made them.

The Department generally assumes that preparing a revised SPD requires four hours of combined professional and clerical time, priced at $56 and $21 per hour, respectively. Previous assumptions were $50 and $11. The Department assumes that distributing an SPD consumes two minutes of clerical labor at $21 per hour, plus $2.25 for printing, materials, and mailing (or electronic dissemination) for pension plans and $3.50 for printing, materials, and mailing (or electronic dissemination) for welfare plans. This amounts to $2.95 per pension SPD and $4.20 per welfare plan SPD distributed. As noted earlier, printing costs were not previously estimated, and have been included here in response to comments.

The Department estimates the baseline cost to prepare and distribute SPDs under the current regulation at $218 million in 2001, $224 million in 2002, and approximately $230 million in 2003 based on projected enrollment growth. Total cost in a typical baseline year such as 2001 includes $46 million to prepare 208,000 unique SPDs, and $172 million to distribute copies to 51 million participants.

The Department separately estimated the cost of revisions to SPDs that plan administrators may undertake to update their SPDs following adoption of final amendments of the SPD content requirements. This cost is separate from the baseline cost attributable to normal SPD revisions, such as those made pursuant to plan amendments. Plans preparing SPDs solely to comply with the final rule would incur only the costs attributable to those revisions deemed necessary to comply with the provisions of the final rule, while plans simultaneously revising their SPDs for other reasons would incur this additional cost plus the baseline unit cost.

With respect to pension plans, the Department assumes that preparing an SPD to comply with the final rule requires 30 minutes of professional time

at a rate of $56 per hour. The time and expense associated with distributing each SPD are assumed to be unchanged from the baseline.

To estimate the per-unit cost to prepare revised health plan SPDs, the Department originally drew on two studies of the cost to health plans to comply with the Consumer Bill of Rights, one cited earlier by The Lewin Group for the President's Commission, and one by Coopers and Lybrand for the Kaiser Family Foundation.[13] Excerpting and adjusting these studies' estimates to reflect the regulation's provisions, the Department essentially adopted the midpoint of these two studies' findings. With the addition of the small burden attributable to other provisions, the cost to prepare a health plan SPD to bring it into conformity with the regulation was originally estimated to require an average of approximately 18 hours at $50 per hour (17 hours for the Consumer Bill of Rights disclosures). Based on the comments received on this estimate, the Department has adjusted its assumptions concerning the time required to implement Consumer Bill of Rights disclosures where not previously implemented from an average of 17 hours to 25 hours, and the total time required to come into compliance with all health plan provisions of the final rule from an average of 18 hours to an average of about 27 hours. This adjustment is responsive to comments, and has the effect of giving the Lewin cost estimates greater weight in the analysis of the impact of this final rule. The resulting estimate takes into account a range of current compliance, based on comments received indicating that many plans already provide the required information, although not necessarily in the format the commenters construed the proposal to require, and the fact that some plans more nearly in compliance may choose to comply with an SMM, presumably lessening the cost of compliance. The average cost of preparation of group health plan disclosures is estimated at about $1,400 per unique SPD.

Numerous comments indicating that plans already comply with the proposed revisions, although not precisely in the manner commenters construed the proposal to require (as to level of detail, including numerous benefit options in a single SPD), support the Department's original view that some portion of plans will be unaffected because they already comply. At the time of the proposal, however, and in the absence of specific evidence of the rate of current compliance in the record, the Department used the conservative estimate that 100% of plans would be required to revise SPDs or issue substantial SMMs. The Department has now revised this assumption to reflect the estimate that in the aggregate 30 percent of pension plans and 50 percent of group health plans will be required to revise SPDs or issue substantial SMMs as a result of changes implemented by this final rule.

The Department assumed that the cost to distribute a group health plan SPD with the additional disclosures will rise in connection with the regulation, consuming an additional one minute of clerical time at $21 per hour and an additional $1.00 for materials and mailing or electronic distribution, for a total for $1.35 per SPD distributed.

The Department estimates the added cost attributable to this regulation to be $47 million in 2001 and $208 million in 2002. The peak incremental cost in 2002 includes $32 million to prepare 155,000 different SPDs describing 1.2 million pension and welfare plans, and $176 million to distribute those SPDs to 36 million participants.

Combining this added cost with the baseline cost attributable to the existing regulation, the total cost to prepare and distribute SPDs under the regulation amounts to $265 million in 2001, and $432 million in 2002. The peak cost in 2002 includes $78 million to prepare 321,000 SPDs describing 1.8 million plans, and $354 million to distribute those SPDs to 89 million participants.

The baseline, additional, and total costs associated with the final SPD regulation are summarized in the table below:

[In millions of dollars]

Year	Baseline	Additional	Total
2001	$218,360,000	$47,129,000	$265,489,000
2002	223,949,000	208,070,000	432,019,000

Plans that are assumed for purposes of this analysis to prepare and distribute SPDs for the sole purpose of complying with the regulation have the option of complying by preparing and distributing SMMs instead, the choice likely depending on the extent of the changes required for the plan involved. Plans are expected to make use of an SMM to come into compliance when a moderate to small number of revisions are required, resulting in a relatively low cost to comply relative to an extensive revision of an SPD. As a result of its use of an assumption representing a midpoint between an SMM cost and an SPD cost, the Department's estimates of the costs to revise and distribute compliant disclosure materials in response to this regulation can be interpreted to account for the likelihood that some plans will elect to prepare and distribute SMMs.

Executive Order 13132 Statement

This final rule does not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supercede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. This final rule, therefore, does not affect the States or change the relationship or distribution of power between the national government and the States. Further, this final rule implements certain revisions to annual reporting and disclosure regulations which have been in effect in similar form for many years. The amendments incorporated in this final rule do not alter the fundamental requirements of the statute with respect to the reporting and disclosure requirements for employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

[13] ''Estimated Costs of Selected Consumer Protection Proposals—A Cost Analysis of the President's Advisory Commission's Consumer Bill of Rights and Responsibilities and the Patient Access to Responsible Care Act,'' Coopers & Lybrand, LLP for the Kaiser Family Foundation, April, 1998.

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 rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, but does include mandates which may impose expenditures of $100 million or more on the private sector. The basis for this statement is described in the analysis of costs for purposes of Executive Order 12866. Identification of the authorizing statute, and the assessment of the anticipated costs and benefits, and economic effect of this regulation are also presented elsewhere in this preamble.

In promulgating this final rule, the Department has adopted the least burdensome method of achieving the rule's objective of improving the information that participants and beneficiaries receive about their ERISA covered pension and welfare plans. The majority of the costs associated with the SPD arise from the distribution costs that must be incurred to comply with ERISA's requirement that plan administrators disclose certain information to participants and beneficiaries within specified time frames. Because plan administrators must communicate changes in the terms of the plan or other changes that affect the information required to be included in the SPD even absent any change in regulatory requirements, they periodically update and distribute SPD information to participants and beneficiaries as part of their usual and customary business practices. To ensure that the regulatory amendments being adopted as part of this final rule may be implemented by administrators in the least burdensome manner, the Department adopted a delayed applicability date that lets plan administrators avoid the largest component of the cost of a regulatory change in the SPD content requirements (*i.e.,* distribution expenses) by allowing them to incorporate the required revisions into the periodic SPD updates that they would otherwise be distributing as part of their usual and customary business practices.

Small Business Regulatory Enforcement Fairness Act

This final rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and is a major rule under SBREFA. Accordingly, this final rule has been transmitted to Congress and the Comptroller General for review.

Statutory Authority

This regulation is adopted pursuant to the authority in sections 101, 103, 104, 109, 110, 111, 504 and 505 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 2520

Employee benefit plans, Employee Retirement Income Security Act, Group health plans, Pension plans, Welfare benefit plans.

For the reasons set forth above, Part 2520 of Title 29 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

2. Section 2520.102–3 is amended by removing paragraph (v), revising paragraphs (d), (j), (l), (m)(3), (o), (s), (t)(2), and (u), revising the last sentence of paragraph (q), and adding paragraph (m)(4) to read as follows:

§ 2520.102–3 Contents of summary plan description.

* * * * *

(d) The type of pension or welfare plan, *i.e.,* for pension plans— defined benefit, defined contribution, 401(k), cash balance, money purchase, profit sharing, ERISA section 404(c) plan, etc., and for welfare plans—group health plans, disability, pre-paid legal services, etc.

* * * * *

(j) The plan's requirements respecting eligibility for participation and for benefits. The summary plan description shall describe the plan's provisions relating to eligibility to participate in the plan and the information identified in paragraphs (j)(1), (2) and (3) of this section, as appropriate.

(1) For employee pension benefit plans, it shall also include a statement describing the plan's normal retirement age, as that term is defined in section 3(24) of the Act, and a statement describing any other conditions which must be met before a participant will be eligible to receive benefits. Such plan benefits shall be described or summarized. In addition, the summary plan description shall include a description of the procedures governing qualified domestic relations order (QDRO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator.

(2) For employee welfare benefit plans, it shall also include a statement of the conditions pertaining to eligibility to receive benefits, and a description or summary of the benefits. In the case of a welfare plan providing extensive schedules of benefits (a group health plan, for example), only a general description of such benefits is required if reference is made to detailed schedules of benefits which are available without cost to any participant or beneficiary who so requests. In addition, the summary plan description shall include a description of the procedures governing qualified medical child support order (QMCSO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator.

(3) For employee welfare benefit plans that are group health plans, as defined in section 733(a)(1) of the Act, the summary plan description shall include a description of any cost-sharing provisions, including premiums, deductibles, coinsurance, and copayment amounts for which the participant or beneficiary will be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive services are covered under the plan; whether, and under what circumstances, existing and new drugs are covered under the plan; whether, and under what circumstances, coverage is provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network, and whether, and under what circumstances, coverage is provided for out-of-network services; any conditions or limits on the selection of primary care providers or providers of speciality medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan. In the case of plans with provider networks, the listing of providers may be furnished as a separate document that accompanies the plan's SPD, provided that the summary plan description contains a general description of the provider network and provided further that the SPD contains a statement that provider lists are furnished automatically, without charge, as a separate document.

* * * * *

(l) For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery (e.g., by exercise of subrogation or reimbursement rights) of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by paragraphs (j) and (k) of this section. In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated; a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination; and a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination. Plans also shall include a summary of any provisions that may result in the imposition of a fee or charge on a participant or beneficiary, or on an individual account thereof, the payment of which is a condition to the receipt of benefits under the plan. The foregoing summaries shall be disclosed in accordance with the requirements under 29 CFR 2520.102–2(b).

(m) * * *

(3) A summary plan description for a single-employer plan will be deemed to comply with paragraph (m)(2) of this section if it includes the following statement:

Your pension benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. If the plan terminates (ends) without enough money to pay all benefits, the PBGC will step in to pay pension benefits. Most people receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits.

The PBGC guarantee generally covers: (1) Normal and early retirement benefits; (2) disability benefits if you become disabled before the plan terminates; and (3) certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) Benefits greater than the maximum guaranteed amount set by law for the year in which the plan terminates; (2) some or all of benefit increases and new benefits based on plan provisions that have been in place for fewer than 5 years at the time the plan terminates; (3) benefits that are not vested because you have not worked long enough for the company; (4) benefits for which you have not met all of the requirements at the time the plan terminates; (5) certain early retirement payments (such as supplemental benefits that stop when you become eligible for Social Security) that result in an early retirement monthly benefit greater than your monthly benefit at the plan's normal retirement age; and (6) non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay, and severance pay.

Even if certain of your benefits are not guaranteed, you still may receive some of those benefits from the PBGC depending on how much money your plan has and on how much the PBGC collects from employers.

For more information about the PBGC and the benefits it guarantees, ask your plan administrator or contact the PBGC's Technical Assistance Division, 1200 K Street N.W., Suite 930, Washington, D.C. 20005–4026 or call 202–326–4000 (not a toll-free number). TTY/TDD users may call the federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4000. Additional information about the PBGC's pension insurance program is available through the PBGC's website on the Internet at http://www.pbgc.gov.

(4) A summary plan description for a multiemployer plan will be deemed to comply with paragraph (m)(2) of this section if it includes the following statement:

Your pension benefits under this multiemployer plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated employers, usually in a common industry.

Under the multiemployer plan program, the PBGC provides financial assistance through loans to plans that are insolvent. A multiemployer plan is considered insolvent if the plan is unable to pay benefits (at least equal to the PBGC's guaranteed benefit limit) when due.

The maximum benefit that the PBGC guarantees is set by law. Under the multiemployer program, the PBGC guarantee equals a participant's years of service multiplied by (1) 100% of the first $5 of the monthly benefit accrual rate and (2) 75% of the next $15. The PBGC's maximum guarantee limit is $16.25 per month times a participant's years of service. For example, the maximum annual guarantee for a retiree with 30 years of service would be $5,850.

The PBGC guarantee generally covers: (1) Normal and early retirement benefits; (2) disability benefits if you become disabled before the plan becomes insolvent; and (3) certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) Benefits greater than the maximum guaranteed amount set by law; (2) benefit increases and new benefits based on plan provisions that have been in place for fewer than 5 years at the earlier of: (i) The date the plan terminates or (ii) the time the plan becomes insolvent; (3) benefits that are not vested because you have not worked long enough; (4) benefits for which you have not met all of the requirements at the time the plan becomes insolvent; and (5) non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay, and severance pay.

For more information about the PBGC and the benefits it guarantees, ask your plan administrator or contact the PBGC's Technical Assistance Division, 1200 K Street, N.W., Suite 930, Washington, D.C. 20005–4026 or call 202–326–4000 (not a toll-free number). TTY/TDD users may call the federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4000. Additional information about the PBGC's pension insurance program is available through the PBGC's website on the Internet at http://www.pbgc.gov.

* * * * *

(o) In the case of a group health plan, within the meaning of section 607(1) of the Act, subject to the continuation coverage provisions of Part 6 of Title I of ERISA, a description of the rights and obligations of participants and beneficiaries with respect to continuation coverage, including, among other things, information concerning qualifying events and qualified beneficiaries, premiums, notice and election requirements and procedures, and duration of coverage.

* * * * *

(q) * * * If a health insurance issuer, within the meaning of section 733(b)(2) of the Act, is responsible, in whole or in part, for the financing or administration of a group health plan, the summary plan description shall indicate the name and address of the issuer, whether and to what extent benefits under the plan are guaranteed under a contract or policy of insurance issued by the issuer, and the nature of any administrative services (e.g., payment of claims) provided by the issuer.

* * * * *

(s) The procedures governing claims for benefits (including procedures for obtaining preauthorizations, approvals, or utilization review decisions in the case of group health plan services or benefits, and procedures for filing claim forms, providing notifications of benefit determinations, and reviewing denied claims in the case of any plan), applicable time limits, and remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 503 of Title I of the Act). The plan's claims procedures may be furnished as a separate document that accompanies the plan's SPD, provided

that the document satisfies the style and format requirements of 29 CFR 2520.102–2 and, provided further that the SPD contains a statement that the plan's claims procedures are furnished automatically, without charge, as a separate document.

(t) * * *

(2) A summary plan description will be deemed to comply with the requirements of paragraph (t)(1) of this section if it includes the following statement; items of information which are not applicable to a particular plan should be deleted:

As a participant in (name of plan) you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

Receive Information About Your Plan and Benefits

Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites and union halls, all documents governing the plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Pension and Welfare Benefit Administration.

Obtain, upon written request to the plan administrator, copies of documents governing the operation of the plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The administrator may make a reasonable charge for the copies.

Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of this summary annual report.

Obtain a statement telling you whether you have a right to receive a pension at normal retirement age (age * * *) and if so, what your benefits would be at normal retirement age if you stop working under the plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every twelve (12) months. The plan must provide the statement free of charge.

Continue Group Health Plan Coverage

Continue health care coverage for yourself, spouse or dependents if there is a loss of coverage under the plan as a result of a qualifying event. You or your dependents may have to pay for such coverage. Review this summary plan description and the documents governing the plan on the rules governing your COBRA continuation coverage rights.

Reduction or elimination of exclusionary periods of coverage for preexisting conditions under your group health plan, if you have creditable coverage from another plan. You should be provided a certificate of creditable coverage, free of charge, from your group health plan or health insurance issuer when you lose coverage under the plan, when you become entitled to elect COBRA continuation coverage, when your COBRA continuation coverage ceases, if you request it before losing coverage, or if you request it up to 24 months after losing coverage. Without evidence of creditable coverage, you may be subject to a preexisting condition exclusion for 12 months (18 months for late enrollees) after your enrollment date in your coverage.

Prudent Actions by Plan Fiduciaries

In addition to creating rights for plan participants ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called ''fiduciaries'' of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a (pension, welfare) benefit or exercising your rights under ERISA.

Enforce Your Rights

If your claim for a (pension, welfare) benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of plan documents or the latest annual report from the plan and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court. In addition, if you disagree with the plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in Federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

Assistance with Your Questions

If you have any questions about your plan, you should contact the plan administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest office of the Pension and Welfare Benefits Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Pension and Welfare Benefits Administration.

(u) (1) For a group health plan, as defined in section 733(a)(1) of the Act, that provides maternity or newborn infant coverage, a statement describing any requirements under federal or state law applicable to the plan, and any health insurance coverage offered under the plan, relating to hospital length of stay in connection with childbirth for the mother or newborn child. If federal law applies in some areas in which the plan operates and state law applies in other areas, the statement should describe the different areas and the federal or state law requirements applicable in each.

(2) In the case of a group health plan subject to section 711 of the Act, the summary plan description will be deemed to have complied with paragraph (u)(1) of this section relating to the required description of federal law requirements if it includes the following statement in the summary plan description:

Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the insurance issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

§ 2520.102–5 [Removed]

3. Section 2520.102–5 is removed.

4. Section 2520.104b–3 is amended by revising the second sentence of paragraph (a), and paragraphs (d) and (e) to read as follows:

§ 2520.104b–3 Summary of material modifications to the plan and changes in the information required to be included in the summary plan description.

