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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

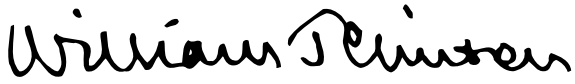
Presidential Determination No. 01–08 of December 27, 2000

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Public Law 106–429)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Public Law 106–429), I hereby certify that withholding from international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, December 27, 2000

[FR Doc. 01–724
Filed 1–8–01; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
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Tuesday, January 9, 2001

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

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 770

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1823, 1902, 1951, and 1956

RIN 0560–AF43

Loans to Indian Tribes and Tribal Corporations

AGENCY: Farm Service Agency, Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule consolidates and revises the Indian Tribal Land Acquisition Program (ITLAP) regulations. The rule eliminates the reserve requirement and the waiver of sovereign immunity for all new loans; allows borrowers to use the loan reserve accounts as either an extra payment on their loans to the Farm Service Agency (FSA) or for other tribal needs; provides borrowers additional servicing options; allows ITLAP funds to be used for certain refinancing activities; expands the uses borrowers may make of land purchased with ITLAP funds; requires ITLAP loan applications, in most cases, to include a copy of the borrower's option to purchase the land; and provides for subsequent loans to be made to ITLAP borrowers.

EFFECTIVE DATE: February 8, 2001.

FOR FURTHER INFORMATION CONTACT: Gary West, Senior Loan Officer, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523, telephone (202) 690–4008, facsimile (202) 690–0949, electronic mail: gwest@wdc.usda.fsa.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Thus, large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The issuing agency has determined that this action does not affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule.

Executive Order 12372

For reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. The rule does not add any new significant loan making criteria, but changes the format of the regulation in compliance with efforts to streamline our loan making and loan servicing criteria.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When a rule contains such mandates, section 205 of the UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

The Agency announced its intent to obtain Office of Management and Budget (OMB) approval of the information collections established under 7 CFR part 770 under a new OMB control number in the notice of proposed rule (64 FR 59131). No comments were received from the public regarding the proposed

information collections and the Agency has requested OMB approval.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance.

10.421—Indian Tribes and Tribal Corporation Loans.

Discussion of the Comments on the Proposed Rule

On November 2, 1999, the Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and the Farm Service Agency published a Proposed Rule (64 FR 59131) requesting comments regarding proposed changes to ITLAP. On March 31, 2000, an extension to the comment period was published. In response to the request for public comment, 29 comments were received. The breakdown of the five groups and or individuals who commented were: Three Native American tribes, one individual and one Federal Government agency.

Four comments were received regarding the cancellation of ITLAP debt. One comment opposed reducing or canceling any ITLAP debt that is fully secured and collectable because (1) The Federal Government has an affirmative responsibility to collect such debt and to not take that action turns the loans into grants and (2) it would violate the appropriations process. Three comments supported the cancellation of debt in some unspecified form, or supported a broad based cancellation of the debt. In response to the comment that the Agency not reduce any ITLAP debt that is fully secured and collectable, these loans are based upon the value of the land purchased and not the general assignment of income that is generally subordinated by the tribe to the Agency to secure repayment. The general assignment of funds comes from all tribal sources and not just the income generated from the land. So while the repayment is secured by the assignment, many loans are in fact not fully collateralized based upon the value of the land. It is the intent of the Agency in the final rule in situations where certain tribal economic impact factors are extreme to provide a mechanism for debt reduction, thereby reducing tribal payments to be more in line with the value of the lands purchased with these loan funds.

Also, while we agree that the Federal Government has an affirmative responsibility to collect its legitimate debts in accordance with various statutes, the Federal Government also has an affirmative responsibility to manage its loan programs in a manner that takes into consideration economic realities and circumstances beyond the control of participants in its loan programs. The Agency is not turning loans into grants but simply providing options for loan restructuring and debt relief for those who qualify. Providing such measures is consistent with actions taken to provide assistance to all program applicants in other Federal loan programs. However, the Agency has determined that it will limit the term of restructured loans to remain within the maximum 40-year term to help balance the needs of tribes for relief from economic hardship with the need to protect the financial integrity of government loan programs.

In response to the comments that suggested the Agency adopt a policy of canceling ITLAP debt, the Agency cannot justify the simple cancellation of ITLAP debt with respect to the program's current borrowers or future borrowers. Such an action would be inconsistent with the intent of the program, which is to provide credit to Native American tribes for the purchase of reservation land. When Congress amended the ITLAP legislation in 1989 (sec. 303 of Pub. L. 101–82) to authorize debt relief, it tied such relief to changes in the value of the land. In this amendment, Congress did not suggest or encourage the Agency to use its debt settlement authorities to provide broad debt relief. While comments to the proposed regulations did suggest new eligibility criteria and specifics on debt reduction, which are addressed here, none of the comments provided specific criteria to support when complete cancellation of debt should take place. Also, providing such relief could jeopardize the future of ITLAP because, at a minimum, if such relief is not clearly limited, it could substantially increase the projected costs for future ITLAP loans. The increased loan losses would mean that under the Credit Reform Act of 1990, the cost of loans would increase which would result in the Agency having less program loan funding available for such loans, even if the appropriation level of the program remains unchanged. The decreased funding would have a negative impact on ITLAP applicants. Therefore, the Agency has concluded at this point that the proposal of broadly canceling ITLAP debts will not be implemented.

Three respondents submitted comments regarding the methodology and eligibility for reducing the principal amount of the outstanding ITLAP debt to the present value of expected future annual rental value of the land purchased with ITLAP loan funds and setting the annual ITLAP loan payment at the annual rent received or that could be received from this land. Two of these comments stated that the principal balance of such loans should be reduced to the present value of future annual rents that could be generated on the land purchased with loan funds. Two comments supported the concept that loan payments should be adjusted to equal rental income received from land purchased with loan funds. In addition, one comment suggested that eligibility for debt relief be tied to the unusually high rates of unemployment encountered on Native American reservations. Three comments supported eligibility criteria based upon socio-economic factors but indicated that the proposed rule criteria was too complicated and terms such as unfunded mandates and quantifying public health and safety needs could never be accurately measured. These comments are indicative that many tribes are having or have experienced severe socio-economic problems and are finding it difficult to meet the basic needs of their members. As a result, the Agency has determined that debt relief to an ITLAP borrower could be extended to those who face extreme poverty and unemployment.

The final rule contains a provision that would allow an ITLAP loan to be written down to a level where annual loan payments are based upon the previous 5-year average annual rental payment received for the land purchased with loan funds projected over the remaining term of the loan. The rental rate information will be obtained from the Native American tribe or tribal corporation and verified with the Department of Interior. This would occur if the Native American tribe is facing extreme socio-economic problems, which are a part of the eligibility criteria for debt relief. In further response to the comments the Agency has changed the eligibility criteria to include socio-economic factors that are more easily measured, such as per capita income and tribal unemployment. However, a Native American tribe's loan could receive the benefit of such a write-down regarding its ITLAP loans only once, provided it has not received a land value write-down in the last 5 years. Such a write-down could involve as many ITLAP loans of the tribe as meet the criteria under this regulation at the time of the write-down application.

Two comments were received with regard to the number of years used to determine the average rental value of the land purchased under the rental value write-down option. The

commenters believed that the Agency did not go far enough in using the preceding 5 years to determine the average rental value of the land purchased with loan funds. The commenters contended that the entire history of the rental value of the land should be considered because there have been several periods over the life of the existing loans during which tribes have suffered financial hardships. The Agency considered these comments but any write-down must be based upon an accurate representation of the value of the land. To go back more than 5 years could result in a misstatement of the current land value. It is not the purpose of the rental value write-down option to compensate the borrower for financial hardship that it may have suffered in the past. The purpose of the new write-down servicing option is to provide a measure of relief, if necessary based upon the most recent indicators of land value.

One comment was received regarding the restructuring of a loan by lowering the interest rate and reamortizing the balance of the loan over the remaining loan term. The comments were not opposed to lowering the interest rate but were opposed to reamortizing over the remaining term. They felt that keeping within the remaining term when no debt relief is proposed simply increases a payment that already cannot be met. This comment also referred to year 40 of the note as the balloon payment date. In response, the Agency feels that routine loan restructuring should take place when necessitated by temporary circumstances and should be reamortized within the original note terms in order to stay within the budgetary confines of program allocations and to project a realistic repayment schedule for the loan. Also, the Agency is publishing a deferral option in the final rule that will further provide for temporary relief. If long-term problems are encountered the debt-relief provisions of this rule should be explored. In response to the balloon payment reference, the Agency believes that 40 years is a more than adequate repayment period for any note. Under the equal amortization schedule the note is set up or restructured under, year 40 is the final due date of the last installment and not a balloon payment.

Two comments suggested that ITLAP borrowers should be eligible for servicing options, such as reamortizations and deferrals (codified at 7 CFR part 1951, subpart S), and debt settlement options (codified at 7 CFR part 1956) that are available to Farm Loan Program (FLP) borrowers. Based on a review of the FLP loan-making and servicing procedures, we have determined that loan-making and servicing procedures for FLP are not consistent with the statutorily established purposes of ITLAP. The purpose of FLP loans is to assist family farming and ranching operations in becoming economically successful. Conversely, the statutory purpose of ITLAP loans is to assist Native American tribes in the purchase of land and interests in land for the purpose of consolidating their ownership of land within their reservations, regardless of the economic use such tribe may make of the land. Thus, FLP loans made to farmers and ranchers versus ITLAP loans made to Native American tribes are substantially different in the types of borrowers being targeted, the importance of how the borrower's operation is structured, and the importance of the economic viability of the project being funded. In order to accomplish the purpose of these respective loan programs, the servicing options offered to borrowers under each program must be different and tailored to the distinct purposes of these programs. With respect to debt settlement, for individual loans the security must be liquidated in order to debt settle. In many cases, even when the security is liquidated a debt settlement is not granted until a borrower makes a compromise offer to settle the remaining indebtedness even though all the collateral has been liquidated. The comments received considered this but felt that land holdings on the reservation are unique because they are generally secured by payment assignments, so collateral liquidation provisions should not apply. To the extent that a final debt settlement procedure is necessary, the Agency will use the general government procedures at (4 CFR parts 101–105). The final rule implements loan servicing and debt write-down provisions that are specially tailored and unique to ITLAP and will maintain the economic viability of tribal lands purchased with ITLAP funds.

Three comments were received regarding releasing assignments of income and substituting real estate mortgages on the land purchased with ITLAP funds. The comments suggest that the Agency take mortgages as security for these existing loans in exchange for the release of the general assignments of income that currently secure many of these loans. The Agency does not agree with these comments. The assignment guarantees repayment and since the ITLAP program is a credit program the Agency is responsible for providing the best possible method of collecting taxpayer dollars loaned. Also, in many of these cases taking security in the form of a mortgage is not practical because the ITLAP funds are being used to purchase fractional interests in land. A mortgage on such fractional interests may not provide the Agency with adequate security for the loan. However, the Agency is eliminating the reserve account requirement for all new loans and providing reserve account release criteria for existing loans in this rule. The reserve is set up for tribes to pay and deposit one-tenth of their regularly scheduled payment in the account until one full payment is in reserve. The release may help to free funds for borrowers to use in other areas rather than have them tied up in the reserve account.

One comment was received regarding granting of deferrals of annual payments if the income loss is temporary. The comment recommended that debt relief should be provided when a producer who rents land from the borrower suffers a reduction in commodity prices. The Agency agrees and has provided specific deferral criteria in § 770.10(c) of the final rule.

One comment suggested that debt relief should be provided if the making of the loan payments by the borrower will impede the borrower's ability to resolve fractional land interests on the reservation. One comment stated that debt relief should be provided if the making of loan payments impedes the borrower's ability to repay other loans or meet other tribal needs. In response, the ITLAP program that provides credit for a tribe to purchase land is not a program designed to solve all tribal needs, nor could it possibly be designed to do so. If tribes have other payment obligations, they may also approach those creditors for relief. ITLAP is a loan program in which tribes recognize their repayment responsibilities when entering into the loan. The Agency cannot promulgate regulations that simply allow a borrower to not make payments because it has decided that purchasing additional lands is a priority.

Two comments indicated that the Agency should take action regarding debt relief without promulgating new regulations, since such regulations are not necessary and would violate Executive Order (E.O.) 13084. These comments indicated that the E.O. obligates the Secretary of Agriculture to take actions to assist Native American tribes while waiving the normal regulatory requirements to take such actions. The Agency agrees that the E.O. does place an obligation on the Secretary of Agriculture to take steps

wherever possible to assist Native American tribes. As indicated in the Proposed Rule the Agency re-examined ITLAP to determine if there are ways in which the Agency can provide more debt relief options to borrowers. The Agency, however, does not agree that the E.O. would allow the Agency to implement such policy changes in violation of the requirements of notice and comment rulemaking requirements in section 553 of Title 5, United States Code and the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation (36 FR 13804). Further, while the public notification and subsequent comment periods of the informal rulemaking process has taken additional time, this process has given all interested parties, including affected Native American tribes, the opportunity to participate in the development of this final rule, thus ensuring that their interests and concerns have been heard. Therefore, the Agency proceeded with the consideration and development of ITLAP debt relief changes through the notice and comment rulemaking process.

One comment indicated that the Agency's concerns regarding the budgetary impacts of providing debt relief to borrowers were misplaced because such relief would enable borrowers to purchase more fractional interests and thus reduce the overall Federal Government's costs in tracking these fractional interests. The comment indicated that any additional costs to the Federal Government would be offset by the reduction in costs to administer programs on Native American reservations. The comment indicated that this information is readily available from the Department of the Interior's Bureau of Indian Affairs and that a reduction in debt would have a corollary effect of reducing the costs incurred by the Federal Government of managing fractional interests within the confines of Federally Recognized Indian Reservations. Only authorizing legislation could allow for consideration of such a proposal. In addition, these comments ignore the Agency's concerns expressed in the Proposed Rule of the impact on the Federal budget that any ITLAP debt relief will have on the Agency and the reality of the Federal budgeting process.

One comment indicated that funding for the loan program should be provided to the full program authorization level of $50 million and that such a change would be in the best interests of the program. The Agency has no comment as the Congressional appropriation process establishes program funding levels, not the Agency.

One comment requested clarification on the definition of Reservation to include the former reservations in Oklahoma. While inclusion of these lands would be consistent with other FSA loan programs, the statute authorizing ITLAP, 25 U.S.C. 488, limits ITLAP loans to ''interests * * * within the tribe's reservation as determined by the Secretary of the Interior or within a community in Alaska incorporated by the Secretary * * *'' Former reservations lands are not covered by the ITLAP authorizing statute and thus the comment was not adopted.

One comment indicated that under the proposed land value or rental value write-down criteria the appraisal that would be necessary would be cost prohibitive because of fractionated interests in land. The Agency maintains that a value must be established prior to any write-down just as it was when the loans were originally made. If the appraisal cost is viewed as being excessive, then, as with any loan, the borrower will have to make a decision on what is in its best interest.

Two comments requested that any requirement for the tribe to waive its sovereign immunity be removed. The Agency agrees and will no longer require the waiver. The lack of a waiver does not prevent the Federal Government from bringing suit against the borrower.

One comment suggested that the Agency is not equipped to handle loans to tribes and that the ITLAP program should be transferred to an Agency that is better suited to understanding and working with tribal programs, such as the Department of the Interior. This type of a loan program transfer between departments of the Federal Government would require enacting legislation.

There were other comments relating to specifics of the Agency's internal administrative processing of various loan making or servicing actions. These comments and recommended actions are solely administrative in nature and will be covered in the Agency handbook.

Discussion of the Final Rule

Public Law 91–229 (25 U.S.C. 488–494) authorized the Secretary of Agriculture to establish ITLAP to make loans to Native American tribes and tribal corporations to acquire land and fractional interests in land on the tribes' reservations. This program was administered by the former Farmers Home Administration (FmHA). Under the authority of the Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354, on October 20, 1994, FmHA's ITLAP functions were transferred to FSA. Regulations for implementing this program are found at 7 CFR part 1823, subpart N for loan making; 7 CFR part 1951, subpart E for loan servicing; and 7 CFR part 1956, subpart C, for debt settlement. The final rule will consolidate the ITLAP regulations into one part and clarify that this program is exclusively administered by FSA.

The final rule will eliminate the reserve account. With respect to loans that are not delinquent and that are presently adequately secured by a general assignment of tribal income, the Agency will release its interest in existing reserve accounts and allow them to be returned to the Native American tribe or tribal corporation. During the review of ITLAP in preparation of the proposed rule and the final rule, the Agency determined that a general assignment of tribal income provides the Agency sufficient security for ITLAP loans. The additional security provided by the reserve account is unnecessary. ITLAP loans secured by an assignment of income have a very low delinquency rate. The release of the reserve would allow Native American tribes and tribal corporations to use these funds towards an extra payment or for other tribal operations. Also, with this change, the borrowers could use the reserve account funds to purchase additional land that could increase its future income or for other pressing tribal needs. The Agency believes that these changes are consistent with the intent of ITLAP to assist Native American tribes and tribal corporations to consolidate their ownership in reservation lands.

The final rule also adopts the use of unemployment rates and tribal per capita income for enrolled tribal members as an eligibility criteria more easily obtainable than calculating the percentage or tribal shortfall to meet unfunded State or Federal mandates.

The final rule expands the use of ITLAP loan funds to include: Refinancing of an existing debt incurred by the Native American tribe or tribal corporation to purchase land, provided the loan application and land purchase proposal was received by the Agency and approved prior to the purchase of the land; the Native American tribe or tribal corporation was not able to obtain an option on the land; the debt to be refinanced is short term debt with a balloon payment that cannot otherwise be refinanced with the creditor; and the debt secured by the land subject to the refinancing must otherwise meet the requirements of ITLAP.

The final rule allows certain ITLAP loans to be written down to a value where the annual loan payment would equal the 5-year average rental value for the land purchased with such loan funds if the borrower could establish that the Native American tribe was facing economic hardships based on a combination of certain eligibility criteria. Such a write-down could involve as many ITLAP loans of the tribe as meet the criteria under this regulation at the time of the write-down application.

The final rule clarifies the process under which the Agency will reduce the interest rate of an ITLAP loan to the interest in effect at the time of application for such a reduction. Such a reduction will take place if the ITLAP loan has been in effect for more than 5 years. This change is being made to allow borrowers who have extreme impoverished circumstances to benefit from any program interest rate changes. Borrowers could qualify if the tribe has a per capita income for enrolled tribal members which is less than the Federally established poverty income rate by more than 50 percent and the tribal unemployment rate exceeds 50 percent.

The final rule clarifies the approved uses of land that are the subject of an ITLAP loan to ensure that the Agency's mortgage or income assignment on the land is protected by requiring Agency approval prior to such land being either leased, sold, or exchanged. The final rule clarifies that a subsequent ITLAP loan may be made to a borrower for the same purposes and under the same conditions as a prior loan. The final rule requires that prior to obtaining an ITLAP loan, the Native American tribe or tribal corporation must obtain an option or other acceptable purchase agreement to purchase the land at issue and that a copy of such agreement accompany the ITLAP loan application. The purpose for this change is to allow the Agency to have all relevant information regarding the land purchase for which ITLAP loan funds are being sought. The final rule will also eliminate the need for the tribe to waive their right to sovereign immunity as the Government will receive an assignment of income that has been approved by Department of Interior, Bureau of Indian Affairs, which serves to guarantee the repayment of the loan, negating the need for the waiver of sovereign immunity.

List of Subjects

7 CFR Part 770

Credit, Indians, Loan programs—agriculture.

7 CFR Part 1823

Credit, Grazing lands, Indians, Loan programs—agriculture, Rural areas, Soil conservation.

7 CFR Part 1902

Accounting, Banks, banking, Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development.

7 CFR Part 1951

Accounting, Grant programs—Housing and community development; Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, for the reasons stated in the preamble, 7 CFR part 770 is added and 7 CFR parts 1823, 1902, 1951, and 1956 are amended as follows:

1. Part 770 is added to read as follows:

PART 770—INDIAN TRIBAL LAND ACQUISITION LOANS

Sec.

770.1 Purpose.
770.2 Abbreviations and definitions.
770.3 Eligibility requirements.
770.4 Authorized loan uses.
770.5 Loan limitations.
770.6 Rates and terms.
770.7 Security requirements.
770.8 Use of acquired land.
770.9 Appraisals.
770.10 Servicing.

Authority: 5 U.S.C. 301, 25 U.S.C. 490.

§ 770.1 Purpose.

This part contains the Agency's policies and procedures for making and servicing loans to assist a Native American tribe or tribal corporation with the acquisition of land interests within the tribal reservation or Alaskan community.

§ 770.2 Abbreviations and definitions.

(a) *Abbreviations.*

FSA Farm Service Agency, an Agency of the United States Department of Agriculture, including its personnel and any successor Agency.

ITLAP Indian Tribal Land Acquisition Program.

(b) *Definitions.*

Administrator is the head of the Farm Service Agency.

Agency is Farm Service Agency (FSA).

Appraisal is an appraisal for the purposes of determining the market value of land (less value of any existing improvements that pass with the land) that meets the requirements of part 761 of this chapter.

Applicant is a Native American tribe or tribal corporation established pursuant to the Indian Reorganization Act seeking a loan under this part.

Loan funds refers to money loaned under this part.

Native American tribe is:

(1) An Indian tribe recognized by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Reservation is lands or interests in land within:

(1) The Native American tribe's reservation as determined by the Department of the Interior; or

(2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Reserve is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001 which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

Tribal corporation is a corporation established pursuant to the Indian Reorganization Act.

§ 770.3 Eligibility requirements.

An applicant must:

(a) Submit a completed Agency application form;

(b) Except for refinancing activities authorized in § 770.4(c), obtain an option or other acceptable purchase agreement for land to be purchased with loan funds;

(c) Be a Native American tribe or a tribal corporation of a Native American tribe without adequate uncommitted funds, based on Generally Accepted Accounting Principles, or another financial accounting method acceptable to Secretary of Interior to acquire lands or interests therein within the Native American tribe's reservation for the use of the Native American tribe or tribal corporation or the members of either;

(d) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms for purposes established in § 770.4;

(e) Demonstrate reasonable prospects of success in the proposed operation of the land to be purchased with funds provided under this part by providing:

(1) A feasibility plan for the use of the Native American tribe's land and other

enterprises and funds from any other source from which payment will be made;

(2) A satisfactory management and repayment plan; and

(3) A satisfactory record for paying obligations.

(f) Unless waived by the FSA Administrator, not have any outstanding debt with any Federal Agency (other than debt under the Internal Revenue Code of 1986) which is in a delinquent status.

(g) Not be subject to a judgment lien against the tribe's property arising out of a debt to the United States.

§ 770.4 Authorized loan uses.

Loan funds may only be used to:

(a) Acquire land and interests therein (including fractional interests, rights-of-way, water rights, easements, and other appurtenances (excluding improvements) that would normally pass with the land or are necessary for the proposed operation of the land) located within the Native American tribe's reservation which will be used for the benefit of the tribe or its members.

(b) Pay costs incidental to land acquisition, including but not limited to, title clearance, legal services, land surveys, and loan closing.

(c) Refinance non-United States Department of Agriculture preexisting debts the applicant incurred to purchase the land provided the following conditions exist:

(1) Prior to the acquisition of such land, the applicant filed a loan application regarding the purchase of such land and received the Agency's approval for the land purchase;

(2) The applicant could not acquire an option on such land;

(3) The debt for such land is a short term debt with a balloon payment that cannot be paid by the applicant and that cannot be extended or modified to enable the applicant to satisfy the obligation; and

(4) The purchase of such land is consistent with all other applicable requirements of this part.

(d) Pay for the costs of any appraisal conducted pursuant to this part.

§ 770.5 Loan limitations.

(a) Loan funds may not be used for any land improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, payment of finder's fees, or similar costs, or for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agriculture commodity as further established in exhibit M to subpart G of part 1940 of this title.

(b) The amount of loan funds used to acquire land may not exceed the market value of the land (excluding the value of any improvements) as determined by a current appraisal.

(c) Loan funds for a land purchase must be disbursed over a period not to exceed 24 months from the date of loan approval.

(d) The sale of assets that are not renewable within the life of the loan will require a reduction in loan principal equal to the value of the assets sold.

§ 770.6 Rates and terms.

(a) *Term.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note.

(b) *Interest rate.* The interest rate charged by the Agency will be the lower of the interest rate in effect at the time of the loan approval or loan closing, which is the current rate available in any FSA office. Except as provided in § 770.10(b) the interest rate will be fixed for the life of the loan.

§ 770.7 Security requirements.

(a) The applicant will take appropriate action to obtain and provide security for the loan.

(b) A mortgage or deed of trust on the land to be purchased by the applicant will be taken as security for a loan, except as provided in paragraph (c) of this section.

(1) If a mortgage or deed of trust is to be obtained on trust or restricted land and the applicant's constitution or charter does not specifically authorize mortgage of such land, the mortgage must be authorized by tribal referendum.

(2) All mortgages or deeds of trust on trust or restricted land must be approved by the Department of the Interior.

(c) The Agency may take an assignment of income in lieu of a mortgage or deed of trust provided:

(1) The Agency determines that an assignment of income provides as good or better security; and

(2) Prior approval of the Administrator has been obtained.

§ 770.8 Use of acquired land.

(a) *General.* Subject to § 770.5(d) land acquired with loan funds, or other property serving as the security for a loan under this part, may be leased, sold, exchanged, or subject to a subordination of the Agency's interests, provided:

(1) The Agency provides prior written approval of the action;

(2) The Agency determines that the borrower's loan obligations to the Agency are adequately secured; and

(3) The borrower's ability to repay the loan is not impaired.

(b) *Title.* Title to land acquired with a loan made under this part may, with the approval of the Secretary of the Interior, be taken by the United States in trust for the tribe or tribal corporation.

§ 770.9 Appraisals.

(a) The applicant or the borrower, as appropriate, will pay the cost of any appraisal required under this part.

(b) Appraisals must be completed in accordance with § 761.7 of this chapter.

§ 770.10 Servicing.

(a) *Reamortization.*

(1) *Eligibility.* The Agency may consider reamortization of a loan provided:

(i) The borrower submits a completed Agency application form; and

(ii) The account is delinquent due to circumstances beyond the borrower's control and cannot be brought current within 1 year; or

(iii) The account is current, but due to circumstances beyond the borrower's control, the borrower will be unable to meet the annual loan payments.

(2) *Terms.* The term of a loan may not be extended beyond 40 years from the date of the original note.

(i) Reamortization within the remaining term of the loan will be predicated on a projection of the tribe's operating expenses indicating the ability to meet the new payment schedule; and

(ii) No intervening lien exists on the security for the loan which would jeopardize the Government's security priority.

(3) *Consolidation of notes.* If one or more notes are to be reamortized, consolidation of the notes is authorized.

(b) *Interest rate reduction.* The Agency may consider a reduction of the interest rate for an existing loan to the current interest rate as available from any Agency office provided:

(1) The borrower submits a completed Agency application form;

(2) The loan was made more than 5 years prior to the application for the interest reduction; and

(3) The Department of the Interior and the borrower certify that the borrower meets at least one of the criteria contained in paragraph (e)(2) of this section.

(c) *Deferral.* The Agency may consider a full or partial deferral for a period not to exceed 5 years provided:

(1) The borrower submits a completed Agency application form;

(2) The borrower presents a plan which demonstrates that due to circumstances beyond their control, they will be unable to meet all financial commitments unless the Agency payment is deferred; and

(3) The borrower will be able to meet all financial commitments, including the Agency payments, after the deferral period has ended.

(d) *Land exchanges.* In the cases where a borrower proposes to exchange any portion of land securing a loan for other land, title clearance and a new mortgage on the land received by the borrower in exchange, which adequately secures the unpaid principal balance of the loan, will be required unless the Agency determines any remaining land or other loan security is adequate security for the loan.

(e) *Debt write-down.*

(1) *Application.* The Agency will consider debt write-down under either the land value option or rental value option, as requested by the borrower.

(i) The borrower must submit a completed Agency application form;

(ii) If the borrower applies and is determined eligible for a land value and a rental value write-down, the borrower will receive a write-down based on the write-down option that provides the greatest debt reduction.

(2) *Eligibility.* To be eligible for debt write-down, the borrower (in the case of a tribal corporation, the Native American tribe of the borrower) must:

(i) Be located in a county which is identified as a persistent poverty county by the United States Department of Agriculture, Economic Research Service pursuant to the most recent data from the Bureau of the Census; and

(ii) Have a socio-economic condition over the immediately preceding 5 year period that meets the following two factors as certified by the Native American tribe and the Department of the Interior:

(A) The Native American tribe has a per capita income for individual enrolled tribal members which is less than 50 percent of the Federally established poverty income rate established by the Department of Health and Human Services;

(B) The tribal unemployment rate exceeds 50 percent;

(3) *Land value write-down.* The Agency may reduce the unpaid principal and interest balance on any loan made to the current market value of the land that was purchased with loan funds provided:

(i) The market value of such land has declined by at least 25 percent since the land was purchased as established by a current appraisal;

(ii) Land value decrease is not attributed to the depletion of resources contained on or under the land;

(iii) The loan was made more than 5 years prior to the application for land value writedown; and

(iv) The loan has not previously been written down under paragraph (d)(4) of this section and has not been written down within the last 5 years under this paragraph.

(4) *Rental value write-down.* The Agency may reduce the unpaid principal and interest on any loan, so the annual loan payment for the remaining term of each loan equals the average of annual rental value of the land purchased by each such loan for the immediately preceding 5-year period provided:

(i) The loan was made more than 5 years prior to the rental value writedown;

(ii) The description of the land purchased with the loan funds and the rental values used to calculate the 5 year average annual rental value of the land have been certified by the Department of the Interior;

(iii) The borrower provides a current appraisal of the land; and

(iv) The loan has not been previously written down under this paragraph and has not been written down within the last 5 years under paragraph (d)(3) of this section.

(e) *Release of reserve.* Existing reserve accounts may be released for the purpose of making ITLAP loan payments or to purchase additional lands, subject to the following:

(1) A written request is received providing details of the use of the funds;

(2) The loan is not delinquent;

(3) The loan adequately secured by a general assignment of tribal income.

PART 1823—[Reserved]

2. Remove and reserve part 1823.

PART 1902—SUPERVISED BANK ACCOUNTS

3. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.16 and 2.42.

§ 1902.15 [Amended]

4. Amend the first sentence of paragraph (c) of § 1902.15 by removing the words ''Indian Land Acquisition,'.

PART 1951—SERVICING AND COLLECTIONS

5. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 Note, 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

§ 1951.201 [Amended]

6. Amend the first sentence of § 1951.201 by removing the words ''loans to Indian Tribes and Tribal Corporations;'.

§ 1951.221 [Amended]

7. Amend the heading of § 1951.221(b) by removing the words ''and Indian Tribes and Tribal Corporation Loans''.

§ 1951.222 [Amended]

8. Remove § 1951.222(a)(11).

§ 1951.230 [Amended]

9. Amend § 1951.230 as follows:

a. Add the word ''and'' at the end of paragraph (b)(5);

b. Remove the word ''; and'' and add in its place ''.'' at the end of paragraph (b)(6); and

c. Remove paragraph (b)(7).

PART 1956—DEBT SETTLEMENT

10. The authority citation for part 1956 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart C—Debt Settlement—Community and Business Programs

11. Amend § 1956.101 by removing the phrase ''and Indian Tribal Land

Acquisition loans;''

§ 1956.105 [Amended]

12. Amend § 1956.105 by removing paragraph (k).

§ 1956.137 [Removed and reserved]

13. Remove and reserve § 1956.137.

Signed at Washington, DC, on December 22, 2000.

August Schumacher,

Under Secretary for Farm and Foreign Agricultural Services.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 01–100 Filed 1–8–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 1910 and 1941

RIN 0560–AF71

Implementation of Low-Documentation Direct Operating Loan (Lo-Doc) Regulations

AGENCIES: Farm Service Agency, Rural Business-Cooperative Service, Rural Housing Service and Rural Utilities Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the regulations governing the Farm Service Agency's direct operating loan (OL) program by simplifying the application process for certain farmers requesting assistance of $50,000 or less and for certain recurring OL applicants. By making FSA's direct OL program application process more consistent with standard industry practices, loan processing will be more efficient and less time consuming. This will decrease the time-frame for family-size farmers to receive their credit, thereby allowing them to conduct their farming operations in a more timely manner.

DATES: Effective January 9, 2001. Comments on this rule and the information collections must be received on or before March 12, 2001 to be given full consideration.

ADDRESSES: Submit written comments to the Farm Service Agency, U.S. Department of Agriculture, Farm Loan Programs Loan Making Division, Attention: Director, Room 5438-S, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522. All written comments received in connection with this rule will be available for public inspection 8:15 a.m.–4:45 p.m., Eastern Standard Time, except holidays, at 1400 Independence Avenue, SW, Washington, DC 20250–0522.

FOR FURTHER INFORMATION CONTACT: Michael Hinton, Branch Chief, Farm Service Agency; telephone: 202–720–1472; Facsimile: 202–690–1117; E-mail: Mike—Hinton@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601) and does not impact small entities to a greater extent than large entities. Large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

Environmental Impact Statement

It is the determination of the issuing agency that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

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

Paperwork Reduction Act

This interim rule does not impose any new information collection or recordkeeping requirements; however, the provisions of the rule do eliminate the need for some information previously collected and result in a revision to the number of estimated respondents from whom information will be collected. Therefore, the Agency is revising the information collection currently approved in support of the Direct Operating Loan program under the Office of Management and Budget (OMB) control number 0560–0178. OMB emergency clearance has been obtained to allow continued use of the affected regulations and forms under OMB control number 0560–0178.

SUPPLEMENTARY INFORMATION:

Title: Receiving and Processing Applications.

OMB Control Number: 0560–0178.

Expiration Date of Approval: April 30, 2000.

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

Abstract: The information collected under OMB Control Number 0560–0178 is used in processing applications for direct FLP loans. Specifically, the Agency uses the information in making eligibility and financial feasibility determinations for direct operating, farm ownership, and emergency loans, as authorized under the Consolidated Farm and Rural Development Act. The specific information collected is business and entity supporting documentation on organizational structure and financial information,

documentation of farm experience and training, verification that the applicant is unable to obtain credit elsewhere, historical financial and production records, and copies of any lease agreements or legal descriptions of real estate they own. The Lo-Doc application process will decrease collections required from applicants requesting operating loans of $50,000 or less, or recurring annual operating loans. Lo-Doc will decrease the burden on both FSA employees and customers. Specifically, for Lo-Doc application processing only the entity supporting documentation information from this collection may be required.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.7 hours per response.

Respondents: Individuals or households, businesses or other for profit, and farms.

Estimated Number of Respondents: 34,970.

Estimated Number of Responses: 73,708.

Estimated Total Annual Burden on Respondents: 119,412.

Comments are sought on these requirements including: (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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Michael Hinton, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington DC 20250–0522. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Discussion of the Interim Rule

Stress in the farm economy has significantly increased demand for FSA farm loans. The Agency must take steps to focus resources on larger, more complex cases that pose the highest risk to the government. The changes in documentation requirements will reduce the time for loan officials to review application information and make the necessary determinations. Decreasing the time required for FSA employees to reach both eligibility and feasibility determinations on lower risk loans increases the time available to concentrate on larger, higher risk loan applicants.

In fiscal year 1999, FSA made more than 16,000 direct OL's to farmers for a total of nearly $800 million. According to recent studies of FSA offices nationwide, the average FSA OL applicant expends 14.05 hours to complete the application to be submitted to FSA. Once this complete application is submitted to FSA another 39.55 hours is expended by FSA employees to reach both eligibility and feasibility determinations on each OL application.

Approximately 10,500, or 65 percent, of these applications are for loans of $50,000 or less. This group of applicants represents only 26 percent of the total direct OL dollars loaned in fiscal year 1999 and only 20 percent of the total FSA direct OL delinquency in dollars. These figures reflect the substantially lower risk involved with FSA direct OL's under $50,000 as compared to those FSA loans above this amount. The Lo-Doc loan regulations will primarily affect this group of FSA current and potential customers.

Reducing the application burden on both potential FSA customers and FSA employees will result in more timely assistance, so applicants will receive their FSA operating funds earlier in the production year. The most critical time period for farming operations nationwide is from pre-planting through planting seasons. This is also the peak demand period for operating capital in many types of farming operations. Without this proposed reduction in the application process many farmers would receive assistance so late in the year their production would be adversely affected, or they would otherwise go without credit for an extended period of time. For two years the farm economy has been in a continuing state of crisis due to excess supplies, weak foreign markets, and regional weather disasters. With the current financial difficulties facing agriculture, it is imperative that producers receive operating credit early in the spring season. Historical records reflect that the Agency approves the majority of OL's in the months of March and April. In order to meet the needs of farmers, the Agency is publishing this rule as an interim rule effective on date of publication. A delayed effective date, or publication of a proposed rule would adversely impact farmers as Lo-Doc OL's would not be available for the current operating season. Farmers eligible for FSA farm loans are unable to obtain credit elsewhere at reasonable rates and terms. Therefore, the Lo-Doc program needs to be effective upon publication. FSA, however, will accept comments for a 60 day comment period after publication to determine if the program should be subsequently modified.