(a) * * * Except as provided in paragraph (d) of this section, the plan administrator shall furnish this summary, written in a manner calculated to be understood by the

average plan participant, not later than 210 days after the close of the plan year in which the modification or change was adopted. * * *

* * * * *

(d) *Special rule for group health plans.* (1) *General.* Except as provided in paragraph (d)(2) of this section, the administrator of a group health plan, as defined in section 733(a)(1) of the Act, shall furnish to each participant covered under the plan a summary, written in a manner calculated to be understood by the average plan participant, of any modification to the plan or change in the information required to be included in the summary plan description, within the meaning of paragraph (a) of this section, that is a material reduction in covered services or benefits not later than 60 days after the date of adoption of the modification or change.

(2) *90-day alternative rule.* The administrator of a group health plan shall not be required to furnish a summary of any material reduction in covered services or benefits within the 60-day period described in paragraph (d)(1) of this section to any participant covered under the plan who would reasonably be expected to be furnished such summary in connection with a system of communication maintained by the plan sponsor or administrator, with respect to which plan participants are provided information concerning their plan, including modifications and changes thereto, at regular intervals of not more than 90 days and such communication otherwise meets the disclosure requirements of 29 CFR 2520.104b–1.

(3) *''Material reduction''.* (i) For purposes of this paragraph (d), a ''material reduction in covered services or benefits'' means any modification to the plan or change in the information required to be included in the summary plan description that, independently or in conjunction with other contemporaneous modifications or changes, would be considered by the average plan participant to be an important reduction in covered services or benefits under the plan.

(ii) A ''reduction in covered services or benefits'' generally would include any plan modification or change that: eliminates benefits payable under the plan; reduces benefits payable under the plan, including a reduction that occurs as a result of a change in formulas, methodologies or schedules that serve as the basis for making benefit determinations; increases premiums, deductibles, coinsurance, copayments, or other amounts to be paid by a participant or beneficiary; reduces the service area covered by a health maintenance organization; establishes new conditions or requirements (*i.e.,* preauthorization requirements) to obtaining services or benefits under the plan.

(e) *Applicability date.* Paragraph (d) of this section is applicable as of the first day of the first plan year beginning after June 30, 1997.

* * * * *

Signed at Washington, D.C., this 15th day of November, 2000

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–29765 Filed 11–20–00; 8:45 am]

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November 21, 2000

Part VIII

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2560

Employee Retirement Income Security Act of 1974; Rules and Regulations for Administration and Enforcement; Claims Procedure; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2560

RIN 1210–AA61

Employee Retirement Income Security Act of 1974; Rules and Regulations for Administration and Enforcement; Claims Procedure

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation revising the minimum requirements for benefit claims procedures of employee benefit plans covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). The regulation establishes new standards for the processing of claims under group health plans and plans providing disability benefits and further clarifies existing standards for all other employee benefit plans. The new standards are intended to ensure more timely benefit determinations, to improve access to information on which a benefit determination is made, and to assure that participants and beneficiaries will be afforded a full and fair review of denied claims. When effective, the regulation will affect participants and beneficiaries of employee benefit plans, employers who sponsor employee benefit plans, plan fiduciaries, and others who assist in the provision of plan benefits, such as third-party benefits administrators and health service providers or health maintenance organizations that provide benefits to participants and beneficiaries of employee benefit plans.

DATES: *Effective Date:* January 20, 2001.

Applicability Date: This regulation applies to all claims filed on or after January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Susan M. Halliday or Susan G. Lahne, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–7461. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

On September 9, 1998, the Department of Labor (the Department) published a notice in the **Federal Register** (63 FR 48390) containing a proposed regulation, designated as proposed § 2560.503–1 of Title 29 (the proposal), intended to substantially revise the minimum requirements for benefit claims procedures of all employee benefit plans covered under Title I of ERISA. The reforms contained in the proposal, as explained in the preamble that accompanied it, were based in part on comments the Department had previously received in response to a Request for Information (the RFI) published in the **Federal Register** (62 FR 47262) on September 8, 1997. In addition, the proposal was developed to respond to a memorandum from the President, dated February 20, 1998, directing the Secretary of Labor to ''propose regulations to strengthen the internal appeals process for all Employee Retirement Income Security Act (ERISA) health plans to ensure that decisions regarding urgent care are resolved within not more than 72 hours and generally resolved within 15 days for non-urgent care'' and ''to ensure the information [group health plans] provide to plan participants is consistent with the Patients' Bill of Rights.'' [1]

In response to the RFI comments, the President's directives, and the recommendations of the Commission, the Department developed a proposal to substantially reform the standards for the resolution of benefit claims under all employee benefit plans covered by the Act. The revised standards derive from section 503 of ERISA, which requires every employee benefit plan, in accordance with regulations of the Department, to ''provide adequate notice in writing to every participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant'' and to ''afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.'' While focusing primarily on group health plans and plans providing disability benefits, the proposal contained provisions altering the benefit claims procedures for all employee benefit plans. Among other reforms, the proposal imposed new notice requirements with respect to incomplete or incorrectly filed claims, altered the standards for appeals of denied claims, and increased or made more specific the disclosure obligations of plans generally with respect to procedural rights and denials of claims. With respect to group health plans and plans providing disability benefits specifically, the proposal shortened the time periods for making initial benefit claims decisions and decisions on appeal of denied claims and imposed additional obligations with respect to group health claims that involved urgent care.

The Department received more than 700 letters of comment in response to the proposal. A public hearing on the proposal was held in Washington, DC., on February 17, 18, and 19, 1999. More than 60 speakers, representing a fair cross-section of the interested public, including benefit plan sponsors, service providers, health care professionals, benefit claimants, health care organizations, and insurance companies, presented testimony and were questioned by a panel of Departmental officials.

After due consideration of the issues raised by the written comments and oral testimony, the Department has modified the scope of the proposal, refined its requirements as to minimum procedural standards for the resolution of benefit claims disputes, and is now publishing in this notice, in final form, regulation § 2560.503–1, establishing new minimum procedural requirements for benefit claims under employee benefit plans. In the course of developing this final regulation, the Department took serious notice of the issues raised by commenters on behalf of the employers that sponsor employee benefit plans and the institutions that aid in their administration or provide the promised benefits. In making changes in the regulation that respond to those issues, the Department has attempted to reconcile the need for procedural protections with the purely voluntary nature of the system through which these vital benefits are delivered. The Department believes, however, that the procedural reforms contained in this regulation are necessary to guarantee important procedural rights to benefit claimants.

While the Department has made a number of significant changes to the proposal, in particular by limiting the scope of its reforms principally to group health plans and plans providing disability benefits and by moderating the severity of the decisionmaking time frames applicable to such plans, the regulation preserves the core reforms of the proposal. In publishing this

[1] The President's memorandum specifically endorsed the reports of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry (the Commission), which set out specific rights of health care consumers that should be protected, including the right ''to a fair and efficient process for resolving differences with their health plans, health care providers, and the institutions that service them, including a rigorous system of internal review and an independent system of external review.''

regulation, the Department believes it has responded to the needs of employers and employees and has successfully implemented, to the extent of its regulatory authority under the Act, the protections recommended by the President's Commission. This action, the Department believes, will ensure that benefit claimants, at least in ERISA-covered plans, are provided faster, fuller, and fairer decisions on their benefit claims.

The following summarizes the most important modifications that the Department adopted in developing this regulation. It further describes generally the comments that gave rise to those changes and explains the Department's reasons for those modifications.

Scope

The proposal contained a number of provisions that would have established new, substantially uniform procedural requirements for all employee benefit plans, including improved notice and disclosure protections and strengthened standards of conduct on review. A substantial number of commenters expressed concern about the scope of the proposal, pointing out that the Department's expressed reasons for procedural reform, as set forth in the preamble to the proposal, focused almost exclusively on perceived problems arising specifically under group health plans and plans providing disability benefits. These commenters claimed that the Department's record does not demonstrate a clear need to change the procedural rules in effect for plans other than group health plans and plans providing disability benefits.

The Department believes, in light of the comments received on this issue, that it is premature to conclude that the proposed reforms are equally appropriate for all plans. In particular, the Department is concerned that it may not have an adequate record regarding the need for reform of procedural standards for pension plans. Accordingly, the Department has determined to limit more narrowly to group health plans and plans providing disability benefits the reforms presently adopted in the regulation and to reserve for further consideration the question of the appropriateness of extending these reforms to pension plans and welfare plans other than group health plans and plans providing disability benefits. The regulation, thus, contains standards respecting benefit claims procedures for pension and other welfare plans that are substantially similar to those currently in effect under the regulation promulgated by the Department in 1977 (the 1977 regulation).[2] As a result, under the regulation, pension plans and welfare plans other than group health plans and plans providing disability benefits will not generally be required to revise their procedures.

In revising the proposal in this manner, however, the Department notes its continuing interest in assessing the appropriateness of the 1977 regulation's standards for pension and other welfare plans. In this regard, the Department is soliciting public comment on this issue to facilitate development of an adequate record upon which to consider additional reforms.

One commenter requested clarification as to the application of the proposed regulation to ''long-term care benefits.'' This commenter described long-term care benefits as clearly distinguishable from group health or disability benefits. Long-term care benefits, it was suggested, have been designed uniquely to provide assistance in tasks of daily living to individuals with disabilities or chronic conditions. Eligibility for long-term care benefits is based, according to the commenter, solely on whether an individual is ''unable to perform a requisite number of the activities of daily living due to the loss of functional capacity or requires substantial supervision due to severe cognitive impairment.'' The commenter reported that ''long term-care benefits'' generally include a wide range of services, including respite care, coverage for home modifications for the disabled, nursing-home care, and payment for family care givers, all directed towards meeting the routine needs of daily life, but do not include ''medical care'' within the meaning of section 733(a)(2) of the Act or replacement income as is usual under disability plans. It is the view of the Department that the provision of the type of benefits described by the commenter would not, in and of itself, cause a plan to be treated as a group health plan or a plan providing disability benefits for purposes of this regulation.

Time Frames for Decisionmaking

The proposal contained new time frames for claims decisions by group health plans and plans providing disability benefits at both the initial claims decision stage and on review. In its treatment of group health claims, the proposal distinguished between claims involving urgent care and all other group health claims, setting different maximum time periods for the two categories of group health claims,[3] and, with respect to disability claims,[4] the proposal provided a separate set of maximum time periods somewhat longer than for group health plans. In proposing these relatively short time frames, the Department emphasized that they reflected specific ''best practices'' discussed in the RFI comments and the Department's belief that speedy decisionmaking is a crucial protection for claimants who need either medical care or the replacement income that disability benefits provide.[5] The Department specifically solicited further public comment on the adequacy of the proposal's definition of claims involving urgent care, explaining that speedy decisionmaking has increased significance when a claim must be approved prior to a claimant's receiving medical care.

There was relatively little objection among the commenters regarding the proposed decisionmaking time frames for urgent care group health claims. The majority of those commenting either actively supported or accepted the necessity for this reform, indicating that at the present time urgent care decisions are generally being made within the proposed time frames.[6] In discussing

[2] It should be noted that the regulation as it applies to such plans is not identical to the 1977 regulation. In some respects, the language of the regulation has been updated to reflect current practices and to incorporate the Department's longstanding interpretations of the 1977 regulation. In addition, as noted specifically below, some provisions of the 1977 regulation have been clarified in this regulation, and such clarifications apply uniformly to all employee benefit plans covered under the Act.

[3] The proposal required urgent care claims decisions to be made during a stringent maximum 72-hour period at both the initial and review stages. All other group health claims were required under the proposal to be resolved within not more than 15 days, with respect to both initial and review decisions. The proposal did not provide for any extensions of these periods by plans in any circumstances, although it did not prohibit consensual agreements between claimants and plans on the timing of decisions.

[4] Where a single plan provides more than one type of benefit, it is the Department's intention that the nature of the benefit should determine which procedural standards apply to a specific claim, rather than the manner in which the plan itself is characterized.

[5] The proposal also eliminated, for group health plans and plans providing disability benefits, the time extension on review available, under the 1977 regulation, to plans administered by boards of directors or committees that meet at least quarterly.

[6] The rules contained in subparagraph (f)(2)(i) regarding treatment of claims involving urgent care are, therefore, largely unchanged from those contained in the proposal. A few commenters suggested that the definition of ''claims involving urgent care'' be expanded to include the concept of ''maintaining'' maximum function, as well as regaining maximum function. The Department has not made this change, but it is the view of the Department that the definition as proposed, and as adopted in this regulation, addresses the concern for protecting ''maximum function'' by providing

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the time frames proposed for other group health and disability decisionmaking, however, a large number of commenters objected to the shortness of the time frames.

With respect to the proposed time frames for non-urgent group health claims, many commenters acknowledged the legitimacy of the Department's concern for affording claimants speedy access to medical care, but asserted that the Department's concerns regarding access to care did not justify treating all non-urgent claims the same. These commenters asserted that it would be extremely difficult and expensive, if not impossible, to satisfy the proposal's requirement that all non-urgent group health claims be decided within not more than 15 days. They urged the Department to consider distinguishing between ''pre-service'' claims, that is, those claims that must be decided before a claimant will be afforded access to health care, and claims that involve only the payment or reimbursement of the cost for medical care that has already been provided (''post-service'' claims).[7] The pre-service claims, the commenters argued, should be subject to a shorter decisionmaking time frame. Other non-urgent group health claims, these commenters argued, do not raise the same degree of concern since they do not represent cases in which claimants may actually be denied medical care. In many instances, the commenters asserted, a longer decisionmaking period for these post-service claims may be appropriate, even necessary, since a longer period of deliberation may in some proportion of cases result in the grant of benefits that might otherwise be denied.

The Department has seriously considered the arguments and testimony put forth on this issue, and it has concluded that there is substantial justification for treating non-urgent health care claims along the lines suggested in the comments. Accordingly, the regulation makes a distinction, in setting the maximum time periods for deciding non-urgent group health claims, between group health claims that involve access to medical care (pre-service claims) and group health claims that involve purely the payment or reimbursement of costs for medical care that has already been provided (post-service claims).

Subparagraph (m)(2) defines a ''pre-service claim'' as any request for approval of a benefit with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care. In this regard, it is the Department's view that any review or approval that a plan requires as part of the process of receiving a benefit, even if such review or approval does not guarantee that the plan will ultimately grant the benefit, involves a ''claim'' and must be treated as such for purposes of this regulation. For example, a request for pre-approval under a utilization review program or for a prior authorization of health care items or service would be a ''pre-service claim'' under this definition, as would any request for a preauthorization that a plan requires a claimant to obtain as a precondition to the claimant's receiving a larger benefit (e.g., payment of 80% of the cost of the preauthorized service, rather than 50%). ''Post-service claims'' are defined in subparagraph (m)(3) as all claims under a group health plan that are not pre-service claims.

Subparagraph (f)(2)(iii)(A) requires that pre-service claims be decided within a maximum[8] of 15 days at the initial level, and subparagraph (i)(2)(ii) permits a maximum of 30 days on review of an adverse benefit determination.[9] Post-service claims are subject to a maximum time period of 30 days for the initial decision under subparagraph (f)(2)(iii)(B) and a maximum of 60 days on review under subparagraph (i)(2)(iii)(A). With respect to both pre- and post-service claims, the regulation further provides for limited extensions of time.[10] In the Department's view, establishing separate time frames for these two groups of claims, and providing more generous time frames for each group, will balance the needs of claimants and the business considerations raised by the commenters representing plans, employers, and administrators. These time frames accommodate both the need for additional time in some cases and the need for speedy decisionmaking when access to medical care is at stake.

Concurrent Care Decisions

The proposal contained a provision that would accelerate decisionmaking in the case of an urgent care claim arising out of a termination or reduction of previously granted benefits being provided over a period of time. Under the proposal, any such termination or reduction would be treated as an adverse benefit determination, and plans would be required to provide notice in such circumstances of the termination or reduction of benefits at a time sufficiently in advance of the termination or reduction so as to allow the claimant to appeal the denial before the termination or reduction takes effect. This proposal was intended to address RFI comments that expressed concern over the harm that patients suffer from interruptions in treatment that should have been provided on a continuous basis. The Department believed that the dangers of this harm could be minimized if patients are provided an opportunity to argue in favor of uninterrupted continuing care before treatment is cut short or reduced. No serious objections to this provision were raised in the comment record.

In finalizing the regulation, the Department has concluded that there is no strong basis for providing this protection only for terminations or reductions involving urgent care.[11] Any

that if delaying deciding a claim could seriously jeopardize the claimant's ''life'' or ''health,'' the claim involves urgent care. Any effect on a claimant's ''maximum function'' that is less than serious jeopardy to life or health should not be considered a ''claim involving urgent care.''

[7] The record indicates also that representatives of claimants do not generally oppose making this distinction.

[8] As in the 1977 regulation and the proposal, the times established for decisionmaking are maximum times only. Decisions are required to be made, generally, within a reasonable period of time appropriate to the circumstances. Accordingly, in some cases, delaying a decision until the end of the applicable maximum period may be unreasonable under the circumstances and thus a violation of the procedural standards.

[9] Various commenters requested clarification as to whether the term ''days'' as used in the proposal was intended to refer to calendar days or to some other more limited construct, such as ''business'' days. It was the Department's intention in the proposal, and it continues to be the Department's position with respect to this regulation, that the term ''days'' means calendar days. In light of the need for speedy decisionmaking in many of the time frames involved, the Department has determined not to restrict the counting of days as used in the regulation to less than every calendar day, but rather to provide reasonable periods of time determined by reference to calendar days.

[10] The regulation's provisions for extension of time for group health plans and plans providing disability benefits are discussed generally below. In addition, the regulation leaves in place a restricted form of the ''quarterly meeting'' rule contained in the 1977 regulation, permitting extension of the decisionmaking time on review, under subparagraph (i)(2)(iii)(B) for post-service claims and under subparagraph (i)(3)(ii) for claims for disability benefits. The extension of time for plans administered by boards of trustees or committees that meet at least quarterly is available, under the regulation, only for multiemployer plans. It is the Department's view that such plans, in which employee representation is guaranteed, will delay decisionmaking by exercising this privilege only when it is necessary and not harmful to claimants.

[11] The regulation calls this type of decisionmaking ''concurrent care decisions'' because the decision to reduce the treatment is made concurrently with the treatment itself. The regulation clarifies that the provision applies to ongoing treatment covering either a period of time or a number of treatments. If a plan approves a course of treatment that has no finite termination date, such as treatments to be provided ''as long as medically necessary,'' a reduction or termination of that course of treatment is considered a concurrent care decision under the regulation.

decision to terminate or reduce benefits that have already been granted will cause disruption and potential harm to patients receiving the ongoing care. In our view, claimants faced with such a disruption should be afforded an adequate opportunity to contest the termination or reduction of already granted benefits before it takes effect. Accordingly, subparagraph (f)(2)(ii)(A) retains the basic protection provided in the proposal as to the termination or reduction of previously granted benefits, but expands its scope to encompass any termination or reduction of already granted benefits.