General Changes

FSA is revising its direct OL program regulations to reduce the application requirements for certain operating loan requests of $50,000 or less and for certain annual OL requests from recurring applicants.

Under current regulations, the application requirements are the same for all OL requests regardless of the amount of the loan or whether it is an initial or subsequent loan for the applicant. For example, an applicant requesting an OL of $5,000 is required to submit the same amount of information as an applicant requesting a $200,000 OL. An FSA customer who has received several OL loans is required to submit the same information as a new applicant requesting an initial OL. This excess paperwork is time-consuming for both the farmer and the FSA employee, who could be helping less experienced farmers whose loans pose a higher risk to the Government. Less experienced farmers normally need more personal attention to make financial progress and be successful in graduating to commercial credit.

Loan applicants and Agency field personnel have identified several application requirements that are repetitive or do not significantly contribute to the Agency's ability to make a credit decision, such as always requiring verifications of employment and verifying the same debt in numerous ways. The Agency is amending its regulation to eliminate requirements that are repetitive or do not contribute significantly to a sound credit decision in light of the financial risk involved.

In addition, application requirements and loan purpose requirements are being amended as follows:

Application Requirements

Certain loan applicants submitting requests for operating loans of $50,000 or less will only be required to submit the following: a signed and dated FSA 410–1, ''Request for Direct Loan

Assistance,'' a check or money order for credit report and lien filing fees, a Farm and Home Plan for the next operating cycle, acreage and lease information, and conservation compliance information. Additionally, applicants which are entities will be required to submit a list of owners, personal financial statements from the owners, and copies of the entities legal documents.

The FSA 440–32,''Statement of Debts and Collateral'' form will no longer be required because several weeks often pass before creditors return them to FSA, thereby increasing the time required for determination of feasibility. Most of the information supplied by creditors on this form can be obtained by FSA from credit reports. The required use of the verification of employment form will also be eliminated. Employment, salary, and wage information is quickly and easily verified by credit reports, current payroll statements or IRS Forms W–2.

Certain recurring applicants requesting annual OL assistance will be required to submit a signed and dated FSA 410–1, a check or money order for credit report and lien filing fees, a Farm and Home Plan for the next operating cycle, and any information that has changed from the previous loan application, including acreage and lease information, and conservation compliance documentation.

For all applicants who apply under the Lo-Doc process, the Agency reserves the right to request additional information that would be required of a loan applicant under the normal process. The Agency will not require information beyond Lo-Doc requirements as a matter of course, but will request supporting documentation when information submitted deviates from local norms, conflicts with other available information, or otherwise creates the need for further documentation.

Qualification Requirements

Lo-Doc applicants requesting a loan of $50,000 or less must meet current eligibility requirements for FSA direct OL's listed in section 1941.12. In addition, the applicant must be current on all loan payments to FSA and all other creditors, must not have received primary loan servicing or disaster set-aside on any FSA debt within the past 5 years, and must owe FSA less than $100,000, including the new loan. These additional requirements are necessary to sufficiently lower the risk from an FSA credit standpoint to make a sound credit decision based on the reduced documentation.

Lo-Doc applicants requesting a recurring annual OL assistance must meet all current eligibility requirements for FSA direct operating loans as listed in § 1941.12 and, must have at least 2 years of annual OL history with FSA where the loans were timely repaid, be current on payments to all other creditors, and have not received primary loan servicing or disaster set-aside on any FSA debt within the past 5 years.

Applicants who cannot meet the criteria for these new application procedures may receive a regular OL provided they meet the current requirements in § 1941.12.

Loan Purposes

Lo-Doc OL's for $50,000 or less can be used for any authorized operating expense allowed in § 1941.16, except paragraph (i) for refinancing debts. This limitation is necessary because the need for refinancing is an indication of financial stress and, thus, a greater credit risk than other OL loan purposes. The Agency must perform additional analysis on those cases to help borrowers become successful and better understand the risk associated with each request.

Lo-Doc OL's issued to recurring applicants requesting annual OL assistance can only be used for any authorized annual operating expense allowed in paragraphs (c) and (h) of § 1941.16. Because these applicants have demonstrated that they are good operators who have repaid their annual operating loans, the Agency is reducing the paperwork requirements for them to obtain subsequent annual operating credit. Also, if they want operating credit for purposes other than annual operating they may qualify for the Lo-Doc OL under $50,000 loan purposes. For applicants that do not qualify under either of the Lo-Doc programs, the Agency feels that there is sufficient risk to warrant the Agency's continued collection of the same application materials currently required.

List of Subjects

7 CFR Part 1910

Agriculture, Credit, Loan programs-housing and community development, Low and moderate income housing, Sex discrimination.

7 CFR Part 1941

Agriculture, Crops, Livestock, Loan programs-rural areas, Youth.

Accordingly, 7 CFR chapter XVIII is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

2. Amend § 1910.1 to add a new paragraph (f) to read as follows:

§ 1910.1 General.

* * * * *

(f) As used in this subpart, the abbreviation ''Lo-Doc'' means Low-Documentation and the abbreviation ''OL'' means Operating Loan.

3. Amend § 1910.4 as follows:

a. Revise the third sentence from the end of paragraph (b);

b. Redesignate paragraphs (c) through (k) as paragraphs (d) through (l); and

c. Add a new paragraph (c).

The addition and the revision read as follows:

§ 1910.4 Processing Applications.

* * * * *

(b) * * * A complete Farm Loan Programs application requires fulfillment of both the applicant and FSA responsibilities, except as provided in paragraph (c) of this section. ***

(c) Low-Documentation (Lo-Doc) Operating Loans:

(1) To qualify for loan processing under Lo-Doc provisions, an applicant must:

(i) Be current on all payments to all creditors including FSA (if an FSA borrower);

(ii) Have not received primary loan servicing or disaster set-aside on any FSA debt within the past 5 years; and

(iii) Meet one of the following criteria:

(A) The loan requested is $50,000 or less and the total outstanding FSA operating loan debt at the time of loan closing will be less than $100,000; or

(B) The loan is requested to pay annual operating expenses and the applicant is an existing FSA borrower who has received and repaid as scheduled, at least two previous annual operating loans from the agency.

(2) A complete Lo-Doc OL application will consist of the items listed in paragraphs (b)(1), (b)(2), (b)(9), (b)(10), and (b)(16) of this section. The Agency may require a Lo-Doc applicant to submit any other information listed under paragraph (b) of this section as needed to make a determination on the loan application.

* * * * *

PART 1941—OPERATING LOANS

4. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures, and Authorizations.

5. Revise the introductory paragraph of § 1941.16 to read as follows:

§ 1941.16 Loan purposes.

An applicant who obtained a write-down under direct or guaranteed loan authorities is restricted to the purposes listed under paragraphs (c), (g), and (h) of this section. An applicant who qualifies for a Low-Documentation operating loan under § 1910.4(c)(1)(iii)(A) of subpart A of part 1910 may use loan funds for all authorized loan purposes except paragraph (i) of this section. An applicant who qualifies for a Lo-Doc loan under § 1910.4(c)(1)(iii)(B) 7 CFR may only use the loan funds for purposes listed under paragraphs (c) and (h) of this section. All other eligible applicants may request OL funds for any of the following purposes:

* * * * *

Signed in Washington, D.C., on December 21, 2000.

August Schumacher,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 01–101 Filed 1–8–01; 8:45 am]

BILLING CODE 3410–05–U

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 34, 36, and 39

RIN 3150–AG21

New Dosimetry Technology; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 8, 2001, for the direct final rule that appeared in the **Federal Register** of October 24, 2000 (65 FR 63750). This direct final rule amended the NRC's regulations that govern radiological safety to allow licensees to use any type of personnel dosimeter that requires processing to determine the radiation dose, provided that the processor of the dosimeter is accredited under the National Voluntary Laboratory Accreditation Program (NVLAP), operated by the National Institutes of Standards and Technology.

DATES: The effective date of January 8, 2001, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Betty Ann Torres, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–0191 (E-mail: *bat@nrc.gov*).

SUPPLEMENTARY INFORMATION: On October 24, 2000 (65 FR 63750), the NRC published in the **Federal Register** a direct final rule amending its regulations to allow licensees to use any type of personnel dosimeter that is processed by an accredited NVLAP processor. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of this direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 3rd day of January, 2001.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Acting Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration.

[FR Doc. 01–600 Filed 1–8–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG58

List of Approved Spent Fuel Storage Casks: HI–STAR 100 Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of December 26, 2000, for the direct final rule that appeared in the **Federal Register** of October 11, 2000 (65 FR 60339). This direct final rule amended the NRC's regulations on the HI–STAR 100 cask system in seven areas and includes changes to the Certificate of Compliance and Technical Specifications. The seven areas involve: revision of the existing fuel specification tables; addition of pressurized water reactor Burnable Poison Rod Assemblies and Thimble Plug Devices; addition of two new classes of fuel to the fuel specification tables; addition of a new damaged fuel container; addition of thoria rods in canisters; addition of antimony-beryllium neutron sources [i.e., reactor startup sources], and clarifications, editorial corrections, and other minor changes to cask design information and drawings. In addition, the amendment includes two minor changes to HI–STAR 100 listing in the regulations. This document confirms the effective date.

DATES: The effective date of December 26, 2000 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6195 (E-mail: GEG1@nrc.gov).

SUPPLEMENTARY INFORMATION: On October 11, 2000 (65 FR 60339), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 on the HI–STAR 100 cask system in seven areas and includes changes to the Certificate of Compliance and Technical Specifications. The seven areas involve: revision of the existing fuel specification tables; addition of pressurized water reactor Burnable Poison Rod Assemblies and Thimble Plug Devices; addition of two new classes of fuel to the fuel specification tables; addition of a new damaged fuel container; addition of thoria rods in canisters; addition of antimony-beryllium neutron sources [i.e., reactor startup sources], and clarifications,

editorial corrections, and other minor changes to cask design information and drawings. In addition, the amendment includes two minor changes to HI–STAR 100 listing in the regulations. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 3rd day of January, 2001.

For the Nuclear Regulatory Commission.

Michael Lesar,

Acting Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 01–599 Filed 1–8–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–329–AD; Amendment 39–11915; AD 2000–20–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2000–20–04 that was published in the **Federal Register** on October 6, 2000 (65 FR 59707). The typographical error resulted in the omission of the amendment number. This AD is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes. This AD requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points.

EFFECTIVE DATE: Effective November 13, 2000.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2000–20–04, amendment 39–11915, applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, was published in the **Federal Register** on October 6, 2000 (65 FR 59707). That AD requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points.

PART 39—[CORRECTED]

As published, the amendment contained a typographical error in paragraph 2. under the ''PART 39—AIRWORTHINESS DIRECTIVES'' heading resulting in the omission of the new amendment number. In all other respects, the original document is correct.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains November 13, 2000.

§ 39.13 [Corrected]

On page 59708, in the first column, correct instruction 2 to read as follows:

2. Section 39.13 is amended by removing amendment 39–11855 (65 FR 49728, August 15, 2000), and by adding a new airworthiness directive (AD), amendment 39–11915, to read as follows:

Issued in Renton, Washington, on December 29, 2000.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–340 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–13–U

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Delegation of Authority to Disclose and Request Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending Rule 140.73, which delegates authority to members of the Commission's staff to provide information to other government agencies, to conform the rule with the provisions of the Commodity Exchange Act (Act) that authorize such information sharing. The Commission is also making certain technical corrections to Rules 140.72 and 140.73 to clarify its delegations of authority.

EFFECTIVE DATE: January 9, 2001.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Ky Tran-Trong, Attorney-Advisor, or Julie R. Windhorn, Law Clerk, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5450.

Supplementary Information:

I. Background

Commission Rule 140.73 delegates the authority of the Commission to provide information to other government agencies to specified members of the Commission's staff. The Commission is authorized to promulgate this rule under Sections 2(a)(11), 8a(5) and 8(e) of the Act.[1] The Commission's original delegation was granted to the Director of the Division of Enforcement (and, in his absence, to each Deputy Director of the Division) in order to ''eliminate the necessity of the Commission itself authorizing the release of information'' in each instance where other federal agencies requested information.[2]

II. Discussion

A. 17 CFR 140.73(a)(1)

As originally adopted, Rule 140.73 limited the information that could be disclosed by authorized Commission staff to another federal agency to that which was ''within the scope of [the requesting agency's] jurisdiction in the investigation or prosecution of any violation of federal law.'' [3] In 1983, after the Futures Trading Act of 1982 (1982 Act) made various amendments to Section 8(e) of the Act, the Commission revised Rule 140.73 to add State and foreign authorities to the list of agencies to which information could be released.[4] The 1983 expansion of the Commission's information-sharing

[1] Section 2(a)(11), 7 U.S.C. 4a(j), authorizes the Commission to ''promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.'' Section 8a(5), 7 U.S.C. 12a(5), gives the Commission the authority to ''promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of [the] Act.'' Section 8(e), 7 U.S.C. 12(e), is the provision that permits the agency to release information.

[2] 44 FR 72107 (Dec. 13, 1979).

[3] *Id.*

[4] 48 FR 22133 (May 17, 1983). The Commission also authorized several additional members of the Commission's staff to disclose information. *Id.* The delegation of authority was further expanded in 1996, and more recently in October 2000. *See* 61 FR 1708 (Jan. 23, 1996); 65 FR 64136 (Ot. 26, 2000).

authority to include disclosure to State and foreign authorities was not limited to matters within the scope of the requesting agency's jurisdiction involving ''the investigation or prosecution of any violation of law.'' However, the Commission at that time did not make a conforming change to Rule 140.73(a)(1) to remove the restriction in connection with requests for information from other federal authorities.

The retention of the ''violation of law'' requirement in Rule 140.73(a)(1) leads to an incongruous result that is inconsistent with the language of section 8(e) of the Act. Section 8(e), with respect to the disclosure of information to federal agencies, provides in relevant part that:

> Upon the request of any department or agency of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of [the] Act.

The 1982 Act amended Section 8(e) to permit similar information-sharing arrangements between the Commission and State and foreign authorities where the State or foreign agency or department made a request while ''acting within the scope of its jurisdiction.'' [5] In its subsequent revision of Rule 140.73, the Commission added paragraphs (a)(2) and (a)(3) ''to conform the Commission's rules to the Commodity Exchange Act, as amended by the Futures Trading Act of 1982.'' [6] As adopted, those provisions authorize certain Commission designees, ''to furnish information in the possession of the Commission obtained in connection with the administration of the Act, upon written request'' to any department or agency of any state or foreign government, or any political subdivision thereof, ''acting within the scope of its jurisdiction.'' [7] However, although the relevant portions of section 8(e) of the Act addressing the conditions under which information could be shared with either Federal or State and foreign agencies were identical, the Commission did not revise Rule 140.73(a)(1) to eliminate that provision's requirement that Commission staff only disclose information to other federal authorities acting within the scope of their jurisdiction ''in the investigation or prosecution of any violation of law.'' Consequently, under Rule 140.73 as currently written, Commission staff are authorized to disclose information obtained in connection with the Commission's administration of the Act to other Federal agencies under more limited circumstances than is permitted in response to similar requests for information from State or foreign agencies. This result is not supported by the statutory language of section 8(e) of the Act [8] and, accordingly, the Commission finds it appropriate to remove the ''violation of law'' limitation from Rule 140.73(a)(1).

The Commission also believes that it is necessary to revise Rule 140.73(a)(1) at this time in order to facilitate the Commission's ability to provide financial reports submitted by, and reports of examinations of, CFTC-regulated entities to the Board of Governors of the Federal Reserve System (FRB) pursuant to Section 111 of the Gramm-Leach-Bliley Act of 1999 (GLB Act).[9] Under the GLB Act, the FRB has supervisory oversight authority and responsibility for financial holding companies (FHCs).[10] Such FHCs may own a variety of financial companies that are ''functionally regulated'' by different regulatory agencies, *e.g.,* a national bank regulated by the Office of the Comptroller of the Currency (OCC), a broker-dealer or investment advisor regulated by the Securities and Exchange Commission (SEC), or a futures commission merchant regulated by the Commission. Although the GLB Act establishes the FRB as the ''umbrella supervisor'' of an FHC, Section 111 directs the FRB, in discharging its responsibilities as umbrella supervisor, to rely ''to the fullest extent possible'' on financial reports filed with, or prepared by, the FHC's or nonbank subsidiary's functional regulator, as well as on publicly available information for both regulated and non-regulated subsidiaries.[11] In addition, the GLB Act also requires the FRB to rely ''to the fullest extent possible'' on examinations of the FHC or nonbank subsidiary carried out by the appropriate functional regulator.[12] Accordingly, as the functional regulator of an FHC or nonbank subsidiary thereof engaging in CFTC-regulated activities, the Commission would be expected to provide financial reports submitted by, and reports of examinations of, those firms upon the FRB's request to enable the FRB to carry out its oversight and supervisory responsibilities. Absent a revision of Rule 140.73(a)(1), however, Commission staff arguably would be prohibited from sharing such information with the FRB unless the report or examination was required in connection with ''the investigation or prosecution of any violation of law.'' This could inhibit the FRB's role as the FHC's umbrella regulator and is inconsistent with Congressional intent. Therefore, the Commission has determined to revise Rule 140.73(a)(1) to delete the ''violation of law'' requirement from the rule.

B. 17 CFR 140.72(a) and 17 CFR 140.73(a)

As noted above, Commission Rule 140.73 delegates authority to certain specified members of the Commission's staff to share information obtained in connection with the administration of the Act with other government agencies upon written request. Similarly, Commission Rule 140.72 delegates authority to certain specified members of the Commission's staff to share ''any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to[,] the full facts concerning any transaction or market operation, including the names of the parties thereto'' with officials of any contract market, registered futures association, or self-regulatory organization.[13] The Commission has

[5] In relevant part, Section 8(e) of the Act provides with respect to disclosure of information to State and foreign authorities.

> Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, any foreign futures authority, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such foreign futures authority, department or agency and information in the possession of the Commission obtained in connection with the administration of [the] Act.

[6] 48 FR at 22133.

[7] 17 CFR 140.73(a)(2), (3).

[8] Section 8(e) of the Act does state, however, that ''any information furnished under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party.'' This limitation exists for both State and foreign authorities as well, and is incorporated into paragraph (c) of Rule 140.73.

[9] Pub. L. No. 106–102, 113 Stat. 1338 (1999) (codified in scattered sections of 12 U.S.C. and 15 U.S.C.).

[10] FHCs are qualifying bank holding companies (BHCs) that engage in a diversified range of financial activities. To qualify as an FHC, a BHC must be well-capitalized, well-managed and have a Community Reinvestment Act rating of ''satisfactory'' or better. *See* GLB Act § 103, codified at 12 U.S.C. 1843(k).

[11] GLB Act § 111, codified at 12 U.S.C. 1844c). *See also* FRB Supervisory Letter SR 00–13 (Aug. 15, 2000) (Framework for Financial Holding Company Supervision), available at http://www.federalreserve.gov.

[12] *Id.*

[13] Disclosure of confidential information under Rule 140.72 requires a prior determination by the Commission or its designees that ''the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or

Continued

determined to amend both rules to add the Regional Counsel of the Division of Enforcement as persons authorized in appropriate cases to disclose certain non-public information to other governmental, judicial or market authorities in carrying out his or her duties. This authority will facilitate the Commission's ability to coordinate and share information with other authorities for regulatory oversight, fitness inquiries and other regulatory purposes. In addition, because the position of Program Coordinator of the Division of Enforcement no longer exists, the Commission is also revising Rules 140.72(a) and 140.73(a) to remove the delegations of authority provided therein to the Program Coordinator of the Division of Enforcement.

III. Related Matters

The Commission has determined that these amendments relate solely to agency organization, procedure and practice. Therefore, the provisions of the Administrative Procedure Act, which generally require notice of proposed rulemaking and provide other opportunities for public participation,[14] are not applicable. The Commission further finds that, because the rules have no adverse effect upon a member of the public, and these changes are being made solely for the purpose of conforming the language of the regulation to the language of the statute, there is good cause to make them effective immediately upon publication in the **Federal Register**.

List of Subjects in 17 CFR Part 140

Authority delegations, organization, functions and procedures of the Commission.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, Sections 2(a), 8 and 8a, 7 U.S.C. 4a, 12 and 12a, the Commission hereby amends Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

1. The authority citation for Part 140 continues to read as follows:

Authority: 7 U.S.C. 4a and 12a.

2. Section 140.72 is amended by revising paragraph (a) to read as follows:

§ 140.72 Delegation of authority to disclose confidential information to a contract market, registered futures association or self-regulatory organization.

(a) Pursuant to the authority granted under sections 2(a)(11), 8a(5) and 8a(6) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Executive Director, the Deputy Executive Director, the Special Assistant to the Executive Director, the Director of the Division of Trading and Markets, each Deputy Director of the Division of Trading and Markets, the Chief Accountant, the General Counsel, each Deputy General Counsel, the Director of the Division of Economic Analysis, each Deputy Director of the Division of Economic Analysis, the Director of the Market Surveillance Section, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, each Associate Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, each of the Regional Coordinators, each of the Directors of the Market Surveillance Branches, the Director of the Office of International Affairs, and the Deputy Director of the Office of International Affairs, the authority to disclose to an official of any contract market, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to, the full facts concerning any transaction or market operation, including the names of the parties thereto. This authority to disclose shall be based on a determination that the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the Act. The authority to make such a determination is also delegated by the Commission to the Commission employees identified in this section. A Commission employee delegated authority under this section may exercise that authority on his or her own initiative or in response to a request by an official of a contract market, registered futures association or self-regulatory organization.

* * * * *

3. Section 140.73 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 140.73 Delegation of authority to disclose information to United States, States, and foreign government agencies and foreign futures authorities.

(a) Pursuant to sections 2(a)(11), 8a(5) and 8(e) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the General Counsel or, in his or her absence, to each Deputy General Counsel, the Director of the Division of Enforcement, each Deputy Director of the Division of Enforcement, the Chief Counsel of the Division of Enforcement, each Associate Director of the Division of Enforcement, each Regional Counsel of the Division of Enforcement, the Director of the Division of Economic Analysis or, in his or her absence, each Deputy Director of the Division, the Director of the Market Surveillance Section, the Director of the Division of Trading and Markets or, in his or her absence, each Deputy Director of the Division of Trading and Markets, and the Director of the Office of International Affairs or, in his or her absence, the Deputy Director of the Office of International Affairs, the authority to furnish information in the possession of the Commission obtained in connection with the administration of the Act, upon written request, to:

(1) Any department or agency of the United States, including for this purpose an independent regulatory agency, acting within the scope of its jurisdiction;

* * * * *

Issued in Washington, DC on January 4, 2001, by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 01–595 Filed 1–8–01; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

Distribution of Fiscal Year 2001 Indian Reservation Roads Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Temporary rule.

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that disclosure is necessary or appropriate to effectuate the purposes of the Act.'' *See* § 140.72(a).

[14] 5 U.S.C. 553(b) generally requires notice of proposed rulemaking to be published in the **Federal Register**. That provision states, however, that except when notice or hearing is required by statute, notice is not required for:

(A) * * * interpretative rules, general statements of policy, or rules of agency organization, procedure or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

SUMMARY: We are issuing a temporary rule requiring that we distribute 75 percent of fiscal year 2001 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. As we did in fiscal year 2000, we are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting states. In this distribution we are reserving up to $19.53 million to allow federally recognized tribes to apply for $35,000 each for administrative capacity building and other eligible transportation activities for fiscal year 2001.

DATES: This temporary rule is effective January 9, 2001 through September 30, 2001. We are requesting comments on or before February 8, 2001.

ADDRESSES: Submit comments to LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS–4058–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, may be reached at 202–208–4359 (phone), 202–208–4696 (fax), or leroygishi@bia.gov (electronic mail).

SUPPLEMENTARY INFORMATION:

Background

Where Can I Find General Background Information on the Indian Reservation Roads Program, the Relative Need Formula, the FHWA Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?

The background information on the IRR program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the Federal Register Notice dated February 15, 2000 (65 FR 7431). You may obtain additional information on the IRR program web site at *http://www.irr.bia.gov.*

What Was the Basis for Distribution of Fiscal Year 2000 Funds?

For fiscal year 2000 IRR program funds, the Secretary published two interim rules distributing one-half of the funds in February, 2000 and the second half of the funds in June, 2000. This distribution followed the TEA–21 Negotiated Rulemaking Committee's recommendation to the Secretary in January, 2000 to distribute fiscal year 2000 IRR program funds under the relative need formula used in 1998 and 1999 while continuing to develop alternative formulas for comment. In addition, we modified the Federal Highway Administration Price Trends Report indices to account for two non-reporting states.

What Is the Basis for Distribution of Fiscal Year 2001 IRR Program Funds?

The Transportation Equity Act for the 21st Century provides that the Secretary develop rules and a funding formula for fiscal year 2000 and subsequent fiscal years to implement the Indian Reservation Roads program section of the Act. The Negotiated Rulemaking Committee created under Section 1115 of TEA–21 and comprised of representatives of tribal governments and the federal government has been diligently working to develop a funding formula that addresses the Congressionally identified criteria, Committee and tribal recommendations, and is consistent with overall Federal Indian Policy.

Permanent funding formula options have been developed and agreed upon by the Committee and tribal representatives. These options will be published at a later date in the **Federal Register** for public comment. In the meantime, there are about 1400 ongoing road and bridge construction projects on or near Indian reservations which need fiscal year 2001 funding to continue or complete work. Partially constructed road and bridge projects could pose safety threats. Other road and bridge projects need to be planned or initiated in this fiscal year.

This rule is published as a temporary rule only for interim funding for fiscal year 2001 and sets no precedent for the final rule to be published as required by Section 1115 of TEA–21. The TEA–21 Negotiated Rulemaking Committee agrees that an interim funding formula for fiscal year 2001 is needed. The Committee expects to recommend the publication of two alternative formulas for public comment so that a final permanent formula can be established for the next fiscal year. The interim formula for fiscal year 2001 will also provide tribes with the critical resources to develop inventory data, long-range transportation plans, transportation improvement programs and other information necessary to distribute funds under a new funding formula to be put in place for fiscal year 2002 and thereafter.

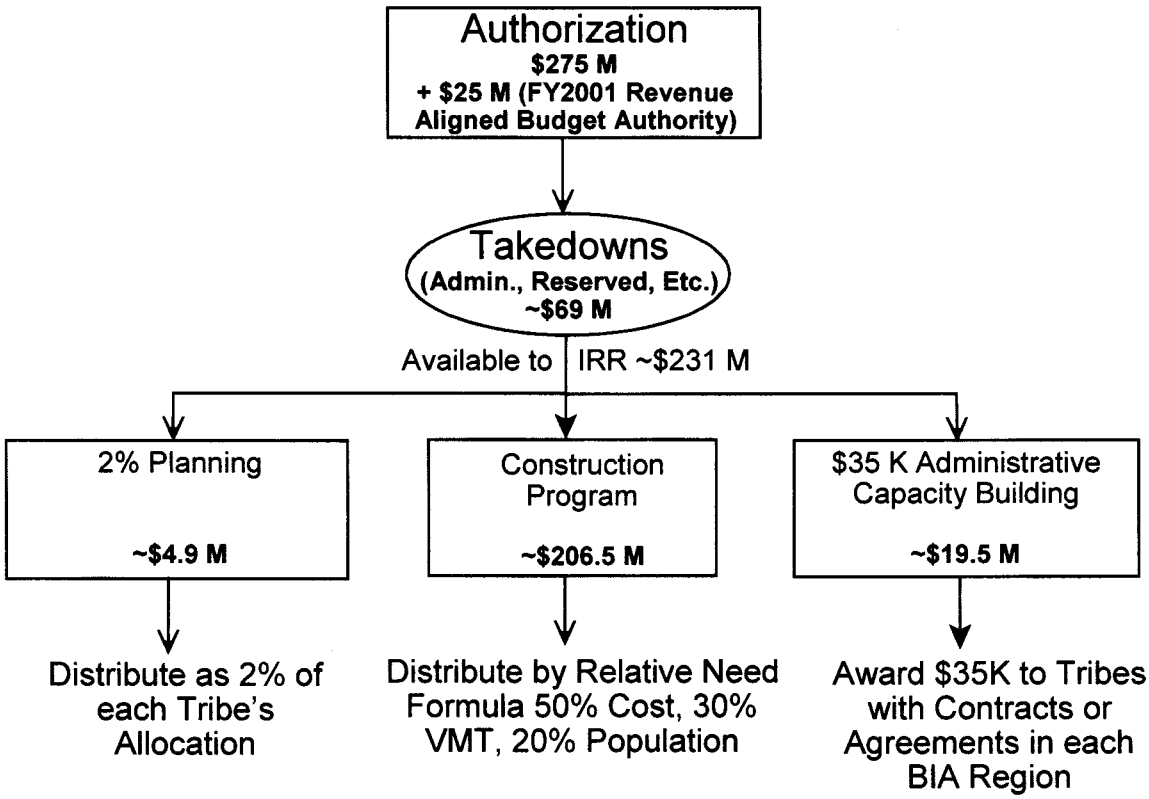
The TEA–21 Negotiated Rulemaking Committee's tribal caucus recommended that the Secretary distribute fiscal year 2001 funds on the same basis as fiscal year 2000 funds, including a provision for an administrative capacity building set-aside. Under a special Congressional appropriation in fiscal year 2000, we distributed $18.3 million for transportation planning and the design of deficient IRR bridges.

How Will the Secretary Distribute Fiscal Year 2001 IRR Program Funds?

Upon publication of this rule, the Secretary will distribute 75 percent (approximately $169.5 million) of fiscal year 2001 IRR program funds based on the current relative need formula used in fiscal year 2000, and the indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process. In this distribution we are reserving $19.53 million for federally recognized tribes who apply for and have negotiated contracts or agreements for up to $35,000 for administrative capacity building and other eligible transportation activities under the IRR program. Fiscal year 2001 funds will be distributed to the twelve BIA regions using this distribution process. The remaining 25 percent of fiscal year 2001 IRR program funds will be distributed under the same relative need formula as the first 75 percent of the funds, after comments are reviewed and any necessary changes to the distribution are made.

What Formula Components Are We Using for Distribution of Fiscal Year 2001 Funds and How Are They Related?

The following diagram shows the relationship between components for fiscal year 2001 IRR program funds distribution:



What Data Are We Using for the Interim Distribution Funding Formula?

We are using the most current road inventory data (June 2000) maintained by the Bureau of Indian Affairs.

What Is the Purpose of Administrative Capacity Building?

The primary purpose of administrative capacity building is to provide all tribes an opportunity to participate in the IRR program by updating transportation needs inventories and performing other transportation planning activities.

How Are We Distributing the Reserved Administrative Capacity Building Funds to the Twelve BIA Regions?

The administrative capacity building funds are to be reserved at the BIA Division of Transportation until the application/award deadline is met. We are distributing the reserved administrative capacity building funds ($19.53 million) to the twelve BIA regions based on the number of tribes in the region that request to participate by tribal resolution or other official action of the tribe.

How Will We Provide Administrative Capacity Building Funds to Tribes?

Any Federally recognized tribe may apply to the appropriate BIA region for administrative capacity building funds under the Indian Self-Determination and Educational Assistance Act (P.L. 93–638) no later than March 15, 2001.

How Will BIA Provide Administrative Capacity Building Services to Direct Service Tribes?

The BIA regions will provide administrative capacity building services to tribes in their regions that request such services.

What Must a Self-Determination or Self-Governance Tribe Provide in Its Application to the BIA Region for Administrative Capacity Building Funds for Fiscal Year 2001?

A self-determination or self-governance tribe must make application to the appropriate BIA Region by March 15, 2001 and must include:

(a) Scope of work; and

(b) Detailed budget not to exceed $35,000; and

(c) Official tribal resolution or other official action of the tribe requesting the funds.

What Will BIA Do With Any Reserved Funds That Have Not Been Awarded to Tribes for Administrative Capacity Building After August 15, 2001?

We will distribute the remaining funds to the twelve BIA regions based on the relative need formula discussed in this rule. It is important that each tribe submit its application for administrative capacity building within the established deadlines so that we can make a timely reallocation of any reserved funds that are not awarded by August 15, 2001.

Are There Any Differences in the Distribution of Fiscal Year 2001 IRR Program Funds as Compared to the Two Distributions of Fiscal Year 2000 IRR Program Funds Under the First and Second Temporary Rules Published in February 2000 and June 2000?

The distribution of fiscal year 2001 IRR program funds are based on the current relative need formula and the FHWA Price Trends Report indices that were used for the adjusted FY 2000 distribution. On February 15, 2000 the Secretary partially distributed fiscal year 2000 IRR program funds using the relative need formula. In June, 2000, the Secretary distributed the remaining funds under the relative need formula by modifying the FHWA price trend report indices for two non-reporting states, Washington and Alaska, that impact tribes in those non-reporting states. We are using the same modification process for non-reporting states for distribution of fiscal year 2001 IRR program funds. We are partially distributing fiscal year 2001 IRR program funds upon publication of this rule (75 percent) and we will distribute the remaining 25 percent of the funds following the 30-day comment period. In the first partial distribution of fiscal

year 2001 funds we are reserving $19.53 million for administrative capacity building. Any federally recognized tribe may apply for $35,000 for such activities.

Why Does This Temporary Rule Not Allow for Notice and Comment on the First Partial Distribution of Fiscal Year 2001 IRR Program Funds, and Why Is It Effective Immediately?

Under 5 U.S.C. 553(b)(3)(B), notice and public procedure on the first partial distribution under this rule are impracticable, unnecessary, and contrary to the public interest. In addition, we have good cause for making this temporary rule for distribution of 75 percent of fiscal year IRR program funds effective immediately under 5 U.S.C. 553(d)(3). Notice and public procedure would be impracticable because of the urgent need to distribute 75 percent of fiscal year 2001 IRR program funds. Approximately 1400 road and bridge construction projects are at various phases that require additional funds this fiscal year to continue or complete work, including 196 deficient bridges and the construction of approximately 600 miles of roads. Fiscal year 2001 IRR program funds will be used to design, plan, and construct improvements (and, in some cases, to reconstruct bridges). Without this partial distribution of fiscal year 2001 funds, tribal and BIA IRR projects will be forced to cease activity, placing projects and jobs in jeopardy. Waiting for notice and comment on this temporary rule would be contrary to the public interest. In some of the BIA regions, approximately 80 percent of the roads in the IRR system (and the majority of the bridges) are designated school bus routes. Roads are essential access to schools, jobs, and medical services. Many of the priority tribal roads are also emergency evacuation routes and represent the only access to tribal lands. Two-thirds of the road miles in Indian country are unimproved roads. Deficient bridges and roads are health and safety hazards. Partially constructed road and bridge projects jeopardize the health and safety of the traveling public. Further, over 200 projects currently in progress are directly associated with environmental protection and preservation of historic and cultural properties. This temporary rule is going into effect immediately because of the urgent need for partially distributing fiscal year 2001 funds to continue these construction projects.

We are providing for a 30-day comment period upon publication of this temporary rule for comments on distribution of the remaining 25 percent of fiscal year 2001 IRR program funds. We will review and consider comments on distributing the remaining 25 percent of fiscal year 2001 IRR program funds before the second distribution.

Clarity of This Temporary Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this temporary rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the temporary rule clearly stated? (2) Does the temporary rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the temporary rule (grouping and order of sections, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the temporary rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the temporary rule? What else could we do to make the temporary rule easier to understand?

Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this temporary rule is a significant regulatory action because it will have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2001 IRR program funds is approximately $226 million and we are distributing approximately $169.5 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2001 IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This temporary rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This temporary rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports.

This temporary rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This temporary rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients.

This temporary rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the second partial distribution of fiscal year 2000 IRR program funds.

Approximately 1400 road and bridge construction projects are at various phases that depend on this fiscal year's IRR program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR program funds. This rule continues to adopt the relative need formula that we have used since 1993.

Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required for this temporary rule because it applies only to tribal governments, not State and local governments.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it has an annual effect on the economy of $100 million or more. We are distributing approximately $169.5 million under this temporary rule. Congress has already appropriated these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR program funds does not require tribal governments and tribal organizations to expend any of their own funds.

This rule will not cause a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements.

This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.), this temporary rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required.

This temporary rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this temporary rule is to immediately provide 75 percent of fiscal year 2001 IRR program funds to tribal governments for ongoing IRR activities and construction projects.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

Federalism (Exectuive Order 13132)

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This temporary rule should not affect the relationship between State and Federal governments because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. We are still pursuing the TEA–21 mandated negotiated rulemaking process. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to 75 percent of fiscal year 2001 IRR program funding.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

National Environmental Policy Act

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of May 14, 1998, Consultation and Coordination with Indian Tribal Governments (63 FR 27655) and 512 DM 2, we have evaluated any potential effects upon federally recognized Indian tribes and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993. The only changes we are making from previous years (which we also made for fiscal year 2000 IRR program funds (see **Federal Register** Notice 65 FR 7431)) are to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process and this distribution uses the TEA–21 Negotiated Rulemaking Committee's tribal caucus recommendation.

List of Subjects in 25 CFR Part 170

Highways and roads, Indians—lands.

For the reasons set out in the preamble, we are temporarily amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

Authority: 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Effective January 9, 2001 through September 30, 2001, add § 170.4b to read as follows:

§ 170.4b What formula will BIA use to distribute 75 percent of fiscal year 2001 Indian Reservation Roads funds?

On January 9, 2001 we will distribute 75 percent of fiscal year 2001 IRR program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting states by inserting the latest data reported for those states for use in the relative need formula process. In addition, we are reserving $19.53 million of this distribution to allow federally recognized tribes to apply for $35,000 for administrative capacity building for fiscal year 2001.

Dated: December 29, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–376 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 95–054]

RIN 2115–AF17

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Final rule and withdrawal of interim rule.

SUMMARY: The Coast Guard withdraws its interim rule on regattas and marine parades, which never went into effect. Instead, it intends to issue new proposals that would better accommodate environmental concerns, while still eliminating overly burdensome requirements for sponsors of marine events. Also, the Coast Guard issues a final rule amending its existing regulation that specifies the minimum time before a marine event takes place for submitting an application to hold the event. This amendment increases the amount of time for the Coast Guard to consider the numerous, additional statutory requirements, enacted since the existing regulation was issued, before it approves an application.

DATES: The interim rule published at 61 FR 33027 on June 26, 1996, is withdrawn as of March 12, 2001. The amendments to 33 CFR part 100 are effective on March 12, 2001.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket CGD 95–054. They are available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

You may obtain a copy of this document by telephone at the U.S. Coast Guard Infoline, 1–800–368–5647; by e-mail at *uscginfoline@tiscom.uscg.mil;* or by Internet at the Web Site for the Office of Boating Safety, *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202–267–0979 or by e-mail at *cperry@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 26, 1995, we published an advance notice of proposed rulemaking (ANPRM) entitled ''Regattas and Marine Parades; Permit Application Procedures'' in the **Federal Register** (60 FR 66773). On April 17, 1996, we published a notice of proposed rulemaking (NPRM) entitled ''Regattas and Marine Parades'' (61 FR 16732). On June 26, 1996, we published an interim rule with notice of availability of environmental assessment entitled ''Regattas and Marine Parades'' (61 FR 33027). As a result of a series of notices of delay of effective date, the interim rule never went into effect (61 FR 60027, November 26, 1996; 62 FR 67570, December 29, 1997; 63 FR 71753, December 30, 1998; and 64 FR 70184, December 16, 1999). No public hearing was requested, and none was held.

Withdrawal of Interim Rule

The original purpose for this rulemaking was to explore ways to better carry out our statutory responsibility, under 33 U.S.C. 1233, to promote safety of life on navigable waters during regattas and marine parades. In keeping with the President's Regulatory Reinvention Initiative, we reviewed the regulations on marine events in 33 CFR part 100 and determined that the regulations needed revising to eliminate overly burdensome, unnecessary, and obsolete requirements. To that end, this rulemaking intended to eliminate the need for Coast Guard marine event permits, unless a permit was necessary to advance the statutory purpose of promoting safety of life during marine events. The rule would have established various categories of marine events: those that did not require either a written notice to the Coast Guard or a Coast Guard permit because they clearly posed no extra or unusual hazard to the safety of life; those that required written notice to the Coast Guard because they may have posed such a hazard; and those that required an individual Coast Guard permit because they clearly posed such a hazard. For a detailed discussion of this project and our statutory authority, see the ANPRM, NPRM, and interim rule mentioned under ''Regulatory History'' in this preamble.

During the course of this project, we consulted with, and continue to consult with, other governmental agencies on the likely environmental effects of our proposals. As a result of the concerns of environmental agencies on the possible adverse effects of our proposals on the environment and, in particular, on endangered species, we have decided to withdraw this interim rule and close CGD 95–054. In its place, we plan to develop new alternatives through a new rulemaking project. In this new project, we will again address our original concerns of eliminating overly burdensome requirements on the sponsors of events, while being responsive to environmental issues.

Final Rule Amending the Lead Time for Applications for Marine Events

This final rule amends 33 CFR 100.15 entitled ''Submission of application.'' Before this amendment, paragraph (c) of § 100.15 stated that an application to hold a proposed marine event must be submitted to the Coast Guard no less than 30 days before the start of the event. In § 100.17(c) of the interim rule, the 30-day period was increased to 135 days before the event or, if all of the following apply, to 60 days before the event:

(1) If the sponsor submitted an application for the event in the year immediately preceding.

(2) If the particulars of the event, such as its nature, location, and scheduling, are essentially the same as for the previous event.

(3) If the Coast Guard did not require a permit for the previous event.

In the final rule, we revised the 60-day criteria to reflect the current regulations on issuing permits for recurring events. To avoid potential burdens of an abrupt transition to the new regulation in paragraph (c), new paragraphs (d) and (e) of § 100.15 provide special lead times for events to be held within 196 days after the effective date of the final rule.

Discussion of Comments to § 100.17(c) in the Interim Rule on the Lead Time for Applications for Marine Events

1. One comment to the interim rule stated that an extension of the existing 30-day deadline for submitting applications to 135 days is unnecessarily burdensome.

Since 1963, when the existing regulations were issued, the number of factors that are required to be considered in the permitting process have greatly increased. Additional statutes enacted since 1963 must now be considered before a permit is issued. For example, compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) alone can delay approval of a permit for 120 days or more. Furthermore, while marine events have become larger, faster, and more frequent and have a greater impact on navigation, the Coast Guard's resources for processing permits have been reduced. The 135-day period is based on the minimum time needed for the Coast Guard to review the application and verify its contents; to consult with other agencies and allow time for their responses; to determine whether a special local regulation under 33 CFR 100.35 is needed and, if so, issue that regulation; to determine if changes to the application are needed; and to prepare the required environmental documentation.

For annually recurring events that meet certain specified criteria, the interim rule in § 100.17(c) and this final rule in § 100.15(c) provide for

submitting an application a minimum of 60 days before the event.

2. One comment asked us to clarify when an event would be subject to the new rules. For example, what if the sponsor has met the 30-day minimum for requesting a permit under paragraph (c) of previous § 100.15 and, in the meantime, this final rule goes into effect, with its 135-day requirement in new § 100.15(c)? The new requirement could force the sponsor to cancel the event.

We agree that a transition period is needed. See new paragraphs (d) and (e) of § 100.15 in this final rule.

Regulatory Evaluation

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of the final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The final rule increases the minimum amount of time necessary for the Coast Guard to process marine-event applications. This means that some sponsors of events may have to plan their events earlier. Though this increase may impose a burden on those sponsors, it is necessary to meet new statutory considerations affecting approval of applications and to allow agencies that must be consulted to have a reasonable amount of time to respond.

Small Entities

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

As discussed in the ''Regulatory Evaluation'' section of this preamble, the need for this rule is due to the increased review time needed to comply with statutes enacted after the previous regulation was issued, as well as to the increasing number of events held. The final rule applies to all marine-event sponsors, both large and small. Some sponsors may now find the need to plan events farther into the future than they have in the past, though having to plan farther into the future does not necessarily create an economic impact. However, to keep the lead-time to the minimum necessary, the final rule provides for a shorter lead-time for events that repeat annually and that meet the criteria listed in § 100.15(c). Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered, under the NPRM and interim rule, to assist small entities in understanding this rulemaking so that they could better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not affect the content of, or burden of collecting information for, marine event application.

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

Civil Justice Reform

This final rule 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.

Protection of Children

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

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule is administrative in nature and concerns the timeframe for submitting an application. It will have no direct affect on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS

1. Revise the authority citation for part 100 to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46.

2. The interim rule published at 61 FR 33027 on June 26, 1996, is withdrawn.

3. In § 100.15, revise paragraph (c), redesignate paragraph (d) as paragraph (f), and add new paragraphs (d) and (e) to read as follows:

§ 100.15 Submission of application.

* * * * *

(c) Except as in paragraphs (d) and (e) of this section, the application must be submitted no less than 135 days before the start of the proposed event. However, if all of the following criteria are met, the application must be submitted no less than 60 days before the start of the proposed event:

(1) The sponsor submitted an application for the event in the year immediately preceding.

(2) The nature, location, scheduling, and other relevant information contained in the previous application are essentially the same.

(3) The Coast Guard received no objection to the previous application.

(4) The Coast Guard did not promulgate special local regulations for the previous event.

(5) The Coast Guard approved the previous event.

(d) For marine events to be held on or before July 10, 2001, the application must be submitted no less than 30 days before the start of the proposed event.

(e) For marine events to be held after July 10, 2001 but before September 24, 2001, the application must be submitted no less than 60 days before the start of the proposed event.

* * * * *

Dated: December 29, 2000.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 01–546 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–033]

RIN 2115–AE47

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary deviation.

SUMMARY: The Commander, Eighth Coast Guard District has authorized a temporary deviation from the regulation governing the Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River at Davenport, Iowa. This deviation allows the drawbridge to remain closed to navigation for 57 days from 7 a.m., January 1, 2001, until 7 a.m., February 26, 2001. This action is required to allow the bridge owner time for preventive maintenance in the winter, before Lock 12 opens March 1, 2001, and when there is less impact on navigation; instead of scheduling maintenance in the summer, when river traffic increases.

DATES: This temporary deviation is effective from 7 a.m., January 1, 2001, until 7 a.m., February 26, 2001.

FOR FUTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Rock Island Railroad and Highway Drawbridge provides a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This deviation has been coordinated with waterway users who do not object.

This deviation allows the bridge to remain closed-to-navigation from 7 a.m., January 1, 2001, to 7 a.m., February 26, 2001. The drawbridge normally opens on signal.

Dated: December 20, 2000.

Paul J. Pluta,

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

[FR Doc. 01–548 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–135]

Drawbridge Operation Regulations; Memorial Bridge, Across the Intracoastal Waterway, Mile 830.6, Volusia County, Daytona Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Memorial bridge across the Intracoastal Waterway, mile 830.6, Volusia County, Daytona Beach, Florida. This deviation allows the drawbridge owner or operator to only open a single leaf, from January 8, 2001, to January 19, 2001. This temporary deviation is required to allow the bridge owner to safely complete repairs of the bridge.

DATES: This deviation is effective from January 8, 2001, to January 19, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Memorial bridge across the Gulf Intracoastal Waterway at Volusia County, Daytona Beach, is a double leaf bridge with a vertical clearance of 21 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. On November 28, 2000, Sieg and Ambachtsheer, Inc., contractors representing the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridges to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical, time-sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of repair completion of the drawbridge. Under this deviation, the Memorial Bridge need only open one leaf from January 8, 2001 until January 19, 2001. The deviation is effective beginning January 8, 2001, to January 19, 2001.

Dated: December 21, 2000.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–547 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–132]

Drawbridge Operation Regulations; Cortez Bridge (SR 684), Across the Gulf Intracoastal Waterway, Mile 87.4, Sarasota County, Cortez, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Cortez bridge across the Gulf Intracoastal Waterway, mile 87.4, Sarasota County, Cortez, Florida. This deviation allows the drawbridge owner or operator to only open one leaf of the drawbridge, from 8 a.m. until 4 p.m., on January 10, 2001. This temporary deviation is required to allow the bridge owner to safely complete repairs of the bridge.

DATES: This deviation is effective on January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Cortez bridge across the Gulf Intracoastal Waterway at Sarasota County, Cortez, is a double leaf bridge with a vertical clearance of 25.5 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. On December 13, 2000, Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repair completion of the drawbridge. Under this deviation, the Cortez Bridge need only open one leaf from 8 a.m. until 4 p.m. The deviation is effective for one day, on January 10, 2001.

Dated: December 21, 2000.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–549 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–133]

Drawbridge Operation Regulations; Siesta Key Bridge, Across the Gulf Intracoastal Waterway, Mile 71.6, Sarasota County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Siesta Key bridge across the Gulf Intracoastal Waterway, mile 71.6, Sarasota County, Florida. This deviation allows the drawbridge owner or operator to open only the east span from 8 a.m. until 12 p.m., on January 8, 2001. This temporary deviation is required to allow the bridge owner to safely complete repairs of the bridge.

DATES: This deviation is effective on January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Chief, Operations Section, Seventh Coast Guard District, Bridge Section at (305) 415–6743.

SUPPLEMENTARY INFORMATION: The Siesta Key bridge across the Gulf Intracoastal Waterway at Sarasota County, has a vertical clearance of 21 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 90 feet. On December 13, 2000, Florida Department of Transportation, the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of repair completion of the drawbridge. Under this deviation, the Siesta Key Bridge need only open the east span from 8 a.m. until 12 p.m. on January 8, 2001.

Dated: December 21, 2000.

Greg E. Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 01–550 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6928–4]

Approval of the Clean Air Act (CAA), Section 112(l) Program and Delegation of Authority to the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation.

SUMMARY: The EPA is approving by direct final rulemaking the Oklahoma Department of Environmental Quality's (ODEQ) request for program approval of adequate authorities and resources to implement and enforce Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR parts 61 and 63, as these regulations apply to non-part 70 sources.

The EPA is approving ODEQ's mechanism for receiving delegation of unchanged NESHAPs as they apply to non-part 70 sources.

Also, EPA is delegating authority to ODEQ to implement and enforce certain Federal NESHAPs hazardous air pollutant regulations which ODEQ has adopted by reference into their State rules as they apply to all sources (*i.e.*, both part 70 and non-part 70 sources). These are NESHAPs found in 40 CFR parts 61 and 63. The EPA is also delegating specified General Provisions to parts 61 and 63 as these regulations apply to all sources.

The EPA is waiving its notification requirements so sources will only need to send notifications and reports to ODEQ.

This action is taken under the authority of CAA section 112(l) and 40 CFR part 63, subpart E.

This action does not apply to areas in Indian Country over which the State of Oklahoma has not demonstrated authority.

DATES: This rule is effective on March 12, 2001 without further notice, unless EPA receives adverse comment by February 8, 2001. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Robert M. Todd at the Region 6 office listed below. Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733. Anyone wanting to examine these documents should make an appointment at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Todd, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–2156.

SUPPLEMENTARY INFORMATION:

I. Overview

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II. Final Action

III. Administrative Requirements

1. What Is EPA Approving? Why?

We, the EPA, are approving ODEQ's air toxics program for non-part 70 sources and their mechanism for receiving future delegation of unchanged Federal NESHAP regulations for non-part 70 sources. The State submittal meets all section 112(l) requirements because:

- The State program is no less stringent than the Federal program. The ODEQ's rules at Oklahoma Administrative Code, subchapter 41, Control of Emissions of Hazardous and Toxic Air Contaminants, part 3, Hazardous Air Contaminants, section 252:100–41–15, adopt certain Federal NESHAP regulations by reference, as more fully discussed in this action.
- The ODEQ has demonstrated adequate authority and resources to implement and enforce the standards.
- The schedule for implementation and compliance is sufficiently expeditious.
- The program otherwise complies with Federal guidance.

A more detailed analysis of the State's submittal pursuant to § 63.91 is in the Technical Support Document included in the docket of this rulemaking. The mechanism for future delegation of unchanged standards is described in question twelve below.

2. What Is EPA Delegating to ODEQ?

We are delegating:

Specific Standards

We are approving ODEQ's request for delegation of authority to implement and enforce specific 40 CFR parts 61 and 63, subparts for all sources, as they exist July 1, 1999. A notable exception is that we are not delegating those standards under part 61 dealing with radionuclides.

(Two tables outlining the standards requested by ODEQ and delegated by this action are found under the response to question eight, below.)

General Provisions

We are approving in part ODEQ's request for delegation of authority to implement and 40 CFR part 61, subpart A and part 63, subpart A, General Provisions (for all sources). The ODEQ's rules are unchanged from the Federal provisions.

We have determined that ODEQ has sufficient resources and expertise to implement certain sections of the General Provisions. A July 10, 1998, memorandum from John Seitz [1] clarified which of the part 63 General Provisions authorities may be delegated to State agencies. On September 14, 2000 our rules were revised to outline the delegable authorities at 40 CFR 63.91(g). A guidance document[2] from EPA's Office of Enforcement and Compliance clarified the part 61 discretionary authorities which were appropriate to delegate to State agencies. Granting ODEQ authority to make decisions that are not likely to be nationally significant or which do not alter the stringency of the underlying standard is in keeping with these authorities. The ODEQ should make decisions on a source-by-source basis, not on a source category basis.

Listed below are the part 61, subpart A, sections that we cannot delegate to ODEQ. We are delegating all other part 61, General Provision authorities to ODEQ.

40 CFR PART 61, SUBPART A, GENERAL PROVISIONS, AUTHORITIES WHICH MAY NOT BE DELEGATED

Section	Authorities
61.04(b)	Addresses of State and Local Implementing Agencies.
61.12(d)(1)	Compliance with Standards and Maintenance Requirements, Alternate Means of Emission Limitation.
61.13(h)	Major Change to an Emissions Test.
61.14(g)	Major modifications to Monitoring Requirements.
61.16	Availability of Information Procedures.

Listed below are the part 63, subpart A, sections that we are delegating to ODEQ. Also, listed in the footnotes of the part 63 delegation table at the end of this rule are the authorities that cannot be delegated to any State or local agency which we therefore retain.

PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES DELEGATED TO ODEQ

Section	Authorities
63.1	Applicability Determinations.
63.6(e)	Operation and Maintenance Requirements—Responsibility for Determining Compliance.
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance.
63.6(h) [except 63.6(h)(9)]	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance
63.7(c)(2)(i) and (d)	Approval of Site-Specific Test Plans.
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods.
63.7(e)(2)(ii) and (f)	Approval of Intermediate Alternatives to Test Methods.
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h)(2), (h)(3)	Waiver of Performance Testing.

[1] Memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July 10, 1998, entitled, ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies.''

[2] ''How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring.'' EPA 305-B–99–004, February 1999.

PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES DELEGATED TO ODEQ—Continued

Section	Authorities
63.8(c)(1) and (e)(1)	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans.
63.8(f)	Approval of Minor Alternatives to Monitoring.
63.8(f)	Approval of Intermediate Alternatives to Monitoring.
63.9 and 63.10	Approval of Adjustments to Time Periods for Submitting Reports.
63.10(f)	Approval of Minor Alternatives to Recordkeeping and Reporting.

For part 70 sources, semiannual and annual reports are required and this does not change that requirement. Decisions ODEQ makes, such as State applicability determinations, approval of alternatives to test methods, approval of alternatives to monitoring and approval of alternatives to recordkeeping requirements are not binding on EPA.

3. What Will Happen to ODEQ's Prior Delegation of Part 61 Standards?

In 1982, the Administrator of EPA's Dallas Regional Office delegated some authority to implement and enforce New Source Performance Standards (NSPS) and NESHAPs to ODEQ. (47 FR 17285, April 22, 1982) These standards and authorities are found in 40 CFR parts 60 and 61, respectively. Today's action will rescind and replace the NESHAP portion of that agreement only. The NSPS portion of the 1982 delegation agreement as supplemented on October 8, 1999 is not affected by this rulemaking. This delegation will cover more part 61 standards, more sources, and grant more discretionary authority to ODEQ, as discussed in the General Provision section of this document.

4. What Is the Legal Authority for EPA's Action?

Section 112(l) of the CAA enables EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program or rules. 40 CFR part 63, subpart E (65 FR 55810 September 14, 2000) governs EPA's approval of State rules or programs under section 112(l).

Approval of an air toxics program is granted by EPA if we find that:

(1) The State program is ''no less stringent'' than the corresponding Federal program or rule,

(2) The State has adequate authority and resources to implement the program,

(3) The schedule for implementation and compliance is sufficiently expeditious, and

(4) The program otherwise complies with Federal guidance. Any request for subpart E approval that does not change the Federal section 112 rules must meet the criteria in 40 CFR 63.91.

The request may specify the mechanism that the State will use in the future to receive delegation of unchanged Federal section 112 standards without additional Federal rulemaking.

The procedure and criteria for requesting and receiving approval of programs or requesting delegation under section 112(l) of the CAA was initially published on November 26, 1993 in 58 FR 62262. The regulations were codified at 40 CFR part 63, subpart E. The EPA's procedures for delegating NESHAPS were modified on September 14, 2000 in 65 FR 55810. The revisions were to provide more options and expedite the approval process. These revisions did not affect the criteria and procedures for program approval and straight delegation to Oklahoma, and the State's request and our review is consistent with the regulations as revised.

5. What Responsibility Does This Give ODEQ?

With this delegation, ODEQ has the primary responsibility to implement and enforce the delegated standards.

This action does not apply to areas of Indian Country over which the State of Oklahoma has not demonstrated authority. States do not have jurisdiction over Indian Country (as defined in 18 U.S.C. 1151, and referenced in 40 CFR 51.1(i)) unless specifically granted by Congress. Since the State of Oklahoma has not submitted a demonstration of authority over the Indian Country, we are limiting our approval to those areas that do not constitute Indian Country. For a more detailed discussion of Tribal authority under the Act, see 59 FR 43956, August 25, 1994 and 63 FR 7254, February 12, 1998.

6. What Authority Does EPA Have?

We retain the right, as allowed by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112.

The EPA Administrator has the authority to approve certain changes to, or make decisions under the General Provisions to parts 61 and 63. This authority is in 40 CFR part 61, subpart A and 40 CFR part 63, subpart A. We are granting ODEQ some of these authorities, and retaining others, as explained with the General Provisions description. And as stated earlier, EPA is not bound by State determinations.

In addition, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

Also, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard.

7. What Is EPA's Oversight of This Delegation to ODEQ?

The EPA must oversee ODEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place.

If, during oversight, we determine that ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ should take corrective actions and the source(s) affected by the decisions would be notified. We will initiate withdrawal of the program if the corrective actions taken are insufficient.

8. What Is the History of ODEQ's Delegation Request?

On March 10, 1995, we proposed to approve the State's program and mechanism for gaining delegation of unchanged section 112 standards for part 70 sources (60 FR 13092). This was included in our proposal to approve ODEQ's request for interim approval of the part 70 Operating Permit Program. On February 5, 1996, we issued final approval of the State's air toxics program and delegation mechanism for all section 112 standards under the authority of CAA section 112(1)(5) and 40 CFR 63.91 (61 FR 4224). This applies only to sources covered by the part 70 program.

We received delegation requests from ODEQ dated June 26, 1998, and May 5, 2000. These requests are for delegation of the 40 CFR parts 61 and 63 NESHAP standards adopted unchanged into Oklahoma Administrative Code Title 252 Chapter 100 Air Pollution Control Subchapter 41 Control of Emission of Hazardous and Toxic Air Contaminants. The ODEQ requested delegation of the general provisions and emission standards listed in the tables below. These requests were made according to the requirements of 40 CFR part 63, subpart E. 58 FR 62262, November 26, 1993. This regulation, which governs EPA's approval of State rules or programs was recently revised to better serve the needs of State and Local agencies that want to implement NESHAPs in their areas. 65 FR 55810, September 14, 2000. These revisions did not affect the criteria and procedures for program approval and straight delegation to Oklahoma, and the State's request and our review is consistent with the regulations as revised.

TABLE 1.—NESHAP—40 CFR PART 61

Subpart	NESHAP
A	General Provisions.
C	Beryllium.
D	Beryllium Rocket Motor Firing.
E	Mercury.
F	Vinyl Chloride.
J	Equipment Leaks of Benzene.
L	Benzene Emissions from Coke By-Product Recovery Plants.
M	Asbestos.
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.
O	Inorganic Arsenic Emissions from Primary Copper Smelters.
P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.
V	Equipment Leaks.
Y	Benzene Emissions from Benzene Storage Vessels.
BB	Benzene Emissions from Benzene Transfer Operations.
FF	Benzene Emissions from Benzene Waste Operations.

TABLE 2.—NESHAPS FOR SOURCE CATEGORIES—40 CFR PART 63

Subpart	Emission standard
A	General Provisions.
F	Hazardous Organic NESHAP (HON)—Synthetic Organic Chemical Manufacturing Industry (SOCMI).
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater.
H	HON—Equipment Leaks.
I	HON—Certain Processes Negotiated Equipment Leak Regulation.
L	Coke Oven Batteries.
M	Perchloroethylene Dry Cleaning.
N	Chromium Electroplating.
O	Ethylene Oxide Sterilizers.
Q	Industrial Process Cooling Towers.
R	Gasoline Distribution.
S	Pulp and Paper Industry.
T	Halogenated Solvent Cleaning.
U	Polymers and Resins I.
W	Polymers and Resins II—Epoxy Resins and Non-Nylon Polyamides.
X	Secondary Lead Smelting.
Y	Marine Tank Vessel Loading.
CC	Petroleum Refineries.
DD	Off-Site Waste and Recovery.
EE	Magnetic Tape Manufacturing.
GG	Aerospace Manufacturing and Rework.
HH	Oil and Natural Gas Production.
II	Shipbuilding and Ship Repair.
JJ	Wood Furniture Manufacturing.
KK	Printing and Publishing Industry.
LL	Primary Aluminum Reduction Plants.
OO	Tanks—Level 1.
PP	Containers.
QQ	Surface Impoundments.
RR	Individual Drain Systems.
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
TT	Equipment Leaks—Control Level 1.
UU	Equipment Leaks—Control Level 2 Standards.
VV	Oil-Water Separators and Organic-Water Separators.
WW	Storage Vessels (Tanks)—Control Level 2.
YY	Generic Maximum Achievable Control Technology Standards.
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration.

TABLE 2.—NESHAPS FOR SOURCE CATEGORIES—40 CFR PART 63—Continued

Subpart	Emission standard
DDD	Mineral Wool Production.
EEE	Hazardous Waste Combustors.
GGG	Pharmaceuticals Production.
HHH	Natural Gas Transmission and Storage.
III	Flexible Polyurethane Foam Production.
JJJ	Polymers and Resins, Group IV.
LLL	Portland Cement Manufacturing.
MMM	Pesticide Active Ingredient Production.
NNN	Wool Fiberglass Manufacturing.
PPP	Polyether Polyols Production.
TTT	Primary Lead Smelting.
XXX	Ferroalloys Production.

The State has asked for delegation of these standards, and we are delegating them to ODEQ, as they existed on July 1, 1999. Please see question twelve below for a discussion of how we will delegate future standards and revisions to the State.

9. What Other Authorities Does ODEQ Have?

Certain General Provisions authorities are automatically granted to ODEQ as part of their part 70 Operating Permits Program approval (regardless of whether the Operating Permits Program approval is interim or final). These are 40 CFR 63.6(i)(1), ''Extension of Compliance with Emission Standards,'' and 63.5(e) and (f), ''Approval and Disapproval of Construction and Reconstruction.''[3]

Additionally, ODEQ's authority to grant a source a compliance extension under 40 CFR 63.6(i)(1) is not limited to delegated standards or part 70 permitted sources.

10. Should Sources Submit Notices to EPA or ODEQ?

Sources within ODEQ's jurisdiction must submit notifications and reports required by the delegated NESHAPs to ODEQ, and sources do not need to send a copy to EPA. The ODEQ is the primary point of contact with respect to delegated NESHAPs. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to ODEQ per 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).

11. What Information Must ODEQ Provide to EPA?

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require ODEQ to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. The ODEQ must enter this information into the AIRS system and update the information by September 30 of every year. Additionally, ODEQ must also report to EPA, Region 6, all MACTRAX information on our request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program.) The ODEQ must provide any additional compliance related information to EPA, Region 6, Office of Compliance Assurance as necessary.

In receiving delegation for specific General Provisions authorities, ODEQ must submit to EPA, Region 6, copies of determinations issued under these authorities. For part 61, these determinations include: applicability determinations (section 61.01); determinations of construction or modification (section 61.06); approvals of construction or modification (section 61.08); Waiver of Compliance (section 61.11); Operation and Maintenance Requirements (section 61.12(c)); Waiver of Emission Test (section 61.13(h)(1)(iii) and (i)(1), (2)); Approval of Minor Alternatives to Monitoring (section 61.14(g) except section 61.14(g)(1)(ii)). For part 63, these determinations include: applicability determinations (§ 63.1); approval/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); approval/disapprovals of compliance extensions (§ 63.6(i)(1)); approval of shorter sampling times and volumes (§ 63.7(e)(2)(iii)); waiver of performance testing (§ 63.7(e)(2)(iv) and (h)(2), (3)); approval of adjustments to time periods for submitting reports (§§ 63.9 and 63.10); approvals/disapprovals of minor (§ 63.7(e)(2)(i)) or intermediate (§ 63.7(e)(2)(ii) and (f)) alternative test methods; approvals/disapprovals of minor or intermediate alternative monitoring methods (§ 63.8(f)); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)). The ODEQ must also forward to EPA, Region 6, copies of any notifications received under § 63.6(h)(7)(ii) regarding the use of a continuous opacity monitoring system.

Additionally, EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (Please note that intermediate changes to test methods must be demonstrated as equivalent through the procedures set out in EPA method 301.) This information on approved intermediate changes to test methods and monitoring will be used to compile a database of decisions that will be accessible to State and local agencies and EPA Regions for reference in making future decisions. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see 40 CFR 63.90). The ODEQ should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

12. How Will Unchanged Authorities Be Delegated to ODEQ in the Future?

In the future, for all sources, ODEQ will only need to send a letter of request to EPA, Region 6, for those NESHAP regulations that the State has adopted by reference with proof of its regulatory authority. We will respond in writing to the request stating that the request for delegation is either granted or denied. If a request is approved, the effective date of the delegation will be the date of our response letter. A document of the delegation will be published in the **Federal Register** to inform the public and affected sources of the delegation

[3] Sections 112(i) (1) and (3) state that ''Extension of Compliance with Emission Standards'' and ''Approval and Disapproval of Construction and Reconstruction'' can be implemented by the ''Administrator (or a State with a permit program approved under Title V).''

and to indicate where source notifications and reports should be sent.

Furthermore, ODEQ intends to update their adoptions by reference of 40 CFR parts 61 and 63 standards and request updated delegation annually, as current standards are revised and new standards are promulgated.

13. What Is the Relationship Between the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Combustor (HWC) MACT? How Does This Affect Delegation of This Standard to ODEQ?

As part of today's rule, we are delegating, under the CAA, implementation and enforcement authority for the Hazardous Waste Combustor MACT to ODEQ. Many of the sources subject to the HWC MACT are also subject to the RCRA permitting requirements. We expect air emissions and related operating requirements found in the HWC MACT will be included in part 70 permits issued by ODEQ. However, RCRA permits will still be required for all other aspects of the combustion unit and the facility that are governed by RCRA (*e.g.,* corrective action, general facility standards, other combustor-specific concerns such as materials handling, risk-based emissions limits and operating requirements, as appropriate and other hazardous waste management units).[4] See the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessments at 64 FR 52828, pages 52839–52843, September 30, 1999, and the RCRA Site-Specific Risk Assessment Policy for Hazardous Waste Combustion Facilities dated June, 2000 for more information.

II. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as apply to part 70 sources, on March 10, 1995. 60 FR 13088. The EPA received public comments on that proposal and responded to them in the February 5, 1996, **Federal Register**. 61 FR 4220. In this action, the public is given an opportunity to comment on the program and mechanism for the State to gain delegation of these standards as they apply to non-part 70 sources. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective March 9, 2001 without further notice unless the Agency receives relevant adverse comments by February 7, 2001.

If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 **Federal Register** 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant and does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 **Federal Register** 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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

[4] EPA promulgated the HWC MACT (40 CFR part 63, subpart EEE) under the joint authority of the (CAA) and (RCRA). Before this rule went in to effect, the air emissions from these sources were primarily regulated under the authority of RCRA. See 40 CFR parts 264, 265, 266, and 270. With the release of HWC MACT, the air emissions are now regulated under both CAA and RCRA. Even though both statutes give EPA the authority, we determined that having the emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, EPA deferred the RCRA requirements for the HWC emission controls to the CAA requirements of 40 CFR part 63, subpart EEE. After a facility has demonstrated compliance with the HWC MACT, the RCRA waste management standards for air emissions from these units will no longer apply, with the exception of 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions that the HWC MACT are necessary to protect human health and the environment for a particular facility, then that regulatory authority may impose those conditions in the facility's RCRA permit.

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State program and rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of the Executive Order does not apply to this rule, EPA did consult with State officials in developing this rule, and this rule is in response to the State's delegation request.

E. Regulatory Flexibility

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because delegation of authority to implement and enforce unchanged Federal standards under section 112(l) of the CAA does not create any new requirements, but simply transfers primary implementation authorities to the State. Therefore, because this action does not impose any new requirements, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

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

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

H. Executive Order 12898

This rule does not involve special consideration of Environmental Justice related issues as required by Executive Order 12898 (59 FR 7629, February 16,1994).

I. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

J. Executive Order 12630

The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney Generals Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

K. Paperwork Reduction

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

L. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective March 12, 2001 unless EPA receives adverse written comments by February 8, 2001.

M. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations,

Reporting and recordkeeping requirements.

Dated: December 21, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Title 40, chapter I, part 63 of the CFR is amended as follows:

Part 63—[Amended]

1. The authority citation for Part 63 continues to read as follows:

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

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(36) to read as follows:

§ 63.99 Delegated Federal Authorities

(a) * * *

(36) Oklahoma.

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the State of Oklahoma for all sources. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—OKLAHOMA

Subpart		ODEQ [1]
A	General Provisions [2]	X
D	Early Reductions.	
F	HON—SOCMI	X
G	HON—SOCMI Process Vents, Storage Vessels, Transfer Operations and Wastewater	X
H	HON—Equipment Leaks	X
I	HON—Certain Processes Negotiated Equipment Leak Regulation	X
L	Coke Oven Batteries	X
M	Perchloroethylene Dry Cleaning	X
N	Chromium Electroplating	X
O	Ethylene Oxide Sterilizers	X
Q	Industrial Process Cooling Towers	X
R	Gasoline Distribution	X
S	Pulp and Paper Industry	X
T	Halogenated Solvent Cleaning	X
U	Polymers and Resins I	X
W	Polymers and Resins II–Epoxy	X
X	Secondary Lead Smelting	X
Y	Marine Tank Vessel Loading	X
CC	Petroleum Refineries	X
DD	Off-Site Waste and Recovery	X
EE	Magnetic Tape Manufacturing	X
GG	Aerospace Manufacturing and Rework	X
HH	Oil and Natural Gas Production	X
II	Shipbuilding and Ship Repair	X
JJ	Wood Furniture Manufacturing Operations	X
KK	Printing and Publishing Industry	X
LL	Primary Aluminum Reduction Plants	X
OO	Tanks—Level 1	X
PP	Containers	X
QQ	Surface Impoundments	X
RR	Individual Drain Systems	X
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	X
TT	Equipment Leaks—Level 1	X
UU	Equipment Leaks—Level 2 Standards	X
VV	Oil-Water Separators and Organic-Water Separators	X
WW	Storage Vessels (Tanks)—Control Level 2	X
YY	Generic Maximum Achievable Control Technology Standards	X
CCC	Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration	X
DDD	Mineral Wool Production	X
EEE	Hazardous Waste Combustors	X
GGG	Pharmaceuticals Production	X
HHH	Natural Gas Transmission and Storage	X
III	Flexible Polyurethane Foam Production	X
JJJ	Polymers and Resins, Group IV	X
LLL	Portland Cement Manufacturing	X
MMM	Pesticide Active Ingredient Production	X
NNN	Wool Fiberglass Manufacturing	X
PPP	Polyether Polyols Production	X
TTT	Primary Lead Smelting	X
XXX	Ferroalloys Production	X

[1] Oklahoma Department of Environmental Quality.

[2] Authorities which may not be delegated include: 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to monitoring; and all authorities identified in the subparts (*i.e.,* under ''Delegation of Authority'') that cannot be delegated.

[FR Doc. 01–110 Filed 1–8–01; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301097; FRL–6760–2]

RIN 2070–6760–2

Spinosad; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of spinosad in or on alfalfa forage, alfalfa hay, sugar beets, sugar beet tops, sugar beet molasses, grass forage, grass hay, peanuts, and peanut hay and, modifies tolerances for livestock commodities on a time-limited basis. 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 alfalfa, sugar beets, pastureland and rangeland, and peanuts. This regulation establishes maximum permissible levels for residues of spinosad on these food commodities. These tolerances will expire and are revoked on December 31, 2002.

DATES: This regulation is effective January 9, 2001. Objections and requests for hearings, identified by docket control number OPP–301097, must be received by EPA on or before March 12, 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–301097 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:(703)308-9367; and e-mail address: ertman.andrew@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	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

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

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''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–301097. 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 tolerances for residues of the insecticide spinosad, in or on the following commodities: alfalfa, forage at 4.0 parts per million (ppm); alfalfa, hay at 4.0 ppm; beet, sugar at 0.020 ppm; beet, sugar, tops at 10.0 ppm; beet, sugar, molasses at 0.250 ppm; grass, forage at 7.0 ppm; grass, hay at 7.0 ppm; peanut at 0.020 ppm; and peanut, hay at 10.0 ppm.