Some commenters urged the Department to consider extending the protection of this special timing rule to requests for additional care discovered to be necessary during the course of the initially prescribed treatment. In response to these suggestions and to minimize the possibility of harm from interruptions in treatment, the regulation further provides that any urgent care claim requesting to extend a course of treatment beyond the initially prescribed period of time or number of treatments must be decided within not more than 24 hours, provided that the claim is made at least 24 hours prior to the expiration of the initially prescribed period. If such a claim is denied, it would be appealable as an urgent care claim. [12]

Time Frames for Plans Providing Disability Benefits

The proposal established time frames for resolution of disability claims that were shorter than those in the 1977 regulation.[13] Commenters representing disability insurers voiced concern over this aspect of the proposal. These commenters argued that disability claims are often difficult to resolve inasmuch as they present complex issues requiring consideration of not only a claimant's medical condition, but also the claimant's continuing vocational capabilities. These commenters asserted that the proposed time frames were far too short to accommodate the individualized decisionmaking process involved in resolving most disability claims. Commenters representing claimants, especially long-term disability claimants, took an opposite position, arguing that disability providers frequently delay resolving these claims unnecessarily in order to avoid beginning to make payments. They emphasized the economic hardships disabled claimants experience as a result of any unnecessary delays in receiving the replacement income that disability benefits are intended to provide.

After consideration of the comments and testimony on this issue, the Department has resolved to provide a limited opportunity for extension of time to resolve disability claims. Subparagraph (f)(3), in consequence, provides that disability claims must be resolved, at the initial level, within 45 days of receipt; a plan may, however, extend that decisionmaking period for an additional 30 days for reasons beyond the control of the plan. If, after extending the time period for a first period of 30 days, the plan administrator determines that it will still be unable, for reasons beyond the control of the plan, to make the decision within the extension period, the plan may extend decisionmaking for a second 30-day period. The regulation requires that the plan provide a disability claimant with an extension notice that details the reasons for the delay. Thus, a plan may take, under limited and justifiable circumstances, up to 105 days to resolve a disability claim at the initial claims stage, provided that appropriate notice is provided to the claimant before the end of the first 45 days and again before the end of each succeeding 30-day period. In the Department's view, this framework will enable a plan to take sufficient time to make an informed decision on what may be a complex matter, but the plan will be required to keep the claimant well informed as to the issues that are retarding decisionmaking and any additional information the claimant should provide. By limiting the reasons for which decisions may be delayed, the regulation also requires prompt decisonmaking when appropriate.

With respect to the review of adverse benefit determinations involving disability claims, subparagraph (i)(3)(i) adopts the basic approach of the proposal, permitting a maximum of 45 days to complete a review,[14] but it further permits plans providing disability benefits to extend the decisionmaking time on review for an additional 45-day period under the rules applicable to pension and other welfare plans, and under subparagraph (i)(3)(ii) allows multiemployer plans providing disability benefits that are administered by boards of trustees or committees meeting at least quarterly to take advantage of the ''quarterly meeting'' extended time period on review.[15]

Incomplete Claims and Extensions of Time

The proposal specifically required all plans to make an early determination as to whether a filed claim is ''incomplete.'' Under the proposal, notification that a claim is incomplete, including a description of the information necessary to complete the claim, would be required to be provided to a claimant within 5 days of filing the claim. This provision, which responded directly to complaints expressed in the RFI comments, was intended to eliminate unnecessary causes of delay in the processing of claims and to speed communications between plan and claimant regarding essential information.

The Department received many comments on the proposal asserting that it is often not possible to determine whether a claim is incomplete without deciding the claim in its entirety.[16] The requirement to provide notice of incompleteness within 5 days, these commenters urged, would essentially force plans to make complete benefit determinations within that time. These commenters further suggested that providing an opportunity for extending the time for deciding ''incomplete'' group health and disability claims would better serve the purposes intended to be achieved by the notice of incompleteness.[17]

In light of these objections and arguments, the Department has reconsidered the structure of its proposed rule regarding incomplete claims and extensions of time. The regulation generally omits the provisions for incomplete claims except

[12] Of course, any request to extend a course of treatment that does not involve urgent care is a claim under the regulation and is governed by the standards generally applicable to such claims.

[13] Under the proposal, disability claims were subject to a 30-day maximum initial decisionmaking period, with the possibility of a 15-day unilateral extension; review of adverse benefit determinations of such claims were made subject to a 45-day maximum period, with a possible 45-day unilateral extension.

[14] Under the regulation, a plan cannot impose more than two levels of mandatory review with respect to denial of a disability claim.

[15] See below for explanation of the ''quarterly meeting'' rule.

[16] Representatives of claimants supported the proposed rule regarding incomplete claims, asserting that plans frequently and unnecessarily delay in informing claimants of obvious deficiencies in claims, thereby causing claims decisions to be made later than would otherwise be the case.

[17] The 1977 regulation permitted an extension of time of up to 90 days for processing claims under ''special circumstances.'' The proposal would have eliminated this provision and prohibited plans from taking extensions of time without the claimant's consent. Commenters representing plans, employers, and plan administrators objected to the prohibition on extensions of time as inappropriately inflexible.

with respect to urgent care claims.[18] Instead, the Department has modified the 1977 regulation's provisions for extensions of time to permit group health plans and plans providing disability benefits a limited opportunity to extend the period for decisionmaking at the initial level.[19] Under subparagraphs (f)(2)(iii)(A) and (B) group health plans may extend decisionmaking on both pre- and post-service claims for one additional period of 15 days after expiration of the relevant initial period, if the plan administrator determines that such an extension is necessary for reasons beyond the control of the plan. Under subparagraph (f)(3), plans providing disability benefits may avail themselves of a similar provision permitting a maximum of two extensions of time, each of 30 days, when necessary for reasons beyond the control of the plan.[20]

In each case, if the reason for taking the extension is the failure of a claimant to provide necessary information, the time period for making the determination is tolled from the date on which notice of the necessary information is sent to the claimant until the date on which the claimant responds to the notice.[21] In connection with providing an opportunity for extension, subparagraph (f)(4) further specifies that the time periods for making a decision are considered to commence to run when a claim is filed in accordance with the reasonable filing procedures of the plan, without regard to whether all of the information necessary to decide the claim accompanies the filing.

In providing a limited extension opportunity for deciding group health and disability claims, it is the Department's intention to provide plans with the flexibility necessary to handle all claims appropriately, whether such claims are easy or difficult, complete when filed or needing more information. The Department emphasizes that the time periods for decisionmaking are generally maximum periods, not automatic entitlements. If a specific claim presents no difficulty whatsoever, it may be unreasonable to delay in deciding that claim until the end of the maximum period; similarly, an extension may be imposed only for reasons beyond the control of the plan. For example, the Department would not view delays caused by cyclical or seasonal fluctuations in claims volume to be matters beyond the control of the plan that would justify an extension. The Department further notes that there is no provision for extensions of time in the case of claims involving urgent care.

Notice and Disclosure Requirements

The proposal contained several amplified notice and disclosure requirements, some of which were made applicable to all plans, and some of which applied specifically only to group health plans. Among such general new notice requirements was a provision requiring all plans to provide a specific notice, within 5 days (24 hours in the case of a claim involving urgent care), in any instance in which a participant or beneficiary made a request for a benefit, but failed to follow the plan's procedures for filing a claim.[22] The mandated notice for incorrectly filed claims would explain that the request for a benefit did not constitute a claim under the terms of the plan and would further describe the plan's procedures for filing a claim. The Department's intention in proposing this new notice requirement was to ensure that plans did not ignore, either deliberately or inadvertently, any reasonable, albeit unsuccessful, attempt by claimants or their representatives to make a claim.

Many commenters representing employers, plans, and plan administrators objected to this provision, asserting that plans would have difficulty determining whether a communication with the plan was a ''request for a benefit'' or a simple inquiry about the plan's provisions, unrelated to any specific benefit claim. These commenters argued that the notice requirement would be unduly expensive to implement because of the large number of plan-related individuals contact with whom could trigger the requirement. Commenters further argued that this notice requirement was superfluous since a plan's summary plan description (SPD) should clearly describe the requirements for filing a claim for benefits, and it can be assumed that claimants read and understand their plan's SPD.

After reconsidering this proposal in light of the comments, the Department has determined to clarify this notice requirement to eliminate uncertainty as to its meaning and to narrow its application to better target the perceived problem. Under subparagraph (c)(1)(i), the requirement to provide a notice informing claimants that they have failed to properly file a claim will arise only if a request is made that involves a pre-service claim. Further, under subparagraph (c)(1)(ii), the notice requirement will be triggered only by a communication from a claimant or a health care professional representing the claimant that specifies the identity of the claimant, a specific medical condition or symptom, and a specific treatment, service, or product for which approval is requested, and the communication is received by a person or organizational unit customarily responsible for handling benefit matters. In order to reduce the asserted costs of compliance, the regulation provides that the notice may be provided orally to the claimant or health care professional (as appropriate), unless the claimant or representative requests a written notice. Restricting the scope of this notice requirement in this manner will reduce the compliance difficulties posited by the commenters, while still requiring notice of a defective filing to be given in those instances most critical to claimants.

The proposal clarified the requirement under the 1977 regulation that a plan's claims procedures must be described in the SPD of the plan. The proposal specified that the description in the SPD must include all procedures for filing claim forms, providing notification of benefit determinations, and reviewing denied claims. With respect to group health plans, the proposal would require the SPD description to include any procedures for obtaining preauthorizations, approvals, or utilization review decisions.

As a concomitant to this basic disclosure, the proposal further clarified that a notice of adverse benefit determination (at both the initial level and on review)[23] must identify

[18] As was proposed, the regulation requires plans to provide notice of incompleteness, in the case of a claim involving urgent care, within 24 hours of receipt of the claim and does not permit a plan to unilaterally extend the time period for deciding an urgent care claim.

[19] With respect to pension and other welfare plans, this regulation fully continues the provisions of the 1977 regulation regarding extensions of time.

[20] The rules for disability claims are also described above.

[21] This tolling period ends on the date on which the plan receives the claimant's response to the notice, without regard to whether the claimant's response supplies all of the information necessary to decide the claim. Once the claimant responds, the plan will have the benefit of the extension of time (15 days for group health claims; 30 days for disability claims) within which to decide the claim. The plan may take only the extensions described in the regulation (*e.g.,* one extension for group health claims) and may not further extend the time for making its decision unless the claimant agrees to a further extension.

[22] The proposal listed a number of individuals and parties related to the plan and the employer, communication with whom would trigger the notice requirement.

[23] The proposal required written or electronic notice to be provided with respect to grants of benefits as well as denials. In view of the negative comments that the Department received regarding

specifically any internal rules, guidelines, protocols, etc. that served as a basis for the adverse benefit determination.[24] If such rules had served as a basis for the decision either at the initial level or on review, the proposal further required that a copy of the protocol be provided to the claimant upon request.

While there was little comment on the proposal's provision for disclosure in the SPD of the plan's claims procedures, some commenters representing plan administrators and health insurance or services provider organizations objected to the requirements regarding identification and furnishing of a utilized internal rule or protocol. In the view of these commenters, these requirements would impose excessive burdens on administration of group health plans and provide little in the way of useful information to claimants. While the testimony and comments on this issue were in some conflict,[25] a large number of commenters asserted that it would be expensive and difficult to specify in the notice of adverse benefit determination the individual protocol on which the decision was based because of the computerized nature of the determination processes. In addition, these commenters argued that specification of the protocol would not provide the claimant with useful information about why their benefit claim had been denied. These commenters also worried that the language of the proposal could be read to require plans routinely to furnish a copy of the specific protocol itself as part of the notice of adverse benefit determination. Because protocols can be of some length and complexity, providing these documents routinely with any adverse benefit determination could impose a large burden on the administration of group health plans.

The Department continues to believe that claimants have a need to know the specific basis for an adverse benefit determination. Where a plan utilizes a specific internal rule or protocol, understanding the terms of the specific protocol may be crucial to a claimant's ability to successfully contest the denial on review. Therefore, subparagraph (g)(1)(v) generally retains the requirements that a plan inform a claimant that a protocol has been relied upon and furnish the protocol upon request. To reduce the potential burden of complying with these requirements, the regulation makes clear that the notice of adverse benefit determination may either set forth the protocol on which it was based or a statement that a protocol was relied upon and that a copy of such protocol will be made available to the claimant free of charge upon request.

Several commenters requested that the Department amplify the disclosure requirements for adverse benefit determinations to require plans to provide an adequate explanation of the reason for an adverse benefit determination based on medical judgment especially when invoking plan exclusions based on ''medical necessity'' or similar broad terms. Commenters asserted that the reasons given in these circumstances were frequently ''cursory'' and ''vague and open ended.'' One commenter stated that when claimants receive such conclusory denials unsupported by scientific or clinical evidence, ''they are in the untenable position of having to refute arguments they are not allowed to understand.''

The Department agrees that claimants would benefit from receiving fuller explanations when a claim is denied because the care is not medically necessary, is experimental in nature, or some similar plan exclusion or limit is applied. Consequently, the Department is adding new subparagraphs (g)(1)(v)(B) and (j)(5)(ii) to require that the notification of an adverse benefit determination (at both the initial level and on review) based on medical necessity, experimental treatment, or other similar exclusion or limit either explain the scientific or clinical judgment of the plan in applying the terms of the plan to the claimant's medical circumstances, or include a statement that such an explanation will be provided free of charge to the claimant upon request. In response to comments, the Department is also adding subparagraph (j)(5)(iii) to require inclusion of a statement notifying claimants that they can seek additional information about potential alternative dispute resolution methods.

The preamble to the proposal discussed the Department's interest in providing claimants sufficient access to information that could aid them in determining whether a plan and its agents had acted fairly and consistently in denying their claims. In particular, the Department was concerned about claimants' difficulties in obtaining sufficient information to determine whether a particular claims decision comported with prior decisions on similar issues and whether a claimant would be justified in challenging a decision as defective under the Act on that basis. In this regard, the Department stated in the preamble that it was considering requiring plans to disclose, after an adverse benefit determination on review, documents and records relating to previous claims involving the same diagnosis and treatment decided by the plan within the five years prior to the adverse benefit determination (up to a maximum of 50 such claims). The disclosure obligation would have been limited to cases in which a claimant commences litigation over the benefit determination and would have been further limited, with respect to insured benefits, to claims involving the same plan or insurance contract language.

This proposal was opposed by many commenters representing employers, plans, plan administrators, and insurers. They asserted that such a requirement would be prohibitively expensive to implement and would provide claimants with little information of any benefit. They also asserted that requiring this disclosure would be beyond the Department's regulatory authority under section 503 of the Act.

The Department has seriously considered the objections raised to this suggestion in the preamble of the proposal and has altered its approach to the problem in order to reduce the potential burden on plans and avoid any suggestion of possible interference with the civil discovery processes in litigation. Subparagraph (b)(5) provides, as a general requirement for reasonable claims procedures for all plans, that a plan's claims procedures must include administrative safeguards and processes designed to ensure and to verify that benefit claims determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants. Courts have long recognized that such consistency is required even under the most deferential judicial standard of review. [26] It is the view of the

this requirement, the regulation requires written or electronic notice of benefit grants to be provided only in the case of claims involving urgent care and pre-service claims.

[24] It is the Department's view that such internal rules, guidelines, protocols, etc. are ''instruments under which the plan is established or operated'' within the meaning of section 104(b) of the Act and as such must be furnished to participants and beneficiaries upon written request. *See* Advisory Opinion 96–14A (July 31, 1996).

[25] Many commenters representing claimants affirmed the importance of having access to internal rules or protocols used in decisionmaking. Other testimony, in particular from insurers, indicated that specifically utilized protocols are currently available and furnished to claimants upon request. Other testimony indicated that such protocols can be obtained routinely only through discovery processes in litigation.

[26] *See, e.g., Lutheran Medical Center* v. *Contractors, Laborers, Teamsters and Engineers*

Continued

Department that this provision does no more than to require a plan to formalize, as a part of its claims procedures, the administrative processes that it must already have established and be using in operating the plan in order to satisfy basic fiduciary standards of conduct under the Act. The Department has not articulated specific requirements as to how such processes should be designed, believing that plans should have flexibility and are capable of monitoring their internal decisionmaking effectively and efficiently.

As a concomitant to this general requirement, subparagraph (m)(8)(iii) further provides that, among the information that a plan must provide a claimant upon request after receiving an adverse benefit determination, is any information that the plan has generated or obtained in the process of ensuring and verifying that, in making the particular determination, the plan complied with its own administrative processes and safeguards that ensure and verify appropriately consistent decisionmaking in accordance with the plan's terms. It is not the Department's intention in this regard to require plans to artificially create new systems for the sole purpose of generating documents that can be handed to a claimant whose claim is denied in order to satisfy this disclosure requirement. The Department anticipates that plans generally will have systems for ensuring and verifying consistent decisionmaking that may or may not result in there being disclosable documents or information pertaining to an individual claims decision.

The proposal attempted to clarify the 1977 regulation's requirement that claimants be afforded access, after a benefit denial, to ''pertinent documents.'' Based on its conclusion from RFI comments that there was substantial public confusion concerning the meaning of the term ''pertinent,'' the Department proposed to replace that term with the term ''relevant.'' The proposal further stated that a document would be considered ''relevant'' to a claim whether or not such document was in fact relied upon by the plan in making the adverse benefit determination. As stated in the preamble to the proposal, the Department believed that these changes would make clear that claimants must be provided access to all of the information present in the claims record, whether or not that information was relied upon by the plan in denying the claim and whether or not that information was favorable to the claimant. Such full disclosure, which is what the 1977 regulation contemplated, is necessary to enable claimants to understand the record on which the decision was made and to assess whether a further appeal would be justified.

Commenters representing plans, employers, insurers, and plan administrators expressed dissatisfaction with this attempted clarification.[27] The main source of their objection was that the proposal failed to define adequately the scope of the intended disclosure. In their view, the use of the term ''relevant,'' particularly when coupled with the modifier that information need not have been relied upon to be relevant, would impose an unlimited burden on plans to search their records for any information relevant in the broadest sense to the claim, whether it was in any way related to the actual claims process. These commenters feared that plans would face added costs of keeping track of, and disclosing, a large amount of information generally accessible to the decisionmaker, without regard to whether such information was in any way utilized in the decisionmaking process.

The regulation responds to this concern. While retaining the term ''relevant'' in subparagraph (j)(3) to describe the documents and other information that must be made available to a claimant free of charge upon request after receiving an adverse benefit determination, the regulation provides a specific definition of that term. Subparagraph (m)(8) states that a document, record, or other information is considered ''relevant'' if it was relied upon in making the determination, or was submitted to the plan, considered by the plan, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the determination. Subparagraph (m)(8) further provides that the claimant should receive any information demonstrating that, in making the adverse benefit determination, the plan complied with its own processes for ensuring appropriate decisionmaking and consistency. Additionally with respect to group health and disability claims under subparagraph (m)(8), a document, record, or other information is considered ''relevant'' if it constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for that claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the determination. The Department believes that this specification of the scope of the required disclosure of ''relevant'' documents will serve the interests of both claimants and plans by providing clarity as to plans' disclosure obligations, while providing claimants with adequate access to the information necessary to determine whether to pursue further appeal.

Standards of Review

The proposal adopted new standards for a full and fair appeal of an adverse benefit determination. The proposal required that the review be conducted by an appropriate named fiduciary who is neither the party who made the initial adverse determination, nor the subordinate of such party; that the review not afford deference to the initial adverse benefit determination; and that the review take into account all comments, documents, records, and other information submitted by the claimant, without regard to whether such information was previously submitted or relied upon in the initial determination. In addition, with respect to group health claims, the proposal required fiduciaries reviewing any determination based on a medical judgment to consult with a health care professional with appropriate training and experience in the field of medicine involved in the medical judgment. Such health care professional was required to be ''independent'' of any health care professional consulted in making the initial adverse benefit determination.

Most commenters considering this aspect of the proposal strongly supported these reforms, agreeing that there is a need to ensure that claims decisions are reviewed by a party with sufficient independence to provide a full and fair review. A significant number of commenters urged the Department to extend the requirement of consultation with an appropriate health care professional to the review of decisions on disability claims. Some commenters, however, voiced concern regarding the additional cost that would be imposed by the requirement of a separate decisionmaker and consultation with health care professionals. In particular, it was argued that small employers, whose plans, it was asserted, generally are administered solely by a single individual who is either the owner of the business or the general manager of the business, would be caused

Health and Welfare Plan, 25 F.3d 616, 620–22 (8th Cir. 1994); *De Nobel* v. *Vitro Corp.,* 885 F.2d 1180, 1188 (4th Cir. 1989).

[27] Representatives of claimants, however, strongly supported this clarification, complaining that plan officials occasionally seek to withhold information that would tend to support granting the claim.

substantial additional expense to obtain the independent review. Some commenters further urged the Department to clarify the type of ''independence'' that would satisfy the Department's requirement for the health care professional who must be consulted on review.

Subparagraphs (h)(3) and (4) generally retain the proposed standards for the conduct of reviews of adverse benefit determinations with respect to group health plans and plans providing disability benefits. By limiting the scope of this reform to group health plans and plans providing disability benefits, the regulation greatly reduces, the Department believes, the cost implications for small employers. In addition, the regulation requires consultation with an appropriately qualified health care professional on review of denied disability claims involving medical judgments. Subparagraph (h)(3)(v) further clarifies that the standards for ''independence'' of a health care professional who is consulted in connection with a review are the same as those that apply to the appropriate named fiduciary under subparagraph (h)(3)(ii), that is, the individual who is consulted must be an individual different from, and not subordinate to, any individual who was consulted in connection with the initial decision. The Department believes that these changes will accommodate the interests of benefit claimants in having a full opportunity for an adequate review and the needs of employers and plans to limit the costs of providing such a review.

Permitted Levels of Review

The proposal provided that a plan may require only one appeal of a denied claim. This limitation was intended to assure that claimants whose claims are denied have the ability to take their claims to court without undue delay, as the Department believes was intended by section 503 of the Act. Nothing in the proposal, however, was intended to preclude a plan from offering, or a claimant from agreeing to utilize, additional voluntary administrative appeals processes. The proposal further banned plans from requiring that denied claims be submitted to arbitration or that any costs be imposed on a claimant as a condition for filing or appealing a claim.

These aspects of the proposal were opposed by many commenters representing employers, plans, plan administrators, benefit providers, and insurers. These commenters asserted that it is common practice among a large number of plans to provide more than one level of appeal for a denied claim and that such a practice generally benefits claimants by providing a less costly alternative to taking a denied claim to court. Such a practice is particularly common, it appears, with respect to insured benefits, where initial decisions and one or more appeals are handled within the insurer, and appeals at additional levels are to the plan or employer. Commenters representing claimants, on the other hand, supported the limitation on the number of mandatory appeals, arguing that multiple levels of administrative appeal often hamper and frustrate claimants, causing them to abandon claims. Such multiple levels often serve no actual purpose, these commenters assert, and provide no independent review.

The Department continues to believe that allowing plans to impose an unlimited number of levels of administrative appeals of denied claims does not serve the best interests of claimants. However, it has concluded that the strict limitation of appeals to a single level may be unnecessarily limiting. In the interests of providing plans some flexibility in creating claims processes, and to accommodate what appears to be a common practice, subparagraph (c)(2) permits two levels of mandatory appeal of an adverse benefit determination. [28] In order to promote speedy resolution of group health claims, however, subparagraph (i)(2) limits the overall time period within which plans must decide appeals of denied claims. [29]

With respect to the proposal's ban on arbitration, a significant number of commenters representing unions, [30] multiemployer plans, and employers objected that this reform was contrary to the general approach of the Federal government, as expressed in the Federal Arbitration Act, to encourage the appropriate use of alternative dispute resolution. In addition, these commenters suggested that arbitration generally provides a useful and less costly means of resolving benefit disputes than litigation. An equal number of commenters representing claimants, however, supported the proposed ban on mandatory arbitration, asserting that, as applied to claims disputes, arbitration is inherently unfair because of the difference in status between the typical benefit claimant and the typical plan or employer. Commenters also suggested that the practice of requiring plan participants to agree to arbitrate all benefits disputes as a condition of participation in the plan is inherently unfair due to the inequality in bargaining power between employers and employees. Further, they argued that the traditional methods of cost-sharing involved in commercial arbitration, in which each party pays half of the costs of the arbitration, may be prohibitively expensive for most claimants.

After careful deliberation on the issues raised by the commenters regarding the use of alternative dispute resolution for benefit claims disputes, the Department has revised its approach to permit plans, pursuant to subparagraph (c)(4), to require some limited forms of mandatory arbitration. In addition, in subparagraph (c)(3), the Department addresses more generally the subject of plans' offering additional, voluntary processes, including voluntary binding arbitration, after conclusion of the required claims review process. By retaining the complete prohibition on imposing costs on claimants in connection with filing or appealing a claim, however, subparagraph (b)(3) makes clear that any process used by a plan to resolve a claim dispute, including arbitration, must be conducted without imposing fees on the claimant. These restrictions apply, under the regulation, only to group health plans and plans providing disability benefits.

With respect to mandatory arbitration used as part of the claims process, subparagraph (c)(4) provides that a plan may require arbitration as one (or both) of the permitted levels of review of a denied claim, provided, first, that the arbitration is conducted in accordance with the requirements of the regulation applicable to such appeals and, second, that the claimant is not thereby precluded from challenging the arbitrator's decision, including pursuing the claim in court pursuant to section 502(a) of the Act. With respect to voluntary additional levels of appeal offered by a plan, including voluntary binding arbitration or other methods of dispute resolution, subparagraph (c)(3)(iii) provides that a plan may offer

[28] As with other aspects of the regulation's procedural reforms, this limit is imposed only with respect to group health plans and plans providing disability benefits. The Department solicits comments on whether this reform should be extended to other employee benefit plans.

[29] If a group health plan provides only one level of appeal, it may take up to 30 days to resolve an appeal of a pre-service claim denial; if it provides two levels of appeal, both levels must be concluded within that 30 days. For appeals of post-service claims denials, a plan with a single level of appeal may take up to 60 days to conclude that appeal; plans with two levels of appeal must complete both appeals within the same 60 days.

[30] The issue of the 1977 regulation's special treatment of grievance procedures, including arbitration, adopted by collectively bargained, single employer plans through the collective bargaining agreement, is discussed separately below.

such voluntary additional levels of appeal to a claimant as a method of resolving a benefit dispute only after the dispute has arisen. Subparagraph (c)(3)(iv) further requires the plan to provide the claimant with sufficient information about the voluntary process to permit the claimant to make an informed judgment about whether to submit the dispute to the voluntary process; this requirement includes information about the applicable rules, the process for selecting the decisionmaker, and the circumstances, if any, that may affect the impartiality of the decisionmaker, such as any financial or personal interests in the result or any past or present relationship with any party to the review process. The plan must also make clear to the claimant that the decision as to whether or not to submit a benefit dispute to the voluntary level of appeal will have no effect on the claimant's rights to any other benefits under the plan.[31] In addition, subparagraph (c)(3) includes two protections intended to make sure that additional appeal levels offered by a plan remain truly voluntary. First, subparagraph (c)(3)(i) requires any plan offering a voluntary appeal to agree not to later assert a defense of failure to exhaust available administrative remedies against a claimant who chooses not to make use of the voluntary appeal process. Second, subparagraph (c)(3)(ii) requires such plans to agree that any statute of limitations or other defense based on timeliness is tolled while the dispute is under submission to the voluntary process. The Department considers these protections to be essential to procedural fairness for a claimant who is offered or pursues voluntary administrative processes as an alternative to pursuing a claim in court.

Preemption of State Law

Section 514(a) of the Act provides that the provisions of the Act generally supersede State laws ''insofar as they may now or hereafter relate to any employee benefit plan [covered under the Act].'' Section 514(b)(2)(A), however, saves from the general preemption of section 514(a) State laws that regulate insurance, banking, or securities. The scope and meaning of the general preemption provision of section 514(a) and the savings clause contained in section 514(b)(2)(A) have been the subject of controversy since enactment of the Act.[32] The proposal did not address section 514 of the Act or in any way propose to regulate the relationship between the proposed minimum standards for benefit claims procedures of employee benefit plans and State law that might affect or relate to such standards.

Many commenters, including several State insurance commissioners, urged the Department to consider addressing the question of the preemptive effect of a final regulation on State law. Such commenters suggested that a failure to do so would exacerbate existing confusion about the possible preemption of State law efforts seeking to improve the quality of health care, especially those that seek to protect patients' rights by providing State-mandated systems for the review of disputes between patients and health care providers or insurers. Such State law, the commenters argued, may be considered to be preempted to the extent that the State-law requirements differ from or conflict with the requirements of this regulation. Some commenters urged the Department to provide in this regulation for the complete preemption of State law that provides procedures for the resolution of benefit claims disputes. Others urged the Department to model the extent of the regulation's preemptive effect on section 731(a) of the Act, which provides special, more limited preemption with respect to the provisions of the Part 7 of the Act, concerning portability, renewability, nondiscrimination, and other rights relating to group health plans. Overall, a large number of commenters agreed that there would be benefit to the public in general in the Department's clarifying its views as to the preemptive effect of the regulatory standards.

In response to these comments, the Department has added to the regulation a new paragraph (k) providing interpretive guidance on the question of the relationship of the substantive regulatory standards to State law. Subparagraph (k)(1) states that the regulatory standards should not be read to supersede State law regulating insurance (even when such State law prescribes standards for claims processes and internal review of claims) unless such State law prevents the application of a requirement of the regulation. For example, a State may have a law requiring insurers to allow oral appeals of all claims or to decide claims within shorter periods of time. These laws would not prevent the application of the regulation because plans could comply with both the regulation and the State laws.

Subparagraph (k)(2)(i) explains that a State law regulating insurance should not be considered to prevent the application of a requirement of the regulation merely because the State law establishes a review procedure to evaluate and resolve disputes involving adverse benefit determinations under group health plans, so long as the review procedure is conducted by parties other than the insurer, the plan, the plan's fiduciaries, the employer, or any employee or agent of any of the foregoing. Subparagraph (k)(2)(ii) further explains that, in the Department's view, the types of procedures described in subparagraph (k)(2)(i) are not part of the claims procedures contemplated by section 503 of the Act, but are ''external reviews'' that are beyond the scope of the regulation. As a result, while such procedures as established by State law are not preempted by the regulation, under subparagraph (k)(2)(ii), claimants cannot be required to submit their claims to such procedures in order to be entitled to file suit under section 502(a) of the Act.[33] There is nothing in the regulation, however, that would preclude a claimant from voluntarily submitting a claim for review pursuant to a State-provided external review process.

By providing that only State insurance law that does not prevent the application of the regulatory standards will be saved from preemption, subparagraph (k)(1) preserves the procedural protections required by the regulation, which the Department finds essential to the full and fair review mandated by section 503 of the Act,[34] but recognizes that States may impose non-conflicting standards for internal processes. Subparagraph (k)(2) of the

[31] In this regard, the regulation requires that any plan intending to offer an additional voluntary level of appeal must include, in the notice of adverse benefit determination on review, a statement describing the voluntary appeal procedure and the claimant's right to obtain the information about the process described in subparagraph (c)(3)(iv) free of charge before deciding to submit the claim to the voluntary level of appeal.

[32] *See, e.g., Pegram* v. *Herdrich,* 120 S. Ct. 2143 (2000); *Unum Life Ins. Co.* v. *Ward*, 526 U.S. 358, (1999); *Boggs* v. *Boggs,* 520 U.S. 833 (1997); *N.Y. State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.,* 514 U.S. 645 (1995); *John Hancock Mut. Life Ins. Co.* v. *Harris Trust & Savings Bank,* 510 U.S. 86 (1993).

[33] It is the view of the Department that claimants would be entitled to have a claim dispute adjudicated in court pursuant to section 502(a) of the Act after exhausting the plan's claims procedures, but without regard to State law procedures described in subparagraph (k)(2), regardless of whether such State law procedures are mandatory pursuant to State law.

[34] Nothing in this regulation should be construed to limit a claimant's ability to pursue any state law remedy that may be available as a result of a medical decision, even where such decision implicates eligibility for benefits under a plan. *See Pegram v. Herdrich,* 120 S. Ct. 2143 (2000).

regulation clarifies the extent to which State law reform efforts regarding patients' rights may be affected by the preemption provided for in paragraph (k)(1). Subparagraph (k)(2) articulates the Department's view that procedural remedies established by State law that are ''external'' to the plan will not be preempted by the regulation. In this regard, subparagraph (k)(2)(i) defines the processes that will be considered ''external'' to the plan by reference to the party who is responsible for conducting the procedures. It is the Department's view that procedures that are conducted by parties other than the insurer providing benefits under the plan, the plan itself, the plan's fiduciaries, or the employer sponsoring the plan (or by any employee or agent of any of these parties) [35] are procedures sufficiently independent of the plan to be considered outside the scope of the process required by section 503 of the Act.

Other Issues

The regulation makes a number of additional changes to the proposal in response to comments. Other aspects of the proposal have been retained unchanged, despite comments, in light of the Department's conclusions as to their importance. The following briefly summarizes these other issues.

The proposal eliminated a provision in the 1977 regulation that seemed to imply that representatives of a claimant must be ''duly authorized'' to act on behalf of the claimant. This change reflected the perception of the Department that no single Federal standard governs the authorization of a representative and that claimants should be able to freely name representatives to act on their behalf. Many commenters representing employers and plans responded that elimination of the concept of an ''authorized'' representative could be read to require plans to accept anyone who claimed to be a representative of a claimant, without permitting plans to establish reasonable procedures to verify that status. This could prevent plans from protecting the privacy or other rights of claimants. The regulation responds to this concern by reinstituting a concept of authorization with respect to claimants' representatives.[36] Specifically, subparagraph (b)(4) provides that a plan's claims procedures may not preclude an authorized representative (including a health care provider) from acting on behalf of a claimant and further provides that a plan may establish reasonable procedures for verifying that an individual has been authorized to act on behalf of a claimant. However, subparagraph (b)(4) requires a group health plan to recognize a health care professional with knowledge of a claimant's medical condition as the claimant's representative in connection with an urgent care claim.

The proposal provided that a ''claim'' is any request for a plan benefit or benefits, made by a claimant or by a representative of a claimant, that complies with a plan's reasonable procedure for making benefit claims.[37] It further specified that, in the case of a group health plan, a request for a benefit includes a request for a coverage determination, for preauthorization or approval of a plan benefit, or for a utilization review determination in accordance with the terms of the plan. One commenter argued that the reference to ''coverage determination'' in this provision could be read to include determinations of eligibility under a group health plan, and that such determinations should not be treated as claims. The Department agrees that all requests for determinations of eligibility under a group health plan should not be required to be treated as claims for benefits for purposes of ERISA's claims procedure under section 503.[38] On the other hand, the Department also believes that where a claim for benefits is made in accordance with reasonable procedures and the claim is denied because the claimant is not eligible for benefits under the terms of the plan, the claimant should be afforded the right to appeal that determination in accordance with the claims procedures of the plan and this regulation.[39] In this regard, the reference to ''coverage determination'' has been eliminated from the description of a claim for benefits in paragraph (e). In an effort to clarify the application of the regulation to benefit claim denials based on eligibility, the Department has amended the definition of ''adverse benefit determination'' in subparagraph (m)(4) to include denials of benefits based on a determination of a claimant's eligibility to participate in the plan. The Department, nonetheless, is interested in receiving public comments concerning whether, and to what extent, questions to a plan regarding eligibility should be governed by a prescribed process, with timing and notice standards.

The proposal contained a provision setting forth the Department's view of the consequences that ensue when a plan fails to provide procedures that meet the requirements of section 503 as set forth in regulations. The proposal stated that if a plan fails to provide processes that meet the regulatory minimum standards, the claimant is deemed to have exhausted the available administrative remedies and is free to pursue the remedies available under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim. The Department's intentions in including this provision in the proposal were to clarify that the procedural minimums of the regulation are essential to procedural fairness and that a decision made in the absence of the mandated procedural protections should not be entitled to any judicial deference.