Furthermore, tolerances for livestock commodities are being modified, on a time-limited basis, as follows: meat of cattle, horses, goats, hogs, and sheep from 0.15 to 0.60 ppm; fat of cattle, horses, goats, hogs, and sheep from 3.5 to 15.0 ppm; meat byproducts (mbyp) of cattle, horses, goats, hogs, and sheep from 1.0 ppm to 3.50 ppm; milk, whole from 0.5 to 2.0 ppm; milk, fat from 5.0 ppm to 20.0 ppm; eggs from 0.02 to 0.030 ppm; and poultry, fat from 0.2 ppm to 0.30 ppm. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerances 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 Federal Insecticide, Fungicide, and Rodenticide Act 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 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 Spinosad on Alfalfa, Pastureland and Rangeland, Peanuts, and Sugarbeets and FFDCA Tolerances

The states of Texas, New Mexico, Kansas and Oklahoma all requested the use of spinosad to control an emergency situation with the beet armyworm on alfalfa. The states of Texas and New Mexico requested the use of spinosad to control an emergency situation with the beet armyworm in peanuts. The state of California requested the use of spinosad on sugar beets to control armyworms, and the state of Arkansas requested the use of spinosad to control armyworms in pastureland and rangeland. EPA has authorized under FIFRA section 18 the use of spinosad on alfalfa in Texas, New Mexico, Kansas, and Oklahoma to control the beet armyworm; on peanuts in Texas and in New Mexico to control the beet armyworm; on sugar beets in California to control armyworms; and on pastureland and rangeland in Arkansas for control of armyworms. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of spinosad in or on alfalfa, peanuts, sugar beets and pastureland and rangeland. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances 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 exemptions in order to address urgent non-routine situations and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on alfalfa forage, alfalfa hay, sugar beets, sugar beet tops, sugar beet molasses, grass forage, grass hay, peanuts, peanut hay and the modified livestock commodity tolerances 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 these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether spinosad meets EPA's registration requirements for use on many or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of spinosad by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any States other than Texas, New Mexico, Kansas and Oklahoma for alfalfa; Texas and New Mexico for peanuts; California for sugarbeets; or Arkansas for pastureland and rangeland to use this pesticide on these crops 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 spinosad, 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 spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of spinosad in or on alfalfa, forage at 4.0 ppm; alfalfa, hay at 4.0 ppm; beet, sugar at 0.020 ppm; beet, sugar, tops at 10.0 ppm; beet, sugar, molasses at 0.250 ppm; grass, forage at 7.0 ppm; grass, hay at 7.0 ppm; peanut at 0.020 ppm; and peanut, hay at 10.0 ppm, as well as the modified tolerances for livestock commodities as follows: meat of cattle, horses, goats, hogs, and sheep from 0.15 to 0.60 ppm; fat of cattle, horses, goats, hogs, and sheep from 3.5 to 15.0 ppm; meat byproducts of cattle, horses, goats, hogs, and sheep from 1.0 ppm to 3.50 ppm; milk, whole from 0.5 to 2.0 ppm; milk, fat from 5.0 ppm to 20.0 ppm; eggs from 0.02 to 0.03 ppm; and poultry, fat from 0.2 ppm to 0.30 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the 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 adverse effects of concern are identified (the LOAEL) 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 intra species 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 spinosad used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR SPINOSAD 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	N/A	N/A	No appropriate endpoint available; risk assessment not required
Acute Dietary general population including infants and children	N/A	N/A	No appropriate endpoint available; risk assessment not required
Chronic Dietary all populations	NOAEL = 2.68 mg/kg/day UF = 100 Chronic RfD = 0.027 mg/kg/day	FQPA SF = 1x cPAD = chronic RfD FQPA SF = 0.027 mg/kg/day	Chronic Toxicity - Dog LOAEL = 8.22 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis and increases in serum enzymes such as alanine aminotransferase, and aspartate aminotransferase, and triglyceride levels
Short-Term Dermal (1 to 7 days) (Residential)	N/A	N/A	No appropriate endpoint available. No dermal absorption expected based on lack of toxicity at 1000 mg/kg/day in a 21–day dermal toxicity study in rats as well as molecular structure and size.
Intermediate-Term Dermal (1 week to several months) (Residential)	N/A	N/A	No appropriate endpoint available. No dermal absorption expected based on lack of toxicity at 1000 mg/kg/day in a 21–day dermal toxicity study in rats as well as molecular structure and size.
Long-Term Dermal (several months to lifetime) (Residential)	N/A	N/A	No appropriate endpoint available; use pattern does not indicate a need for this risk assessment
Short-Term Inhalation (1 to 7 days) (Residential)	N/A	N/A	The low toxicity, use pattern and application rate does not indicate a need for risk assessment via this route.
Intermediate-Term Inhalation (1 week to several months) (Residential)	N/A	N/A	The low toxicity, use pattern and application rate does not indicate a need for risk assessment via this route.
Long-Term Inhalation (several months to lifetime) (Residential)	N/A	N/A	The low toxicity, use pattern and application rate does not indicate a need for risk assessment via this route.
Cancer (oral, dermal, inhalation)	N/A	N/A	No cancer endpoints were identified, and thus a cancer risk assessment is not required.

*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 180.495) for the residues of spinosad, in or on a variety of raw agricultural commodities. Tolerances range from 0.02 ppm (many commodities; limit of quantitation) to 20 ppm (aspirated grain fractions). Risk

assessments were conducted by EPA to assess dietary exposures from spinosad 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. An acute dietary exposure risk assessment is not required because the Agency did not identify an acute dietary endpoint that was applicable to females (13+ years) or to the general population, including infants and children.

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. Tolerance level residues were used for all commodities with the exception of the following: anticipated residues were used for the livestock feed commodities from alfalfa, peanuts, pastures and rangeland, and sugar beets. This Tier 2 DEEM analysis shows that dietary (food only) exposure estimates are below the Agency's level of concern for all population subgroups. The highest chronic dietary exposure was for children 1-6 years old at 0.015291 mg/kg/day, representing 57% of the chronic PAD (cPAD). Exposure for the U.S. population was 0.007679 mg/kg/day, representing 28% of the cPAD.

iii. *Cancer*. No cancer endpoints were identified, and thus a cancer risk assessment is not required.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for spinosad 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 spinosad.

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 groundwater. 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 spinosad they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of spinosad for chronic exposures are estimated to be 0.057 parts per billion (ppb) for surface water and 0.006 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).

No acute dietary, cancer, short-term, intermediate-term, or chronic dermal or inhalation endpoints were identified by the Agency. Spinosad is currently registered on turf grass, creating a potential for non-dietary oral exposure to children who ingest grass. To calculate a quantitative dietary risk from a potential ingestion of grass (in the absence of acute-, short-, or intermediate-term oral endpoints), the Agency would need to default to the chronic dietary endpoint. This scenario would represent a child eating grass for > 6 months continuously. Based on the low application rate for spinosad on turf (0.41 lbs.ai./A.), its non-systemic nature, its short half-life (especially in sunlight), and the rapid incorporation of spinosad metabolites into the general carbon pool, the Agency believes that residues of spinosad on turf grass after application would be low and decrease rapidly over time. The Agency believes that it is inappropriate to perform a quantitative dietary risk representing a chronic scenario from children eating spinosad residues on turf grass. Qualitatively, the risk from children eating spinosad residues on turf grass does not exceed the Agency's level of concern.

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 spinosad 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, spinosad 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 spinosad 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. *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 margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. There were no developmental effects that could be attributed to administration of spinosad technical to either rats or rabbits. The NOAEL for developmental toxicity is greater than or equal to 200 mg/kg/day (highest dose tested) for rats and greater than or equal to 50 mg/kg/day (highest dose tested) for rabbits.

3. *Reproductive toxicity study*. The LOAEL for reproductive toxicity is 100 mg/kg/day based on both maternal and reproductive effects in rats including decreases in litter size, survival (F2 litters only), and body weights in the offspring, and increased incidence of dystocia and/or vaginal bleeding after parturition with associated increases in mortality in the dams. The NOAEL for reproductive (offspring and dams) and systemic (parental) toxicity is the same and is 10 mg/kg/day.

4. *Conclusion*. There is a complete toxicity data base for spinosad and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency has removed the 10x Safety Factor to account for enhanced sensitivity of infants and children based on (i) the completeness of the toxicological database, (ii) no indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure, and (iii) no requirement for a developmental neurotoxicity study.

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 USEPA Office of Water are used to calculate DWLOCs: 2L/70 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 groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to spinosad 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 spinosad on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. No acute toxicological endpoint was identified by the Agency, and therefore this risk assessment is not required.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to spinosad from food will utilize 28% of the cPAD for the U.S. population, 25% of the cPAD for all infants and 57% of the cPAD for children 1-6 years of age. Although spinosad is currently registered on turf grass, creating a potential for non-dietary oral exposure to children who ingest grass, the Agency believes that it is inappropriate to perform a quantitative dietary risk representing a chronic scenario from children eating spinosad residues on turf grass. Qualitatively, the risk from children eating spinosad residues on turf grass does not exceed the Agency's level of concern. In addition, despite the potential for chronic dietary exposure to spinosad in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of spinosad 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 SPINOSAD

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.027	28	0.057	0.006	680
All Infants	0.027	25	0.057	0.006	200
Children 1-6 years of age	0.027	57	0.057	0.006	120
Children 7-12 years of age	0.027	40	0.057	0.006	160
Females 13-50 years of age	0.027	24	0.057	0.006	610

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

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Males 13-19 years of age	0.027	26	0.057	0.006	700
Males 20+ years of age	0.027	23	0.057	0.006	730
Seniors 55+ years of age	0.027	24	0.057	0.006	720

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).

Though residential exposure could occur with the use of spinosad, no toxicological effects have been identified for short-term toxicity. 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).

Though residential exposure could occur with the use of spinosad, no toxicological effects have been identified for intermediate-term toxicity. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *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 spinosad residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate high performance liquid chromatography using ultra violet detection and immunoassay methods exist to enforce tolerances for residues of spinosad in/on plant and animal matrices. The method 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, Canadian, or Mexican maximum residue levels (MRLs) established for spinosad. There are no international residue limits that affect this Section 18 exemption.

VI. Conclusion

Therefore, the tolerance is established for residues of spinosad in or on alfalfa, forage at 4.0 ppm; alfalfa, hay at 4.0 ppm; beet, sugar at 0.020 ppm; beet, sugar, tops at 10.0 ppm; beet, sugar, molasses at 0.250 ppm; grass, forage at 7.0 ppm; grass, hay at 7.0 ppm; peanut at 0.020 ppm; and peanut, hay at 10.0 ppm. Furthermore, tolerances for livestock commodities are being modified, on a time-limited basis, as follows: meat of cattle, horses, goats, hogs, and sheep from 0.15 to 0.60 ppm; fat of cattle, horses, goats, hogs, and sheep from 3.5 to 15.0 ppm; meat byproducts of cattle, horses, goats, hogs, and sheep from 1.0 ppm to 3.50 ppm; milk, whole from 0.5 to 2.0 ppm; milk, fat from 5.0 ppm to 20.0 ppm; eggs from 0.02 to 0.03 ppm; and poultry, fat from 0.2 ppm to 0.30 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–301097 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 March 12, 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–301097 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 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 time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (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 tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (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: December 21, 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), 346(a) and 371.

2. Section 180.495 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Alfalfa, forage	4.0	12/31/02
Alfalfa, hay	4.0	12/31/02
* *	*	* *
Beet, sugar	0.020	12/31/02
Beet, sugar, tops	10.0	12/31/02
Beet, sugar, molasses	0.250	12/31/02
Cattle, fat	15.0	12/31/02
Cattle, mbyp	3.50	12/31/02
Cattle, meat	0.60	12/31/02
* *	*	* *
Eggs	0.030	12/31/02
Goats, fat	15.0	12/31/02
Goats, mbyp	3.50	12/31/02
Goats, meat	0.60	12/31/02
Grass, forage	7.0	12/31/02
Grass, hay	7.0	12/31/02
Hogs, fat	15.0	12/31/02
Hogs, mbyp	3.50	12/31/02
Hogs, meat	0.60	12/31/02
Horses, fat	15.0	12/31/02
Horses, mbyp	3.50	12/31/02
Horses, meat	0.60	12/31/02
Milk, fat	20.0	12/31/02
Milk, whole	2.0	12/31/02
Peanut	0.020	12/31/02
Peanut, hay	10.0	12/31/02
Poultry, fat	0.30	12/31/02
Sheep, fat	15.0	12/31/02
Sheep, mbyp	3.50	12/31/02
Sheep, meat	0.60	12/31/02

* * * * *

[FR Doc. 01–119 Filed 1–8–01; 8:45am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 413 and 489

[HCFA–1005–F3]

RIN 0938–AI56

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendments.

SUMMARY: In the April 7, 2000 issue of the **Federal Register** (65 FR 18434), we published a final rule with a comment period that implemented a prospective payment system for hospital outpatient services furnished to Medicare beneficiaries. In addition, the final rule established requirements and standards for facilities or organizations seeking provider-based status. This document corrects technical errors in the preamble and regulations text made in that part of the final rule related to provider-based requirements. (A document published in the **Federal Register** on October 3, 2000 (65 FR 58919) delayed the effective date of the provider-based regulations from October 10, 2000 to January 10, 2001 and made a conforming change in the regulations text.)

EFFECTIVE DATE: January 10, 2001.

FOR FURTHER INFORMATION CONTACT: Linda McKenna, (410) 786–4537.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–8215 of April 7, 2000 (65 FR 18434), there were several typographical errors. The provisions in this document are effective as if they had been included in the document published in the **Federal Register** on April 7, 2000.

Correction of Errors

In FR Doc. 00–8215 on April 7, 2000 (65 FR 18434), make the following corrections:

Corrections to the Preamble

On page 18434, column 1, in the **DATES** section, ''§ 412.24(d)(6)'' is corrected to read ''§ 413.24(d)(6)'', ''§ 489.24(h)'' is corrected to read ''§ 489.24''.

Corrections to the Regulations Text

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

Accordingly, 42 CFR parts 413 and 489 are corrected by making the following correcting amendments:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 13951, 13951(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.65 [Corrected]

2. In § 413.65, the following corrections are made:

A. In paragraph (d)(7)(iii), the reference to paragraph ''(d)(7)'' is corrected to read ''(d)(7)(i)''.

B. In paragraph (f)(3), the reference to paragraph ''(b)(3)(ii)'' is corrected to read ''(d)(3)(ii)''.

C. In paragraph (j)(3), the reference to paragraph ''(h)'' is corrected to read ''(i)''.

D. In paragraph (j)(4), the reference to paragraph ''(i)(5)'' is corrected to read ''(j)(5)''.

E. In paragraph (j)(5), in the second sentence, the reference to paragraph ''(i)(5)'' is corrected to read ''(j)(5)''.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 489.24 [Corrected]

2. In § 489.24, in paragraph (i), the reference to ''§ 416.35'' is corrected to read ''§ 413.65''.

Authority: Section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).

(Catalog of Federal Domestic Assistance Program No. 93.774; Medicare—Supplementary Medical Insurance Program)

Dated: December 18, 2000.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 01–654 Filed 1–8–01; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7600]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

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

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Missouri: St. Louis.	(Incorporated Areas).	November 1, 2000, November 8, 2000, *St. Louis Post Dispatch*.	The Honorable Buzz Westfall, St. Louis County Executive, 41 South Central Avenue, Clayton, Missouri 63105.	January 31, 2000	290327
Texas:					
Dallas & Collin.	City of Garland	October 12, 2000, October 19, 2000, *Garland News*.	The Honorable Jim Spence, Mayor, City of Garland, 200 North 5th Street, Garland, Texas 75046–9002.	September 8, 2000 ...	485471
Denton & Tarrant.	Town of Westlake.	December 8, 2000, December 15, 2000, *Denton Record Chronicle*.	The Honorable Scott Bradley, Mayor, Town of Westlake, 3 Village Circle, Suite 207, Westlake, Texas 76262.	March 16, 2001	480614

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

Dated: December 12, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 01–468 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No.980331080-0286-03; I.D. 092100A]

RIN 0648-AK66

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing this final rule to amend the regulations that require most shrimp trawlers to use Turtle Excluder Devices (TEDs) in the waters of the Atlantic and Gulf Areas of the United States, to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS is permanently approving the Parker soft TED for use in the waters of the Atlantic and Gulf Areas of the United States.

DATES: This final rule is effective January 9, 2001.

ADDRESSES: Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 727-570-5312.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of these species as a result of shrimp trawling activities has been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. Existing sea turtle conservation regulations (50 CFR 223.206 and 223.207) require most shrimp trawlers operating in the Gulf and Atlantic Areas, defined at 50 CFR 222.102, to have a NMFS-approved TED installed in each net rigged for fishing, year- round. TEDs currently approved by NMFS for shrimp trawling include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, and two types of special hard TEDs. One type of soft TED–the Parker soft TED - was approved through October 13, 2000.

NMFS approved the Parker TED for use in the waters of the Atlantic and Gulf Areas of the United States through an interim final rule (63 FR 17948, April 13, 1998). The interim final rule was set to expire on October 13, 1999. At that time, NMFS determined that while there was sufficient information on the use and effectiveness of the Parker TED to continue to allow its use, there was insufficient information to permanently approve it. Also, industry expressed interest in the testing for approval of variations of the Parker soft TED design. Therefore, NMFS extended its approval for 1 year (64 FR 55434, October 13, 1999), to allow time for the collection of additional data on the use and effectiveness of the Parker TED and to allow time for the shrimp industry to tests new soft TED designs. The extension expired on October 13, 2000.

NMFS looked at many aspects of the Parker soft TED's performance over the past 30 months in both the Gulf of Mexico and the South Atlantic. Observers placed aboard commercial trawlers have documented sea turtle capture rates and finfish bycatch reduction. Intensive law enforcement efforts have ensured and documented compliance with the technical requirements for using the Parker TED. NMFS' gear specialists provided initial training to net shops and trawler fleets in the proper installation and use of the Parker TED. Follow-up assistance was also provided to fishermen and net makers as they adapted to using the new soft TED.

Observer Information

NMFS' observer information generally shows that the rate of sea turtle capture in the Parker soft TED is comparable to hard TEDs. In 1997-1998 in the southeastern Atlantic, observers documented three turtle captures in nets equipped with Parker TEDs. A total of 190 tows were observed, for 515 hours of trawling. The resulting turtle catch rate (''Catch per unit effort,'' or ''CPUE'') was 0.005 turtles per 100 ft (30.5 m) headrope-hour. During the same time period, observers documented 1 turtle capture in nets equipped with hard TEDs. A total of 62 tows were observed, for 161 hours of trawling, for a CPUE of 0.005 turtles per 100 ft (30.5 m) headrope-hour. Observations in the Gulf of Mexico revealed a similar situation, although turtle catch rates in the Gulf are much lower overall. In 1998, no turtle captures were documented by observers in 133 tows using Parker TEDs, totaling 1,352 hours of trawling. During the same time period, 2 turtle captures were documented by observers in nets equipped with hard TEDs. A total of 2,081 tows were observed, for a total of 9,632 hours of trawling, representing a CPUE of 0.0001. All of these observed catch rates for shrimp trawlers using hard TEDs and Parker TEDs are small and it is therefore difficult to make definitive comparisons.

Shrimp loss in the Parker TED was also a concern, therefore observer data was collected to test the Parker TED's reliability catching shrimp. Observer data from the Gulf and South Atlantic Fisheries Development Foundation and South Carolina Department of Natural Resources showed that nets equipped with a Parker TED experienced an 11.9 and 8.4 percent reduction in shrimp catch, respectively, compared to a hard TED-equipped net.

Observations by Law Enforcement

The Protected Resources Enforcement Team (PRET) is a specially-equipped team of NMFS law enforcement officers that focus enforcement attention on protected resources issues primarily TEDs– in the southeastern United States. In 1998, the PRET's first year in operation, the team logged 488 hours of at-sea patrols, boarding 261 vessels as part of the TED compliance project. PRET boardings in 1998 focused on nearshore shrimping grounds along the coasts of Texas, Louisiana, Georgia, and South Carolina. A large portion of the PRET's efforts in 1999 had been dedicated to patrols along the Texas coast, due to the continuing concern over the number of dead sea turtles that strand on Texas beaches. From March 16, 1999, through August 19, 1999, the PRET boarded 241 vessels along the Texas and Louisiana coasts.

Enforcement efforts in the South Atlantic prior to October 1999 also indicated that use of the Parker TED in the shrimp fleet was very low. The PRET only encountered one trawler

equipped with Parker TEDs during 53 boardings in 1998. NMFS gear specialists accompanied SCDNR enforcement officers on patrols of state waters during May 1999. Out of approximately 40 trawlers boarded at sea, two were using Parker soft TEDs. The U.S. Coast Guard Group in Charleston, SC reported encountering only a total of 4 boats with Parker TEDs over the prior 2 years. No violations were reported from these seven boardings.

Since October 13, 1999, the PRET has concentrated their patrols in the Gulf of Mexico, where there was virtually no Parker soft TED use. The Parker TED is currently being used more in the Atlantic than in the Gulf, but even in the Atlantic the use is low (less than 50 boats). The Atlantic shrimping fleet is routinely inspected for TED compliance by the U.S. Coast Guard, state natural resources agency marine patrols, and NMFS law enforcement agents. No Parker TED violations have been documented in the Atlantic. While exact statistics on the numbers of inspections are not available, law enforcement agencies have found that the compliance rate on the boats that do use the Parker TED is good.

Parker Soft TED Tests

During 1998 and 1999, industry representatives expressed an interest in the testing for approving of Parker TED variations. NMFS issued the required testing permits to industry but there have been no new developments in Parker TED design reported by industry. Therefore, NMFS has no new Parker TED variations to approve and is approving only the version of the Parker TED previously approved.

Observations of Gear Specialists

The installation specifications for the Parker TED included an unprecedented level of technical detail compared to our previous soft TED regulations. The specifications included new requirements such as limiting installation to only certain styles of nets, exact mesh counts for fixing the location of the soft TED panel in the net, and detailed sewing instructions for attaching the panel to the net. As discussed in the April 13, 1998, interim final rule (63 FR 17948), NMFS believes that this level of technical specificity is required for the Parker TED to achieve a proper shape and exclude turtles effectively.

NMFS provided intensive technical training to assist the shrimp industry to adopt these stringent technical requirements. During 1998 and 1999, NMFS gear specialists held training sessions throughout the southeastern United States to improve TED technical operation and compliance. Technical assistance included the development of improved training and educational materials which were distributed through the Coast Guard, Sea Grant and through TED skill building workshops. Workshops included multimedia presentations and hands-on instruction which were highly effective in transferring technical information. TED operational manuals were distributed to assist fishermen in complying with TED regulations and assist in solving TED operational problems. In spring 1998, the training specifically focused on net shops around the entire Atlantic and Gulf coasts. Training sessions included a review of the Parker TED regulatory requirements and included hands-on training for installing Parker TEDs. Generally, net makers did not experience difficulty with the technical installation requirements for the Parker TED; however, NMFS' gear specialists provided follow-up visits to work with net makers requiring further assistance. During the Spring of 1999, NMFS gear specialists visited net shops along the Texas coast to provide follow-up Parker TED training if necessary, but found no net shops still making Parker TEDs in Texas. In the Atlantic, NMFS' gear specialists confirmed that only one net shop in each state (Florida, Georgia, South Carolina, and North Carolina) was still installing Parker TEDs in 2000. Those shops reported no ongoing technical problems.

NMFS' gear specialists held workshops to train Federal and state law enforcement personnel in the technical installation requirements for the Parker soft TED. NMFS' gear specialists also accompanied federal and state law enforcement personnel during at-sea and dockside boardings to provide hands-on technical training and to collect information on TED technical performance and compliance. This assistance was provided in North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, and Texas.

During the period May-July 1999, 3 NMFS gear specialists provided 22 days of assistance to fishermen in North Carolina, South Carolina and Georgia in modifying their TEDs to comply with the leatherback turtle contingency plan (60 FR 47713, September 14, 1995). Although almost all fishermen used hard TEDs with a large escape opening to comply with the leatherback contingency plan, the gear specialists found 10 vessels in McClellanville, South Carolina, that were equipped with Parker TEDs, modified to use the leatherback escape opening. The fishermen reported little difficulty in successfully making the leatherback modification to their Parker TEDs.

Comments on the October 13, 1999, Extension of the Interim Final Rule (64 FR 55434)

We received no comments on the October 13, 1999, extension of interim final rule that extended the approved use of the Parker soft TED. Comments received on the April 13, 1998 interim final rule (63 FR 17948) were responded to in the October 13, 1999, extension to that interim rule (64 FR 55434).

Provisions of this Final Rule

It was NMFS' intention to make its approval of the Parker TED permanent before the 1-year extension of its approval expired on October 13, 2000. However, because of an inadvertent administrative delay, NMFS was not able to do this before the approval expired. This final rule permanently approves the Parker TED for use in the waters of the Atlantic and Gulf Areas of the United States. This final rule makes no changes to the technical requirements for the Parker TED nor to the restrictions on the styles of net in which it may be installed.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, (AA) finds that there is good cause to waive providing prior notice and opportunity for public comment for this rule. It would be contrary to the public interest to delay this rule to provide prior notice and an opportunity for public comment because the delay would deprive fishermen from using a TED determined by NMFS as meeting the criteria for approval and whose approval had expired because of administrative delay. Without such delay, the previous approval could have been made permanent without a waiver, because providing prior notice and opportunity for public comment would not have been required. Finally providing an opportunity for public comment is unnecessary given the public's opportunity to comment on the original approval rule (63 FR 17948, April 13, 1998; 64 FR 55434, October 13, 1999).

Because this final rule does not create any new regulatory burden, but instead relieves regulatory restrictions by allowing an additional option for complying with existing sea turtle conservation requirements, under 5

U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment/Regulatory Impact Review (EA/RIR) for the April 13, 1998, interim final rule (63 FR 17948) that approved the use of the Parker TED through October 13, 2000. The EA/RIR concluded that the rule will have no significant impact on the human environment. An EA/RIR, prepared for this final rule, concluded that the permanent use of the Parker soft TED will have no significant impact on the human environment. A copy of the EA/RIR is available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: January 2, 2001.

Penelope D. Dalton

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 - 1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

2. § 223.206, paragraph (d)(2)(iv)(B) the third sentence is revised to read as follows:

§ 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d)* * *

(2)* * *

(iv)* * *

(B)* * * Within such a closed area, fishing by any shrimp trawler required to have a NMFS-approved TED in each net rigged for fishing is prohibited, unless the TED installed is one described at § 223.207(a)(7)(ii)(B) or § 223.207(c)(1)(iv)(B), and the owner or operator of the shrimp trawl has notified the Southeast Regional Administrator of his or her intention to fish in that area, in accordance with the procedure provided in paragraph (d)(5) of this section.* * *

* * * * *

3. In § 223.207, introductory text in paragraph(c), is revised to read as follows:

§ 223.207 Approved TEDs.

* * * * *

(c) *Soft TEDs.* Soft TEDs are TEDs with deflector panels made from polypropylene or polyethylene netting. The following soft TEDs are approved TEDs:

* * * * *

[FR Doc. 01–449 Filed 1–8–01; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 6
Tuesday, January 9, 2001

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1721

RIN 0572–AB60

Extensions of Payments of Principal and Interest

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Rural Utilities Service (RUS) proposes to add procedures and conditions under which Borrowers may request extensions of the payment of principal and interest. These procedures and conditions are stated in RUS Bulletin 20–5:320–2, Extensions of Payments of Principal and Interest, dated May 10, 1972, and RUS Bulletin 20–23, Section 12 Extensions for Energy Resources Conservation Loans, dated December 8, 1980; however, these procedures and conditions were not codified in the Code of Federal Regulations. This regulation will set forth procedures and conditions under which Borrowers may request extensions of principal and interest. RUS is proposing to rescind upon the effective date of this regulation RUS Bulletin 20–5:320–2, and RUS Bulletin 20–23.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than March 12, 2001.

ADDRESSES: Written comments should be addressed to Al Rodgers, Deputy Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 4037 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560. Telephone (202) 720–9547. RUS requires a signed original and three copies of all comments (7 CFR Part 1700). All comments received will be made available for inspection in room 4037 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gail P. Salgado, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560. Telephone: (202) 205–3660.

SUPPLEMENTARY INFORMATION

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice titled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising the RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, (1) all State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and, (3) in accordance with sec. 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. sec. 6912(e)), administrative appeals procedures, if any are required, must be exhausted prior to initiating an action against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule relating to the RUS electric loan program is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by March 12, 2001.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

Title: Extensions of Payments of Principal and Interest.

Type of Request: New information collection.

Abstract: To set forth the procedure for Borrowers' requests for extensions of principal and interest.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.36 hours per response.

Respondents: Not-for-profit institutions, business or other for-profit.

Estimated Number of Respondents: 90.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 180.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the

request for OMB approval. All comments will also become a matter of public record.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS believes it to be a good business practice to provide a Borrower the opportunity to request an extension of time and payment of principal and interest where such an extension provides the Borrower the flexibility to address financial hardship and achieve specified program objectives to benefit rural America.

This proposed rule contains the procedures and conditions under which Borrowers may request RUS approval for extensions of principal and interest under the circumstances specified in the proposed rule. Eligible purposes include financial hardship, energy resource conservation (ERC) loans, renewable energy projects, and contributions-in-aid of construction. The procedures and conditions for these purposes have not previously been codified in the Code of Federal Regulations. In addition, eligible new purposes (renewable energy projects and contributions-in-aid of construction) are included in this proposed rule and will follow the same procedures and conditions as the ERC loans. Samples of board resolutions mentioned in the proposed rule can be located on the RUS webpage, http://www.usda.gov/rus/electric/forms.htm.

Authority for these extensions are contained in section 12(a) of the Rural Electrification Act of 1936 (RE Act), as amended and section 236 of the Disaster Relief Act of 1970 (Pub. L. 91–606), as amended by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354). RUS proposes to add procedures and conditions under which Borrowers may request extensions of principal and interest. Many of these procedures and conditions are stated in RUS Bulletin 20–5:320–2, Extensions of Payments of Principal and Interest, dated May 10, 1972, and RUS Bulletin 20–23, Section 12 Extensions for Energy Resources Conservation Loans, dated December 8, 1980.

RUS is proposing to rescind upon the effective date of this regulation RUS Bulletin 20–5:320–2, Extensions of Payments of Principal and Interest, dated May 10, 1972, and RUS Bulletin 20–23, section 12 Extensions for Energy Resources Conservation Loans, dated December 8, 1980. RUS believes the information contained in these bulletins will be obsolete and unnecessary upon finalization of the proposed rule.

List of Subjects in 7 CFR Part 1721

Electric power, Loan programs ‘‘ energy, Rural areas.

For the reasons set forth in the preamble, RUS proposes to amend 7 CFR chapter XVII, part 1721 by adding subpart B to read as follows:

PART 1721—POST LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

1. The authority citation for part 1721 continues to read:

Authority: 7 U.S.C. 901 *et seq.*; 1921 *et seq.*, and 6941 *et seq.*).

2. Add subpart B to read as follows:

Subpart B—Extensions of Payments of Principal and Interest

Sec.

1721.100 Purpose.
1721.101 General.
1721.102 Definitions.
1721.103 Policy.
1721.104 Eligible purposes.
1721.105 Application documents.
1721.106 Repayment of deferred payment.
1721.107 Agreement.
1721.108 Commencement of the deferment.

§ 1721.100 Purpose.

This subpart contains RUS procedures and conditions under which Borrowers may request RUS approval for extensions for the payment of principal and interest.

§ 1721.101 General.

The procedures in this subpart are intended to provide Borrowers with the flexibility to request an extension of principal and interest as authorized under section 12(a) of the RE Act and section 236 of the Disaster Relief Act of 1970 (Public Law 91–606).

§ 1721.102 Definitions.

The definitions contained in 7 CFR 1710.2 are applicable to this subpart unless otherwise stated.

§ 1721.103 Policy.

(a) In reviewing requests for extension of payment of principal and interest, consideration shall be given to the effect of such extensions on the security of the Government's loans, and on the ability of the Borrower to achieve program objectives. It is the policy of RUS to extend the time for payment of principal and interest on the basis of findings that such extension does not impair the security and feasibility of the Government's loans and:

(1) Is essential to the effectiveness of the Borrower's operations in achieving specified program objectives; or

(2) Is necessary to help a Borrower place its operations on a more stable financial basis and thereby provide assurance of repayment of loans within the time when payments of such loans are due under the terms of the note or notes as extended; or

(3) Is otherwise in the best interest of the Government.

(b) Extensions will be given in the minimum amount to achieve the purpose of the extension.

(c) The total amount of interest that has been deferred will be added to the principal balance and the total amount of principal and interest that has been deferred will be reamortized over the life of the applicable note beginning in year six (6).

(d) Payment of principal and interest will not be extended more than 5 years after such payment shall have become due. However, in cases where the extension is being granted because, at the sole discretion of the Administrator, a severe hardship has been experienced, the Administrator may grant a longer extension provided that the maturity date of any such loan does not extended to a date beyond forty (40) years from the date of the loan.

§ 1721.104 Eligible purposes.

(a) *Deferments for financial hardship.* (1) A Borrower may defer principal or interest or both in cases of severe financial hardship. The deferral would be considered so as to help a Borrower place its operations on a more stable

financial basis and thereby provide assurance of repayment of loans within the time when payment of such loans are due under the terms of the note or notes as extended.

(2) The determination as to whether a Borrower qualifies for the deferment will be made by RUS on a case-by-case basis, considering such factors as:

(i) Substantial unreimbursed expenses relating to storm damage;

(ii) Loss of large power load;

(iii) Substantial loss of consumers or load due to hostile annexations and condemnations; or

(iv) Need to substantially upgrade a borrower's system to bring it into compliance with the National Electric Safety Code (NESC).

(b) *Deferments for energy resource conservation (ERC) loans.* (1) A Borrower may defer principal payments to make funds available to their consumers to conserve energy. Amounts deferred under this program can be used to cover the cost of labor and materials for the following energy conservation measures:

(i) Caulking;

(ii) Weather-stripping;

(iii) Heat pump systems (including water source heat pumps);

(iv) Heat pumps, water heaters, and central heating or central air conditioning system replacements or modifications, which reduce energy consumption;

(v) Ceiling insulation;

(vi) Wall insulation;

(vii) Floor insulation;

(viii) Duct insulation;

(ix) Pipe insulation;

(x) Water heater insulation;

(xi) Storm windows;

(xii) Thermal windows;

(xiii) Storm or thermal doors;

(xiv) Electric system coordinated customer-owned devices that reduce the maximum kilowatt demand on the electric system;

(xv) Clock thermostats; or

(xvi) Attic ventilation fans.

(2) ERC loans will be amortized over not more than 84 months, without penalty for prepayment of principal.

(c) *Deferments for renewable energy projects.* (1) A Borrower may defer principal payments to finance renewable energy projects. Amounts deferred under this program can be used to cover any and all costs to install all or part of a renewable energy system including, without limitation:

(i) Energy conversion technology;

(ii) Electric system interface;

(iii) Delivery equipment;

(iv) Control equipment; and

(v) Certain energy consuming devices.

(2) A Borrower may defer principal payments for the purpose of providing its consumers with loans to install all or part of customer-owned renewable energy systems up to 5kW.

(3) For the purpose of this subpart, a renewable energy system is one that can directly collect and convert solar, wind, or biomass energy into a usable form of energy such as electricity or heat.

(4) For the purpose of this subpart, a renewable energy project consists of one or more renewable energy systems.

(d) *Deferments for contributions-in-aid of construction.* (1) A Borrower may defer principal payments to make funds available to new full time residential consumers to assist them in paying their share of the construction costs (contribution-in-aid of construction) needed to connect them to the Borrower's system.

(2) Amounts available for this purpose will be limited to the amount of the construction costs that are in excess of the average cost per residential consumer incurred by the Borrower to connect new permanent residential consumers during the last calendar year for which data is available.

§ 17121.105 Application documents.

(a) *Deferments for financial hardship.* A Borrower requesting a section 12 deferment because of financial hardship should submit the following:

(1) A summary of the financial position of the Borrower, based on the latest information available (usually less than 60 days old).

(2) A copy of the board resolution requesting an extension due to financial hardship.

(3) A 10-year financial forecast of revenues and expenses on a cash basis, by year, for the period of the extension and 5 years beyond to establish that the remaining payments can be made as rescheduled.

(4) A listing of notes or portions of notes to be extended, the effective date for the beginning of the extension, and the length of the extension.

(5) A narrative description of the nature and cause of the hardship and the strategy that will be instituted to mitigate or eliminate the effects of the hardship.