Many commenters representing employers and plans argued that this provision would impose unnecessarily harsh consequences on plans that substantially fulfill the requirements of the regulation, but fall short in minor respects. These commenters suggested that the Department adopt instead a standard of good faith compliance as the

[35] Whether a party conducting a review procedure should be considered to act as the ''agent'' of a party related to the plan will depend on the independent authority with which the party is vested. That an insurer is required, under State law, to provide funds to pay for a review will not, in and of itself, cause the party who conducts the review to be considered an ''agent'' of the insurer.

[36] This provision, which is a clarification of current law, applies to all employee benefit plans covered under the Act.

[37] In this regard, the Department notes that all such claims for benefits are covered by this regulation, regardless of the reason or reasons a plan may have for denying the claim. For example, a claim for a health care service, even a health care service that is specifically excluded by the plan's governing documents, would be covered by the regulation.

[38] The Department notes that persons who need to establish their status as participants or beneficiaries under a plan have a number of ways to do so without implicating the claims procedures. Eligibility information is generally provided through the plan administrator, the summary plan description, and plan documents. If a person is unable to determine his or her status under the plan or if there is disagreement about a person's status under the plan, section 502(a)(1)(B) of the Act provides that participants and beneficiaries may bring a civil action to clarify their rights to future benefits under the terms of the plan.

[39] Sections 206(d)(3) and 609(a)(5) of the Act mandate certain specific plan procedures for determining the qualified status of domestic relations orders and medical child support orders, respectively, and for administering qualified domestic relations orders (QDROs) and qualified medical child support orders (QMCSOs). It is the view of the Department that issues pertaining to such orders must be resolved pursuant to the procedures described in section 206(d)(3) or 609(a)(5) of the Act, as appropriate, and not the claims procedures governed by section 503 of the Act and the current regulation.

measure for requiring administrative exhaustion. Alternatively, they suggested that the Department recognize the judicial doctrine under which exhaustion is required unless the administrative processes impose actual harm on the claimant.

Upon consideration, the Department has determined to retain this provision in paragraph (l). Inasmuch as the regulation makes substantial revisions in the severity of the standards imposed on plans, we believe that plans should be held to the articulated standards as representing the minimum procedural regularity that warrants imposing an exhaustion requirement on claimants. In the view of the Department, the standards in the regulation represent essential aspects of the process to which a claimant should be entitled under section 503 of the Act. A plan's failure to provide procedures consistent with these standards would effectively deny a claimant access to the administrative review process mandated by the Act. Claimants should not be required to continue to pursue claims through an administrative process that does not comply with the law. At a minimum, claimants denied access to the statutory administrative review process should be entitled to take that claim to a court under section 502(a) of the Act for a full and fair hearing on the merits of the claim. Further, the Department believes that it is unlikely that this provision, in and of itself, will result in an increase in benefit claims litigation. Given the limited remedies available in a suit under section 502(a) of the Act, claimants will have little incentive to invoke this provision unless they believe they will be unable to receive a fair consideration from the plan.

The proposal eliminated several special provisions contained in the 1977 regulations, including the special treatment provided for grievance procedures of collectively bargained, single-employer plans [40] and for benefits provided through Federally qualified health maintenance organizations (''HMOs'').[41] With respect to each of these special provisions, the Department requested comment on whether, in the interests of uniform treatment of benefit claims, these special treatments could be eliminated.

Comments on these subjects were relatively sparse. With respect to the special HMO exception, the Department has determined to retain the proposal's elimination of the special treatment. With respect to treatment of collectively bargained, single-employer plans, the Department received a few comments from interested parties, arguing that elimination of the special treatment would interfere unduly with the collective bargaining process and citing the Department's policy, articulated in the preamble to the 1977 regulation,[42] not to interfere with the operation of such agreements merely because they involve employee benefit plans. On review of the record, the Department has concluded that there is no reason to alter its policy position with regard to collective bargaining agreements that establish grievance procedures for single-employer collectively bargained plans and, accordingly, has determined to reinstate in subparagraph (b)(6) the special treatment provided in the 1977 regulation for such single-employer, collectively bargained plans.

The proposal stated that the regulation, when finalized, would be applicable to plans on the later of the effective date of the final regulation or the first day of the plan year beginning on or after the effective date, with a delayed compliance date for collectively bargained plans. Commenters argued that these applicability dates would be too soon, delineating the significant changes that would be required to achieve compliance with the proposal's requirements, such as review of third party administrator relationships, revisions to vendor contracts, systems redesign, amendment of documents, and preparation of appropriate disclosures for participants and beneficiaries. Several of these commenters requested a period of twelve months between publication of the final regulation and its applicability to plans. Recognizing these concerns, the Department has determined to provide a more substantial period of time for orderly and deliberate compliance efforts. Therefore, the regulation provides that its provisions will apply to claims filed under a plan on or after January 1, 2002.

B. Economic Analysis Under Executive Order 12866

Overview

In developing the regulation, the Department considered the potential economic effects of available alternative approaches. The regulation is crafted to maximize economic benefits net of costs. The Department believes that the regulation's benefits will substantially outweigh its costs.

The regulation will have two major, direct effects: it will change the timing and outcomes of some health and disability claims decisions, and it will require affected plans to modify claims decision-making processes.

The regulation will cause plans to promptly approve some valid claims that otherwise would have been denied. In economic terms, these changes in claims outcomes can be characterized as financial transfers that produce societal benefits. The cost to the plan of the services provided is offset by a benefit of equal financial value to the claimant, so the net cost to society is zero. The amount of the transfer cannot be estimated because there are no data on the number of valid claims that are denied today.

At least two societal benefits will derive from the prompt approval of valid benefit claims. The first benefit will be improved health outcomes and financial security. Claimants will be assured access to needed health care when ill or injured and financial support when disabled. The second will be more efficient labor and insurance markets, which should facilitate more and better health and disability benefit coverage. Employers will be more able and inclined to provide these benefits if employees are confident that valid claims will be approved. These benefits generally cannot be quantified, but they are expected to be large.

In estimating plans' cost to comply with the regulation, the Department considered the degree to which current claims handling practices conform to the regulation's requirements. Many claims are already handled in satisfaction of all or some applicable requirements, but assuring that all claims meet all the requirements will require at least some modifications to all plans' claims procedures. These modifications will entail one-time, ''start-up'' costs to establish the new processes, and ongoing costs to operate them.

The Department anticipates that all health and disability benefit plans will incur some start-up cost. Start-up costs are estimated at $119 million in 2001. Most of that cost, $103 million, is attributable to health plans, while the remaining $16 million is attributable to disability plans. Health plan start-up costs amount to an estimated $37 per plan and $0.75 per enrollee on average, while disability plan start-up costs are

[40] The 1977 regulation provides that such collectively bargained plans may substitute, for the provisions of the regulation, a collectively bargained procedure that either provides for filing, initial disposition of claims, and grievance and arbitration of benefit claims, or provides only for grievance and arbitration of such claims.

[41] The 1977 regulation provides that plans that provide benefits through membership in a qualified HMO, as defined in section 1310(d) of the Public Service Act, 42 U.S.C. 300e–9(d), are deemed to satisfy the regulation with respect to such benefits if the HMO satisfies the requirements of section 1310 of the Public Service Act.

[42] *See* 42 FR 27426 (May 27, 1977).

estimated to average $9 per plan and $0.24 per enrollee. Since most claims administrators serve many plans so costs generally will be spread widely across plans.

Ongoing costs will be incurred in connection with the subset of health and disability benefit claims that must be handled differently to satisfy the regulation's requirements. That subset will be small in connection with many of these requirements. Many claims are already handled in satisfaction of some requirements, such as the regulation's time frames for claims decisions, and many requirements apply only to a small subset of claims, such as urgent care claims or health benefit claims that are denied. Ongoing costs attributable to the regulation are estimated to be $399 million in 2002. Costs will fall over time with increased automation. Most of the ongoing cost, $379 million, is attributable to health benefit claims, while the remaining $21 million is attributable to disability benefit claims. Annual health plan costs amount to an average of $135 per plan. This is equivalent to $2.77 per enrollee on average, or approximately one-tenth of one percent of total plan premium. Disability plan ongoing costs average $12 per plan and $0.31 per enrollee. The cost to carry out any particular claims transaction in satisfaction of the regulation is likely to be low, but claims volume is high (1.4 billion health benefit claims per year), so aggregate costs are substantial.

The single largest ongoing cost is attributable to the regulation's time frames for health claims decisions. The Department believes that under plans' current practices up to 1 percent of claims decisions are not made within the regulation's maximum time periods. Accelerating these 14 million decisions to comply with the regulation is estimated to cost $222 million in 2002.

The economic costs of the regulation will be very small relative to the overall cost of providing and administering health and disability benefits. Health plans' ongoing cost of complying with the regulation will amount to just 0.1 percent of total plan expenditures. Costs of this relative magnitude are not expected to adversely affect employers' propensity to offer health and disability benefits.

The regulation does not substantially change the standards applicable to pension benefit claims or welfare benefit claims other than health and disability benefit claims. Its economic effects are therefore are limited to those associated with health and disability benefit claims.

The ongoing cost estimates for the regulation, presented here, are higher than the Department's ongoing cost estimates for the proposed regulation, previously presented in that proposed regulation's preamble. This should not be interpreted as an indication that the regulation will carry greater cost than would the proposed regulation. On the contrary, the regulation relaxes certain provisions of the proposed regulation, such as time frames for certain health benefit claims, in ways that will reduce economic costs without sacrificing economic benefits. The Department's estimation of the cost of the regulation incorporates new information, not available for estimating the cost of the proposed regulation, including the extensive public comments received in response to the proposed regulation. Based on this new information, the Department revised its estimations of the cost of certain provisions.

Required Analyses of Economic Impact

1. 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 consistent with the President's priorities as articulated in the President's February 20, 1998, directive to the Secretary of Labor to propose regulations that, among other things, implement the recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry. In addition, the Department estimates that this regulatory action will have an economic impact exceeding $100 million in the year 2002, the year in which this regulation will be applicable to benefit claims. The total cost of this regulation is expected to be $399 million in 2002, and to decrease thereafter. This amount is approximately $2.77 per group health plan enrollee and $.31 per disability plan enrollee. Therefore, this notice is ''significant'' and subject to OMB review under Sections 3(f)(1) and 3(f)(4) of the Executive Order. Accordingly, the Department has undertaken to assess the costs and benefits of this regulatory action. The benefits of the regulation, although not quantifiable, are expected to exceed its cost. The Department's assessment of the regulation's costs and benefits is summarized above and detailed later in this preamble.

2. 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 that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a final rule will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis describing the impact of the rule on small entities at the time of publication of the notice of final rulemaking. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA continues 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 ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans.

PWBA believes that assessing the impact of this rule on small plans is an appropriate substitute for evaluating the effect on small entities. Because this definition differs from the definition of small business based on size standards, which is promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business

Act (5 U.S.C. 631 *et seq.*), PWBA solicited comments on its use of its standard for evaluating the effects of the proposal on small entities.

A few comments concerning the size standard were received from Congressional and administrative representatives. One commenter was concerned that prior to adopting the proposed size standard, the Department first consult with the Office of Advocacy of the Small Business Administration (SBA) and provide an opportunity for public comment. The Department consulted with the SBA regarding its proposed size standard prior to publication of the proposed regulation in the **Federal Register**. The SBA agreed with the proposed alternate size standard, indicating that Department provided a reasonable justification for its definition. No other comments were received with respect to this size standard.

A summary of the final regulatory flexibility analysis based on the 100 participant size standard is presented below.

This regulation applies to all small employee benefit plans covered by ERISA. Employee benefit plans with fewer than 100 participants include 631,000 pension plans, 2.8 million health plans, 1.7 million disability plans, and 1.7 million other welfare plans. The regulation makes substantial changes to the 1977 regulation, which it replaces, only in its provisions applicable to health and disability plans.

The final rule amends the Department's existing benefits claims regulation, which implements ERISA's claims and appeals requirements. Both ERISA and the existing regulation require plans to maintain procedures to determine claims and to review disputed claims determinations. The compliance requirements assumed for purposes of this regulation consist of new standards for claims and appeals procedures.

The objective of this revised regulation is to improve the accuracy and timeliness of health and disability benefit claims and appeals determinations. Certain provisions pertaining to group health plans are being implemented in response to the President's February 20, 1998, directive to the Secretary of Labor to propose regulations that among other things implements the recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry. An extensive list of authorities may be found in the Statutory Authority section, below.

The Department believes that modifying and operating claims and appeals procedures in compliance with the regulation will require a combination of professional and clerical skills.

The Department estimates that the added cost to small plans of complying with the regulation will amount to $94 million over the years 2001 to 2002. This figure includes $24 million in one-time, start-up costs incurred in 2001 to revise health and disability benefit claims procedures and related systems, and $71 million in annual, ongoing added costs beginning in 2002 to handle health and disability benefit claims in compliance with the regulation's new standards. The annual ongoing cost in later years will change with claims volume and mix, and is expected to decrease with increasing automation in claims processing. The $71 million annual cost in 2002 averages $25 for each small health plan and $2.77 for each small health plan enrollee, and $1 for each small disability plan and $0.15 for each small disability plan enrollee. By contrast, the ongoing cost to large plans in 2002 is estimated at $329 million, or $6,183 for each large health plan and $2.77 for each large health plan enrollee, and $481 for each large disability plan and $0.35 for each large disability plan enrollee.

Start-up costs for small plans will be modest because a large majority of such plans purchase claims administration services from a relatively small number of insurers, HMOs, and other service providers. Service providers typically use a single claims processing system to service a large number of customers. Thus, the cost of revising and implementing a relatively small number of claims and appeals procedures is spread thinly over a far larger number of small plans. The regulation therefore is not expected to adversely affect small plans. Small and large plans and their respective enrollees will benefit equally from improved accuracy and timeliness in claims and appeals determinations.

The Department's assessment of the regulation's costs and benefits is detailed later in this preamble.

3. Paperwork Reduction Act

On September 9, 1998, the Pension and Welfare Benefits Administration published in the **Federal Register** (63 FR 48390), a Notice of Proposed Rulemaking concerning the Employee Retirement Income Security Act of 1974, Rules and Regulations for Administration and Enforcement; Claims Procedure, which included a request for comments on its information collection provisions. That proposal, if adopted as proposed, would have revised the information collection request (ICR) included in the existing regulation relating to the minimum requirements for benefits claims procedures for all employee benefit plans covered under Title I of ERISA. Also on September 9, 1998, the Department submitted the revised ICR to OMB for review and clearance under the Paperwork Reduction Act of 1995 (PRA 95), and solicited public comments concerning the revision of the information collection request (ICR) included in the proposal.

OMB has approved the ICR included in the Final Regulation concerning the Employee Retirement Income Security Act of 1974, Rules and Regulations for Administration and Enforcement; Claims Procedure. A copy of the ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor, Departmental Clearance Officer, Ira Mills, at (202) 693–4122. (Not a toll-free number.)

The burden estimates are summarized below. A more detailed description of the assumptions and methodology underlying these estimates will be found below in the analysis of costs.

Agency: Pension and Welfare Benefits Administration.

Title: Final Regulation, Employee Retirement Income Security Act of 1974; Rules and Regulations for Administration and Enforcement; Claims Procedure (Final Revisions to Benefit Claims Procedure Regulation Pursuant to 29 CFR 2560.503–1).

OMB Number: 1210–0053.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 6.7 million (2001); 6.7 million (2002); 6.7 million (2003).

Total Responses: 118 million (2001); 118 million (2002); 118 million (2003).

Estimated Burden Hours: 316,000 (annual average 2001–2003).

Estimated Annual Costs (Operating and Maintenance): $96 million (annual average 2001–2003).

Persons are not required to respond to the revised information collection unless it displays a currently valid OMB control number.

4. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), as well as Executive Order 12875, this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, but does include mandates that may impose an annual

expenditure of $100 million or more on the private sector. The basis for this statement is described in the analysis of costs for purposes of Executive Order 12866 and the Regulatory Flexibility Act. Elsewhere in this preamble we have identified the authorizing legislation, presented cost-benefit analyses, described regulatory alternatives, and explained how we selected the least costly alternative as required by UMRA.

5. Small Business Regulatory Enforcement Fairness Act

This final rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and is a major rule under SBREFA. Accordingly, this final rule has been transmitted to Congress and the Comptroller General for review.

C. Detailed Assessment of Economic Benefits and Costs of the Regulation

Economic Benefits of the Regulation

The regulation will ensure the prompt approval of some health and disability claims that otherwise would have been wrongly denied. The approval of such claims can be characterized as financial transfers that will produce societal benefits. Quicker and more accurate health benefit claims determinations will serve to encourage the delivery of more beneficial health care. This in turn will improve health benefit claimants' health outcomes, productivity, and quality of life, and possibly avert the need for some later health care and associated expense. With respect to disability claims, timelier determinations will assure prompt replacement of lost income for successful claimants, thereby averting some financial hardships. Improved standards for handling health and disability claims will also increase enrollee confidence in their health and disability plans and thereby promote efficiency in group insurance and labor markets and employer sponsorship of health and disability plans.

These benefits of the regulation generally are impossible to quantify because of limitations in available data and the absence of reliable measures for their assessment. The Department's analysis is therefore restricted to identifying the categories of these benefits and describing their origins and anticipated magnitude.

1. Group Health Claims

The regulation updates ERISA's requirements for benefit claims processing in group health plans to address recent, dramatic changes in the delivery and financing of health care services. This will improve health care quality by averting harmful, inappropriate delays and denials of health benefits, thereby yielding substantial social benefits. It will also increase confidence in the employment-based health benefits system, increase transparency and enrollee access to information related to their benefit claims, and help streamline and make more uniform and predictable claims and appeals procedures. In so doing, it can help increase the efficiency of health benefit plans and of health insurance, health care markets, and labor markets at large.

The Department expects that the economic benefits of the regulation will be large. Benefits are expected to be large in part because serious weaknesses in current claims determination processes, which the regulation will help correct, are widespread. Elements of health claims and appeals processes that are widely considered to be essential are often lacking, the U.S. General Accounting Office has reported. Just 41 percent of HMOs and 50 percent of indemnity insurers studied by GAO provided for appeals decisions to be made by individuals not involved in the original denial. Written denial notices explaining appeal rights were provided by 97 percent of HMOs, but just 67 percent of indemnity insurers. Expedited reviews were provided by 94 percent of HMOs, but just 67 percent of indemnity insurers.[43]

Improving Health Outcomes

There is broad agreement that more accurate and timely claims determinations can yield large economic benefits in the form of improved health outcomes. In one survey, 59 percent of physicians said their decisions regarding hospital length of stay were subject to review. Forty-five percent were subject to review in connection with site-of-care decisions, as were 39 percent in connection with treatment appropriateness. On average for various types of treatment, plans initially denied between 1.8 percent and 5.8 percent of physician-recommended actions.[44] In another survey, 87% of physicians reported that managed care health plans denied one or more patients' claims for medical services during a two-year period, often adversely affecting patients' health.[45] In yet another survey, 17 percent of insured adults under age 65 reported problems with delayed or denied coverage, and 12 percent reported billing or payment problems. Of adults reporting problems, 21 percent said the problem resulted in them losing time from school or work, 21 percent reported worsened health, and 6 percent reported suffering a permanent or long-lasting disability.[46] These figures demonstrate the potential importance of prompt and accurate claims determinations to health outcomes.

The President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry (the Commission) placed ''highest priority'' on ''creating systems that minimize errors and correct them in a timely fashion,'' adding that improvements to appeals processes could avert injuries.[47]

Lacking data on the number of claims and appeals that are wrongly denied and the incidence and severity of resultant injuries, the Department was unable to quantify the economic benefits of improved health outcomes under the regulation. There is evidence, however, that additional spending on appropriate health care increases social welfare.[48] The Department believes that the economic benefits of improved health outcomes under the regulation will be large.

Improving Market Efficiency

By improving claims and appeals processes, the regulation will increase efficiency in the operation of employee benefit systems and health care, health insurance, and labor markets.

The regulation will increase efficiency by reducing complexity. Idiosyncratic

[43] GAO, *HMO Complaints and Appeals: Most Key Procedures in Place, but Others Valued by Consumers Largely Absent*, GAO/HEHS, 98–119, May 1998; and GAO, *Indemnity Health Plans: Key Features of Consumer Complaint and Appeals Systems*, GAO/HEHS 98–189, June 1998.

[44] Dahlia K. Remler et. al., ''What Do Managed Care Plans Do To Affect Care? Results from a Survey of Physicians,'' *Inquiry* 34: 196–204 (Fall 1997).

[45] Kaiser Family Foundation Press Release, ''New Survey Shows that Providers and Health Plans Clash Often over Patient Care'' (July 28, 1999).

[46] Kaiser Family Foundation, ''National Survey on Consumer Experiences with Health Care Plans'' (June 2000).

[47] The President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry, *Quality First: Better Health Care for All Americans*, Final Report to the President of the United States. The report points out that some patients suffer harm when ''inappropriate benefit coverage decisions . . . impinge on or limit the delivery of necessary care.'' A wrongful denial of coverage ''can lead to a delay in care or to a decision to forgo care entirely.'' The report adds that ''even a small number of mistakes . . . can have serious, costly, or fatal consequences,'' such as ''additional health expenses, increased disability, lost wages, and lost productivity.''

[48] See, e.g., David M. Cutler and Elizabeth Richardson, ''Your Money and Your Life: The Value of Health and What Affects It,'' in *Frontiers in Health Policy Research* (Alan M. Garber, ed., Cambridge: MIT Press, 1999, at 99–132).

requirements, time-frames, and procedures for claims processing impose substantial burdens on participants, their representatives, and service providers. By establishing a more complete, uniform set of minimum requirements the regulation will reduce the complexity of claims processing requirements, thereby increasing efficiency.

The regulation will improve the efficiency of private employee benefits systems by enhancing its transparency and fostering participants' confidence in its fairness. In various surveys, consumers have expressed concern that plans sometimes withhold care or benefits.[49] The ability to get a promised benefit, particularly when sick or disabled, is at the heart of these consumer concerns. The regulation will also increase efficiency by better informing claimants. When information about the terms and conditions under which benefits will be provided is unavailable to enrollees, they will discount the value of benefits to compensate for the perceived risk.

The voluntary nature of the employment-based health benefit system in conjunction with the open and dynamic character of labor markets make explicit as well as implicit negotiations on compensation a key determinant of the prevalence of employee benefits coverage. It is likely that 80% to 100% of the cost of employee benefits is borne by workers through reduced wages.[50] The prevalence of benefits is therefore largely dependent on the efficacy of this exchange. If workers perceive that there is the potential for inappropriate denial of benefits, they will discount the value of such benefits to adjust for this risk. This discount drives a wedge in the compensation negotiation, limiting its efficiency. With workers unwilling to bear the full cost of the benefit, fewer benefits will be provided. To the extent that workers perceive that a federal regulation, supported by enforcement authority, reduces the risk of inappropriate denials of benefits, the differential between the employers' costs and workers' willingness to accept wage offsets is minimized.

Effective claims procedures can also improve health care, health plan quality, and market efficiency by serving as a communication channel, providing feedback from participants, beneficiaries, and providers to plans about quality issues. Aggrieved claimants are especially likely to disenroll if they do not understand their appeal rights, or if they believe that their plans' claims and appeals procedures will not effectively resolve their difficulties. Unlike appeals, however, disenrollments fail to alert plans to the difficulties that prompted them. More effective appeals procedures can give participants and beneficiaries an alternative way to respond to difficulties with their plans. Plans in turn can use the information gleaned from the appeals process to improve services.

By providing aggrieved claimants with an alternative to disenrollment, improved claims and appeals procedures will reduce disenrollment rates. Lower disenrollment rates in turn will increase plans' incentive to keep enrollees healthy over the long term, prompting managed care organizations (MCOs) to step up efforts to promote preventive care and healthy lifestyles. (In contrast, the high disenrollment rates associated with ineffective claims and appeals procedures discourage MCOs from investing in such efforts.) Such efforts by MCOs may yield long term improvements in population health and reductions in national health care costs.

The disenrollments that will be discouraged by the regulation would have been economically inefficient. Such disenrollments can be characterized as instances where aggrieved claimant, lacking access to or knowledge of a full and fair appeals process, drop their otherwise preferred health coverage option in favor of an inferior option. By discouraging such disenrollments, the regulation will increase social welfare.

Reducing economically inefficient turnover across health coverage options will also trim administrative costs. Plans incur costs directly to process enrollments and disenrollments. Turnover also imposes indirect transactions costs on enrollees and providers, including (sometimes) costs that arise when enrollees must change doctors or hospitals and when enrollees and doctors must become familiar with new plan provisions, including new claims procedures.

The Department also expects that the regulation's higher standard for claims adjudication will enhance some insurers' and group health plans' abilities to effectively control costs by limiting access to inappropriate care. Providing a more formally sanctioned framework for internal review and consultation on difficult claims facilitates the adoption of cost containment programs by employers who, in the absence of a regulation providing some guidance, may have opted to pay questionable claims rather than risk alienating participants or being deemed to have violated ERISA's fiduciary provisions.

Finally, it is worth noting that economic theory allows for regulation of managed care practices to be welfare-enhancing. For example, Korobkin contends that ''managed care organizations (MCOs) have an incentive to provide an inefficiently low quality of certain types of benefits because it is difficult for consumers to evaluate their quality prior to contracting, and because consumers who are able to evaluate quality after contracting are the customers that MCOs do not wish to retain.'' [51]

In summary, the regulation's new, higher standards for handling health benefit claims will reduce the incidence of excessive delays and inappropriate denials, averting serious, avoidable lapses in health care quality and resultant injuries and losses to enrollees. It will raise enrollees' level of confidence in and satisfaction with their health care benefits. It will improve plans' awareness of participant, beneficiary, and provider concerns, prompting plan responses that improve health care quality. Finally, by helping assure prompt and precise adherence to contract terms and by improving the flow of information between plans and enrollees, the proposed regulation will bolster the efficiency of labor, health care, and insurance markets. The Department therefore concludes that the economic benefits of the regulation will outweigh its costs.

[49] For example, a 1997 Kaiser Family Foundation / Harvard University survey found that a majority of Americans say managed care plans have made it harder for people who are sick to see medical specialists and have decreased the quality of health care for the sick. A majority of those in managed care plans are very or somewhat worried that their health plan would be more concerned about saving money than about what is the best treatment for them if they were sick (Kaiser Family Foundation, ''Is There a Managed Care 'Backlash'?'' Press Release, National Toplines, and Chart Pack, November 7, 1997).

[50] See, e.g., Jonathan Gruber and Alan B. Krueger, ''The Incidence of Mandated Employer-Provided Insurance: Lessons from Workers Compensation Insurance,'' *Tax Policy and Economy* (1991); Jonathan Gruber, ''The Incidence of Mandated Maternity Benefits,'' *American Economic Review*, Vol. 84 (June 1994), at 622–641; Lawrence H. Summers, ''Some Simple Economics of Mandated Benefits,'' *American Economic Review*, Vol. 79, No. 2 (May 1989); Louise Sheiner, ''Health Care Costs, Wages, and Aging,'' Federal Reserve Board of Governors working paper, April 1999; and Edward Montgomery, Kathryn Shaw, and Mary Ellen Benedict, ''Pensions and Wages: An Hedonic Price Theory Approach,'' *International Economic Review*, Vol. 33 No. 1 (Feb. 1992).

[51] Russell Korobkin, ''The Efficiency of Managed Care 'Patient Protection' Laws: Incomplete Contracts, Bounded Rationality, and Market Failure,'' 85 *Cornell Law Review* 1 (1999).

2. Disability Benefit Claims

With respect to disability claims, timelier determinations will assure prompt replacement of lost income for successful claimants, thereby averting some financial hardships. Improving standards for handling disability claims will also increase enrollee confidence in disability plans and promote efficiency in disability insurance and labor markets.

Averting Financial Hardship

As with health benefit claims, the regulation is intended and expected to improve the timeliness and accuracy of disability benefit claims determinations. This will avert financial hardship for claimants whose claims or appeals would otherwise have been inappropriately delayed or denied.

No data are available on how much financial hardship might be attributable to such delays or denials, or how much hardship the regulation might avert, but the potential magnitudes are large.

Severe disabilities are not uncommon among the working age population. In 1994, 6 million Americans age 22 to 44 (or 6 percent of all those in the age group) were severely disabled, as were 3 million of those age 45 to 54 (12 percent) and 5 million of those 55 to 64 (22 percent). Altogether more than one-half of severely disabled Americans were age 22 to 64, and nearly one-half of these were age 44 or younger.

Severe disability often greatly impedes work and erodes income. The employment rate for people 21 to 64 years of age was 82 percent among those with no disability, but 26 percent among those with severe disabilities. The proportion of this age group with low income (less than one-half of the median) was 13 percent among those with no disability, but 42 percent among those with severe disabilities. [52]

More than 4 million disabled individuals under age 65 currently rely on Supplemental Security Income (SSI), a federal means-tested cash assistance program for disabled individuals with very low incomes and assets. More than one-half million disabled Americans join the SSI rolls each year.[53]

Private, employment-based disability insurance can help replace income people lose when disability forces them to terminate or curtail work. The Department estimates that in 2002 36 million U.S. private-sector employees (or 32 percent of all such employees) will be insured against short-term disability, and 26 million (or 23 percent) will be insured against long term disability. Insured workers may nonetheless suffer financial hardship, however, if their claims for disability benefits are wrongly denied or unduly delayed. Public comments on the proposed regulation provide examples of such hardships.

Improving Market Efficiency

The regulation's disability claims provisions will promote market efficiency in many of the same ways as its health claims provisions. Fuller information and fuller and fairer claims appeals processes will promote enrollee confidence and discourage workers from inappropriately discounting the value of their disability benefits, thereby fostering efficiency in disability insurance and labor markets. Fairer and faster determinations will also spare claimants and their representatives, including their health care providers, the incidental (but potentially large) costs associated with excessively cumbersome and lengthy claims and appeals processes. Finally, by averting some financial hardships, faster and more accurate claims determinations will relieve claimants and their creditors of some of the costs associated with borrower delinquency and bankruptcy.

Economic Costs of the Regulation

1. Cost Estimates

The Department performed a comprehensive, unified analysis to estimate the economic cost attributable to the final regulation for purposes of compliance with Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act. The analysis takes into account a wide range of information, including public comments on the Department's proposed regulation.

Table 1 summarizes the Department's cost estimates, disaggregated by type of claim and plan size.[54] ''Small'' plans have fewer than 100 participants. Health claims, which at 1.4 billion annually are far more numerous than disability claims, account for the majority of costs. Ongoing costs will change over time with claims volume and mix, and will fall over time as health claims processing becomes more automated.

The Department does not anticipate any increase in the cost of processing pension claims or welfare plan claims other than health and disability claims. As noted earlier in this preamble, the regulation's standards applicable to pension claims and welfare claims other than health and disability claims are substantially similar to those currently in effect under the 1977 regulation.

TABLE 1.—SUMMARY OF ADMINISTRATIVE COSTS

Plan size	Start-up costs 2001			Annual costs 2002			Total costs 2001–2002		
	Small	Large	Total	Small	Large	Total	Small	Large	Total
Dollars in millions:									
Health	$20	$82	$103	$68	$310	$379	$88	$393	$481
Disability	4	13	16	2	18	21	6	31	37
Total	24	95	119	71	329	399	94	424	518
Dollars per enrollee:									
Health	0.81	0.73	0.75	2.77	2.77	2.77	3.58	3.50	3.51
Disability	0.24	0.24	0.24	0.15	0.35	0.31	0.40	0.59	0.55
Dollars per plan:									
Health	7	1,642	37	25	6,183	135	32	7,825	172
Disability	2	332	9	1	481	12	3	814	22

[52] John M. McNeil, ''Americans with Disabilities: 1994–95,'' U.S. Bureau of the Census, *Current Population Reports*, P 70–61 (August 1997).

[53] U.S. Social Security Administration, *Social Security Bulletin, Annual Statistical Supplement*, 1998.

[54] In the tables that follow, due to rounding, individual reported estimates may not always add to reported totals.

The regulation applies different standards to disability claims and to different kinds of health benefit claims. The start-up cost of meeting these standards reflects the number of claims processes that must be modified and the degree of changes to those processes that are necessary. The ongoing cost of adhering to the standards reflects the volume of claims transactions to which they apply and the necessary degree of change to bring all transactions into compliance. Based on public comments and other information, it is clear that many health and disability plans already comply or nearly comply with many of the regulations' standards in connection with a large number of claims, but that all or most will need to make at least some changes in their handling of at least some claims.

Table 2 connects the Department's cost estimates with the regulation's major provisions and the Department's estimates of affected claims processes and claims transactions. The single largest ongoing cost is attributable to the regulation's time frames for health claims decisions. The Department believes that under plans' current practices up to 1 percent of claims decisions would violate this provision. Accelerating these 14 million decisions is estimated to cost $222 million in 2002.

In estimating the start-up cost, the Department considered the major actions that plans (or their service providers) would undertake, including revising processes, modifying forms, modifying systems, and hiring or contracting where necessary. The Department estimated these combined costs at $119 million in 2001, or a little more than $12,000 on average for each entity that processes health or disability claims.

TABLE 2.—START-UP COSTS, AND ONGOING COSTS BY MAJOR PROVISION

Type of claim	Health benefit claims		Disability benefit claims	
	Affected procedures	Estimated cost ($MM)	Affected procedures	Estimated cost ($MM)
Start up, 2001	308,000	$103	24,000	$16
	Affected transactions (MM)	Estimated cost ($MM)	Affected transactions	Estimated cost ($MM)
Ongoing, 2002	.....	$379	.....	$21
Notices	114.6	27	179,000	6
Time frames	1,397.6	222	1,421,000	6
Fuller reviews	0.4	32	32,000	3
Disclosure on request	2.9	68	57,000	3
Expert consultations	0.2	30	32,000	3

2. Basis for Estimates

The Department's analysis relies on various government and private surveys and studies and the testimony, written comments, and other materials received by the Department in response to its proposed regulation and earlier request for information. The Department developed additional assumptions as necessary where no data were available.

Comments on the Department's proposed regulation were helpful to the Department's effort to estimate the cost impact of its regulation. Many commenters described how the proposed regulation's major requirements compared with, and would affect, their current business practices, and how the requirements would interact with state laws, accreditation standards, and other strictures on those practices. In estimating the cost of the regulation, the Department relied on these comments to gauge the differences between plans' current business practices and the regulation's requirements and to develop reasonable assumptions regarding the cost of compliance.

The Department separately estimated the one-time, start-up cost of coming into compliance with the regulation and the ongoing, annual cost of complying.

3. Start-Up Costs

In estimating start-up costs, the Department considered the number of claims processes that will be affected by the regulation. The overwhelming majority of health and disability benefit plans rely on service providers to administer their claims processes. Only a small fraction perform these administrative functions in-house. Those that do tend to be very large, self-insured plans. Service providers, which are less numerous than plans, tend to use a single claims process to service a large number of plans. They may also provide customized claims processes for some plans, especially for self-insured plans, which generally are not subject to state laws regarding benefit coverage. The Department expects that the start-up cost of revising claims processes, which for a given claims process may be large, in most cases will be spread thinly across plans and participants. Table 3 presents the Department's estimates of the number of affected health and disability claims processes.

TABLE 3.—AFFECTED PLANS AND CLAIMS PROCESSES

	Health benefit plans	Disability benefit plans
Number of plans	2,802,000	1,716,000
Number of claims processes	308,000	35,000
Maintained by plans that self-administer	4,000	3,000
Maintained by service providers	305,000	32,000

The Department considered the following major actions that plans (or their service providers) would undertake to come into compliance with the regulation: revising processes, revising forms, modifying systems, and hiring or contracting where necessary. The Department assumed that all health and disability plans would have to revise processes and forms and modify systems to at least some degree and that some would hire personnel or contract for additional or different services in order to achieve compliance. [55]

4. Ongoing Costs

In estimating the ongoing cost of various provisions, the Department considered the number of claims transactions to which they apply, the degree to which plans already comply in the course of normal business or in response to a state law or other mandate other than ERISA, and, to the degree that they do not, the likely cost of coming into compliance.