(b) *Deferments for energy resource conservation loans.* A Borrower requesting principal deferments for an ERC loan program should submit the following information:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of offering an ERC loan program to its members.

(2) A copy of the board resolution establishing the ERC loan program and outlining the details of the program.

(c) *Deferments for renewable energy projects.* A Borrower requesting principal deferments for its renewable energy project should submit the following information:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of offering a renewable energy project program to its members and outlining the details of the program.

(2) A copy of the board resolution establishing the renewable energy project.

(d) *Deferments for contribution-in-aid of construction.* A Borrower requesting principal deferments for contribution-in-aid of construction should submit the following information:

(1) A letter from the Borrower's General Manager requesting an extension of principal payments for the purpose of offering a contribution-in-aid of construction program and outlining the details of the program.

(2) A copy of the board resolution establishing the contribution-in-aid of construction program.

(3) A summary of the calculations used to determine the average cost per residential consumer. (See § 1721.104 (d)(2)).

§ 1721.106 Repayment of deferred payment.

(a) *Deferments relating to financial hardship.* The total amount of interest that has been deferred will be added to the principal balance and the total amount of principal and interest that has been deferred will be reamortized over the life of the applicable note beginning in year six (6). For example: the amount of interest deferred in years 2001, 2002, 2003, 2004, and 2005, will be added to the principal balance and reamortized over the life of the applicable note in year 2006.

(b) *Deferments relating to the ERC loan program, renewable energy project, and the contribution-in-aid of construction.* An extension agreement is for a term of two (2) years. The installment will be recalculated each time the Borrower defers the payment of principal and recognition of the deferred amount will begin with the next payment. For example: the amount deferred in the October payment will be reamortized over a 84 month period starting with the next payment (November if paying on a monthly basis). When a Borrower defers principal under any of these programs the scheduled payment on the account will increase by an amount sufficient to pay off the deferred amount by the date specified in the agreement (usually 84 months (28 quarters)).

§ 1721.107 Agreement.

After approval of the Borrower's request for a deferment of principal and interest, an extension agreement, containing the terms of the extension, together with associated materials, will be prepared and forwarded to the Borrower by RUS.

§ 1721.108 Commencement of the deferment.

The deferment of principal and interest will not begin until the extension agreement and any other supporting materials requested by RUS have been executed and returned by the Borrower to RUS in form and substance satisfactory to RUS.

Dated: December 19, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 01–557 Filed 1–8–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–67–AD]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Model DG-800B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain DG Flugzeugbau GmbH (DG Flugzeugbau) Model DG–800B Sailplanes. The proposed AD would require you to install an additional filter for the primer valve; inspect and align the exhaust system; modify the placement of the fuel lines if the fuel filter is installed at the front mounting point of the spindle drive; and secure the gas strut piston rod end using Loctite if the piston rod does rotate. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the fuel line, exhaust system, and piston rod of the gas strut, which could result in failure of the engine. Such failure could lead to loss of power during critical stages of flight.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by February 20, 2001.

ADDRESSES: Send three copies of your comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–67–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from DG Flugzeugbau, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany; telephone: +49 7257–890; facsimile: +49 7257–8922. You may read this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on the proposed AD? We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 99-CE–67-AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified FAA that an unsafe condition may exist on all Model DG-800B sailplanes equipped with a SOLO engine. The LBA reports that an extensive review of the service history revealed failures of the primer valve, exhaust system, fuel line, exhaust and piston rod of the gas strut for the engine.

What are the consequences if the condition is not corrected? The actions specified by the proposed AD are intended to prevent failure of the fuel line, exhaust system, and piston rod of the gas strut, which could result in failure of the engine. Such failure could lead to loss of power during critical stages of flight.

Is there service information that applies to this subject? DG Flugzeugbau has issued these technical notes (TN):

—TN No. 873/12, dated March 9, 1999; and

—TN No. 873/13, dated June 30, 1999.

What are the provisions of these service bulletins? These service bulletins includes procedures for:

—Installing an additional filter for the primer valve;

—Inspecting and aligning the exhaust system;

—Modifying the placement of the fuel lines if the fuel filter is installed at the front mounting point of the spindle drive; and

—Securing the gas strut piston rod end using Loctite, if the piston rod does rotate.

What action did the LBA take? The LBA classified this service information as mandatory and issued German AD Number 1999–167, dated May 20, 1999, and German AD Number 1999–269, dated July 22, 1999, in order to assure the continued airworthiness of these sailplanes in the Germany.

Was this in accordance with the bilateral airworthiness agreement? These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation

Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Complying with this bilateral airworthiness agreement, the LBA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other DG Flugzeugbau Model DG–800B sailplanes of the same type design;

—The actions specified in the previously-referenced service information should be accomplished on the affected sailplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would the proposed AD require? This proposed AD would require you to do the actions specified in the previously referenced serviced information.

Cost Impact

How many sailplanes would the proposed AD impact? We estimate that the proposed AD would affect 6 sailplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do the proposed installation of an additional filter for the primer valve:

Labor cost	Parts cost	Total cost for each sailplane	Total cost on U.S. operators
2 workhours × $60 = 120	Manufacturer will provide the parts at no cost.	$120	6 sailplanes × $120 = $720.

We estimate the following costs to inspect and align the exhaust system:

Labor cost	Parts cost	Total cost for each sailplane	Total cost on U.S. operators
1 workhour × $60	The manufacturer will provide the parts at no cost.	$60	6 sailplanes × $60 = $360.

We estimate the following costs to modify the placement of the fuel lines:

Labor cost	Parts cost	Total cost for each sailplane	Total cost on U.S. operators
1 workhour × $60.	Manufacturer will provide the parts at no cost.	$60	6 sailplanes × $60 = $360.

We estimate the following costs to secure the gas strut rod end:

Labor cost	Parts cost	Total cost for each sailplane	Total cost on U.S. operators
1 workhour × $60.	Manufacturer will provide the parts at no cost.	$60	6 sailplanes × $60 = $360.

Compliance Time of the Proposed AD

What would be the compliance time of the proposed AD? Unless already done, the compliance times of this proposed AD are:

Compliance	Action
Within the next 3 calendar months after the effective date of this AD.	Install an additional filter for the primer valve.
Within the next 3 calendar months after the effective date of this AD.	Inspect and align the exhaust system.
Within the next 30 days after the effective date of this AD.	Modify the placement of the fuel lines.
Within the next 30 days after the effective date of this AD.	Remove the gas strut from the engine mount and secure the rod end using Loctite.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Although the failures of the fuel line, exhaust system, and piston rod of the gas strut occur during flight, the condition is not a direct result of sailplane operation. A calendar time for compliance will ensure that the unsafe conditions are addressed on all sailplanes in a reasonable time period. Sailplane operation varies among operators. For example, one operator may use the sailplane 50 hours TIS in 3 months while it may take another 12 months or more to accumulate 50 hours TIS. In order to ensure that preventive and corrective actions are done in a timely manner, the compliance time for installing an additional filter for the primer valve and inspecting and aligning the exhaust system is required within the next three calendar months after the effective date of this AD, unless already done.

Because of the impact on safety, the compliance time for modifying the placement of the fuel lines and removing the gas strut from the engine mount and securing the rod end using Loctite is required within the next 30 days after the effective date of this AD, unless already done.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed would 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 proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed 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) if issued, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **''ADDRESSES''**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

DG Flugzeugbau GMBH: Docket No. 99–CE–67–AD

(a) *What sailplanes are affected by this AD?* This AD affects the following sailplane models and serial numbers that are certificated in any category;

Model	Serial Nos.
DG–800B with SOLO engine	8–001 through 8–128 for paragraph (d)(1) of this AD.
DG–800B with SOLO engine	8–001 through 8–154 for paragraph (d)(2) of this AD.
DG–800B with SOLO engine	all serial numbers for paragraphs (d)(3) through (4) of this AD.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the fuel line, exhaust system, and piston rod of the gas strut, which could result in failure of the engine. Such failure could lead to loss of power during critical stages of flight.

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

Actions	Compliance time	Procedures
(1) Install an additional filter for the primer valve	Within the next 3 calendar months after the effective date of this AD.	Do this action following the Instructions paragraph of DG Flugzeugbau Technical Note (TN) No. 873/12, dated March 9, 1999, and Working Instruction No. 1 for TN No. 873/12.
(2) Inspect and align the exhaust system	Within the next 3 calendar months after the effective date of this AD.	Do this action following the Instructions paragraph of DG Flugzeugbau TN No. 873/12, dated March 9, 1999, and working Instruction No. 2 for TN No. 873/12.
(3) If the fuel filter is installed at the front mounting point of the spindle drive, modify the placement of the fuel lines.	Within the next 30 days after the effective date of this AD.	Do this action following the Instructions paragraph of DG Flugzeugbau TN No. 873/13, dated June 30, 1999.
(4) If there is no paint marking (torque putty) or if the marking proves that the piston rod rotates, remove the gas strut from the engine mount and secure the rod end using Loctite, then apply marking paint line (torque putty).	Within the next 30 days after the effective date of this AD.	Do this action following the Instructions paragraph of DG Flugzeugbau TN No. 873/13, dated June 30, 1999, and the maintenance manual.

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

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

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

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* You can contact Mike Kiesov, Aerospace engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4144; facsimile: (816) 329–4090.

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

(h) *How do I get copies of the documents reference in this AD?* You may get copies of the documents referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76646 Bruchsal, Federal Republic of Germany; telephone: +49 7257–890; facsimile: +49 7257–8922. You may read these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subjects of this AD are addressed in German Ad 1999–269, Effective

Date: July 22, 1999, and German AD 1999–167, Effective Date: May 20, 1999.

Issued in Kansas City, Missouri, on January 2, 2001.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–509 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–223–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–620, A310–203, A310–221, and A310–222 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–620, A310–203, A310–221, and A310–222 series airplanes. This proposal would require repetitive inspections of fuselage frame 07 in the upper frame section assemblies of the lateral cockpit windows, and corrective action, if necessary. Accomplishment of certain corrective actions would extend the repetitive inspection interval. This action is necessary to detect and correct fatigue cracking in that area, which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–223–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 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-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–223–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 the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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 proposed 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–NM–223–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–223–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–620, A310–203, A310–221, and A310–222 series airplanes. The DGAC has advised that, during a scheduled corrosion inspection in accordance with the Model A300 Corrosion Prevention and Control Programme (A300 CPCP), a crack of 100 millimeters in length was discovered forward of fuselage frame 07, in the upper frame section assembly of the lateral cockpit windows. When the crack was discovered, the airplane had accumulated 36,077 total flight hours and 30,733 total flight cycles. During the Model A300 full-scale fatigue test program, similar cracking was found at approximately 84,000 simulated flight cycles. The test results indicated that the onset of cracking could occur sooner than calculated from the original test results, suggesting the inspection threshold for this area of the airplane should be reduced from the threshold specified by the A300 CPCP. The cracking has been attributed to the effect of cabin pressure on the junction points, where thickness variations can lead to local bending and subsequent fatigue damage. If not corrected, the cracking could result in reduced structural integrity of the airplane.

Similar Model

The frame section is similar on all airplanes affected by this AD. Therefore, Model A310–203, A310–221, and A310–222 series airplanes are also subject to the identified unsafe condition.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–53–6120 (for Model A300–600 series airplanes) and A310–53–2109 (for Model A310 series airplanes), both dated May 5, 2000. These service bulletins describe procedures for repetitive detailed visual inspections of the upper frame section assemblies of the left and right forward lateral cockpit windows. The service bulletins describe temporary and permanent repairs for cracking. The temporary repair, which is acceptable if cracking is found only in a certain area, involves replacing a

pick-up fitting and bracket with new parts, and installing a doubler. The permanent repair, which is recommended if any cracking is found in any other specified area, involves replacing the upper frame section assembly with a new assembly, which would reset the inspection threshold. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2000–263–314(B), dated June 28, 2000, in order to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as described below.

Difference Between Proposed AD and Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for certain repair or inspection instructions, this proposal would require the repair or inspection to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair or inspection that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair or inspection approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,620, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed 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 proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Airbus Industrie: Docket 2000–NM–223–AD.

Applicability: Model A300 B4–620, A310–203, A310–221, and A310–222 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A300–53–6120 or A310–53–2109, both dated May 5, 2000; excluding airplanes on which Airbus Modification 3632 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 fatigue cracking of fuselage frame 07 in the upper frame section assembly of the lateral cockpit windows, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) Before the accumulation of 25,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracking of fuselage frame 07 in the left and right upper frame section assemblies of the lateral cockpit windows, in accordance with Airbus Service Bulletin A300–53–6120 (for Model A300–600 series airplanes) or A310–53–2109 (for Model A310 series airplanes), both dated May 5, 2000; as applicable.

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.''

(1) If no cracking is found: Repeat the inspection thereafter at least every 7,000 flight cycles.

(2) If any cracking is found and the cracking is only in ''area A,'' as depicted in

view B of Figure 4 of the service bulletin: Before further flight, do the actions specified by either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Do a temporary repair per the applicable service bulletin. Within 3,000 flight cycles thereafter, do a permanent repair per the applicable service bulletin. Within 32,000 flight cycles thereafter, except as required by paragraph (b) of this AD, repeat the inspection specified by paragraph (a) of this AD.

(ii) Do a permanent repair per the applicable service bulletin. Within 32,000 flight cycles thereafter, except as required by paragraph (b) of this AD, repeat the inspection specified by paragraph (a) of this AD.

(3) If any cracking is in ''area B,'' or in both ''area A'' and ''area B''; as depicted in view B of Figure 4 of the service bulletin: Before further flight, do a permanent repair per the applicable service bulletin. Within 32,000 flight cycles thereafter, except as required by paragraph (b) of this AD, repeat the inspection specified by paragraph (a) of this AD.

(b) If the service bulletin specifies to contact Airbus for further instructions for a repair or inspection: Prior to further flight, perform a repair or inspection per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. For a repair or inspection method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–263–314(B), dated June 28, 2000.

Issued in Renton, Washington, on January 3, 2001.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–510 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–86–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300 B2 and A300 B4 series airplanes, and all A300 B4–600, A300 B4–600R, and A300 F4–600R (A300–600) series airplanes. For certain airplanes, this proposal would require modifying the frame 40 aft fittings. For all airplanes, this proposal would require repetitive nondestructive test inspections to detect cracking of the frame 40 aft fittings; a modification would be required as corrective action for cracking or provided as optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct propagation of cracks on the frame 40 aft fittings due to local stress concentrations at the frame 40 upper flange runout, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by February 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–86–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.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed 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 above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue; *e.g.*, discuss a request to change a compliance time and a request to change a service bulletin reference as two issues.
- For each issue, state the specific change requested to the proposed AD.
- 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 proposed 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 summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

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

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France,

notified the FAA that an unsafe condition may exist on all Airbus Model A300 B2 and A300 B4 series airplanes, and all Model A300 B4–600, A300 B4–600R, and A300 F4–600R (A300–600) series airplanes. The DGAC reports that cracks have been found on the frame 40 aft fittings at stringer 33 on the left and right sides of the fuselage. The cracks were caused by a local stress concentration at the frame 40 upper flange runout. This condition, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

Model	Service bulletin	Revision level	Date
A300	A300–53–0296	01	Sep. 30, 1998.
		02	May 12, 1999.
A300–600	A300–53–6048	01	Sep. 30, 1998.
		03	Feb. 21, 2000.
A300	A300–53–0268	4	Aug. 16, 1995.
A300–600	A300–57–6052	02	April 4, 1997.
A300	A300–53–0297	2	Oct. 31, 1995.
A300–600	A300–57–6053	1	Oct. 31, 1995.
		02	June 2, 1999.

Service Bulletins A300–53–0296 and A300–53–6048 describe procedures for modification of the frame 40 aft fittings on certain airplanes, and repetitive nondestructive test inspections to detect cracking of the frame 40 aft fittings on all airplanes. Corrective actions for cracking involve trimming the front spar angle and vertical stiffener; drilling, reaming, and spotfacing attachment holes; installing a new frame 40 aft fitting and pick-up angles; and inspecting (by a detailed visual, high frequency eddy current, or liquid penetrant method) to detect cracking of the frame 40 forward fittings.

Those service bulletins refer to Service Bulletins A300–53–0268 and A300–57–6052 as additional sources of service information for corrective actions if cracking is found in the frame 40 aft fitting. Service Bulletins A300–53–0268 and A300–57–6052 describe procedures for, among other things, an inspection (detailed visual, eddy current, or liquid penetrant) to detect cracking of the forward fitting at frame 40.

Service Bulletins A300–53–0296 and A300–53–6048 also refer to Service Bulletins A300–53–0297 and A300–57–6053 as additional sources of service information to modify the aft angle fittings at frame 40. The modification involves replacing the angle fittings with new larger fittings. The service bulletins recommend the modification to repair cracked fittings and eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletins described above is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletins A300–53–0296 and A300–53–6048 as mandatory, and issued French airworthiness directive 1998–481–270(B) R1, dated July 12, 2000, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

For airplanes on which no cracking is found, this proposed AD would also provide for optional terminating action for the repetitive inspections. Operators should note that, to be consistent with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately ensured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between Proposed AD and Relevant Service Information

Operators should note that the service bulletins provide a method of adjustment of the inspection thresholds and intervals, relative to average flight times, of various groups of airplanes. The service bulletins provide a complicated method of determining the thresholds and intervals for various groups of airplanes. The FAA has determined that it would be difficult to enforce the implementation of that method for determining the compliance times. Therefore, this proposed AD does not provide for adjustments to the compliance times to accommodate average flight times that vary among operators. The FAA has established a single threshold and interval for each identified group of airplanes. In developing appropriate compliance times for this AD, the FAA considered not only the manufacturer's method for determining the compliance times, but the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet. The compliance times in this proposed AD are derived from the average flight times for affected airplanes as follows:

Model	Average flight time (in minutes)
A300 B2 series	65
A300 B4–100 series	80
A300 B4–200 series	125
A300–600 series	125

In light of these factors, the FAA finds the proposed thresholds and intervals to be warranted, in that they represent appropriate intervals of time for affected

airplanes to continue to operate without compromising safety. However, the provisions of paragraph (e) of this proposed AD would enable the FAA to approve requests for adjustments to the compliance time if data are submitted that substantiate an acceptable level of safety provided by such an adjustment.

Operators should further note that, unlike the procedures described in Airbus Service Bulletins A300–57–6052 and A300–53–0268, this proposed AD would not permit further flight if cracking is detected in the frame 40 forward fitting. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any cracked subject fitting must be repaired or modified before further flight.

In addition, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require that those conditions be repaired in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and, in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD.

For affected airplanes, it would take approximately 92 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost as much as $874 per airplane. Based on these figures, the cost impact of the proposed modification is estimated to be as much as $6,394 per airplane.

It would take approximately 10 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $42,000, or $600 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed 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 planning time, time required to gain access and close up, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would 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 proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

Airbus Industrie: Docket 99–NM–86–AD.

Applicability: All Model A300 B2 and A300 B4 series airplanes, and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (A300–600) series airplanes; 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if 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 propagation of cracks on the frame 40 aft fittings due to local stress concentrations at the upper flange runout of frame 40, which could result in reduced structural integrity of the airplane, accomplish the following:

Modification

(a) For airplanes on which Airbus Modification 10430 has not been done before the effective date of this AD: When you do the inspection required by paragraph (b) of this AD, modify the profile of frame 40 aft fittings per the service information specified in Table 1 of this AD. Table 1 is as follows:

TABLE 1.—SERVICE INFORMATION FOR MODIFICATION AND INSPECTION

Model	Service Bulletin	Revision level	Date
A300	A300–53–0296	Revision 01	Sept. 30, 1998.
		Or Revision 02	May 12, 1999.
A300–600	A300–53–6048	Revision 01	Sept. 30, 1998.
		Or Revision 03	Feb. 21, 2000

Note 2: Modification per Airbus Service Bulletin A300–53–6048, Revision 02, dated May 12, 1999, is acceptable for compliance with paragraph (a) of this AD for Model A300–600 series airplanes.

Inspection

(b) For all airplanes, inspect the airplane per Table 2 of this AD, as follows:

TABLE 2.—INSPECTION REQUIREMENTS

Requirements	Description
(1) Area to inspect	The frame 40 aft fitting.
(2) Type of inspection	Nondestructive test (NDT).
(3) Compliance time	As specified by paragraph (c) of this AD.
(4) Discrepancies to detect	Cracking.
(5) Required service information	As specified by Table 1 of this AD.
(6) Follow-on actions if you find no cracking	Repeat the inspection thereafter at the intervals specified by Table 3 of this AD.
(7) Corrective actions if you find cracking	Do the actions specified by paragraph (d) of this AD.
(8) Terminating action	Paragraph (d) terminates paragraph (b) of this AD.

Note 3: A nondestructive test (NDT) per Part 6 53–15–30 procedure C of the NDT manual, is also acceptable for compliance with paragraph (b) of this AD.

Note 4: Accomplishment of an inspection per Airbus Service Bulletin A300–53–6048, Revision 02, dated May 12, 1999, is acceptable for compliance with the requirements of paragraph (b) of this AD for Model A300–600 series airplanes.

(c) Perform the inspection of paragraph (b) of this AD per the schedule in Table 3, as follows:

TABLE 3.—COMPLIANCE THRESHOLDS FOR INSPECTION

For model . . .	If the total flight cycles accumulated on the airplane is . . .	Then inspect . . .	And repeat the inspection at least every . . .
A300–600 series airplanes, pre-Modification 10430S20428.	Fewer than 6,200	Before the airplane accumulates 7,700 total flight cycles.	7,500 flight cycles.
	At least 6,200 and fewer than 9,700	Within 1,500 flight cycles after the effective date of this AD.	
	At least 9,700	Within 750 flight cycles after the effective date of this AD.	
A300–600 series airplanes, post-Modification 10430S20428.	Fewer than 19,600	Before the airplane accumulates 21,100 total flight cycles.	7,500 flight cycles.
	At least 19,600 and fewer than 23,100.	Within 1,500 flight cycles after the effective date of this AD.	
	At least 23,100	Within 750 flight cycles after the effective date of this AD.	
A300 B2 series airplanes	Fewer than 12,000	Before the airplane accumulates 14,000 total flight cycles.	5,500 flight cycles.
	At least 12,000 and fewer than 17,000.	Within 2,000 flight cycles after the effective date of this AD.	
	At least 17,000	Within 1,000 flight cycles after the effective date of this AD.	
A300 B4–100 series airplanes	Fewer than 9,500	Before the airplane accumulates 11,500 total flight cycles.	4,500 flight cycles.
	At least 9,500 and fewer than 14,500	Within 2,000 flight cycles after the effective date of this AD.	
	At least 14,500	Within 1,000 flight cycles after the effective date of this AD.	
A300 B4–200 series airplanes	Fewer than 8,500	Before the airplane accumulates 10,500 total flight cycles.	4,000 flight cycles.
	At least 8,500 and fewer than 13,500	Within 2,000 flight cycles after the effective date of this AD.	
	At least 13,500	Within 1,000 flight cycles after the effective date of this AD.	

Note 5: An NDT inspection is also required by AD 98–25–07, amendment 39–10933, to be repetitively performed on Model A300–600 series airplanes on which Airbus Modification 10453 has not been installed. For those airplanes, if the inspection is done within the applicable compliance time specified by paragraph (c) of this AD, the threshold for the initial inspection of paragraph (b) of this AD may be extended by 1,500 flight cycles.

Corrective Actions

(d) If any crack is found during any inspection of a frame 40 aft fitting required by this AD, prior to further flight, accomplish the actions specified by paragraph (d)(1) or (d)(2), as applicable, and paragraph (d)(3) of this AD. Accomplishment of the actions of this paragraph terminates the repetitive inspection requirements of paragraph (b) of this AD.

(1) For Model A300–600 series airplanes: Replace the angle fittings with new, larger

fittings, in accordance with Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995, or Revision 02, dated June 2, 1999.

(2) For Model A300 series airplanes listed in Airbus Service Bulletin A300–53–0297, Revision 2, dated October 31, 1995: Replace the angle fittings with new, larger fittings, in accordance with the service bulletin.

(3) For all airplanes: Perform a detailed visual, high frequency eddy current (HFEC), or liquid penetrant inspection, as applicable, to detect cracking in the frame 40 forward fitting in accordance with Airbus Service Bulletin A300–57–6052, Revision 02, dated April 4, 1997 (for Model A300–600 series airplanes), or Airbus Service Bulletin A300–53–0268, Revision 4, dated August 16, 1995 (for Model A300 series airplanes); as applicable.

(i) If no crack is found: No further action is required by this AD.

(ii) Except as provided by paragraph (d)(3)(iii) of this AD: If any crack is found, during an inspection required by paragraph (d)(3) of this AD, prior to further flight, repair per the applicable service bulletin.

(iii) If any crack is detected during any inspection required by paragraph (d)(3) of this AD, and the applicable service bulletin specifies to contact the manufacturer for an appropriate action. Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Gonorale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) 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, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 7: The subject of this AD is addressed in French airworthiness directive 1998–481–270(B) R1, dated July 12, 2000.

Issued in Renton, Washington, on January 3, 2001.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–511 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–038–FOR]

Utah Regulatory Program

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

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is reopening the public comment period for revisions to a proposed amendment to the Utah regulatory program (hereinafter, the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposes to revise its amendment to change design requirements for temporary impoundments that function as sedimentation ponds. The State also proposes one minor editorial change. Utah intends to revise its program to make it consistent with the corresponding Federal regulations. We are reopening the comment period to allow for public review of Utah's revisions to its amendment.

DATES: We will accept written comments on this amendment until 4:00 p.m., mountain standard time January 24, 2001.

ADDRESSES: You should mail, hand deliver or e-mail your written comments to James F. Fulton, Denver Field Division Chief, at the address listed below.

You may review copies of the Utah program, this amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Denver Field Division.

James F. Fulton, Denver Field Division Chief, Office of Surface Mining, Western Regional Coordinating Center, 1999 Broadway, Suite 3320, Denver, Colorado, 80202–5733, telephone (303)844–1400, extension 1424.

Lowell P. Braxton, Director, Division of Oil, Gas and Mining, 1594 West North Temple, Suite 1210, P.O. Box 14581, Salt Lake City, Utah 84114–5801, telephone (801)538–5370.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Denver Field Division Chief, telephone (303)844–1400, extension 1424; e-mail address jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program.
II. Description of the Proposed Amendment.
III. Public Comment Procedures.
IV. Procedural Determinations.

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15 and 944.30.

II. Description of Proposed Amendment

By letter dated December 23, 1999 (administrative record No. 1133), Utah sent to us a proposed amendment (UT–038–FOR) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). It sent the proposed Utah Administrative (Utah Admin. R.) amendment in response to a June 18, 1997, letter (administrative record No. UT–1093) that we sent to the State under 30 CFR 732.17(c). Utah originally proposed to change its rules pertaining to: Definitions of ''abandoned site,'' ''other treatment facilities,'' ''previously mined area,'' ''qualified laboratory,'' and ''significant recreational, timber, economic, or other values incompatible with coal mining and reclamation operations,'' engineering requirements for impoundments and for backfilling and grading; hydrologic requirements for impoundments; requirements for bond release applications; prime farmland acreage; inspection frequency for abandoned sites; and the period in which to pay a penalty when requesting a formal hearing.

We announced receipt of the proposed amendment in the January 14, 2000, **Federal Register** (65 FR 2364; administrative record No. UT–1136), provided an opportunity for a public hearing or meeting, and invited public comment on its adequacy. We did not hold a public hearing or meeting because nobody requested either one. The public comment period ended on February 14, 2000.

During our review of the amendment, we identified a concern relating to the provision of Utah Admin. R. 645–301–742.225.2, which is part of the State's hydrology requirements for sedimentation ponds. Utah intended this proposed rule to provide an exception to the location guidance for certain temporary impoundments functioning as sedimentation ponds that *do not* meet the design criteria of the Natural Resources Conservation Service's Technical Release Number 60 or the size or other criteria of 30 CFR 77.216(a). However, the proposed rule repeated the same wording the State proposed at Utah Admin. R. 645–301–742.224.1, which applies to temporary impoundments that do meet the criteria of TR–60 or the size or other criteria of 30 CFR 77.216(a). We notified Utah of our concern by letter dated April 17, 2000 (administrative record No. UT–1142). The State formally responded to our concern in a letter dated November 27, 2000, by submitting a proposed revision (administrative record No. UT–1147).

The State now proposes two specific changes. First, it proposes an editorial change by adding the word ''where'' at the end of the clause in Utah Admin. R. 645–301–752.225 to read ''An exception to the sediment pond location guidance in R645–301–742.224 may be allowed *where:* * * *'' (emphasis added). Second, Utah proposes to delete wording of Utah Admin. R. 645–301–742.225.2 that repeated the preceding rule at R.646–301–742.225.1 and replace it with the following sentence: ''Impoundments not included in R645–301–742.225.1 shall be designed to control the precipitation of the 100-year 6-hour event, or greater event if specified by the Division.''

III. Public Comment Procedures

We are reopening the comment period on the proposed amendment at Utah Admin. R. 645–301–742.225 to give you an opportunity to consider the revision we received.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Denver Field Division.

Electronic Comments

Please submit Internet comments as an ASCII file and do not use special characters or any form of encryption. Please also include ''Attn: SPATS No. UT–038–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at telephone number (303) 884–1400, extension 1424.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 and determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA. This rule does not have Federalism implications.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule

would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act.

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal State or local governmental agencies; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. this determination is based on the fact that the State submittal which is the subject of this rule is based on counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 14, 2000.

James F. Fulton,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 01–558 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6928–5]

Approval of the Clean Air Act, Section 112(l) Program and Delegation of Authority to the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on section 112(l) program approval and delegation of authority to Oklahoma. The Oklahoma Department of Environmental Quality (ODEQ) has requested delegation of certain Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) found in 40 CFR parts 61 and 63.

In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is approving ODEQ's program of authorities and resources to implement and enforce NESHAPs in 40 CFR parts 61 and 63 and General Provisions as they apply to these sources and the mechanism for receiving future delegation of unchanged NESHAPs as they apply to non-part 70 sources. The EPA is granting ODEQ the authority to implement and enforce specified NESHAPS adopted by reference by ODEQ. The EPA is taking direct final action without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the preamble to the direct final rule. If no adverse comments are received, the EPA will not take further action on this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and it will not take effect. All public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by February 8, 2001.

ADDRESSES: Comments must be submitted to Mr. Robert M. Todd at the Region 6 office listed below. Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733. Anyone wanting to examine these documents should make an appointment at least two working days in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Todd, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–2156.

SUPPLEMENTARY INFORMATION: This document concerns delegation of unchanged NESHAPS and Maximum Achievable Control Technology standards to ODEQ. For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: December 21, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 01–111 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7408]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Executive Order 12612

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

Executive Order 12778

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	Clayton (City), (Contra Costa, County).	Donner Creek	At confluence with Mt. Diablo Creek	*421	*424
			Approximately 4,400 feet upstream of Marsh Creek Creek Road.	*516	*516
		Mitchell Creek	At confluence with Mt. Diablo Creek	*377	*379
			Approximately 1,600 feet upstream of Oak Street.	*439	*444
		Mt. Diablo Creek	Just upstream of Kirker Pass Road	*306	*304
			Just upstream of Oak Circle	None	*576
		Mt. Diablo Creek Split Flow.	Approximately 630 feet downstream of North Mitchell Canyon Road.	None	*342
			Approximately 1,700 feet upstream of North Mitchell Canyon Raod.	None	*370
Maps are available for inspection at 6000 Heritage Trail, Clayton, California.					
Send comments to The Honorable Phyllis Peterson, Mayor, City of Clayton, 6000 Heritage Trail, Clayton, California 94517–0280.					
California	Concord (City) (Contra Costa County).	Galindo Creek	Approximately 100 feet upstream of San Miguel Road.	None	*63
			Just upstream of St. Francis Drive	None	*127
			Approximately 200 feet downstream of Dam #1.	None	*220
		Mt. Diablo Creek	Approximately 2,675 feet downstream of Bailey Road.	*195	*196
			Approximately 2,475 feet upstream of Kirker Pass Road.	None	*323
Maps are available for inspection at the Permit Center, 3024 Willow Pass Road, Concord, California.					
Send comments to The Honorable Helen Allen, Mayor, City of Concord, 1950 Parkside Drive, Concord, California 94519.					
California	Contra Costa County (Unincorporated Areas).	Mitchell Creek	Approximately 1,670 feet downstream of Diablo Downs Road.	*440	*444
			Approximately 2,150 feet upstream of Diablo Downs Road.	*518	*535
		Mt. Diablo Creek	Immediately upstream of Bailey Road	None	*217
			Downstream of Russelman Park Road	None	*609
		Green Valley Creek	At Stone Valley Road	None	*467
			Approximately 4,410 feet upstream of Green Valley Road.	None	*573

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
		Rodeo Creek	At confluence with San Pablo Creek	None	*6
			Approximately 425 feet upstream of Hawthorne Drive.	None	*28
		Garrity Creek	Approximately 350 feet downstream of Southern Pacific Railroad.	None	*6
			Approximately 165 feet upstream of Brian Road.	None	*25
		Grayson Creek	Approximately 1,890 feet (.36 mile) downstream of Interstate 680.	None	*15
			Approximately 195 feet upstream of 2nd Avenue South.	None	*20
		Arroyo Del Hambra Creek	Approximately 1,280 feet (.24 mile) upstream of Alhambra Avenue.	None	*176
			Approximately 2,858 feet (.54 mile) upstream of Alhambra Avenue.	None	*190
		Appian Creek	At upstream side of Garden Road	None	*108
			Approximately 1,320 feet upstream of Appian Way.	None	*134
		West Alamo Creek	Approximately 2,870 feet (.54 mile) downstream of Green Meadow Drive.	None	*718
			At upstream side of BlackHawk Meadow Drive.	None	*804
		Wildcat Creek	Approximately 475 feet downstream of Atchison, Topeka and Santa Fe Railroad.	None	*29
Maps are available for inspection at the Public Works Department, 255 Glacier Drive, Marinez, California 94553.					
Send comments to The Honorable Donna Gerber, Chairperson, Board of Supervisors, 309 Diablo Road, Danville, California 94526.					
California	Danville (Town) (Contra Costa County).	Green Valley Creek	Just upstream of Interstate 680 Culvert	*354	*355
			Just downstream of Stone Valley Road	None	*467
		East Branch Valley Creek	At confluence with Green Valley Creek	*424	*423
			Approximately 1,600 feet upstream of Green Valley Road.	*458	*458
Maps are available for inspection at 510 La Gonda Way, Danville, California.					
Send comments to The Honorable Millie Greenberg, Mayor, Town of Danville, 510 La Gonda Way, Danville, California 94526.					
California	Martinez (City) (Contra Costa County).	Arroyo Del Hambra Creek	Just upstream of John Muir Parkway	*116	*116
			Approximately 2,000 feet upstream of Alhambra Avenue.	None	*180
			Approximately 950 feet downstream of Howe Road.	None	*22
		Line A, DA–40	Approximately 75 feet downstream of Howe Road.	None	*23
Maps are available for inspection at 525 Henrietta Street, Martinez, California.					
Send comments to The Honorable Michael M. Menesini, Mayor, City of Martinez, 525 Henrietta Street, Martinez, California 94553.					
California	Pittsburg (City) (Contra Costa County).	Kirker Creek	Approximately 170 feet downstream of East 14th Street.	*38	*37
			Approximately 140 feet upstream of Brush Creek Drive.	*193	*208
Maps are available for inspection at the Department of Public Works, 65 Civic Avenue, Pittsburg, California.					
Send comments to The Honorable Lori Anzini, Mayor, City of Pittsburg, 65 Civic Avenue, Pittsburg, California 94565.					
California	Pleasant Hill (City) (Contra Costa County).	Grayson Creek	Approximately 2,725 feet downstream of Concord Avenue.	None	*20
			Approximately 250 feet upstream of Harriett Drive.	None	*37
		East Fork Grayson Creek	At confluence with Grayson Creek and West Fork Grayson Creek.	None	*37
			Approximately 80 feet upstream of Gregory Lane.	None	*49

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Public Works Department, 100 Gregory Lane, Pleasant Hill, California.					
Send comments to The Honorable Chuck Escover, Mayor, City of Pleasant Hill, 100 Gregory Lane, Pleasant Hill, California 94523.					
California	Richmond (City) (Contra Costa County).	San Pablo Creek	Approximately 690 feet downstream of Atchison, Topeka and Santa Fe Railway.	*3	*18
			Approximately 60 feet upstream of Atchison, Topeka and Santa Fe Railway.	*31	*24
		Wild Cat Creek	Approximately 400 feet downstream of Atchison, Topeka and Santa Fe Railway.	*3	*27
			At Atchison, Topeka and Santa Fe Railway.	*3	*30
			Approximately 115 feet upstream of Atchison, Topeka and Santa Fe Railway.	*31	*31
Maps are available for inspection at the Community Map Repository, City of Richmond, 2600 Barrett Avenue, Richmond, California.					
Send comments to The Honorable Rosemary Corbin, Mayor, City of Richmond, 2600 Barrett Avenue, Room 312, Richmond, California 94802.					
California	San Pablo (City) Contra Costa County.	Wildcat Creek	Approximately 700 feet downstream of Rumrill Boulevard.	[1] 31	*30
			Just downstream of Creek Vale Road	[1] 81	*81
		San Pablo Creek	Approximately 50 feet downstream of Giant Road.	[1] 29	*24
			Approximately 100 feet upstream of Church Lane.	[1] 57	*57
[1] Mean Sea Level					
Maps are available for inspection at One Alvarado Square, San Pablo, California.					
Send comments to The Honorable Ron Kiedrowski, Acting City Manager, City of San Pablo, One Alvarado Square, San Pablo, California 94806.					
Idaho	Idaho County (Unincorporated Areas).	Rapid River	Approximately 250 feet upstream of Interstate Highway 95.	None	*2,002
			Approximately 4,830 feet upstream of Interstate Highway 95.	None	*2,078
Maps are available for inspection at 320 West Main Street, Grangeville, Idaho.					
Send comments to The Honorable George Enneking, Chairman, Idaho County Board of Commissioners, 320 West Main Street, Room 5, Grangeville, Idaho 83530.					
Oregon	Tillamook (City) (Tillamook County).	Dougherty Slough	At Main Avenue	*11	*11
			Approximately 775 feet upstream of Main Avenue	*11	*12
		Hoquarten Slough	Approximately 1,450 feet downstream of U.S. Highway 101—Main Avenue.	*11	*11
			Approximately 675 feet upstream of U.S. Highway 101—Main Avenue.	*11	*13
		Wilson River	Approximately 230 feet upstream of U.S. Highway 101.	None	*17
			Approximately 975 feet upstream of U.S. Highway 101.	None	*18
Maps are available for inspection at City Hall, 210 Laurel Avenue, Tillamook, Oregon.					
Send comments to The Honorable Robert McPheeters, Mayor, City of Tillamook, 210 Laurel Avenue, Tillamook, Oregon 97141.					
Oregon	Tillamook County (Unincorporated Areas).	Dougherty Slough (Wilson River).	At confluence with Hoquarten Slough	*10	*10
			Approximately 2,800 feet upstream of Wilson River Loop Road.	*28	*27
		Hoquarten Slough (Wilson River).	Approximately 3,250 feet upstream of confluence with Trask River.	*10	*10
			Approximately 700 feet upstream of Southern Pacific Railroad.	*12	*15
		Wilson River	Approximately 150 feet upstream of confluence with Tillamook Bay.	*9	*10
			Approximately 4,300 feet upstream of Wilson River Loop Road.	*29	*28

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the County Courthouse, 201 Laurel Avenue, Tillamook, Oregon. Send comments to The Honorable Tim Josi, Chairperson, Tillamook County Board of Commissioners, 201 Laurel Avenue, Tillamook, Oregon 97141.					