Claims volume was estimated by applying estimated claiming rates for various types of claims to projected estimates of plan enrollment in 2002. To estimate the application of the regulation's various requirements to different types of benefit claims, it was necessary to separately estimate health, disability, pension, and other benefit claims volumes. With respect to health benefit claims, it was necessary to separately estimate urgent, pre-service, and post-service claims volume, and the number of denials that are based on clinical or medical judgments. With respect to disability claims, it was necessary to estimate short-term and long-term disability claims separately. The Department also accounted separately for costs associated with approved and denied claims and appeals. Table 4 summarizes estimated 2002 claims volume.

TABLE 4.—SUMMARY OF CLAIMS VOLUME, 2002

	Health (MMs)	Disability (000s)	Pension (000s)	Other (000s)
Claims	1,369.7	1,389.7	2,122.1	244.5
Approved	1,328.6	1,304.9	2,104.0	236.4
Denied	41.0	84.8	18.0	8.1
Appeals	0.4	31.6	1.8	0.8
Approved	0.3	6.5	0.9	0.4
Denied	0.1	25.1	0.9	0.4
Health claims (MMs)	1,369.7			
Urgent pre-service	1.2			
Routine pre-service	40.0			
Post-service	1,328.5			
Denied health claims (MMs)	41.0			
Clinical/scientific basis	14.5			
Other basis	26.5			
Disability claims (000s)	1,389.7			
Short-term	1,162.7			
Long-term	227.1			

The Department applied estimates of health and disability benefit claiming rates and claims mix to its estimates of enrollment in health and disability plans to produce its estimates of total claims volume. The Department estimated claims volume and mix in light of comments received in response to its proposed regulation and other data that provide reasonable proxies for private-sector employment-based health and disability benefit plans' claim patterns. For example, comments on the proposed regulation indicated health benefit claiming rates ranging from about 5 to 18 claims per individual per year. The average rate across all comments reporting rates was 9 claims per year, and surveys available to the Department reported rates of 6 [56] and 11 [57] claims per year. Many of these reported figures may omit some health benefit claims, such as dental claims, made by the same individuals under separate plans. The Department assumed that the health benefit claiming rates average 10 per covered individual, believing that this is consistent with comments received and other available information.

The Department similarly relied on comments received and other available data to assess health benefit claims denial and appeal rates and the mix of urgent, pre- and post-service claims. The Department assessed disability claiming rates and claims mix based on comments received (including information from the life insurance industry) and available data on the incidence of temporary and permanent disability in the working age population. [58]

The Department separately considered the effect of each of the regulation's major provisions on each type of claim to which it applies. Based on its analysis, the Department attributed cost to the application of the regulation's notice, timeliness, disclosure, standard of review, and expert consultation requirements to health and disability claims and appeals. [59] Many plans' current, normal

[55] This estimate is not intended to include the cost of developing new explanations of claims processes for inclusion in plan descriptions. The Department separately accounts for that cost as part of the estimated cost of its regulation governing the content of summary plan descriptions.

[56] A published 1995 survey of 53 health insurers' claims systems by the Health Insurance Association of America.

[57] A survey of 7 managed care organizations conducted and provided to the Department in response to its proposed regulation.

[58] Primarily, data from the National Center for Health Statistics and the Social Security Administration.

[59] The Department did not attribute cost to certain other major provisions of the regulation, including the regulation's prohibition against unduly inhibiting or hampering the initiation or processing of claims for benefits, the requirement that plans have procedures to ensure and verify appropriately consistent decisions, and the provisions applicable to pension plans and welfare plans other than health and disability benefit plans. These provisions merely clarify current law and do not impose new standards. Other provisions, including the requirement that certain health care professionals be treated as claimants' representatives in connection with urgent health benefit claims, the prohibition against requiring more than two mandatory levels of administrative appeal, the restrictions on arbitration, and the

Continued

business practices meet or nearly meet one or more of these requirements. Nonetheless, the Department believes that many health and disability benefit plans will have to modify their claims processes to some degree in order to meet all of these requirements in connection with all claims.[60]

As reported in table 2 (above), the Department attributed the single largest ongoing cost, $222 million, to the application of the regulation's timeliness requirements to health benefit claims. The magnitude of this estimated cost is a function of the large volume of total health benefit claims (estimated at 1.4 billion in 2002) and the proportion of these that will be affected by the time frames of the regulation. In light of comments received in response to its proposed regulation and other available information,[61] the Department assumed that 1 percent of claims and appeals determinations will have to be accelerated in order to comply with the regulation. On the same basis, it assumed that the unit cost of accelerating determinations will range from $10 for initial determinations that do not involve medical judgments to $50 for determinations on appeal that do involve such judgments. The low end of this range represents the use of administrative staff to accelerate precessing times, the higher end a substantially greater cost due to the need for consultation by a medical professional in some circumstances. On average the affected claims are expected to be close to the low end of the range because the majority of claims transactions are initial determinations that will not hinge on medical judgments.

The costs attributed to disclosure following adverse determinations, fuller reviews on appeal, and expert consultations in appeals involving medical judgments reflect the progressively smaller incidence (relative to total claims volume) of adverse determinations, appeals, and appeals involving medical judgments. Estimated unit costs associated with these provisions reflect comments received and other available information on the cost of these elements of health benefit claims processes and the degree to which plans' normal business practices currently conform to the provisions. For example, in light of such information, the Department believes that expert medical consultations for a typical appeal cost between $350 and $500. However, most plans' normal business practices already provide for some type of expert consultation in appeals involving medical judgments. The Department therefore assumed that the cost of such consultations will rise by $100 on average, reflecting the understanding that plans' normal business practices may not always provide consultations as required by the regulation's provisions.

5. Required Estimates

The Department developed estimates as appropriate for purposes of compliance with Executive Order 12866, the Regulatory Flexibility Act, and the Paperwork Reduction Act. Because the regulation establishes new standards for, and will have a substantial economic impact on, health and disability claims, the Department estimated the cost of the regulation in connection with these claims for purposes of Executive Order 12866 and the Regulatory Flexibility Act, as well as for purposes of the Paperwork Reduction Act. Because it established no substantial new standards for pension claims and other welfare benefit claims, the Department estimated its cost in connection with these claims only for purposes of the Paperwork Reduction Act.

6. Changes in Claims and Appeals Volume and Disposition

The cost estimates reported above reflect administrative costs associated with processing claims and appeals, based on the assumption that the volume, mix, and disposition of claims and appeals remain constant. The regulation, however, is expected to change the overall volume and nature of appeals and to improve the accuracy of claims and appeals decisions. The Department was unable to quantify these changes, but undertook a qualitative assessment of their likely nature, magnitude, and social welfare effects. The Department believes that changes in the nature of appeals and in claims and appeals decisions may be large in number, but will be small as a fraction of total claims and appeals volume and will result in a substantial overall increase in social welfare.

The regulation may increase or decrease the actual number of appeals. It is expected to decrease the number of non-meritorious appeals and to encourage and help ensure the approval of meritorious claims. Improved accuracy of initial claims decisions under the regulation will serve to reduce the volume of appeals. The volume may increase, however, if the existence of fuller review processes and information disclosure under the regulation increases claimants' propensity to appeal denied claims. Fuller disclosure of information to claimants will also tend to encourage appeals that are meritorious and discourage those that are not. Improved accuracy of initial decisions provides social benefits without the administrative expense of appeals. Any new appeals arising as a result of the regulation are likely to be both meritorious and successful; such appeals are likely to deliver social benefits that are larger than the associated administrative cost. The regulation is also expected to reduce non-meritorious, unsuccessful appeals, which generally deliver no social benefits to justify their administrative cost.

Changes in claims and appeals decisions under the regulation are also expected to increase social welfare. The Department expects that the regulation will improve the timeliness and accuracy of decisions. In particular, the Department expects that some claims and appeals that otherwise would have been denied, but in fact should have been approved under plans' terms, will now be paid. Therefore, it is highly likely that the number and dollar amount of claims approved will increase. For example, encouraging meritorious over non-meritorious appeals should increase the number of favorable determinations on appeal. As noted earlier in this preamble, the approval of meritorious claims that otherwise would have been denied can be characterized as a financial transfer from plans to claimants that will have societal benefits. Economic theory suggests that, all else being equal, improving adherence to private voluntary agreements, such as plans' terms, tends to increase economic efficiency. In addition, as noted earlier in this preamble, there is evidence that additional spending on appropriate health care increases social welfare.

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requirement of at least 180 days for filing appeals, are expected to have minimal impact on plan costs.

[60] For example, not all health plans currently include in denied claim notices statements of claimants' rights to request copies of any guidelines or protocols or explanations of any clinical or scientific judgments that were applied. Not all health and disability claims are decided within the time frames specified in the final regulation. Not all health and disability plans routinely disclose relevant information, such as statements of policy or guidance regarding denied treatments for claimants' conditions. Not all provide for decisionmakers on review who are different from and not subordinate to initial decisionmakers, or disclose the identity of medical experts consulted in connection with reviews.

[61] Including the 1995 survey of insurers cited above and a Mercer/Foster Higgins Survey of employment-based health plans.

D. Federalism Summary Impact Statement

Although the Department has identified this regulation as possibly having federalism implications, those implications are limited. Therefore, in compliance with Executive Order 13132, 64 FR 43255 (August 10, 1999), the Department has taken a number of steps to consult with affected entities.

First, the Department has, throughout the process of developing the proposed regulation and the final regulation, provided State and local officials with significant opportunities for meaningful and timely input. After issuance of the proposed regulation, the Department invited public comment from all affected parties, including States and local governments, and held the public comment period open for an extended period. The Department further held a three-day public hearing and consulted separately with the major organizations that represent state and local government prior to finalizing the regulation.

The insurance commissioners of various states, acting collectively through the National Association of Insurance Commissioners (NAIC), provided substantial public comment on the proposed regulation and participated in the public hearing by submitting written testimony, testifying personally, and engaging in public discussion with the Department's panel of officials. The Department also invited all of the ''Big 7'' organizations [62] that represent state and local government to meet separately with the Department to discuss this regulation.

The NAIC and the Big 7 attendees have generally praised the Department for taking this regulatory action regarding ERISA covered plans because the Department's approach has generally paralleled the approach taken by many States in regulating the conduct of insurance companies doing business in their States. However, both the NAIC and the Big 7 attendees asked the Department to limit the application of the regulation to ''self-funded'' plans, which do not provide benefits through insurance directly regulated by the States. The NAIC and Big 7 attendees argued that many States have already provided protections to participants in insured plans that are greater than that contained in the proposed regulation. The Department has not followed this suggestion, although the Department has sought to address the concerns raised by the NAIC and Big 7 attendees in other ways. (*See,* for example, the discussion below and elsewhere in this preamble regarding preemption.) It is the view of the Department that the importance of establishing uniform minimum procedural rights for all participants and beneficiaries in ERISA-covered group health plans outweighs the concerns of the State and local governments.

With respect specifically to preemption, Executive Order 13132 requires agencies taking such action to act in strict accordance with governing law and to restrict preemption to the minimum level necessary to achieve the objectives of the statute pursuant to which any regulations are promulgated. The Department has satisfied these requirements in this regulation.

The proposed regulation was silent on preemption. The Department intended that the scope of preemption that would result under the proposed regulation would be limited to the minimum level required by section 514 of the Act and the Supremacy Clause of the Constitution. The Department's intent remains the same with respect to this final regulation. The NAIC and other commenters argued that the proposal's silence on the subject of preemption was potentially confusing and asked the Department to make clear its views as to the preemptive effect of the final regulation. The Department has responded to these comments by adding paragraph (k) to the final regulation. Paragraph (k) provides interpretive guidance on preemption.

The Department's view of the preemptive effect of the regulation is consistent with the Department's intent that the regulation's preemptive effect be limited to the minimum required by section 514 and the Supremacy Clause. As explained elsewhere in this preamble, paragraph (k) specifically sets forth the Department view that State insurance laws are not preempted unless they ''prevent the application'' of a requirement of the regulation. In other words, State insurance laws are preempted by the final regulation only to the extent that those laws are in conflict with the regulation such that the State laws could not be read in harmony with the regulation.

In response to the specific concern most commonly expressed by state insurance commissioners, the Department stated further in paragraph (k)(2) its view that State-mandated external review procedures, which operate outside the scope of plans' internal review procedures, are not preempted by promulgation of the regulation.

Thus, the Department has made every effort to limit the effect that the regulation will have on State law to the minimum imposed by operation of the statute and the Constitution.

Finally, Executive Order 13132 limits the extent to which agencies may impose mandates on State and local governments. This regulation does not create a mandate on State or local governments. The regulation does not impose any enforceable duties on these entities. This regulation will be implemented at the Federal level and imposes compliance obligations only on private industry. The regulation therefore does not require imposition on States of substantial direct compliance costs, mandates, duties, or similar obligations.

List of Subjects in 29 CFR Part 2560

Employee benefit plans, Employee Retirement Income Security Act, Benefit Claims Procedures.

For the reasons set out in the preamble, 29 CFR part 2560 is amended as follows:

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

1. The authority citation for part 2560 continues to read as follows:

Authority: Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary's Order 1–87, 52 FR 13139 (April 21, 1987).

Section 2560–502–1 also issued under sec. 502(b)(1), 29 U.S.C. 1132(b)(1).

Section 2560–502i-1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560–503–1 also issued under sec. 503, 29 U.S.C. 1133.

2. Section 2560.503–1 is revised to read as follows:

§ 2560.503–1 Claims procedure.

(a) *Scope and purpose.* In accordance with the authority of sections 503 and 505 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), 29 U.S.C. 1133, 1135, this section sets forth minimum requirements for employee benefit plan procedures pertaining to claims for benefits by participants and beneficiaries (hereinafter referred to as claimants). Except as otherwise specifically provided in this section, these requirements apply to every employee benefit plan described in section 4(a) and not exempted under section 4(b) of the Act.

(b) *Obligation to establish and maintain reasonable claims procedures.*

[62] The organizations invited were the National Governors Association, the National League of Cities, the National Conference of State Legislatures, the National Association of Counties, the U.S. Conference of Mayors, and the Council of State Governments. The meeting was attended by representatives of the National Governors Association, the National Conference of State Legislatures, and the National Association of Counties.

Every employee benefit plan shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations (hereinafter collectively referred to as claims procedures). The claims procedures for a plan will be deemed to be reasonable only if—

(1) The claims procedures comply with the requirements of paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section, as appropriate, except to the extent that the claims procedures are deemed to comply with some or all of such provisions pursuant to paragraph (b)(6) of this section;

(2) A description of all claims procedures (including, in the case of a group health plan within the meaning of paragraph (m)(6) of this section, any procedures for obtaining prior approval as a prerequisite for obtaining a benefit, such as preauthorization procedures or utilization review procedures) and the applicable time frames is included as part of a summary plan description meeting the requirements of 29 CFR 2520.102–3;

(3) The claims procedures do not contain any provision, and are not administered in a way, that unduly inhibits or hampers the initiation or processing of claims for benefits. For example, a provision or practice that requires payment of a fee or costs as a condition to making a claim or to appealing an adverse benefit determination would be considered to unduly inhibit the initiation and processing of claims for benefits. Also, the denial of a claim for failure to obtain a prior approval under circumstances that would make obtaining such prior approval impossible or where application of the prior approval process could seriously jeopardize the life or health of the claimant (e.g., in the case of a group health plan, the claimant is unconscious and in need of immediate care at the time medical treatment is required) would constitute a practice that unduly inhibits the initiation and processing of a claim;

(4) The claims procedures do not preclude an authorized representative of a claimant from acting on behalf of such claimant in pursuing a benefit claim or appeal of an adverse benefit determination. Nevertheless, a plan may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant, provided that, in the case of a claim involving urgent care, within the meaning of paragraph (m)(1) of this section, a health care professional, within the meaning of paragraph (m)(7) of this section, with knowledge of a claimant's medical condition shall be permitted to act as the authorized representative of the claimant; and

(5) The claims procedures contain administrative processes and safeguards designed to ensure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants.

(6) In the case of a plan established and maintained pursuant to a collective bargaining agreement (other than a plan subject to the provisions of section 302(c)(5) of the Labor Management Relations Act, 1947 concerning joint representation on the board of trustees)—

(i) Such plan will be deemed to comply with the provisions of paragraphs (c) through (j) of this section if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference—

(A) Provisions concerning the filing of benefit claims and the initial disposition of benefit claims, and

(B) A grievance and arbitration procedure to which adverse benefit determinations are subject.

(ii) Such plan will be deemed to comply with the provisions of paragraphs (h), (i), and (j) of this section (but will not be deemed to comply with paragraphs (c) through (g) of this section) if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference a grievance and arbitration procedure to which adverse benefit determinations are subject (but not provisions concerning the filing and initial disposition of benefit claims).

(c) *Group health plans.* The claims procedures of a group health plan will be deemed to be reasonable only if, in addition to complying with the requirements of paragraph (b) of this section—

(1)(i) The claims procedures provide that, in the case of a failure by a claimant or an authorized representative of a claimant to follow the plan's procedures for filing a pre-service claim, within the meaning of paragraph (m)(2) of this section, the claimant or representative shall be notified of the failure and the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the claimant or authorized representative, as appropriate, as soon as possible, but not later than 5 days (24 hours in the case of a failure to file a claim involving urgent care) following the failure. Notification may be oral, unless written notification is requested by the claimant or authorized representative.

(ii) Paragraph (c)(1)(i) of this section shall apply only in the case of a failure that—

(A) Is a communication by a claimant or an authorized representative of a claimant that is received by a person or organizational unit customarily responsible for handling benefit matters; and

(B) Is a communication that names a specific claimant; a specific medical condition or symptom; and a specific treatment, service, or product for which approval is requested.

(2) The claims procedures do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act;

(3) To the extent that a plan offers voluntary levels of appeal (except to the extent that the plan is required to do so by State law), including voluntary arbitration or any other form of dispute resolution, in addition to those permitted by paragraph (c)(2) of this section, the claims procedures provide that:

(i) The plan waives any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a benefit dispute to any such voluntary level of appeal provided by the plan;

(ii) The plan agrees that any statute of limitations or other defense based on timeliness is tolled during the time that any such voluntary appeal is pending;

(iii) The claims procedures provide that a claimant may elect to submit a benefit dispute to such voluntary level of appeal only after exhaustion of the appeals permitted by paragraph (c)(2) of this section;

(iv) The plan provides to any claimant, upon request, sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed judgment about whether to submit a benefit dispute to the voluntary level of appeal, including a statement that the decision of a claimant as to whether or not to submit a benefit dispute to the voluntary level of appeal will have no effect on the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, the process for selecting the decisionmaker, and the circumstances, if any, that may affect the impartiality of the decisionmaker,

such as any financial or personal interests in the result or any past or present relationship with any party to the review process; and

(v) No fees or costs are imposed on the claimant as part of the voluntary level of appeal.