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

Dated: December 7, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 01–469 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 64

[WT Docket No. 99–217; FCC 00–366]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on the current state of the evolving market for the provision of telecommunications services in multiple tenant environments (MTEs). The Commission also notes that a strong case can be made that it has authority to impose obligations on carriers to ensure nondiscriminatory access to MTEs. The Commission seeks comment on this legal argument, whether it would be prudent to exercise such authority, the potential scope of such requirements, and how such requirements could be implemented, if adopted. In addition, the Commission seeks further comment on several other potential actions that may be necessary in the event that competition in the MTE market does not develop sufficiently.

DATES: Comments are due on or before January 22, 2001; Reply comments are due on or before February 21, 2001. Comments from the public, OMB, and other agencies on the information collections contained in this document are due March 12, 2001.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW.; TW–A325; Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.*

In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Lauren Van Wazer at (202) 418–0030 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau). For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rulemaking in WT Docket No. 99–217, FCC 00–366, adopted October 12, 2000 and released October 25, 2000 (''Further NPRM''). This summary also reflects an order extending the pleading cycle for this proceeding issued on December 4, 2000 (DA 00–2720), and an erratum issued in this proceeding on December 20, 2000. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC and also may be purchased from the commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, SW., CY–B400, Washington, DC 20554. The document is also available via the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00366.pdf.*

Paperwork Reduction Act

This Further NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget (OMB), and other federal agencies to comment on the information collection(s) contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. It will be submitted to OMB for review under Section 3507(d) of the PRA. Public, OMB, and other agency comments are due March 12, 2001. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

OMB Control Number: 3060–XXXX.

Title: Promotion of Competitive Networks in Local Telecommunications Markets.

Form No.: NA.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 438.

Estimated Time Per Response: 120 hrs.

Total Annual Burden: 52,560 hrs.

Total Annual Costs: $7,358,400.

Needs and Uses: The information will be used to guide the Commission as it continues to evaluate and monitor the need for a nondiscriminatory access requirement for MTEs.

Synopsis of Further Notice of Proposed Rulemaking

1. This Further Notice of Proposed Rulemaking (''Further NPRM'') is part of a larger item in which the Commission

takes several targeted steps toward eliminating the existing bottlenecks to facilities-based competition in MTEs. In particular, this Further NPRM seeks comment on several potential modifications to the Commission's Rules in order to facilitate tenant choice of telecommunications providers in MTEs. Subsequent to this Further NPRM, the Commission will publish a First Report and Order, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order that adopts rules to facilitate the development of competitive telecommunications networks that will provide consumers with alternatives to services provided by the incumbent wireline local exchange carriers (LECs).

Discussion

2. This Further NPRM seeks comment on the current state of the evolving market for the provision of telecommunications services in MTEs. The Further NPRM also notes that a strong case can be made that the Commission has authority to impose obligations on carriers to ensure nondiscriminatory access to MTEs. The Further NPRM seeks comment on this legal argument, whether it would be prudent to exercise such authority, the potential scope of such obligations, and how such obligations could be implemented.

3. In addition, the Further NPRM seeks comment on whether the Commission's prohibition of exclusive access contracts in commercial MTEs should be extended to residential MTEs, whether the Commission should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs, whether the Commission should proscribe carriers from entering into contracts that grant them preferences other than exclusive access, such as exclusive marketing or landlord bonuses to tenants that use their services, in some or all situations, the definition of ''rights-of-way'' in MTEs to which a utility must allow access under 47 U.S.C. 224, and whether it should extend its cable inside wiring rules to facilitate the use of home run wiring by telecommunications service providers where an incumbent cable provider no longer has a legal right to maintain its home run wiring in the building.

Filing Procedures

4. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 22, 2001, and reply comments on or before February 21, 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 24,121 (1998).

5. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments 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.

6. 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 12th Street, SW., TW–A325, Washington, DC 20554.

7. 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 12th Street, SW., CY–B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554.

8. 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 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs 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

9. As required by the Regulatory Flexibility Act (RFA),[1] 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 Competitive Networks Further Notice of Proposed Rulemaking (FNPRM), WT Docket No. 99–217. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the Competitive Networks FNPRM provided above in paragraph 179 of the Competitive Networks FNPRM. The Commission will send a copy of the Competitive Networks FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the Competitive Networks FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Rules

10. In the Competitive Networks FNPRM, the Commission seeks comment on a number of proposals to further its ongoing efforts under the Telecommunications Act of 1996[4] to foster competition in local communications markets. Specifically, we seek comment on measures to ensure that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). MTEs include apartment and office buildings, office parks, shopping centers, and manufactured housing communities. Each of the proposals in the Competitive Networks FNPRM is intended to benefit telecommunications carriers, building owners and their tenants by creating a more competitive MTE telecommunications service environment. The Competitive Networks FNPRM seeks comment on: (1) Whether we should require building owners, who allow access to their premises to any telecommunications provider, to make comparable access available to all providers on a nondiscriminatory basis; (2) whether we should prohibit local exchange carriers

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] See 5 U.S.C. 603(a).

[3] See id.

[4] Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56, codified at 47 U.S.C. 151 *et seq.* (1996 Act). The 1996 Act amended the Communications Act of 1934 (the ''Communications Act'' or the ''Act'').

from serving buildings that do not afford nondiscriminatory access to all telecommunications service providers; (3) whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with residential building owners; (4) whether we should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs; (5) whether we should phase out exclusive access provisions by establishing a future termination date for such provisions; (6) whether we should phase out exclusive access provisions for carriers that qualify as small entities and the timing of any such phase out; (7) whether, and to what extent, preferential agreements between building owners and LECs should be regulated by the Commission; (8) whether the Commission's rules governing access to cable home run wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services; and (9) the extent to which utility rights-of-way within MTEs are subject to access by telecommunications carriers (except incumbent LECs) and cable companies pursuant to section 224 of the Act.[5]

B. Legal Basis

11. The potential actions on which comment is sought in this Competitive Networks FNPRM would be authorized under Sections 1, 2(a), 4(i), 201(b), 202(a), 205(a), 224(d), 224(e), 303(r), and 411(a) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 201(b), 202(a), 205(a), 224(d), 224(e), 303(r), and 411(a), and Sections 1.411 and 1.412 of the Commission's Rules, 47 CFR 1.411 and 1.412.

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

12. The RFA requires that an IRFA 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.'' [6] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [7] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[8] 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).[9] For many of the entities described below, we utilize SBA definitions of small business categories, which are based on Standard Industrial Classification (''SIC'') codes.

We have included small incumbent LECs in this present IRFA. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [10] The SBA contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope.[11] We have therefore included small incumbent LECs in this IRFA, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

13. This Competitive Networks FNPRM proposes rule changes that, if adopted, would impose requirements that would affect on local exchange carriers and other utilities, building owners and managers, neighborhood associations, small governmental jurisdictions, cable operators, and wireless communications providers.

a. Local Exchange Carriers

14. Many of the potential rule changes on which comment is sought in this Competitive Networks FNPRM, if adopted, would affect small LECs. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[12] The SBA has defined establishments engaged in providing ''Telephone Communications, Except Radiotelephone'' to be small businesses when they have no more than 1,500 employees.[13] According to recent Telecommunications Industry Revenue data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services.[14] We do not have data specifying the number of these carriers that are either dominant in their field of operations, 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 LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities that may be affected by the potential actions discussed in this Further Notice of Proposed Rulemaking, if adopted.

b. Other Utilities

15. The proposals in the Competitive Networks FNPRM with respect to the application of Section 224 of the Act, if adopted, would affect utilities other than LECs. Section 224 defines a ''utility'' as ''any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any state.'' The Commission anticipates that, to the extent its legal interpretation of Section 224 affects non-LEC utilities, the effect would be concentrated on electric utilities.

(1) Electric Utilities (SIC 4911, 4931 & 4939)

16. *Electric Services (SIC 4911).* The SBA has developed a definition for

[5] 47 U.S.C. 224.

[6] 5 U.S.C. 605(b).

[7] 5 U.S.C. 601(6).

[8] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[9] Small Business Act, 15 U.S.C. 632.

[10] 5 U.S.C. 601(3).

[11] SBA Reply Comments at 3–4 (filed Sept. 10, 1999). See also Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, *e.g.,* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[12] See 13 CFR 121.201, SIC Code 4813.

[13] 13 CFR 121.201. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (1987 SIC Manual).

[14] FCC, Common Carrier Bureau, Industry Analysis Division, Trends in Telephone Service, Table 19.3 (March 2000)

small electric utility firms.[15] The Census Bureau reports that a total of 1,379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues do not exceed five million dollars.[16] The Census Bureau reports that 447 of the 1,379 firms listed had total revenues below five million dollars in 1992.[17]

17. *Electric and Other Services Combined (SIC 4931).* The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service.[18] The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues do not exceed five million dollars.[19] The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars in 1992.[20]

18. *Combination Utilities, Not Elsewhere Classified (SIC 4939).* The SBA defines this type of utility as providing a combination of electric, gas, and other services that are not otherwise classified.[21] The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues do not exceed five million dollars.[22] The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars in 1992.[23]

(2) Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 & 4932)

19. *Natural Gas Transmission (SIC 4922).* The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas.[24] The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues do not exceed five million dollars.[25] The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars in 1992.[26]

20. *Natural Gas Transmission and Distribution (SIC 4923).* The SBA has classified this type of entity as a utility that transmits and distributes natural gas for sale.[27] The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributor is a firm whose gross revenues do not exceed five million dollars.[28] The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars in 1992.[29]

21. *Natural Gas Distribution (SIC 4924).* The SBA defines a natural gas distributor as an entity that distributes natural gas for sale.[30] The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues do not exceed five million dollars.[31] The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars in 1992[32].

22. *Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (SIC 4925).* The SBA has classified this type of entity as a utility that engages in the manufacturing and/or distribution of the sale of gas.[33] These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues do not exceed five million dollars.[34] The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars in 1992.[35]

23. *Gas and Other Services Combined (SIC 4932).* The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services.[36] The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues do not exceed five million dollars.[37] The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars in 1992.[38]

(3) Water Supply (SIC 4941)

24. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use.[39] The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues do not exceed five million dollars.[40] The Census Bureau reported that 3,065 of the 3,169 firms listed had total revenues below five million dollars in 1992.[41]

(4) Sanitary Systems (SIC 4952, 4953 & 4959)

25. *Sewerage Systems (SIC 4952).* The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems.[42] The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars.[43] The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars in 1992.[44]

26. *Refuse Systems (SIC 4953).* The SBA defines a firm in the business of refuse as an establishment whose business is the collection and disposal of refuse ''by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials.''[45] The Census Bureau reports that a total of 2,287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross

[15] 1987 SIC Manual.

[16] 16 13 CFR 121.201.

[17] U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D (Bureau of Census data under contract to the Office of Advocacy of the SBA) (1992 Economic Census Industry and Enterprise Receipts Size Report).

[18] 1987 SIC Manual.

[19] 13 CFR 121.201.

[20] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[21] 1987 SIC Manual.

[22] 13 CFR 121.201.

[23] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[24] 1987 SIC Manual.

[25] 13 CFR 121.201.

[26] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[27] 1987 SIC Manual.

[28] 13 CFR 121.201.

[29] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[30] 1987 SIC Manual.

[31] 13 CFR 121.201.

[32] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[33] 1987 SIC Manual.

[34] 13 CFR 121.201.

[35] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[36] 1987 SIC Manual.

[37] 13 CFR 121.201.

[38] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[39] 1987 SIC Manual.

[40] 13 CFR 121.201.

[41] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[42] 1987 SIC Manual.

[43] 13 CFR 121.201.

[44] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[45] 1987 SIC Manual.

revenues do not exceed six million dollars.[46] The Census Bureau reported that 1,908 of the 2,287 firms listed had total revenues below six million dollars in 1992.[47]

27. *Sanitary Services, Not Elsewhere Classified (SIC 4959).* The SBA defines these firms as engaged in sanitary services.[48] The Census Bureau reports that a total of 1,214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firm's gross revenues do not exceed five million dollars.[49] The Census Bureau reported that 1,173 of the 1,214 firms listed had total revenues below five million dollars in 1992.[50]

(5) Steam and Air Conditioning Supply (SIC 4961)

28. The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air.[51] The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues do not exceed nine million dollars.[52] The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars in 1992.[53]

(6) Irrigation Systems (SIC 4971)

29. The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation.[54] The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small irrigation service is a firm whose gross revenues do not exceed five million dollars.[55] The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars in 1992.[56]

c. Building Owners and Managers

30. Our proposals in the this Further Notice of Proposed Rulemaking regarding the scope of in-building rights-of way under section 224 of the Act, termination or phasing out of exclusive contracts between commercial MTEs and telecommunications carriers, and nondiscriminatory access to MTEs, if adopted, would affect multiple dwelling unit operators and real estate agents and managers.

(1) Multiple Dwelling Unit Operators (SIC 6512, SIC 6513, SIC 6514)

31. The SBA has developed definitions of small entities for operators of nonresidential buildings, apartment buildings, and dwellings other than apartment buildings, which include all such companies generating $5 million or less in revenue annually.[57] According to the Census Bureau, there were 26,960 operators of nonresidential buildings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[58] Also according to the Census Bureau, there were 39,903 operators of apartment dwellings generating less than $5 million in revenue that were in operation for at least one year at the end of 1992.[59] The Census Bureau provides no separate data regarding operators of dwellings other than apartment buildings, and we are unable at this time to estimate the number of such operators that would qualify as small entities.

(2) Real Estate Agents and Managers (SIC 6531)

32. The SBA defines real estate agents and managers as establishments primarily engaged in renting, buying, selling, managing, and appraising real estate for others.[60] According to SBA's definition, a small real estate agent or manager is a firm whose revenues do not exceed 1.5 million dollars.[61]

d. Neighborhood Associations

33. Section 601(4) of the Regulatory Flexibility Act, 5 U.S.C. 601(4), defines ''small organization'' as ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' This definition includes homeowner and condominium associations that operate as not-for-profit organizations. We note that these groups would be indirectly affected by our proposals. The Community Associations Institute estimates that there are 205,000 such associations.[62]

e. Municipalities

34. Our proposals in the this Competitive Networks FNPRM regarding the scope of in-building rights-of way under Section 224 of the Act, termination or phasing out of exclusive contracts between commercial MTEs and telecommunications carriers, and nondiscriminatory access to MTEs would, if adopted, affect municipalities. The term ''small governmental jurisdiction'' is defined as ''governments of * * * districts, with a population of less than 50,000.''[63] As of 1992, there were approximately 85,006 governmental entities in the United States.[64] This number includes such entities as states, counties, cities, utility districts and school districts. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566, or 96%, have populations of fewer than 50,000.[65] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,606 (96%) are small entities.

f. Cable Services or Systems

35. Our proposals in the this Competitive Networks FNPRM regarding the scope of in-building rights-of way under Section 224 of the Act, nondiscriminatory access to MTEs, and extension of the cable home run wiring rule to telecommunications carriers, would, if adopted, affect owners and operators of cable systems. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[66] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788

[46] 13 CFR 121.201.

[47] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[48] 1987 SIC Manual.

[49] 13 CFR 121.201.

[50] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[51] 1987 SIC Manual.

[52] 13 CFR 121.201.

[53] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[54] 1987 SIC Manual.

[55] 13 CFR 121.201.

[56] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D.

[57] 13 CFR 121.601 (SIC 6512, SIC 6513, SIC 6514).

[58] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6512 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration) (1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report).

[59] 1992 Economic Census of Financial, Insurance and Real Estate Industries, Establishment and Firm Size Report, Table 4, SIC 6513.

[60] 1987 SIC Manual.

[61] 13 CFR 121.201.

[62] CAI Response to Competitive Networks NPRM IRFA at 5 (filed Aug. 27, 1999).

[63] 5 U.S.C. 601(5).

[64] U.S. Department of Commerce, Bureau of the Census, ''1992 Census of Governments.''

[65] Id.

[66] 13 CFR 121.201, SIC code 4841.

total cable and other pay television services and 1,423 had less than $11 million in revenue.[67]

36. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[68] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[69] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

37. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[70] The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[71] Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450.[72] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[73] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

g. Multipoint Distribution Service (MDS)

38. This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[74] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[75] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[76] These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.[77] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[78] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

h. Wireless Services

39. Many of the proposals in this Competitive Networks FNPRM, if enacted, could affect providers of wireless services regulated by the Commission.

40. *Broadband Personal Communications Service (PCS).* 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 $40 million or less in the three previous calendar years.[79] 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.[80] These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA.[81] 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.[82] 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.

41. *Cellular Licensees.* 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.[83] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms that operated during 1992 had 1,000 or more employees.[84] 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

[67] 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[68] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[69] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[70] 47 U.S.C. 543(m)(2).

[71] 47 CFR 76.1403(b).

[72] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[73] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to Section 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

[74] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

[75] 47 CFR 1.2110 (a)(1).

[76] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[77] 47 U.S.C. 309(j).

[78] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide,* 123rd Edition, pp. 36–39.

[79] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96–59; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, GN Docket 90–314, *Report and Order,* 11 FCC Rcd 7824, 7850–52, paragraphs 57–60 (1996) (*Cross Ownership Report & Order*); *see also* 47 CFR 24.720(b).

[80] *Cross Ownership Report & Order,* 11 FCC Rcd at 7852, paragraph 60.

[81] *See, e.g.,* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order,* 9 FCC Rcd 5532, 5581–84, paragraphs 114–20 (1994).

[82] FCC News, *Broadband PCS, D, E and F Block Auction Closes,* No. 71744 (released Jan. 14, 1997).

[83] 13 CFR 121.201, SIC code 4812.

[84] *1992 Census,* Series UC92–S–1, at Table 5, SIC code 4812.

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.[85] 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.

42. *Fixed Microwave Services.* Microwave services include common carrier,[86] private-operational fixed,[87] and broadcast auxiliary radio services.[88] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.,* an entity with no more than 1,500 persons.[89] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

43. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[90] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[91]91 We will use the SBA's definition applicable to radiotelephone companies, *i.e.,* an entity employing no more than 1,500 persons.[92] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

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

44. The Competitive Networks FNPRM Rulemaking proposes no additional reporting, recordkeeping or other compliance measures. We note supra, however, that the Competitive Networks FNPRM seeks comment on termination or phase out of exclusivity and preferential provisions in contracts between telecommunications providers and MTEs.

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

45. 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.[93]

46. In this Competitive Networks FNPRM, we seek comment on proposals that are intended to promote competition in local communications markets by ensuring that competing telecommunications providers are able to serve customers in MTEs. Specifically, we seek comment on the following proposals: (1) Whether we should require building owners, who allow access to their premises to any telecommunications provider, to make comparable access available to all providers on a nondiscriminatory basis; (2) whether we should prohibit local exchange carriers from serving buildings that do not afford nondiscriminatory access to all telecommunications service providers; (3) whether we should forbid telecommunications service providers, under some or all circumstances, from entering into exclusive contracts with residential building owners; (4) whether we should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs; (5) whether we should phase out exclusive access provisions by establishing a future termination date for such provisions; (6) whether we should phase out exclusive access provisions for carriers that qualify as small entities and the timing of any such phase out; (7) whether, and to what extent, preferential agreements between building owners and LECs should be regulated by the Commission; (8) whether the Commission's rules governing access to cable home run wiring for multichannel video program distribution should be extended to benefit providers of telecommunications services; and (9) the extent to which utility rights-of-way within MTEs are subject to access by telecommunications carriers (except incumbent LECs) and cable companies pursuant to Section 224 of the Act.[94] We anticipate that the proposals, if enacted in whole or in part, would benefit consumers, telecommunications carriers and building owners, including small entities.

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

47. None.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group.

[FR Doc. 01–579 Filed 1–8–01; 8:45 am]

BILLING CODE 6712–01–U

[85] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service,* Table 19.3 (March 2000).

[86] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[87] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. See 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[88] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[89] 13 CFR 121.201, SIC 4812.

[90] The service is defined in Section 22.99 of the Commission's Rules, 47 CFR 22.99.

[91] BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[92] 13 CFR 121.201, SIC code 4812.

[93] 5 U.S.C. 603(c).

[94] 47 U.S.C. 224.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH68

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Dolly Varden as Threatened in Washington Due to Similarity of Appearance to Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Dolly Varden (*Salvelinus malma*) as threatened under the ''Similarity of Appearance'' provisions of the Endangered Species Act of 1973, as amended. In Washington, the Dolly Varden, an anadromous char and a member of the family Salmonidae, occurs in several river drainages within the Coastal-Puget Sound distinct population segment of the bull trout (*Salvelinus confluentus*), which is listed as a threatened species under the Act. Because of the close resemblance in appearance between bull trout and Dolly Varden, law enforcement personnel have substantial difficulty in differentiating between the two species. The determination of threatened status due to similarity of appearance for Dolly Varden will extend to this species the prohibitions against take that apply to bull trout, and will substantially facilitate law enforcement actions to protect bull trout. Actions that result in take of Dolly Varden may include capture as a result of fishing and actions that degrade or destroy habitat.

DATES: Comments from all interested parties must be received by March 12, 2001. Public hearing requests must be received by February 23, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments to Gerry Jackson, Manager, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503.

(2) You may send comments by e-mail to dolly_varden@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN 1018–AH68]'' 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 Western Washington Office at phone number 360–753–9440. Please note that the e-mail address ''dolly_varden@fws.gov'' will be closed out at the termination of the public comment period.

(3) You may hand-deliver comments to our Western Washington Office at 510 Desmond Drive SE, Suite 102, Lacey, Washington.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gerry Jackson, Manager, Western Washington Office (see **ADDRESSES** section) (telephone 360/753–9440; facsimile 360/753–9008).

SUPPLEMENTARY INFORMATION:

Background

Section 4(e) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C., 1531 *et seq.*, and implementing regulations (50 CFR 17.50–17.52), authorize the treatment of a species (subspecies or population segment) as endangered or threatened if (a) The species so closely resembles in appearance a listed endangered or threatened species that law enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the purposes of the Act. Listing a species as endangered or threatened under the similarity-of-appearance provisions of the Act extends the take prohibitions of section 9 to cover the species. A designation of endangered or threatened due to similarity of appearance under section 4(e) of the Act, however, does not extend other protections of the Act, such as the consultation requirements for Federal agencies under section 7 and the recovery planning provisions under section 4(f), that apply to species that are listed as endangered or threatened under section 4(a).

Bull trout *(Salvelinus confluentus)*, members of the family Salmonidae, are char (trout in the genus *Salvelinus*) that are native to the Pacific Northwest and western Canada. On November 1, 1999, we added the bull trout to the List of Endangered and Threatened Wildlife (50 CFR 17.11) as a threatened species throughout its range in the coterminous United States (64 FR 58910). This determination was based on our finding that the Coastal-Puget Sound and St. Mary-Belly River distinct population segments of bull trout are threatened, coupled with our earlier findings of threatened status for the Klamath River, Columbia River, and Jarbidge River distinct population segments (63 FR 31647; 64 FR 17110).

Bull trout and Dolly Varden *(Salvelinus malma)* occur together only within the area occupied by the Coastal-Puget Sound bull trout distinct population segment. This area of overlap includes western Washington (west of the Cascades) and the Olympic Peninsula (64 FR 58910). Although these two species of ''native char'' were previously considered a single species, the bull trout and the Dolly Varden are now formally recognized as two separate species (Cavender 1978; Robins *et al.* 1980; Bond 1992). Specific distinctions between bull trout and Dolly Varden are based on morphometrics (measurements), meristic variation (variation in characters that can be counted), osteological characteristics (bone structure), and distributional evidence (Cavender 1978). Currently, genetic analyses can distinguish between the two species (Crane *et al.* 1994; Baxter *et al.* 1997; Leary and Allendorf 1997). Bull trout and Dolly Varden, however, are virtually impossible to differentiate visually, and misidentifications occur even using an established morphometric field identification procedure. In a study of the errors in, and problems with species identification, bull trout were misidentified as Dolly Varden 48 percent of the time, and the error rate was 2.5 percent for Dolly Varden misidentified as bull trout (Haas and McPhail 2000). Washington Department of Fish and Wildlife (WDFW) currently manages the two species together as ''native char.'' Consequently, we delineated 34 subpopulations of ''native char'' (bull trout, Dolly Varden, or both species) within the Coastal-Puget Sound distinct population segment (64 FR 58910).

Fifteen of the thirty-four subpopulations had been analyzed when the bull trout was listed as threatened. Bull trout likely occur in the majority of the remaining 19 subpopulations. Genetic analyses determined that three of the tested ''native char'' subpopulations within the Coastal-Puget Sound distinct population segment contained only Dolly Varden (64 FR 58910). Because of the limited sample sizes used in the analyses, however, and evidence that bull trout and Dolly Varden frequently co-occur, we considered it premature to conclude that bull trout do not exist in these subpopulations. The proposal to list the Dolly Varden due to similarity of appearance to bull trout includes all 34 ''native char'' subpopulations described in the bull trout rule (64 FR 58910).

We did not include the similarity-of-appearance designation for Dolly Varden in the listing for bull trout based on WDFW's management strategies for these two species. We considered that, for fisheries regulations, WDFW manages the two species together as

''native char.'' For conservation management, WDFW has combined the two species into common inventory stock units (spawning populations) that represent composites of both bull trout and Dolly Varden char within specific areas (WDFW 1998). After further consideration, however, we have determined that law enforcement personnel will have substantial difficulty in attempting to differentiate between bull trout and Dolly Varden because of their close resemblance in appearance. The effect of such a close resemblance between the two species will be an additional threat to bull trout because of the difficulty in prosecuting cases of illegal take of bull trout.

Designating Dolly Varden as threatened due to similarity of appearance will extend take prohibitions to this species in the 34 ''native char'' subpopulations in the Coastal-Puget Sound area. The term ''take'' as defined in section 3 of the Act means to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' In the definition of take, the term ''harass'' is defined (50 CFR 17.3) as ''an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.'' The term ''harm'' is further defined (50 CFR 17.3) as meaning, in the definition of take, an act which actually kills or injures wildlife. Such actions may include ''significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.'' Because Dolly Varden and bull trout cannot easily be distinguished visually, take prohibitions against any actions that may result in harm or harassment to bull trout will also apply to Dolly Varden where individuals cannot readily be identified as to species. Such actions may include not only capture as a result of fishing, but any actions that might result in habitat degradation or destruction.

Special Rule

In the final listing for bull trout, we included a special rule, as provided by section 4(d) of the Act, exempting certain activities from the take prohibition. This special rule exempts from the take prohibition fishing activities authorized under State, National Park Service, or Native American Tribal laws and regulations and take for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act (64 FR 58910). We propose to extend the same take prohibitions to Dolly Varden as are in place to protect bull trout and, if this proposed rule is made final, this special regulation will also apply to the Dolly Varden in the 34 ''native char'' populations in the Coastal-Puget Sound area.

Actions that would and would not likely be considered a violation of section 9 that apply to bull trout were included in the final rule to list the bull trout (64 FR 58910). These also would apply to Dolly Varden in the 34 ''native char'' subpopulations in the Coastal-Puget Sound area if this rule is made final. Actions that, without a permit or other authorization from us, are likely to be considered a violation of section 9 include:

(1) Take of Dolly Varden without a permit or other incidental take authorization from us. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State, National Park Service, and Tribal fish and wildlife conservation laws and regulations;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken Dolly Varden;

(3) Unauthorized interstate and foreign commerce (commerce across State and international boundaries) and import/export of Dolly Varden;

(4) International introduction of nonnative fish species that compete or hybridize with Dolly Varden;

(5) Destruction or alteration of Dolly Varden habitat by dredging, channelization, diversion, instream vehicle operation or rock removal, grading of unimproved roads, stormwater and contaminant runoff from roads, failing road culverts, and road culverts that block fish migration or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, turbidity, temperature, and migratory corridors used for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting Dolly Varden that result in death or injury of this species; and

(7) Destruction or alteration of riparian or lakeshore habitat and adjoining uplands of waters supporting Dolly Varden by timber harvest, grazing, mining, hydropower development, road construction, or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by these species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider this list to be exhaustive and provide it as information to the public.

The designation of Dolly Varden as threatened due to similarity of appearance will substantially facilitate law enforcement protection of bull trout and further the purposes of the Act. Therefore, we are proposing to list the Dolly Varden as threatened under section 4(e), ''Similarity of Appearance'' provisions, of the Act.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Any final regulation concerning the listing of this species will take into consideration the comments and any additional information received by us, and such communications may lead to a final regulation that differs from this proposal.

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

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in

the **Federal Register**. Such requests must be made in writing and addressed to Manager, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Dr. SE., Suite 102, Lacey, Washington 98503.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send any comments that would help us improve the readability of this proposed rule to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4 of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Crane, P.A., L.W. Seeb, and J.E. Seeb. 1994. Genetic relationships among *Salvelinus* species inferred from allozyme data. Canadian Journal of Fisheries and Aquatic Sciences 51(Suppl. 1):182–197.

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Washington Department of Fish and Wildlife. 1998. 1998 Washington salmonid stock inventory. Bull trout and Dolly Varden appendix. Washington Dept. of Fish and Wildlife, Olympia. 437 pp.

Author

The primary author of this document is Dr. L. Karolee Owens (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. Law. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under ''FISHES,'' to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Veterbrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Dolly Varden (char).	*Salvelinus malma.*	U.S.A. (OR, WA, AK), Canada, E. Asia.	Coastal-Puget Sound (U.S.A–WA) all Pacific Coast drainages north of Columbia R.	T(S/A)		NA	17.44(w)
*	*	*	*	*	*		*

Dated: December 13, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–500 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for Status Review Addressing the Washington Population of Western Sage Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status Review; notice of reopening of comment period.

SUMMARY: Pursuant to the Endangered Species Act of 1973, as amended (Act), the United States Fish and Wildlife Service (Service) provides notice of the reopening of the comment period for the status review addressing the Washington population of western sage grouse (*Centrocercus urophasianus phaios*). Reopening of the comment period will allow further opportunity for all interested parties to submit additional information and written comments to be considered by the Service for this status review (see **DATES** and **ADDRESSES**).

DATES: Written materials from interested parties must be received by February 16, 2001.

ADDRESSES: You may submit written comments, reports, map products, and other information concerning this status review to the Field Supervisor, U.S. Fish and Wildlife Service, Upper Columbia River Basin Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, Washington 99206.

FOR FURTHER INFORMATION CONTACT: Chris Warren at the address listed above, or by telephone at (509) 893–8020, or by facsimile at (509) 891–6748.

SUPPLEMENTARY INFORMATION:

Background

In July 2000, the American Ornithologists' Union (AOU) recognized sage grouse (*Centrocercus urophasianus*) by the common name of greater sage grouse. In addition, the AOU now recognizes sage grouse inhabiting southwestern Colorado and extreme southeastern Utah as a congeneric species (*C. minimus*), referred to as Gunnison sage grouse (AOU 2000). The western subspecies of greater sage grouse (*C. u. phaios*) was first described in 1946 (Aldrich 1946), and was recognized by the AOU in 1957 (AOU 1957). Compared to birds throughout the remainder of the species' range, western sage grouse have reduced white markings and darker grayish-brown feathering, resulting in a more dusky overall appearance. The above nomenclature and recognized ranges for these taxa have been adopted by the United States Fish and Wildlife Service in this notice, and will be used for subsequent work concerning this status review.

Greater sage grouse are the largest North American grouse species. Historically, greater sage grouse were believed to occur in 12 states and 3 Canadian provinces (after Schroeder *et al.* 1999); their range extending from southeastern Alberta and southwestern Saskatchewan, Canada, south to northwestern Colorado, west to eastern California, Oregon, and Washington, and north to southern British Columbia, Canada. Currently, greater sage grouse occur in 11 states and 2 Canadian provinces, having been extirpated from Nebraska and British Columbia (after Braun 1998). The historic distribution of western sage grouse extended from southern British Columbia southward through eastern Washington and Oregon, except in extreme southeastern Oregon near the Idaho/Nevada borders (Aldrich 1963). Currently, western sage grouse occur in southeastern Oregon and central Washington (Johnsgard 1973, Drut 1994, WDFW 1995).

Range wide, the distribution of greater sage grouse has declined in a number of areas, most notably along the periphery of their historic range. In addition, there is general consensus in the literature that there have been considerable declines from historic abundance levels, and much of the overall decline occurred from the late 1800s to the mid 1900s (Hornaday 1916, Crawford and Lutz 1985, Drut 1994, WDFW 1995, Coggins and Crawford 1996, Braun 1998, Schroeder *et al.* 1999, among others). The available information indicates that the current range-wide population estimate for greater sage grouse is between roughly 100,000 and 500,000 individuals. Based on rough historic estimates, greater sage grouse abundance may have declined by over 69 percent from historic levels.

Until the early 1900s, western sage grouse were distributed throughout central and eastern Oregon in sagebrush dominated areas until the early 1900s. By 1920, western sage grouse populations in Oregon had decreased and were considered scarce except for areas in south-central Oregon (Gabrielson and Jewett 1940, Drut 1994). The distribution of western sage grouse in Oregon declined by approximately 50 percent from 1900 to 1940 (Crawford and Lutz 1985), and further declines in distribution and abundance likely continued into the mid-1980s (Crawford and Lutz 1985). Presently, Malheur, Harney, and Lake Counties harbor the bulk of western sage grouse in Oregon (roughly 24,000 to 58,000 birds), with the remaining portion (roughly 3,000 to 8,000 birds) split among Baker, Crook, Deschutes, Grant, Klamath, Union, and Wheeler Counties (after Willis *et al.* 1993).

Historically, western sage grouse in Washington ranged from Oroville in the north, west to the Cascade foothills, east to the Spokane River, and south to the Oregon border (Yocom 1956). Western sage grouse have been extirpated from 7 counties in Washington and currently occupy approximately 10 percent of their historic range in the state; the two remaining subpopulations total roughly 1,000 birds (WSGWG 1998). One subpopulation occurs primarily on private and state owned lands in Douglas County (approximately 650 birds), the other occurs at the Yakima Training Center (YTC), administered by the Army, in Kittitas and Yakima Counties (approximately 350 birds). These two subpopulations are geographically isolated from the Oregon population (WDFW 1995, Livingston 1998) and nearly isolated from one another (WSGWG 1998).

The May 28, 1999, petition addressing the listing of western sage grouse under the Act requested that the subspecies be listed as threatened or endangered in Washington, yet the Service does not base listing decisions on political subdivisions beyond that of international boundaries. However, the Service has developed policy that addresses the recognition of distinct population segments (DPS) of vertebrate species and subspecies for consideration under the Act (61 FR 4722). The DPS policy was developed to address the measures prescribed by the Act and its Congressional guidance. The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require the protective measures of the Act. Under the DPS policy, two elements are used to assess whether a population under consideration for listing may be recognized as a DPS. The two elements are: (1) A population segment's discreteness from the remainder of the taxon; and (2) the population segment's significance to the taxon to which it belongs.

The Service's 90-day finding for the subject petition (65 FR 51578) found that the western sage grouse population in Washington may represent a DPS for the following reasons: (1) It is discrete from other populations of the subspecies; (2) the population represents the only western (or greater) sage grouse occurring within the Columbia Plateau Ecological Reporting Unit (ERU) (after Quigley and Arbelbide 1997), which represents approximately one half of the historic range of western sage grouse; (3) the life history attributes of western sage grouse in Washington may demonstrate persistence of the subspecies (and species) in an ecological setting unusual or unique for the taxon; and (4) the loss of this population segment may result in a significant gap in the range of the taxon. Currently, there is not enough information to determine if the population of western sage grouse in Washington may exhibit a significantly different genetic makeup compared to the remainder of the taxon.

Since the early 1900s, large portions of the shrub steppe ecosystem in Washington have been converted for dryland and irrigated crop production (Daubenmire 1988, WDFW 1995). Dobler (1994) estimated that approximately 60 percent of the original shrub steppe habitat in Washington had been converted for other, primarily agricultural, uses. While at much reduced levels, shrub steppe habitat continues to be converted for crop production. Cassidy (1997) considered major portions of Washington's shrub steppe ecosystem as the least protected biogeographic zones in the state.

Excessive grazing pressure can have significant impacts on the shrub steppe ecosystems found throughout the historic range of greater sage grouse (Fleischner 1994), and these impacts may be exacerbated in portions of the Columbia Plateau that support western sage grouse. In this region, excessive grazing removes herbaceous growth and residual cover of native grasses and forbs, and can increase the canopy cover and density of sagebrush and undesirable invasive species (Daubenmire 1988, WDFW 1995, Livingston 1998). These impacts may be especially critical to the reproductive success of western sage grouse during the spring nesting and brood rearing periods (Crawford 1997, Connelly and Braun 1997, Schroeder *et al.* 1999).

Lands under the Federal Conservation Reserve Program (CRP) have become important to the subpopulation of western sage grouse in north-central Washington (Schroeder, Washington Department of Fish and Wildlife, pers. comm. September 1999). However, CRP contracts extend for only 10 years, and new standards for CRP lands may be implemented that require replanting of significant acreage under existing contracts (USDA 1998). Presently, it is unclear what effects these changes have had, or will have, on the northern subpopulation of western sage grouse in Washington.

Large-scale military training exercises occur at the YTC, and are scheduled at roughly 18 to 24 month intervals (USDD 1989, Livingston 1998). Modeling exercises indicate that sagebrush cover at YTC would decline due to large-scale training scenarios if conducted on a biannual basis (Cadwell *et al.* 1996). The Army conducts aggressive revegetation efforts for sagebrush and native grasses at the YTC (Livingston 1998) and has eliminated season-long grazing on the installation (USDD 1996). However, evaluation of the quality or quantity of naturally recovered areas and the efficacy of revegetation efforts is currently not available.

Natural and human-caused fire is a significant threat to western sage grouse throughout Washington because, at increased frequencies, it can remove sagebrush from the vegetation assemblage (WDFW 1995). Fire may be especially damaging at the YTC where military training activities provide multiple ignition sources, vegetative cover is relatively continuous, and invasive species may provide fine fuels that can carry a fire. Livingston (1998) indicates that a single, large range fire within the identified western sage grouse protection areas could jeopardize the species' persistence at the installation.

The fragmented, isolated nature of the population of western sage grouse that occurs in Washington is a concern for the conservation of the species in the northwestern extension of its historic range. Preliminary viability analyses conducted by the WSGWG (1998) indicates that neither subpopulation is likely viable at current levels over the long-term (approximately 100 years).

The Service published a notice in the **Federal Register** on August 24, 2000, that a range-wide status review of the Washington population of western sage grouse was being conducted (65 FR 51578). The original comment period for this status review closed October 23, 2000. The Service will now accept information concerning this status review through February 16, 2000. The Service will also solicit the opinions of appropriate specialists regarding the data, assumptions, and supportive information presented for this status review, per the Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Upper Columbia River Basin Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this notice is Chris Warren of the Upper Columbia River Basin Fish and Wildlife Office, U.S. Fish and Wildlife Service, 11103 East Montgomery Drive, Spokane, Washington 99206 [Telephone: (509) 893–8020].

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

Dated: January 3, 2001.

Rowan W. Gould

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 01–507 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Re-opening of the Public Comment Period for Status Review of the Yellow-Billed Cuckoo in the Western United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status Review; notice of the re-opening of comment period.

SUMMARY: On February 17, 2000, the U.S. Fish and Wildlife Service (we), announced a 90-day finding on a petition to list the yellow-billed cuckoo (*Coccyzus americanus*) as endangered, pursuant to the Endangered Species Act (Act) of 1973, as amended (65 FR 8104). We found that the petition presented substantial information indicating that the listing of the yellow-billed cuckoo may be warranted. At that time, we initiated a status review for the yellow-billed cuckoo and announced that a 12-month finding would be prepared at the conclusion of the review.

DATES: Comments and materials related to this petition may be submitted on or before February 8, 2001.

ADDRESSES: Data, information, comments, or questions concerning this petition finding and status review should be submitted to the Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California

95825. The petition, finding, and supporting data and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dwight Harvey or Stephanie Brady at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at 916/414–6600.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the involved species. The Act requires that we make this finding within 12 months of the receipt of the petition.

On February 17, 2000, we announced a 90-day finding for a petition to list the yellow-billed cuckoo under the Act (65 FR 8104). In addition, the petition asked that since the yellow-billed cuckoo is endangered in a significant portion of it's range (*i.e.,* the western United States) and that this range represents the range of a valid subspecies, the western yellow-billed cuckoo, they would concur with a decision to list only this subspecies. In that finding, we found that the petition presented substantial information indicating that the listing of the western yellow-billed cuckoo subspecies (*Coccyzus americanus occidentalis*) may be warranted, although the taxonomy of this subspecies is unclear.

At this time, we continue to seek additional data, information or comments on yellow-billed cuckoos in the western U.S. from the public, other concerned government agencies, the scientific community, industry or any other interested persons. We are also interested in information from throughout the potential breeding range in Canada, Mexico and the overwintering range in Central and South America.

Public Comments Solicited

Of particular interest is information regarding:

1. Subspecies taxonomy and geographic variation in the species, in the form of genetic, behavioral, physiological, morphological, and/or ecological data which might be used to evaluate subspecies and the distinctness of population segments;

2. Historic and current distribution in your area, region, or state, indicating breeding or wintering range;

3. Historic and current population estimates and/or trends in your area, region, or state. If known please indicate whether the population is increasing, stable, or decreasing, and the sources of this information;

4. Any ongoing research or monitoring efforts in your area, region, or state;

5. Summarize any threats in your area, and specifically address the following categories:

(a) Present or threatened destruction, modification, or curtailment of habitat;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) Inadequate regulatory mechanisms;

(e) Other natural or manmade factors affecting the species' continued existence;

6. Seasonal habitat requirements and habitat conditions in your area or region or state;

7. Relative abundance of cuckoos on private vs. public lands in your area, region or state;

8. Past, current and planned conservation efforts in your area, region, or state that may be beneficial to the species;

9. Any banding information that has not been sent to the Bird Banding Laboratory in Patuxent, Maryland.

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

Dated: January 3, 2001.

Rowan W. Gould,

Acting Manager, U.S. Fish and Wildlife Service.

[FR Doc. 01–506 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 010201D]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold several public meetings, including a 3-day Council meeting, on January 23, 24, and 25, 2001, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). During this period, the Council's Enforcement, Red Crab and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Committees also will meet independently from and report back to the Council.

DATES: Both the Enforcement and Red Crab Committees will meet on Tuesday, January 23, at 9 a.m. The Council meeting will be held on Tuesday, January 23, 2001, beginning at 1:00 p.m., and on Wednesday and Thursday, January 24 and 25, at 8:30 a.m. The Magnuson-Stevens Act Committee will meet on Wednesday, January 24, at 6 p.m.

ADDRESSES: The meetings will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA, 01923; telephone (978) 777-2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465-0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 23, 2001

Enforcement Committee Meeting

The committee intends to initiate a review of enforcement activities since the implementation of Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP). The information will be used in documents supporting Amendment 13 to the FMP. The committee also will finalize recommendations for Sea Scallop Framework Adjustment 14 and discuss issues related to measuring the cod-end mesh in fishing nets.

Red Crab Committee Meeting

The committee intends to discuss recent events in the red crab fishery and develop recommendations to the Council on issues related to potential overfishing of the red crab resource.

Council Meeting

After introductions, the meeting will begin with a report from the Council's

Research Steering Committee. The committee chair will ask the Council to approve elements of a Request for Proposals (RFP), including research priorities. The RFP will outline requirements under which fishermen and scientists may apply for funds to conduct collaborative groundfish or related research in New England. During the Skate Committee Report to follow, the Council will consider a request for NMFS emergency or interim action to prohibit the possession of barndoor skates on vessels fishing in Federal waters. There also will be a discussion and possible approval of a request to NMFS to eliminate, for management purposes, clearnose and rosette skate from the Northeast skate complex. The Red Crab Committee will report on issues addressed at its earlier committee meeting. These include recent changes in the deep-sea red crab fishery and consideration of a request for emergency or interim action to address overfishing as a result of the recent changes in the fishery. The committee will also forward the results of their discussion concerning the need to develop a Red Crab FMP this year.

Wednesday, January 24, 2001

The Council meeting will begin with a closed session for approximately an hour to discuss personnel and internal administrative matters. The open portion of the meeting will begin with a report from the Groundfish Committee. There will be an update on the development of Amendment 13 to the Northeast Multispecies FMP, including a discussion of the biological objectives for the amendment (in light of Amendment 9 overfishing definitions) and progress on the development of management measures. This also will serve as the initial meeting for Framework 36 to the Northeast Multispecies FMP. Actions under consideration in the framework adjustment include alternatives that would address regulatory discards of Gulf of Maine cod and address combined landings and discards that exceed the 2000 target Total Allowable Catch, a measure to allow tuna purse seine vessels access to the current groundfish closed areas, expansion of the northern shrimp fishery area in the Gulf of Maine, an extension of the timeframe of the Western Gulf of Maine Closed Area and other issues identified by the Groundfish Committee and Council. The Habitat Committee will review the court decision and order on *American Oceans Campaign* v. *Secretary of Commerce Daley* (the Essential Fish Habitat lawsuit) and will discuss Council responsibility to implement corrective action concerning the requirements of the National Environmental Policy Act. The discussion will include a proposed approach to comply with the court order in the Northeast Multispecies Amendment 13 Environmental Impact Statement currently under development. In the final agenda item for the day, the Spiny Dogfish Committee will recommend approval of annual specifications for the 2001-2002 fishing year; measures may include a Total Allowable Catch, quotas, trip limits, and/or any other measures specified in the Spiny Dogfish FMP.

Magnuson-Stevens Act Committee Meeting

Following adjournment of the Council meeting, the Magnuson-Stevens Act Committee will meet briefly to discuss the reauthorization of the Magnuson-Stevens Act and develop an approach to address issues proposed in the legislation.

Thursday, January 25, 2001

The third day of the Council meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. As part of a NMFS Stock Assessment Public Review Workshop, Northeast Fisheries Science Center staff will present an advisory on the stock status of sea scallops, silver hake, American plaice, and Gulf of Maine haddock. During the afternoon session, the Council will consider approval of final action on Framework Adjustment 14 to the Atlantic Sea Scallop FMP and its related Draft Supplemental Environmental Impact Statement. Four management issues will be addressed in the framework: (1) the annual adjustment to the days-at-sea available for fishing in the 2001-2002 and the 2002-2003 fishing years; (2) up to four 2-year area closures to protect small scallops; (3) a controlled fishing program to harvest scallops in the Hudson Canyon and Virginia Beach Areas; and (4) a new possession limit on in-shell scallops for limited access scallop vessels when inshore of the day-at-sea monitoring line south of 42°20' N latitude. The Council meeting will adjourn after addressing any other outstanding business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notification and any issues arising after publication of this notification that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery management plan. If she concurs with the adjustment proposed by the Council, the Regional Administrator has the discretion to publish the action either as proposed or final regulations in the Federal Register. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 3, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–561 Filed 1–8–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 66, No. 6

Tuesday, January 9, 2001

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

Rural Business-Cooperative Service

Inviting Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of two individual grants. One single $500,000 grant from the passenger transportation set aside of the funds appropriated for RBS programs and another single $250,000 grant from the Federally Recognized Native American Tribes set aside of the funds appropriated for RBS under the Rural Business Enterprise Grant (RBEG) Program for Fiscal Year (FY) 2001. Each grant is to be competitively awarded to a qualified national organization. These grants are to provide technical assistance for rural transportation.

DATES: The deadline for receipt of preapplications in the Rural Development State Office is March 2, 2001. Preapplications received at a Rural Development State Office after that date will not be considered for FY 2001 funding.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the preapplication package. A list of Rural Development State Offices follows:

Alabama

USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7705

Arizona

USDA Rural Development State Office, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200

California

USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (303) 236–2801

Delaware-Maryland

USDA Rural Development State Office, P.O. Box 400, 4607 South DuPont Highway, Camden, DE 19934–9998, (302) 697–4300

Florida/Virgin Islands

USDA Rural Development State Office, P.O. Box 147010, 4440 NW, 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

Georgia

USDA Rural Development State Office, Stephens Federal Building 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600

Illinois

USDA Rural Development State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5235

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

Kansas

USDA Rural Development State Office, P.O. Box 4653, 1200 SW., Executive Drive, Topeka, KS 66604, (785) 271–2700

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920

Maine

USDA Rural Development State Office, P.O. Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9106

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5100

Minnesota

USDA Rural Development State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976

Montana

USDA Rural Development State Office, P.O. Box 850, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59717, (406) 585–2580

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 437–5551

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222

New Jersey

USDA Rural Development State Office, Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt. Holly, NJ 08060, (609) 265–3600

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000

North Dakota

USDA Rural Development State Office, P.O. Box 1737, Federal Building, Room 208, 220 East Rosser Avenue, Bismarck, ND 58502–1737, (701) 530–2043

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2500

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000

Oregon

USDA Rural Development State Office 101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299

Puerto Rico

USDA Rural Development State Office, Munoz Rivera, Number 654, IBM Plaza, Suite 601, San Juan, Puerto Rico 00918, (787) 766–5095

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000

Virginia

USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229–5014, (804) 287–1550

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740

West Virginia

USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, Casper, WY 82601, (307) 261–6300,

SUPPLEMENTARY INFORMATION: The passenger transportation portion of the RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)(2)). The RBEG program is administered on behalf of RBS at the state level by the Rural Development State Offices. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program are made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. That subpart also contains the information required to be in the preapplication package. For the $500,000 grant, up to 25 Administrator's points may be added to an application's priority score based on the extent to which the application targets assistance to Empowerment Zones/Enterprise Communities, Champion Communities, or other rural communities that have experienced persistent poverty, out-migration of population, or sudden severe structural changes in the local economy. For the $250,000 grant, at least 75 percent of the benefits of the project must be received by members of Federally Recognized Tribes. Up to 25 Administrative points may be added to an applicant's priority score based on the extent of the service areas to be served, the number of Federally Recognized Native American Tribes and tribal members that are being served, and the documented need for the project. The project that scores the greatest number of points based on the selection criteria and Administrator's points will be selected for each grant. Preapplications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

To be considered ''national,'' a qualified organization is required to provide evidence that it operates in multi-state areas. There is not a requirement to use the grant funds in a multi-state area. Under this notice, grants will be made to qualified private

non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Public bodies are not eligible for passenger transportation RBEG grants.

Refer to section 310B(c)(2) (7 U.S.C. 1932) of the CONACT and 7 CFR part 1942, subpart G for the information collection requirements of the RBEG program.

Fiscal Year 2001 Preapplications Submission

Each preapplication received in a Rural Development State Office will be reviewed to determine if this preapplication is consistent with the eligible purposes contained in 7 U.S.C. 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR part 1942, subpart G, section 1942.305(b)(3), must be addressed in the preapplication. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the preapplication. Copies of 7 CFR part 1942, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice. All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the preapplications are submitted to the Rural Development State Office. Multiple project preapplications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project. For multiple-project preapplications, the average of the individual project scores will be the score for that preapplication.

All eligible preapplications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than April 13, 2001, for final scoring and selection for award.

The National Office will score preapplications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G, and Administrator's points, and will select a grantee subject to the grantee's satisfactory submission of a formal application and related materials in the manner and time frame established by RBS in accordance with 7 CFR part 1942, subpart G. It is anticipated that the grantees will be selected by June 1, 2001. All applicants will be notified by RBS of the Agency decision on the award.

The information collection requirements within this Notice are covered under OMB No. 0570–0022 and 7 CFR part 1942, subpart G.

Dated: December 22, 2000.

Judith A. Canales,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 01–605 Filed 1–8–01; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Arkansas Electric Cooperative Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Arkansas Electric Cooperative Corporation for financing assistance from the RUS to finance the construction of a 153 megawatt (MW) combustion turbine electric generating plant in southwest Arkansas.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The project will consist of a single 153 MW gas-fired, simple-cycle combustion turbine generating unit. Other on-site facilities include a 90-foot exhaust stack, step-up and auxiliary transformers, motor control centers, bus ductwork, an electric substation, and control, maintenance, and operations buildings. The project also includes 4 miles of 115 kV transmission line that will tie the station to the existing transmission grid. The transmission line will be built to 161 kV specifications in anticipation that additional transmission line capacity may be needed in the future.

The facility is designed to accommodate conversion of the unit to combined cycle operation, but will be initially operated as a simple cycle unit. The site has been sized to accommodate additional simple or combined cycle units that may be added in the future.

Copies of the FONSI are available from RUS at the address provided herein or form Curtis Warner, Arkansas Electric Cooperative Corporation, P.O. Box 194208, Little Rock, Arkansas 72219–4208. Telephone (501) 570–2462.

Dated: January 3, 2001.

Blaine D. Stockton,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 01–556 Filed 1–8–01; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and rescission in part of antidumping duty administrative review of certain cased pencils from the People's Republic of China.

SUMMARY: The Department of Commerce (''the Department'') has preliminarily determined that sales by the respondent in this review covering the period December 1, 1998 through November 30, 1999, have been made below normal value (''NV''). In addition, we are preliminarily rescinding this review with respect to Three Star Stationery Industry Co., Ltd. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (''Customs'') to assess antidumping duties on all appropriate entries. Furthermore, we have reached a final determination to rescind the review with respect to Laizhou City Guangming Pencil-Making Lead Co., Ltd.

The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 9, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4474, and 482–5193, respectively.

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 amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1999).

Period of Review

The period of review (''POR'') is December 1, 1998 through November 30, 1999.

Background

On December 28, 1994, the Department published in the **Federal Register** (59 FR 66909) the antidumping duty order on certain cased pencils (''pencils''), from the People's Republic of China (''PRC''). On December 14, 1999, the Department published in the **Federal Register** (64 FR 69693) a notice of opportunity to request an administrative review of this order. On December 20, 1999, in accordance with 19 CFR 351.213(b), Simmons Rennolds Associates, L.L.C., Incorporated and Laizhou City Guangming Pencil-Making Lead Co., Ltd., (''Laizhou''), a U.S. importer and a PRC producer, respectively, jointly requested that the Department conduct an administrative review of the order with respect to Laizhou. On January 3, 2000, in accordance with 19 CFR 351.213(b), the Writing Instrument Manufacturers Association, Inc., Pencil Section; Sanford Corp.; Berol Corp.; General Pencil Co., Inc; J.R. Moon Pencil Co.; Tennessee Pencil Co.; and Musgrave Pencil Co., collectively, the petitioners, requested that we conduct an administrative review of exports of the subject merchandise made by 33 named producers/exporters.

On January 26, 2000, the Department published a notice in the **Federal Register** initiating an administrative review of all parties named in the above requests (65 FR 4228).

On February 23, 2000, we issued antidumping duty questionnaires to all parties named in the notice of initiation for whom we were able to obtain addresses.[1] In addition, on March 1, 2000, we issued a questionnaire to the PRC embassy in order to collect information relevant to the calculation of the PRC-wide rate. Only China First Pencil Co., Ltd. (''CFP'') Laizhou, and Three Star Stationary Co., Ltd. (Three Star) responded to our February 23, 2000, questionnaire. In its March 16, 2000, response to the Department's questionnaire, Three Star stated that it did not export pencils to the United States during the POR.

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results of a review within the statutory time limit of 245 days. On September 5, 2000, in accordance with the Act, the Department extended the time limit for the preliminary results of this review until December 30, 2000 (*see Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 53701).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, during September, 2000, the Department conducted verifications of CFP and Three Star Stationary. During the verifications, we followed standard procedures in order to test information submitted by the respondents. These procedures included on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed in the report: Verification of the Sales Responses of China First Pencil Company, Ltd., and Three Star Stationary in the 1998–1999 Administrative Review of Certain Cased Pencils from the People's Republic of China (''Verification Report'') dated January 2, 2001, the public version of which is on file in the Department's Central Records Unit, Room B099, of the Main Commerce building (''CRU-Public File'').

Scope of Reviews

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this investigation are classified under subheading 9609.10.00 of the Harmonized Tariff Schedules of the United States (''HTSUS''). Specifically excluded from the scope of this investigation are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, and chalks.

Although the HTSUS subheading is provided for convenience and customs purposes our written description of the scope of the order is dispositive.

Preliminary Partial Rescission

We are preliminarily rescinding this review with respect to Three Star because the Department verified that Three Star did not export pencils to the United States during the POR.

Final Partial Rescission

On June 8, 2000, we issued a letter to Laizhou stating our intention to rescind the review with respect to this company because it had not exported subject merchandise to the United States during the POR.[2] We also invited all interested parties to comment on our stated intent to rescind the review with respect to Laizhou. On June 20, 2000, the petitioners submitted comments supporting the rescission while on July 14, 2000, Laizhou submitted comments objecting to the rescission. We have considered petitioners' and Laizhou's comments and have reached a final determination to rescind the review with respect to Laizhou. For a discussion of this issue, *see* the memorandum: Final Partial Rescission of Administrative Review, dated January 2, 2001 (CRU-Public File).

Separate Rates Determination

To establish whether a company operating in a non-market economy (''NME'') is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test we established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of*

[1] On March 6, 2000, we sent a letter to the PRC Minister of Foreign Trade and Economic Cooperation (MOFTEC) requesting that it deliver questionnaires for seven parties for whom we could not find addresses. On April 24, 2000, we sent a letter to MOFTEC requesting that it deliver questionnaires to 6 parties for whom questionnaires were returned to us as undeliverable due to incorrect addresses or contract information. We requested that MOFTEC contact us by May 30, 2000 if it should not deliver any of these questionnaires and advised MOFTEC that if we did not receive its responses within the time provided, we would be required to base our findings with respect to these firms on facts available which could be adverse to the firms' interests. We did not receive any response from MOFTEC and we did not receive questionnaire responsesfrom these firms within the time limits.

[2] During the POR, Kaiyuan Group Corproration (''Kaiyuan'') exported pencils from the PRC to the United States that were produced by Laizhou; however, a review of Kaiyuan's U.S. sales of subject merchandies was not requested.

Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under this test, NME companies are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587 and *Sparklers* 56 FR at 20589.

In the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625 (November 8, 1994), the Department granted a separate rate to CFP. While CFP received a separate rate in a previous segment of this proceeding, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12441 (March 13, 1998). In the instant review, CFP submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in this review by CFP includes government laws and regulations on corporate ownership, business licences, and narrative information regarding the company's operations and selection of management. This evidence is consistent with the Department's findings in a previous review and supports a finding that control of companies in the PRC has been decentralized and that the respondent company's operations are, in fact, autonomous from the PRC government. Therefore, we preliminarily determine that CFP continues to be entitled to a separate rate.

Facts Available

China First

The record in the instant review establishes that CFP failed to report a significant quantity of U.S. sales and thus significantly impeded the review. As a result, the Department has determined to apply a total facts available rate to CFP in accordance with sections 776(a)(2)(A) and (C) of the Act. For further discussion, *see* the memorandum: Application of Total Facts Available for the Preliminary Results: China First Pencil Company, Ltd., dated January 2, 2001 (''Facts Available Memorandum''); *see also* the Verification Report.

Furthermore, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability. Although CFP is entitled to a separate rate, CFP provided incomplete information, failed to provide information it had readily available, and misled the Department about the availability of sales/shipping documents. See verification report at page 17. As a result, the accuracy and completeness of CFP's submitted information is called into question. Furthermore, we have concluded that CFP failed to act to the best of its ability to cooperate with the Department. Thus, for the preliminarily results, we have made an inference that is adverse to CFP in selecting from among the facts available.

The statute provides no clear obligation or preference for relying upon a particular source in choosing information to use as adverse facts available. Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b) of the Act, as adverse facts available we have applied a margin based on the highest margin used either in prior reviews or in the less-than-fair-value (''LTFV'') investigation. *See e.g., Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32820, 32822 (June 16, 1998) (Viscose Rayon Fiber). Therefore, as facts available we are applying the ''recalculated'' petition rate, 53.65 percent ad valorem, which is the highest margin used in this or any prior segment of this proceeding. *See Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision,* 64 FR 25275 (May 11, 1999); and Facts Available Memorandum for further discussion.

Tianjin Stationery & Sporting Goods Imp. & Exp. Corp.

On June 7, 2000, in letters to all non-responding parties to whom we issued antidumping duty questionnaires, we noted that the questionnaire deadline had passed without the Department having received either the party's response or a request to extend the deadline for responding. Also, we advised these parties that, pursuant to 19 CFR 351.302(d)(i), we would consider any information submitted after the deadline as untimely filed and would return it to the submitting party. Finally, we advised these parties that since we had not received their responses, we were required by section 776(a)(2)(B) of the Act to rely on facts available in our determination.

Tianjin Stationery & Sporting Goods Imp. & Exp. Corp. (''Tianjin'') submitted a letter dated June 20, 2000 stating that although it had received our letter of June 7, 2000, it had not received our antidumping duty questionnaire. Tianjin asked that we re-send the questionnaire by mail, electronic mail, or facsimile.

However, the Department's records indicate that both the letter of June 7, 2000, which Tianjin received, and the questionnaire were sent to the same address in the PRC. Moreover, the commercial courier which the Department used to transmit the questionnaire confirmed that the questionnaire was delivered to Tianjin and signed for on February 29, 2000. Thus, we find that Tianjin received the Department's questionnaire but failed to respond. Tianjin's failure to respond to the questionnaire indicates that the company did not act to the best of its ability to comply with the Department's requests. Thus, pursuant to section 776(b) of the Act, we would normally rely on adverse facts available to determine the margin for Tianjin. However, because Tianjin did not submit any information in the instant review, we also preliminarily determine that Tianjin is not entitled to a separate rate and is therefore subject to the PRC country-wide rate described in the following section.

Country-Wide Rate

The Department has determined that the use of facts available is appropriate for purposes of establishing the country-wide rate for the preliminary results of this review, pursuant to section 776(a)(2)(B) of the Act. The Act provides that the administering authority shall use facts otherwise available when an interested party ''fails to provide such information by the deadlines for the submission of the information or in the form and manner requested.'' On February 23, 2000, the Department sent a questionnaire to the PRC Embassy in order to collect information relevant to the calculation of the PRC-wide rate. The PRC Embassy never responded to our questionnaire. With respect to Tianjin, evidence on the record indicates that although Tianjin received the Department's questionnaire, it never responded, and thus, failed to act to the best of its ability to respond to this request for information. Further, as noted above, we requested that MOFTEC deliver the questionnaire to 13 firms for which we could not obtain valid addresses. MOFTEC did not notify us as to whether it was able to do so within the times limits and these firms did not respond to our questionnaire. Sixteen additional firms for which we have confirmation that they received our questionnaires, did not respond.

Section 776(b) of the Act authorizes the Department to use adverse facts available whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because the PRC embassy did not respond to our questionnaire or advise us to send it to any other party, because Tianjin failed to respond to the Department's questionnaire in any way, because MOFTEC did not respond on behalf of the thirteen firms for which we could not obtain addresses, and because 16 other firms to whom we sent questionnaires did not respond, we preliminarily determine that these entities did not act to the best of their abilities to comply with our requests. Therefore, pursuant to section 776(b) of the Act, we are relying on adverse facts available to determine the margins for the PRC-wide entity. Specifically, for adverse facts available for the PRC-wide entity, we have applied the highest rate from any prior segment of this proceeding, 53.65 percent, the ''recalculated'' petition rate from the LTFV investigation.

Corroboration

Section 776(c) of the Act provides that when the Department resorts to facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (H.R. Doc. 103–316 (1994)) (''SAA'') states that ''corroborate'' means to determine that the information used has probative value. *See* SAA at *870*. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

In this review, we are using, as adverse facts available, the highest margin from this or any prior segment of the proceeding. Specifically, we are using 53.65 percent, the ''recalculated'' petition rate, which was ''recalculated'' for the final determination in the investigation. *See Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Order in Accordance With Final Court Decision,* 64 FR 25275 (May 11, 1999).

The rate we are using for adverse facts available constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that ''the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.'' In addition, the SAA, at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

To corroborate secondary information, to the extent practicable the Department will examine the reliability and relevance of the information to be used. The ''recalculated'' petition rate was corroborated by the Department in a prior segment of this proceeding and nothing on the record of the instant review calls into question the reliability of the ''recalculated'' rate. *See Certain Cased Pencils From the People's Republic of China; Final Results of Antidumping Administrative Review,* 63 FR 779 (January 7, 1998). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevancy of the selected margin. Furthermore, the rate has not been judicially invalidated. Thus it is appropriate to use the ''recalculated'' petition rate as adverse facts available in the instant review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1998 through November 30, 1999:

Manufacturer/exporter	Margin (percent)
China First Pencil Co Ltd	53.65
PRC-wide Rate	53.65

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. The Department will publish a notice of the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of these preliminary results.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Duty Assessment Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In the instant review, we based the importer-specific assessment rates on the facts available margin percentages listed above. These importer-specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis,* (*i.e.,* less than 0.5 percent). The Department will issue appraisement instructions directly to Customs.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above, will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed PRC or non-PRC exporter with a separate rate not covered in this review, the cash deposit rate will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of this review; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 2, 2001.

Troy H. Cribb,

Assistant Secretary for Import Administration.

[FR Doc. 01–604 Filed 1–8–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Certain Polyester Staple Fiber From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on the submissions of the petitioners, E.I. Dupont de Nemours and Co., Arteva Specialities S.a.r.l, d/b/a KoSa, Wellman Inc. and Intercontinental Polymers, Inc., and Samyang Corporation and the Huvis Corporation, Korean polyester staple fiber producers, we are initiating a changed circumstances review to examine the recent formation of the Huvis Corporation through a joint venture merger of Samyang Corporation and SK Chemicals Co., Ltd. Pursuant to this review, the Department of Commerce preliminarily determines that the Huvis Corporation is not the successor-in-interest to either of the pre-merger companies, and is covered by the antidumping duty order on certain polyester staple fiber from Korea. The Department of Commerce is directing that liquidation of the Huvis Corporation's entries of subject merchandise be suspended retroactive to November 1, 2000, the date of the joint venture merger of Samyang Corporation and SK Chemicals Co. Ltd.

EFFECTIVE DATE: January 9, 2001.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, at (202) 482–3464 or (202) 482–1778 respectively; AD/CVD Enforcement Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

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 amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On May 25, 2000, the Department of Commerce (the Department) issued an antidumping duty order on certain polyester staple fiber (PSF) from Republic of Korea. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Polyester Staple Fiber from Republic of Korea,* 65 FR 33807 (May 25, 2000). The order excluded merchandise produced by Samyang Corporation (Samyang) which had been found to be dumping at a *de minimis* level in the less-than-fair-value (LTFV) investigation. SK Chemicals Co., Ltd. (SK Chemicals) was not examined in the LTFV investigation and its entries of subject merchandise are currently being suspended at the ''all others'' cash deposit rate, 11.35 percent.

On September 25 and November 1, 2000, E.I. Dupont de Nemours and Co., Arteva Specialities S.a.r.l, d/b/a KoSa, Wellman Inc. and Intercontinental Polymers, Inc., (the petitioners), requested that the Department forward new antidumping duty deposit instructions to Customs informing that agency that Samyang and SK Chemicals no longer produce subject merchandise and directing that entries of subject merchandise produced or exported by the Huvis Corporation (Huvis) be subject to the ''all others'' rate. In addition, the petitioners argued that the Department may not conduct a changed circumstances review, claiming that Huvis is a new company and not a ''successor'' to either SK Chemicals or Samyang, and that ''good cause'' does not exist to conduct a changed circumstances review.

On November 20, 2000, Samyang and Huvis informed the Department that Samyang and SK Chemicals established Huvis as a 50–50 joint venture, effective November 1, 2000, and requested that the Department conduct a changed circumstances review. Samyang and Huvis argued that Huvis is the successor-in-interest to Samyang and, therefore, entitled to exclusion from the antidumping order. In the alternative, they asked that the Department find Huvis a joint successor to Samyang and SK Chemicals and to calculate a weighted-average cash deposit rate for Huvis.

Scope of the Review

The product covered by this order is certain polyester staple fiber. Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from these orders. Also specifically excluded from these orders are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from these orders. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of this order is dispositive.

Initiation of Changed Circumstances Antidumping Review

It is undisputed that Samyang and SK Chemicals have merged their operations for the production of the subject merchandise. Accordingly, pursuant to section 351.216(c) of the Department's regulations, we have determined that good cause exists to initiate this changed circumstances review for purposes of determining whether the merged entity, Huvis, is the successor-in-interest to either of the previous entities, neither, or both. Thus, in accordance with section 751(b)(1) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstances review to determine whether Huvis is the successor-in-interest to Samyang or SK Chemicals, and, based on that determination, whether PSF produced by the entity known as Huvis, is covered by the antidumping duty order on PSF from Korea.

Preliminary Results of Changed Circumstances Antidumping Review

Section 351.221(c)(3)(ii) of the Department's regulations provides that the preliminary results of a changed circumstances review may be issued concurrently with the initiation of the review if the Department determines that expedited action is warranted. In this instance, because Samyang is excluded from the order, an expedited action is warranted to determine whether merchandise produced by the joint venture company Huvis should be included in the order. As explained below, the Department preliminarily finds that Huvis, formed by a 50–50 joint venture of Samyang and SK Chemicals, is not a successor-in-interest to either Samyang or SK Chemicals, or to Samyang and SK Chemicals jointly. As such, the Department is directing the suspension of liquidation of Huvis' entries of the subject merchandise at the ''all others'' rate.

In determining successor-in-interest questions in past cases, the Department typically has examined several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992). Such determinations are made based on consideration of the totality of the circumstances. If the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping and countervailing duty treatment as its predecessor.

In this case, the evidence on the record indicates that Huvis is substantially different from the pre-merger Samyang and SK Chemicals. While Huvis claims that there have been no significant changes in the operations of the production facilities and there has not been a significant crossover of personnel at the production facilities since the merger, the overall Huvis management and organizational structure reflects the new, 50–50, equal nature of the joint venture between Samyang and SK Chemicals. The president of Huvis is a former employee of SK Chemicals, while a former Samyang official is Huvis' vice-president. The heads of Huvis' eight managerial departments are equally divided among SK Chemicals and Samyang personnel. Concerning Huvis' statements that the Chunju factory continues to produce merchandise under the Samyang brand name while the Ulsan factory continues to produce merchandise under the SK Chemicals brand name, the Department does not conduct its dumping analyses with respect to brands, but rather on a company-specific basis.

With respect to supplier relationships and customer bases, Huvis claims that the production operations of the pre-merger entities have not been integrated and that each of the production facilities has maintained its supplier relationships and customer bases. Despite Huvis' claim, however, Samyang and SK Chemical's PSF production facilities are now integrated by virtue of their operations as part of the Huvis Corporation. While the post-merger operations of the PSF production facilities may resemble the pre-merger Samyang and SK Chemical factories respectively, the management of each of the production facilities is now answerable to the management of Huvis.