(4) The claims procedures do not contain any provision for the mandatory arbitration of adverse benefit determinations, except to the extent that the plan or procedures provide that:

(i) The arbitration is conducted as one of the two appeals described in paragraph (c)(2) of this section and in accordance with the requirements applicable to such appeals; and

(ii) The claimant is not precluded from challenging the decision under section 502(a) of the Act or other applicable law.

(d) *Plans providing disability benefits.* The claims procedures of a plan that provides disability benefits will be deemed to be reasonable only if the claims procedures comply, with respect to claims for disability benefits, with the requirements of paragraphs (b), (c)(2), (c)(3), and (c)(4) of this section.

(e) *Claim for benefits.* For purposes of this section, a claim for benefits is a request for a plan benefit or benefits made by a claimant in accordance with a plan's reasonable procedure for filing benefit claims. In the case of a group health plan, a claim for benefits includes any pre-service claims within the meaning of paragraph (m)(2) of this section and any post-service claims within the meaning of paragraph (m)(3) of this section.

(f) *Timing of notification of benefit determination.* (1) *In general.* Except as provided in paragraphs (f)(2) and (f)(3) of this section, if a claim is wholly or partially denied, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim by the plan, unless the plan administrator determines that special circumstances require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the benefit determination.

(2) *Group health plans.* In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination in accordance with paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, as appropriate.

(i) *Urgent care claims.* In the case of a claim involving urgent care, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claim by the plan, unless the claimant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the plan. In the case of such a failure, the plan administrator shall notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim by the plan, of the specific information necessary to complete the claim. The claimant shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph (f)(2)(i) shall be made in accordance with paragraph (g) of this section. The plan administrator shall notify the claimant of the plan's benefit determination as soon as possible, but in no case later than 48 hours after the earlier of—

(A) The plan's receipt of the specified information, or

(B) The end of the period afforded the claimant to provide the specified additional information.

(ii) *Concurrent care decisions.* If a group health plan has approved an ongoing course of treatment to be provided over a period of time or number of treatments—

(A) Any reduction or termination by the plan of such course of treatment (other than by plan amendment or termination) before the end of such period of time or number of treatments shall constitute an adverse benefit determination. The plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the adverse benefit determination at a time sufficiently in advance of the reduction or termination to allow the claimant to appeal and obtain a determination on review of that adverse benefit determination before the benefit is reduced or terminated.

(B) Any request by a claimant to extend the course of treatment beyond the period of time or number of treatments that is a claim involving urgent care shall be decided as soon as possible, taking into account the medical exigencies, and the plan administrator shall notify the claimant of the benefit determination, whether adverse or not, within 24 hours after receipt of the claim by the plan, provided that any such claim is made to the plan at least 24 hours prior to the expiration of the prescribed period of time or number of treatments. Notification of any adverse benefit determination concerning a request to extend the course of treatment, whether involving urgent care or not, shall be made in accordance with paragraph (g) of this section, and appeal shall be governed by paragraph (i)(2)(i), (i)(2)(ii), or (i)(2)(iii), as appropriate.

(iii) *Other claims.* In the case of a claim not described in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, the plan administrator shall notify the claimant of the plan's benefit determination in accordance with either paragraph (f)(2)(iii)(A) or (f)(2)(iii)(B) of this section, as appropriate.

(A) *Pre-service claims.* In the case of a pre-service claim, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) within a reasonable period of time appropriate to the medical circumstances, but not later than 15 days after receipt of the claim by the plan. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph (f)(2)(iii)(A) shall be made in accordance with paragraph (g) of this section.

(B) *Post-service claims.* In the case of a post-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that

such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

(3) *Disability claims.* In the case of a claim for disability benefits, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the plan. This period may be extended by the plan for up to 30 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If, prior to the end of the first 30-day extension period, the administrator determines that, due to matters beyond the control of the plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the plan administrator notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this paragraph (f)(3), the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

(4) *Calculating time periods.* For purposes of paragraph (f) of this section, the period of time within which a benefit determination is required to be made shall begin at the time a claim is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (f)(2)(iii) or (f)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(g) *Manner and content of notification of benefit determination.* (1) Except as provided in paragraph (g)(2) of this section, the plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv). The notification shall set forth, in a manner calculated to be understood by the claimant —

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

(v) In the case of an adverse benefit determination by a group health plan or a plan providing disability benefits,

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(vi) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, a description of the expedited review process applicable to such claims.

(2) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, the information described in paragraph (g)(1) of this section may be provided to the claimant orally within the time frame prescribed in paragraph (f)(2)(i) of this section, provided that a written or electronic notification in accordance with paragraph (g)(1) of this section is furnished to the claimant not later than 3 days after the oral notification.

(h) *Appeal of adverse benefit determinations.* (1) *In general.* Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.

(2) *Full and fair review.* Except as provided in paragraphs (h)(3) and (h)(4) of this section, the claims procedures of a plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures—

(i) Provide claimants at least 60 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide claimants the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits;

(iii) Provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(iv) Provide for a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(3) *Group health plans.* The claims procedures of a group health plan will not be deemed to provide a claimant with a reasonable opportunity for a full

and fair review of a claim and adverse benefit determination unless, in addition to complying with the requirements of paragraphs (h)(2)(ii) through (iv) of this section, the claims procedures—

(i) Provide claimants at least 180 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide for a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriate named fiduciary of the plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual;

(iii) Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;

(iv) Provide for the identification of medical or vocational experts whose advice was obtained on behalf of the plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination;

(v) Provide that the health care professional engaged for purposes of a consultation under paragraph (h)(3)(iii) of this section shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual; and

(vi) Provide, in the case of a claim involving urgent care, for an expedited review process pursuant to which—

(A) A request for an expedited appeal of an adverse benefit determination may be submitted orally or in writing by the claimant; and

(B) All necessary information, including the plan's benefit determination on review, shall be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method.

(4) *Plans providing disability benefits.* The claims procedures of a plan providing disability benefits will not, with respect to claims for such benefits, be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures comply with the requirements of paragraphs (h)(2)(ii) through (iv) and (h)(3)(i) through (v) of this section.

(i) *Timing of notification of benefit determination on review.* (1) *In general.* (i) Except as provided in paragraphs (i)(1)(ii), (i)(2), and (i)(3) of this section, the plan administrator shall notify a claimant in accordance with paragraph (j) of this section of the plan's benefit determination on review within a reasonable period of time, but not later than 60 days after receipt of the claimant's request for review by the plan, unless the plan administrator determines that special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the determination on review.

(ii) In the case of a plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(1)(i) of this section shall not apply, and, except as provided in paragraphs (i)(2) and (i)(3) of this section, the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(2) *Group health plans.* In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination on review in accordance with paragraphs (i)(2)(i) through (iii), as appropriate.

(i) *Urgent care claims.* In the case of a claim involving urgent care, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination by the plan.

(ii) *Pre-service claims.* In the case of a pre-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review within a reasonable period of time appropriate to the medical circumstances. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 30 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not later than 15 days after receipt by the plan of the claimant's request for review of the adverse determination.

(iii) *Post-service claims.* (A) In the case of a post-service claim, except as provided in paragraph (i)(2)(iii)(B) of this section, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review within a reasonable period of time. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 60 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of

such two appeals, not later than 30 days after receipt by the plan of the claimant's request for review of the adverse determination.

(B) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(2)(iii)(A) of this section shall not apply, and the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(3) *Disability claims.* (i) Except as provided in paragraph (i)(3)(ii) of this section, claims involving disability benefits (whether the plan provides for one or two appeals) shall be governed by paragraph (i)(1) of this section, except that a period of 45 days shall apply instead of 60 days for purposes of that paragraph.

(ii) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(3)(i) of this section shall not apply, and the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(4) *Calculating time periods.* For purposes of paragraph (i) of this section, the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (i)(1), (i)(2)(iii)(B), or (i)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(5) *Furnishing documents.* In the case of an adverse benefit determination on review, the plan administrator shall provide such access to, and copies of, documents, records, and other information described in paragraphs (j)(3), (j)(4), and (j)(5) of this section as is appropriate.

(j) *Manner and content of notification of benefit determination on review.* The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant—

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific plan provisions on which the benefit determination is based;

(3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(4) A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act; and

(5) In the case of a group health plan or a plan providing disability benefits—

(i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the claimant upon request;

(ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and

(iii) The following statement: ''You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency.''

(k) *Preemption of State law.* (1) Nothing in this section shall be construed to supersede any provision of State law that regulates insurance, except to the extent that such law prevents the application of a requirement of this section.

(2) (i) For purposes of paragraph (k)(1) of this section, a State law regulating insurance shall not be considered to prevent the application of a requirement of this section merely because such State law establishes a review procedure

to evaluate and resolve disputes involving adverse benefit determinations under group health plans so long as the review procedure is conducted by a person or entity other than the insurer, the plan, plan fiduciaries, the employer, or any employee or agent of any of the foregoing.

(ii) The State law procedures described in paragraph (k)(2)(i) of this section are not part of the full and fair review required by section 503 of the Act. Claimants therefore need not exhaust such State law procedures prior to bringing suit under section 502(a) of the Act.

(l) *Failure to establish and follow reasonable claims procedures.* In the case of the failure of a plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

(m) *Definitions.* The following terms shall have the meaning ascribed to such terms in this paragraph (m) whenever such term is used in this section:

(1)(i) A ''claim involving urgent care'' is any claim for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations—

(A) Could seriously jeopardize the life or health of the claimant or the ability of the claimant to regain maximum function, or,

(B) In the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

(ii) Except as provided in paragraph (m)(1)(iii) of this section, whether a claim is a ''claim involving urgent care'' within the meaning of paragraph (m)(1)(i)(A) of this section is to be determined by an individual acting on behalf of the plan applying the judgment of a prudent layperson who possesses an average knowledge of health and medicine.

(iii) Any claim that a physician with knowledge of the claimant's medical condition determines is a ''claim involving urgent care'' within the meaning of paragraph (m)(1)(i) of this section shall be treated as a ''claim involving urgent care'' for purposes of this section.

(2) The term ''pre-service claim'' means any claim for a benefit under a group health plan with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(3) The term ''post-service claim'' means any claim for a benefit under a group health plan that is not a pre-service claim within the meaning of paragraph (m)(2) of this section.

(4) The term ''adverse benefit determination'' means any of the following: a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(5) The term ''notice'' or ''notification'' means the delivery or furnishing of information to an individual in a manner that satisfies the standards of 29 CFR 2520.104b–1(b) as appropriate with respect to material required to be furnished or made available to an individual.

(6) The term ''group health plan'' means an employee welfare benefit plan within the meaning of section 3(1) of the Act to the extent that such plan provides ''medical care'' within the meaning of section 733(a) of the Act.

(7) The term ''health care professional'' means a physician or other health care professional licensed, accredited, or certified to perform specified health services consistent with State law.

(8) A document, record, or other information shall be considered ''relevant'' to a claimant's claim if such document, record, or other information

(i) Was relied upon in making the benefit determination;

(ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;

(iii) Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5) of this section in making the benefit determination; or

(iv) In the case of a group health plan or a plan providing disability benefits, constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

(n) *Apprenticeship plans.* This section does not apply to employee benefit plans that solely provide apprenticeship training benefits.

(o) *Applicability dates.* This section shall apply to claims filed under a plan on or after January 1, 2002.

Signed at Washington, DC, this 15th day of November, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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LIST OF PUBLIC LAWS

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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. 1235/P.L. 106–467

To authorize the Secretary of the Interior to enter into contracts with the Solano County Water Agency, California, to use Solano Project facilities for impounding, storage, and carriage of nonproject water for domestic, municipal, industrial, and other beneficial purposes. (Nov. 9, 2000; 114 Stat. 2026)

H.R. 2780/P.L. 106–468

Kristen's Act (Nov. 9, 2000; 114 Stat. 2027)

H.R. 2884/P.L. 106–469

Energy Act of 2000 (Nov. 9, 2000; 114 Stat. 2029)

H.R. 4312/P.L. 106–470

Upper Housatonic National Heritage Area Study Act of 2000 (Nov. 9, 2000; 114 Stat. 2055)

H.R. 4646/P.L. 106–471

To designate certain National Forest System lands within the boundaries of the State of Virginia as wilderness areas. (Nov. 9, 2000; 114 Stat. 2057)

H.R. 4788/P.L. 106–472

Grain Standards and Warehouse Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2058)

H.R. 4794/P.L. 106–473

Washington-Rochambeau Revolutionary Route National Heritage Act of 2000 (Nov. 9, 2000; 114 Stat. 2083)

H.R. 4846/P.L. 106–474

National Recording Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2085)

H.R. 4864/P.L. 106–475

Veterans Claims Assistance Act of 2000 (Nov. 9, 2000; 114 Stat. 2096)

H.R. 4868/P.L. 106–476

Tariff Suspension and Trade Act of 2000 (Nov. 9, 2000; 114 Stat. 2101)

H.R. 5110/P.L. 106–477

To designate the United States courthouse located at 3470 12th Street in Riverside, California, as the ''George E. Brown, Jr. United States Courthouse''. (Nov. 9, 2000; 114 Stat. 2182)

H.R. 5302/P.L. 106–478

To designate the United States courthouse located at 1010 Fifth Avenue in Seattle, Washington, as the ''William Kenzo Nakamura United States Courthouse''. (Nov. 9, 2000; 114 Stat. 2183)

H.R. 5331/P.L. 106–479

To authorize the Frederick Douglass Gardens, Inc., to establish a memorial and gardens on Department of the Interior lands in the District of Columbia or its environs in honor and commemoration of Frederick Douglass. (Nov. 9, 2000; 114 Stat. 2184)

H.R. 5388/P.L. 106–480

To designate a building proposed to be located within the boundaries of the Chincoteague National Wildlife Refuge, as the ''Herbert H. Bateman Education and Administrative Center''. (Nov. 9, 2000; 114 Stat. 2186)

H.R. 5410/P.L. 106–481

Library of Congress Fiscal Operations Improvement Act of 2000 (Nov. 9, 2000; 114 Stat. 2187)

H.R. 5478/P.L. 106–482

To authorize the Secretary of the Interior to acquire by donation suitable land to serve as the new location for the home of Alexander Hamilton, commonly known as the Hamilton Grange, and to authorize the relocation of the Hamilton Grange to the acquired land. (Nov. 9, 2000; 114 Stat. 2192)

H.J. Res. 102/P.L. 106–483

Recognizing that the Birmingham Pledge has made a significant contribution in fostering racial harmony and reconciliation in the United States and around the world, and for other purposes. (Nov. 9, 2000; 114 Stat. 2193)

S. 484/P.L. 106–484

Bring Them Home Alive Act of 2000 (Nov. 9, 2000; 114 Stat. 2195)

S. 610/P.L. 106–485

To direct the Secretary of the Interior to convey certain land under the jurisdiction of the Bureau of Land Management in Washakie County and Big Horn County, Wyoming, to the Westside Irrigation District, Wyoming, and for other purposes. (Nov. 9, 2000; 114 Stat. 2199)

S. 698/P.L. 106–486
To review the suitability and feasibility of recovering costs of high altitude rescues at Denali National Park and Preserve in the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2201)

S. 710/P.L. 106–487
Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Nov. 9, 2000; 114 Stat. 2202)

S. 748/P.L. 106–488
To improve Native hiring and contracting by the Federal Government within the State of Alaska, and for other purposes. (Nov. 9, 2000; 114 Stat. 2205)

S. 893/P.L. 106–489
To amend title 46, United States Code, to provide equitable treatment with respect to State and local income taxes for certain individuals who perform duties on vessels. (Nov. 9, 2000; 114 Stat. 2207)

S. 1030/P.L. 106–490
To provide that the conveyance by the Bureau of Land Management of the surface estate to certain land in the State of Wyoming in exchange for certain private land will not result in the removal of the land from operation of the mining laws. (Nov. 9, 2000; 114 Stat. 2208)

S. 1367/P.L. 106–491
To amend the Act which established the Saint-Gaudens National Historic Site, in the State of New Hampshire, by modifying the boundary and for other purposes. (Nov. 9, 2000; 114 Stat. 2209)

S. 1438/P.L. 106–492
National Law Enforcement Museum Act (Nov. 9, 2000; 114 Stat. 2210)

S. 1778/P.L. 106–493
To provide for equal exchanges of land around the Cascade Reservoir. (Nov. 9, 2000; 114 Stat. 2213)

S. 1894/P.L. 106–494
To provide for the conveyance of certain land to Park County, Wyoming. (Nov. 9, 2000; 114 Stat. 2214)

S. 2069/P.L. 106–495
To permit the conveyance of certain land in Powell, Wyoming. (Nov. 9, 2000; 114 Stat. 2216)

S. 2425/P.L. 106–496
Bend Feed Canal Pipeline Project Act of 2000 (Nov. 9, 2000; 114 Stat. 2218)

S. 2872/P.L. 106–497
Indian Arts and Crafts Enforcement Act of 2000 (Nov. 9, 2000; 114 Stat. 2219)

S. 2882/P.L. 106–498
Klamath Basin Water Supply Enhancement Act of 2000 (Nov. 9, 2000; 114 Stat. 2221)

S. 2951/P.L. 106–499
To authorize the Secretary of the Interior to conduct a study to investigate opportunities to better manage the water resources in the Salmon Creek watershed of the Upper Columbia River. (Nov. 9, 2000; 114 Stat. 2223)

S. 2977/P.L. 106–500
To assist in establishment of an interpretive center and museum in the vicinity of the Diamond Valley Lake in southern California to ensure the protection and interpretation of the paleontology discoveries made at the lake and to develop a trail system for the lake for use by pedestrians and nonmotorized vehicles. (Nov. 9, 2000; 114 Stat. 2224)

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