The evidence on the record thus far indicates that Samyang and SK Chemicals entered into a joint venture as equal partners to form a new company, Huvis. By its nature, this joint venture is sufficiently distinct from each of the pre-merger entities such that it is not a successor-in-interest to either Samyang or SK Chemicals. Concerning Huvis' assertion that the Department must determine whether Huvis is a successor-in-interest to Samyang and SK Chemicals jointly, even if it were possible to conclude that an entity could be a successor to two entities jointly, given the recent occurrence of the merger, there is insufficient evidence concerning the post-merger operations of Huvis to make such a determination. Therefore, the Department preliminarily finds that the entity currently doing business as Huvis is covered by the antidumping order on polyester staple fiber from the Republic of Korea. We will request additional information from Huvis in the context of this changed circumstances review before making a final determination.

Accordingly, the Department will instruct the Customs Service to suspend liquidation of all entries of PSF from the Republic of Korea produced and exported by Huvis that are entered, or withdrawn from warehouse, for consumption, effective retroactive to November 1, 2000, the effective date of the joint venture merger between Samyang and SK Chemicals.

In determining the appropriate cash deposit rate to assign to Huvis for this purpose, based on our preliminary finding that Huvis is not a successor-in-interest to the pre-merger entities, we

will instruct the Customs Service to require a cash deposit based on the ''all others'' rate from the LTFV investigation, 11.35 percent. This requirement for a cash deposit of estimated antidumping duties on imports of subject merchandise produced by Huvis will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

Public Comment

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs or comments, limited to issues raised in the briefs or comments, may be filed no later than five days after the deadline for case briefs. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

This notice is in accordance with section 751(b) of the Act.

Dated: January 3, 2001.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 01–603 Filed 1–8–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 9, 2001.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0408.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 2000).

Background

On July 31, 2000, the Department published a notice of initiation of the administrative review of the antidumping duty order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan, covering the period June 1, 1999 through May 31, 2000 (65 FR 46687). The preliminary results are currently due no later than March 3, 2001.

Extension of Time Limit for Preliminary Results

Because of the complex issues enumerated in the Memorandum from Edward C. Yang to Joseph A. Spetrini, *Extension of Time Limit for the Preliminary Results of Administrative Review of Stainless Steel Butt-Weld Pipe Fittings from Taiwan*, dated January 2, 2001 and on file in the Central Records Unit (CRU) of the Main Commerce Building, Room B–099, we find that it is not practicable to complete this review by the scheduled deadline. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the preliminary results of review by 90 days (*i.e.*, until June 1, 2001).

Dated: January 2, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01–602 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 001027302–0319–02]

RIN 0648–ZA–98

Sea Grant Technology Program: Request for Proposals for FY 2001

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) is entertaining preliminary proposals and subsequently full proposals for a technology transfer and development program to fulfill its broad responsibilities in fostering economic competitiveness through the transfer of technology pertaining to the development and utilization of ocean, coastal, and Great Lakes resources. In FY 2001, Sea Grant expects to provide about $950,000 to support projects that can accelerate the transfer of academic science and technology to the market. It is desirable that proposals, which must be submitted through state Sea Grant Programs, involve industrial partners. Matching funds equal to a minimum of 50% of the federal request must be provided. Successful projects will be selected through national competition.

DATES: Preliminary proposals must be submitted before 5 pm (local time) on February 15, 2001 to a state Sea Grant College Program. Preliminary proposals from non Sea Grant states, if submitted directly to the National Sea Grant Office, must be received by 5 pm (local time) on February 15, 2001. After evaluation at the National Sea Grant Office, some proposers will be encouraged to prepare full proposals, which must be submitted before 5 pm (local time) on April 24, 2001 to a state Sea Grant College Program or to the National Sea Grant Office. (See **ADDRESSES** for where to submit preliminary and full proposals.)

ADDRESSES: Preliminary proposals and full proposals originating in Sea Grant states must be submitted through the state Sea Grant Program. Preliminary proposals and full proposals originating elsewhere may be submitted either through the nearest Sea Grant Program or directly to the Program Manager at the National Sea Grant Office. The addresses of the Sea Grant College Program directors may be found on Sea Grant's home page (http://www.mdsg.umd.edu/NSGO/index.html) or may also be obtained by contacting the Program Manager at he National Sea Grant Office (see below).

FOR FURTHER INFORMATION CONTACT: Dr. Vijay G. Panchang, Program Manager, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2435 ext. 142; e-mail: Vijay.Panchang@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Progam Authority

Authority: 33 U.S.C. 1121–1131.

Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support.

II. Program Description

Background

The ocean environment has traditionally provided an abundance of economic opportunities over a wide spectrum of activities. As a result of growing population pressures, the demands to maintain a sustainable and healthy environment, and ongoing scientific advancements, the economic potential afforded by the marine environment may be expected to increase. On the other hand, globalization has put unprecedented demands on US industry for innovation and the development of new technologies. Economic competitiveness can be fostered by creating opportunities for collaboration between industrial and academic scientists and engineers, as well as by supporting post-fundamental work to accelerate the conversion of academic research into products with commercial value.

The ''National Sea Grant College Program Reauthorization Act of 1997'' (33 U.S.C. 1121–1131) calls upon the National Sea Grant College Program (Sea Grant) to foster economic competitiveness, invest in technology transfer, and create partnerships between the Federal Government and universities, private industry, and other agencies in the development and utilization of marine resources. To meet these objectives, Sea Grant's technology program is meant to serve as a catalyst for scientific entrepreneurship and technology transfer and thereby enhance commerce. With at least one-third of the total cost provided as required matching funds by the grantee, Sea Grants expects to provide federal support of approximately $950,000 to support new projects in 2001. Projects selected for funding will be limited to 18 months duration and $150,000 of federal contributions.

Program Goals

To conduct focused projects that can lead to the development of marine and Great Lakes related technological innovations and their acceptance in the marketplace (both in the US and abroad); to increase interactions between the nation's academic scientists and engineers and their industrial counterparts; to stimulate Sea Grant's research and development activities in the physical sciences and engineering; to accelerate the transfer of research-based marine science from universities to new technologies in industry; to provide a mechanism for industry to influence Sea Grant research priorities and solve problems of importance to industry; and to forge long-term relationships between Sea Grant colleges and industrial firms.

Funding Priorities

The Sea Grant technology program provides support for applied research and development projects that ultimately facilitate the transfer of new products and processes that pertain to the development of marine technologies, including cost reductions for processes and product safety. In a true partnership that benefits national or regional economies, industrial cooperation in academic research and development efforts could be expected and such cooperation should be sought. University faculty are the major source for identifying potential industrial collaborators and suitable research topics. However, other sources can be used to identify potential industrial partners or user groups, such as the Sea Grant Marine Extension Program, university industrial relations offices, and the Sea Grant Review Panel. Sea Grant directors are encouraged to use a variety of sources in building successful partnerships with industry or other user groups.

Several types of projects will be considered under this announcement. These include, for example, the following:

(1) Additional developmental work that can accelerate the transition of academic research to maketplace acceptance or practice. For example, pilot-scale testing of technologies developed in academia may be necessary to establish economic feasibility. A private sector partner may or may not be identified. (If the work has imminent commercial implications and an industrial partner is involved, the partner is encouraged to provide matching funds.)

(2) A project which does not lead to a commercializable product per se, but is of mutual benefit to industry and academia. For example, if an industry sector anticipates future trends either due to market forces or government regulations, it may wish to prepare for them by developing technologies with help from academia. If there is actual transfer of technologies to industry, then participation by an industrial partner may be appropriate.

(3) Technology transfer or demonstration projects and workshops/forums given by academic researchers and mainly targeted to industry, involving registration or other fees paid by industry which can constitute industrial match.

(4) Technology transfer to user groups in government or other agencies that enhances cost-effectiveness of operations.

(Proposals that will be considered under this announcement are not limited to the above types of projects, which are given by way of example only.)

This announcement is intended to stimulate Sea Grant developments in the physical sciences and engineering. (See the Long Range Plan on Sea Grant's home page or that of the nearest Sea Grant College Program). Examples of possible project areas include:

1. Improved ocean observation technology and data management systems pertaining to a ''digital ocean'', including predictive models of coastal/shoreline/basin ocean/lake circulation and sensors for currents/tides, marine contamination and water quality, storms/winds/waves, and other natural chemical/physical properties.

2. Marine weather prediction techniques for users in coastal regions.

3. Determining the extent and implications of shoreline erosion and developing new solutions (including social science approaches).

4. Sea level issues such as rise/fall, hazard analysis, etc.

5. Harbor/channel problems such as management for commercial, public, and private/recreational uses as well as engineering design and operations (*e.g.* improved techniques for dredging and spoil analysis/distribution, ''intelligent'' waterways and enhanced navigability, etc).

6. Improved wastewater treatment technologies to reduce coastal contamination.

7. Vessel design.

8. Life raft/lifesaving/rescue communications devices.

9. Material science in relation to the marine environment for structures, vessels, antifouling products, etc.

10. Programmable online robotic submersibles for marine observations.

11. Improvements in land use practice, watershed management, smart growth, risk analysis, etc.

The above list is not intended to be restrictive and projects covering other topics in the physical sciences and engineering are welcome. A match equal

to at least one-half of the federal contribution is required for all proposals.

III. Eligibility

Proposals may be submitted by individuals, public or private corporations, partnerships, or other associations or entities (including institutions of higher education, institutes, or non-Federal laboratories), or any State, political subdivision of a State, or agency or officer thereof.

IV Evaluation Criteria

The evaluation criteria for proposals submitted for support under the Sea Grant Technology Program are:

A. Importance of the problem and the benefits expected to the nation due to the advancement of technology (30%).

B. Appropriateness of methodologies to be used (30%).

C. Potential for technology transfer to user groups such as industry and/or for enhanced economic value. Participation (especially matching contributions) by an industrial partner or other user groups will be viewed favorably (30%).

D. Qualifications of project participants (10%).

V. Selection Procedures

Preliminary proposals will be reviewed at the National Sea Grants Office (NSGO) by a panel composed of individuals from the federal government with expertise in industry/academic interactions and/or academia and industry.

The panel will be asked to assess each preliminary proposal based on the importance of the technology to the nation, the potential for technology transfer to user groups and/or enhanced economic value, and the qualifications of project participants from the viewpoint of the project. The panel will make individual recommendations to the Director of the NSGO regarding which preliminary proposals may be suitable for further consideration. On the basis of the panel's recommendations, the Director of the NSGO will advise proposers whether or not the submission of full proposals is encouraged. Invitation to submit a full proposal does not constitute an indication that the proposal will be funded. Interested parties who are not invited to submit full proposals will not be precluded from submitting full proposals if they have submitted a preliminary proposal in accordance with the procedures described below.

Individual state Sea Grant Programs receiving proposals will conduct the mail peer review of the proposed projects in accordance with the Evaluation Criteria listed above. Complete proposals and copies of the mail reviews will then be sent by the state Sea Grant programs to the National Sea Grant Office. The National Sea Grant Office will conduct mail reviews for proposals submitted directly to it by institutions not in Sea Grant states. The proposals will be ranked in accordance with the assigned weights of the above evaluation criteria by an independent peer review panel consisting of government, academic, and industry experts. These panel members will provide individual evaluations on each proposal; thus there will be no consensus advice.

Their recommendations and evaluations will be considered by the National Sea Grant Office in the final selection. Only those proposals awarded a minimum score of 50% by the panel will be eligible for funding. For those proposals, the National Sea Grant Office will: (a) Ascertain which proposals best meet the program goals (stated in Section II), and do not substantially duplicate other projects that are currently funded or are approved for funding by NOAA and other federal agencies, hence, awards may not necessarily be made to the highest-scored proposals; (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal.

Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current NOAA grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

VI. Instructions for Application

Timetable

February 15, 2001, 5 pm (local time)—Preliminary proposals due at state Sea Grant Program, or at NSGO if application is being submitted by a non Sea Grant College Program.

February 20, 2001, 5 pm (local time)—Preliminary proposals received at state Sea Grant Programs due at NSGO.

April 24, 2001, 5 pm (local time)—Full proposals due at state Sea Grant Program, or at NSGO if application is being submitted by a non Sea Grant College Program.

May 1, 2001, 5 pm (local time)—Full proposals received at state Sea Grant Programs due at NSGO.

October 1, 2001 (approximate)—Funds awarded to selected recipients; projects begin.

General Guidelines

Interested parties must submit applications (preliminary proposals, and if invited, a full proposals) as follows. Applications originating in one of the 29 Sea Grant states must be submitted to the state's Sea Grant College Program, who will submit the final grant application to the National Sea Grant Office. Applications originating in a state with no Sea Grant College Program may be submitted to the nearest state Sea Grant College Program will then submit the final grant application to the National Sea Grant Office, or the application may be submitted directly to the National Sea Grant Office. Applications may be made for a grant to support up to two-thirds of the total budget. The project can be for a maximum of 18 months duration. No more than $150,000 of federal funds may be requested for the project. Allocation of matching funds, equal to at least half the federal request, must be specified in the budget.

What to Submit

Preliminary Proposal Guidelines

To prevent the expenditures of effort that may not be successful, proposers must first submit preliminary proposals. Preliminary proposals must be single- or double-spaced, typewritten in at least at 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½″ x 11″ paper. The following information should be included:

(1) Signed Title Page: The title page should be signed by the Principal Investigator and should clearly identify the program area being addressed by starting the project title with ''Sea Grant Technology Program.'' Principal Investigators and collaborators should be identified by affiliation and contact information. The total amount of Federal funds and matching funds being requested should be listed, as well as the source fo the matching funds. Preliminary proposals must include matching funds equivalent to at least 50% of the Federal funds requested.

(2) A concise (2-page limit) description of the project that addresses the following questions: What technology will be developed? How is it important to the nation? What fundamental work has been done that allows advancement of this technology to a more applied level? What are the anticipated economic benefits? Proposers should consult the Evaluation

Criteria for additional guidance in preparing the preliminary proposals.

(3) Resumes (1-page limit) of the Principal Investigators.

(4) Proposers are encouraged (but not required) to include a separate page suggesting reviewers that the proposers believe are especially well-qualified to review the proposal. Proposers may also designate persons they would prefer not review the proposal, indicating why. These suggestions will be considered during the review process.

Three copies of the preliminary proposals must be submitted to the nearest state Sea Grant Program Director or to the NSGO Program Manger (as explained in ''General Guidelines'') before 5 pm (local time) on February 15, 2001. Preliminary proposals received at the state Sea Grant Program offices must be forwarded by the Sea Grant Programs, along with a cover letter, to Dr. Vijay Panchang, Program Manger, at the address below so as to reach the National Sea Grant Office (NSGO) on or before 5 pm on February 20, 2001. No institutional signatures or federal government forms are needed while submitting preliminary proposals.

Full Proposal Guidelines

All pages should be single- or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm x 297 mm) or 8½″ x 11″ paper. Each full proposal should include the items listed below. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices are permitted.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title with ''Sea Grant Technology Program.'' The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds and matching funds being requested should be listed.

(2) Project Summary: This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describe the research being proposed and convey all essential elements of the research. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of October 1, 2001. 5. Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) Project Description (15-page limit):

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) Previous fundamental research and a description of what additional work is needed to enhance the economic value of this fundamental work; (ii) contributions that the study will make to the particular discipline or subject area; and (iii) significance of the proposed technology to the region and nation.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) Experimental design and statistical analysis to be used; (iii) Plan of work, detailed methodology, collaboration with industry or other user groups (if appropriate), and a timetable for project activities; and (iv) Role of project personnel.

(c) Output/Anticipated Economic Benefits: This may be measured, for example, by patents or licenses; commercializable new products (*e.g.* products used in or obtained from marine engineering operations, computer models for simulation of marine processes, *etc.*); process improvements (*e.g.* harbor design or dredging procedures, biochemical engineering, *etc.*); corporate investments in academic research efforts; private sector job opportunities for students involved in the project.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) References and Literature Citations: Should be included but will not be counted in the 15 page project description limit.

(4) Budget and Budget Justification: There should be one cumulative budget for the entire project period. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated; failure to provide adequate matching funds will result in the proposal being rejected without review. The budget should include a separate budget justification page that itemizes all budget items in sufficient detail to enable reviewers to evaluate the appropriateness of the funding requested. Please pay special attention to any travel, supply or equipment budgets and provide details. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) The line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support: Applicants must provide information on all current and pending Federal support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. The proposed project and all other projects or activities using Federal assistance and requiring a portion of time of the principal investigator or other senior personnel should be included. The relationship between the proposed project and these other projects should be described, and the number of person-months per year to be devoted to the projects must be stated.

(6) Vitae (2 pages maximum per investigator).

(7) Letter of commitment from any industrial partner, if appropriate.

(8) A brief (one-page) description of the collaborating industrial firm, if appropriate.

(9) Standard Application Forms: Applicants may obtain all required application forms through the World wide Web at http://www.mdsg.umd.edu/NSGO/research/rfp/index.html, from the state Sea Grant Programs or from Dr. Vijay Panchang at the National Sea Grant Office (phone: 301–713–2435 x142 or e-mail: vijay.panchang@noaa.gov). The following forms must be included:

(a) Standard Forms 424, Applications for Federal Assistance, 424A, Budget

Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Applications should clearly identify the program area being addressed by starting the project title with either as appropriate. Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For section 10, applicants should enter ''11.417'' for the CFDA Number and ''Sea Grant Support'' for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(i) Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart f, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award documents.

VII. How to Submit

Preliminary proposals and proposals must be submitted to the state Sea Grant Programs or to the NSGO according to the schedule outlined above (See **ADDRESSES** and ''Timetable''). Although investigators are not required to submit more than 3 copies of either preproposals or full proposals, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. The addresses of the Sea Grant College Program directors may be found on Sea Grant's World Wide Web home page (http://www.mdsg.umb.edu/NSGO/index.html) or may also be obtained by contacting the Program Manager, Dr. Vijay Panchang, at the National Sea Grant Office (phone: 301–713–2435 x142 or e-mail: vijay.panchang@noaa.gov). Preproposals and proposals sent to the National Sea Grant Office should be addressed to: National Sea Grant Office, R/SG, Attn: Sea Grant Technology Program Coordinator, NOAA, Room 11828, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2435 for express mail applications).

Applications received after the deadline and applications that deviate from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of applications will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Preaward Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

(D) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged to the greatest extend practicable, to purchase American-made equipment and products with funding provided under the program.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The Sea Grant Project Summary Form and the Sea Grant Budget Form have been approved under Office of Management and Budget (OMB) Control Number 0648–0362, with estimated times per response of 20 and 15 minutes respectively. The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. The response time estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant Office/NOAA, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: January 4, 2001.

David L. Evans,

Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 01–562 Filed 1–8–01; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

RIN 0651–AB30

Establishment of a Database Containing the Official Insignia of Federally Recognized Native American Tribes

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) is proposing to create and maintain a database of the official insignia of federally and state-recognized Native American tribes. The USPTO seeks comments on its proposed method for creating and maintaining this database.

DATES: Comment Deadline Date: To ensure consideration, written comments must be received on or before February 8, 2001. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *tribal.insignia@uspto.gov.* Comments may also be submitted by mail addressed to: Box Comments—Trademarks, Commissioner for Trademarks, Washington, DC 20231; or by facsimile to (703) 308–9285, marked to the attention of Ari Leifman.

The comments will be available for public inspection at the Office of the Commissioner for Trademarks, 2900 Crystal Drive, Room 10B10, Arlington, Virginia, 22202 and will be posted at the USPTO's web site (address: *http://www.uspto.gov*). All comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Ari Leifman by telephone at (703) 308–8900, or by mail addressed to: Box Comment Trademarks, Commissioner for Trademarks, Washington, DC 20231, or by facsimile to (703) 872–9285, marked to the attention of Ari Leifman.

SUPPLEMENTARY INFORMATION: Trademark Law Treaty Implementation Act, Pub. L. 105–330, § 302, 112 Stat. 3071 (1998) required the USPTO to study issues surrounding the protection of the official insignia of federally and state-recognized Native American tribes. The study was conducted, and a report was presented to the Chairman of the Committee on the Judiciary of the Senate and to the Chairman of the Committee on the Judiciary of the House of Representatives on November 30, 1999.

One of the recommendations in the report was that the USPTO create and maintain an accurate and comprehensive database of the official insignia of Native American tribes.

The USPTO proposes to create such a database and seeks comments on the proposed method. If the comments received include a suggestion for a better method for creating and maintaining the database, the USPTO will publish a proposal describing this method and requesting further comments. Otherwise, the USPTO will publish an announcement that finalizes the procedures described in the present notice.

Proposed Procedures

All requests to enter an official insignia of a Native American tribe into the USPTO database must be in writing, addressed to the Commissioner for Trademarks, and must include the following:

(1) A depiction of the insignia. If the insignia consists of a word, this word should be typed in upper-case letters. If the insignia consists of a design, or a combination of a word or words and a design, the depiction of the insignia should not be larger than 4 inches by 4 inches (10.3 cm. by 10.3 cm.). The depiction of the insignia should be placed at or near the center of a sheet of white paper 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 inches (27.9 cm.) long. The paper should have a heading that includes the name of the tribe and the address for correspondence.

(2) A copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe;

(3) A statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by tribal resolution; and

(4) For all entities not recognized as Native American tribes by the Bureau of Indian Affairs (BIA), either (a) a document issued by a state official that evidences the state's determination that the entity is a Native American tribe, or (b) a citation to a state statute that designates the entity as a Native American tribe.

The request should be sent by facsimile to (703) 872–9192, or mailed to a United States Postal Service mailbox that the Office will identify at a later date.

The USPTO will record any official insignia of a Native American tribe submitted in the above manner, if the Commissioner determines that the entity that submitted the request is a Native American tribe recognized by the Federal Government or by one or more state governments.

The Commissioner will determine whether or not the entity that submitted the request is a federally recognized Native American tribe by consulting the list of Native American tribes maintained by the BIA.

If an entity that seeks recordal of its insignia wishes to demonstrate that it is a state-recognized Native American tribe rather than a federally recognized Native American tribe, that entity must provide the Commissioner with either (1) a document issued by a state official that evidences the state's determination that the entity is a Native American tribe, or (2) a citation to a state statute that designates the entity as a Native American tribe.

Legal Significance of Recordal

The recordal of an official insignia of a Native American tribe at the USPTO will *not* be the equivalent of registering that insignia as a trademark pursuant to 15 U.S.C. 1051 *et seq.* Thus, including an insignia in the USPTO's database would not create any legal presumption of validity or priority, and none of the benefits of trademark registration will accrue to a Native American tribe whose insignia may be recorded pursuant to this notice.

Acceptance of the insignia for recordal will not be a determination as to whether a particular insignia for which recordal has been requested would be refused registration as a trademark pursuant to 15 U.S.C. 1051 *et seq.*, or to some provision of Chapter 37 of the Code of Federal Regulations, or to any requirement of the USPTO.

The USPTO will use the official insignia recorded by the USPTO as information useful in the examination of certain applications for registration of trademarks and as evidence of what a federally or state-recognized tribe considers to be its official insignia.

The database of official insignia of Native American tribes will be included, for informational purposes, within the USPTO's database of material that is not registered but is searched to make determinations regarding the registrability of marks. This database is available at the USPTO's web site. Inclusion of official insignia in this database will ensure that an examining attorney, who is searching a mark that is confusingly similar to an official insignia will find and consider the official insignia before making a determination of registrability.

For correspondence pertaining to the database of official insignia of Native American tribes, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office has waived the requirement of 37 CFR 1.1 that all correspondence intended for the United States Patent and Trademark Office be mailed to one of the addresses identified in 37 CFR 1.1.

The Office has determined that the proposed establishment of the database has no federalism implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612. The proposed database conforms with Executive Order 12612.

Dated: December 21, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 01–594 Filed 1–8–01; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year (FY) 2001.

SUMMARY: This Notice announces the Department of Energy (DOE) acceptance of claims for reimbursement. Approximately $72 million in funds for FY 2001 are available for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. In December 2000, DOE issued reimbursements to licensees totaling approximately $30 million from the FY 2001 appropriations. These reimbursements eliminated the backlog of licensees' approved unpaid claim balances for claims submitted through FY 1999. The Department will make a second payment by April 30, 2001, from the FY 2001 appropriations on approved FY 2000 claim amounts.

DATES: The closing date for the submission of claims in FY 2001 is May 1, 2001. These claims will be processed for payment by April 30, 2002, based on the availability of funds from congressional appropriations.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, P.O. Box 5400, Albuquerque, NM 87185–5400, or by express mail to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM 87116. All claims should be addressed to the attention of Mr. James B. Coffey. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Messrs. James Coffey (505–845–4026) or Gil Maldonado (505–845–4035), U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR Part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR Part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington D.C. on this 2nd of January, 2001.

David E. Mathes,

Team Leader, Albuquerque/Nevada Team, Small Sites Closure Office, Office of Site Closure.

[FR Doc. 01–588 Filed 1–8–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 01–17; Low Dose Radiation Research Program—Pilot Modeling Projects

AGENCY: Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research that supports the Low Dose Radiation Research Program. Research is specifically sought for pilot projects that involve innovative collaborations between experimentalists and modelers to:

• Model the mechanisms of key radiation-induced biological responses.

• To describe or identify strategies for developing biologically-based risk models that incorporate information on mechanisms of radiation-induced biological responses.

The Low Dose Radiation Research Program uses modern molecular tools to develop a better scientific basis for understanding exposures and risks to humans from low dose radiation that can be used to achieve acceptable levels of human health protection at a reasonable cost.

DATES: Potential applicants should submit a one page preapplication referencing Program Notice 01–17 by 4:30 p.m. e.s.t., February 1, 2001. Receipt of preapplications sent by e-mail will be acknowledged by a return message. An email response to preapplications discussing the potential program relevance of a formal application generally will be communicated by February 8, 2001.

The deadline for receipt of formal applications is 4:30 p.m., e.s.t., May 1, 2001, in order to be accepted for merit review and to permit timely consideration for award in FY 2001 and FY 2002.

ADDRESSES: Preapplications referencing Program Notice 01–17, should be sent by E-mail to joanne.corcoran@science.doe.gov. Preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 01–17, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–17. This address also must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, telephone: (301) 903–9817, E-mail: david.thomassen@science.doe.gov, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. The full text of Program Notice 01–17 is available via the World Wide Web using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

SUPPLEMENTARY INFORMATION: Low Dose Radiation Research Program

Background information on the Low Dose Radiation Research Program can be found in the research program plan at *http://www.lowdose.org/index.html.* A list of currently funded projects can be found at *http://lowdose.org/research.html.* A parallel request for research applications focused on understanding the biological responses to low doses of low LET ionizing radiation and on genetic factors influencing those responses has been issued (Office of Science Notice 01–18).

This research program is faced with the challenge of conducting research that can be used to inform the development of future radiation risk policy. Not all research on the biological effects of low doses of radiation will be equally useful for the development of radiation risk policy though the path from basic radiation biology research to radiation risk policy is admittedly not clear at this time.

Information on biological responses to low doses of radiation will most likely have an impact on radiation risk policy through its incorporation into biologically-based models for radiation risk. Two types of models will be important in efforts to incorporate results from current low dose radiation research into radiation risk policy: mechanistic models and biologically-based risk models.

Mechanistic models are defined as mathematical descriptions of the molecular and cellular processes involved in biological responses to radiation. One goal for these types of models will be to develop predictive capabilities for the range and nature of biological responses expected in a given system following exposure to different doses of radiation. The ability to extrapolate between different levels of biological organization (from molecules to cells to tissues to organisms) and from observations in vitro to biological responses in vivo should be improved by the development of such models.

Biologically-based risk models are defined as mathematical constructs of the key events involved in the production of an adverse health effect, e.g., cancer, in response to radiation across a range of doses of interest. Such models are likely to describe both continuous and probabilistic variables that range from key molecular probabilities of inducing cell death, replication or specific gene expression to modifiers of responses at the tissue level or even at the level of the entire organism. Mathematical predictors or estimators of radiation risk can include both epidemiological and experimental information. One likely source of input for the development and use of biologically-based risk models is mechanistic models for radiation-induced biological responses. For example, if a mechanistic model for the induction of a by-stander effect by low doses of radiation existed, information from that model could, in theory, serve as a direct source of information on an ''effective radiation dose'' in a biologically-based risk model.

Pilot Projects

Pilot, collaborative research projects are requested in one of two areas:

• Pilot projects to model the mechanisms of key radiation-induced biological responses.

• Pilot projects to describe or identify strategies for developing biologically-based risk models that incorporate information on mechanisms of radiation-induced biological responses.

Projects will involve research teams that include both laboratory-based scientists and scientists whose expertise is in the development or use of mathematical models. Projects can range from active research-modeling efforts to more ''think tank'' type efforts. Experimentalists and modelers are encouraged to interact in an iterative process of experimentation and modeling to generate and identify hypotheses, data and both experimental and modeling needs that then drive the ''next steps'' of both laboratory and modeling experiments. Alternatively, experimentalists and modelers could interact to identify research and modeling needs and gaps that are barriers to the development of true biologically-based risk models, to develop ''what-if'' type scenarios describing how different types of biological data could and would be used in these models and to identify new modeling strategies that take into account a broader range of biological information on radiation responses.

Modeling mechanisms of key radiation-induced biological responses. Mechanistic models can and should be developed for a range of biological responses that meet the **Criteria for Selection of Biological Responses**

described below. This portion of the program has two goals: (1) To develop models that have the potential to serve as links between data describing molecular and cellular responses to radiation and the use of that data in biologically-based risk models; and (2) To develop predictive capabilities for the range and nature of biological responses expected in a given system following exposure to different doses of radiation. It is expected that collaborations in this area will involve an iterative process of experimentation, modeling, experimentation, etc. Models of experimental data should be developed and used to make predictions about biological responses or effects that are then tested experimentally.

Description or identification of strategies to develop biologically-based risk models that incorporate information on mechanisms of radiation-induced biological responses. In many or most cases there may be such a wide gap between the nature of biological data and the state of risk models that it is premature, if not impossible, to begin incorporating biological data into these models. Research in this area will focus more on ''think tank'' types of activities to identify how information on biological responses to low doses of radiation could, conceptually, be incorporated into risk models. Investigators should use their knowledge of biology and modeling to develop realistic scenarios for the development of biologically-based risk models where neither current biological information nor modeling capabilities are adequate to actually develop these models. This research will follow a ''what if'' or ''if only'' type of approach where the use of theoretically obtainable but currently unavailable biological data is described for risk models that have not yet been developed. These pilot activities should have as their goal the identification of key experiments that would serve to verify key hypotheses that are generated or the preliminary design for incorporating these parameters into biologically-based risk models. Researchers might organize workshops to obtain some of the information needed to carry out their study. Pilots in this area will ordinarily be limited to 1–2 years. Successful or promising pilots will be eligible for additional funds to validate key hypotheses or to expand the scope of the research that was originally proposed. It is not the intent of this solicitation to fund the complete development of new biologically-based risk models that incorporate information on mechanisms of radiation-induced biological responses since it is our belief that it is premature to attempt to develop such models at this time.

Criteria for Selection of Biological Responses

It is our belief that the most useful research will focus on biological responses that meet each of the following criteria. The biological responses of greatest interest for this solicitation include bystander effects, induction of genetic instability and adaptive responses. Applications proposing the use of additional biological responses will be considered only if the biological responses proposed for investigation can be reasonably demonstrated to meet the criteria outlined below.

- Are known to be induced at low doses of radiation.
- Have the potential to increase or decrease the biological effects of radiation if they occur at low doses of radiation.
- Have the potential to directly impact, *i.e.,* increase or decrease, the subsequent development of cancer or other harmful health impacts.
- Are potentially quantifiable.
- Could, potentially, be linked to the development of a biologically-based model for radiation risk.

Alternatively, a biological response of interest could meet all of the above criteria only at high doses but may actually not be induced (not simply undetectable) at low doses of radiation. Since the mechanisms of action may be different after high versus low doses of radiation, such studies would help define these mechanisms. Defining the unique doses where these mechanisms shift is important for comparing, understanding and modeling biological responses to high versus low doses of radiation.

Program Funding

It is anticipated that up to $750,000 will be available for new grant awards during FY 2001 and FY 2002, contingent upon the availability of funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of appropriated funds, progress of the research, and continuing program need. It is expected that most awards will be from 1 to 3 years and will range from $100,000 to $250,000 per year (total costs).

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Preapplication

A preapplication should be submitted. The preapplication should contain a title, list of investigators, address, telephone, fax and E-mail address of the Principal Investigator, and no more than a one page summary of the proposed research, including project objectives and methods of accomplishment. Responses to the preapplications, encouraging or discouraging formal applications, will generally be communicated within 7 days of receipt. Notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications

Note: Please Note Critical Information Below on Page Limits.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR Part 605. Electronic access to the Guide and required forms is made

available via the World Wide Web at: *http://www.er.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Project Description must be 25 pages or less, exclusive of attachments. *Applications with Project Descriptions longer than 25 pages will be returned to applicants and will not be reviewed.* The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage, or by using small type, of providing more text in their applications. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8 ½″ × 11″ (or metric A4, *i.e.,* 210 mm × 297 mm).

Applicants are expected to use the following ordered format to prepare applications in addition to following instructions in the Application Guide for the Office of Science Financial Assistance Program. Applications must be written in English, with all budgets in U.S. dollars.

- Face Page (DOE F 4650.2 (10–91)).
- Project Abstract (no more than one page).
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1).
- Budget Explanation.
- Budgets and Budget explanation for each collaborative subproject, if any.
- Project Description (The Project Description must be 25 pages or less, exclusive of attachments. *Applications with Project Descriptions longer than 25 pages will be returned to applicants and will not be reviewed.*)
- Goals.
- Background.
- Research Plan.
- Preliminary Studies and progress (if applicable).
- Research Design and Methodologies.
- Literature Cited.
- Collaborative Arrangements (if applicable).
- Biographical Sketches (limit 2 pages per senior investigator).
- Description of Facilities and Resources.
- Current and Pending Support for each senior investigator.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules'', which is available via the world wide web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington DC on December 29, 2000.

Ralph H. De Lorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 01–586 Filed 1–8–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/NSF Nuclear Science Advisory Committee; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DOE/NSF Nuclear Science Advisory Committee (NSAC). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, January 29, 2001; 8:30 a.m. to 7:00 p.m. and Tuesday, January 30, 2001; 8:30 a.m. to 7:00 p.m.

ADDRESSES: Doubletree Hotel, 1750 Rockville Pike, Regency Conference Room, Rockville, Maryland 20852–1699.

FOR FURTHER INFORMATION CONTACT: Cathy A. Hanlin, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290; Telephone: 301–903–3613.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis to the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

Tentative Agenda

Monday, January 29, 2001, and Tuesday, January 30, 2001

- Status Report on DOE Division of Nuclear Physics Activities and Budget Outlook
- Status Report on NSF Nuclear Physics Program Activities and Budget Outlook
- Presentation from Sudbury Neutrino Observatory (SNO)
- Presentations from DOE/NSF Laboratories/University Facilities
- Public Comment (10-minute rule)
- Reports on American Physical Society/Division of Nuclear Physics Town Meetings
- Report from the Rare Isotope Accelerator (RIA) Costing Committee
- Discussion of the RIA Science Whitepaper
- Organizational Issues for the Long Range Plan Working Group

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Cathy A. Hanlin at 301–903–3613. You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 4, 2001.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 01–587 Filed 1–8–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho; Meeting

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), Idaho. 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:

Tuesday, January 23, 2001, 8:00 a.m.–6:00 p.m.

Wednesday, January 24, 2001, 8:00 a.m.–5:00 p.m.

Public participation sessions will be held on:

Tuesday, January 23, 2001, 12:15–12:30 p.m, 5:45–6:00 p.m.

Wednesday, January 24, 2001, 11:45–12:00 noon, 3:45–4:00 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Cavanaugh's, 1350 Blue Lakes Boulevard, Twin Falls, ID 83301, 208–734–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL Cab Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *http://www.ida.net/users/cab*).

Presentations on the following:

- Spent nuclear fuel: What it is, where and how it is stored, and the schedule for transferring it to dry storage
- Draft Closure Plan for the New Waste Calcining Facility
- The Idaho Settlement Agreement, what it requires, and how DOE is doing in meeting its terms and conditions
- DOE–ID's budget request for Fiscal Year 2003
- The significance of being designated as a lead laboratory
- Licensing and permitting for facilities on the INEEL
- The Transuranic/Mixed Waste Focus Area and its efforts to identify alternatives to incineration
- How DOE sets shipping schedules for off-site shipments of radioactive materials

Briefings on the following:

- Final recommendations of the Blue Ribbon Panel on alternatives to incineration
- Final Nuclear Infrastructure Programmatic Environmental Impact Statement

Consideration of draft recommendations on:

- Draft Closure Plan for High-Level Waste Tanks 182 and 183
- Proposed Plan for Groundwater Remediation at the Test Area North
- Institutional Plan for Fiscal years 2001–2005

Discussion of the following:

- Activities related to the Site Specific Advisory Board Stewardship Workshop
- Possibly cosponsoring a Site Specific Advisory Board Seminar on alternatives to incineration for treatment of transuranic mixed waste

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request 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, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC on January 4, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–585 Filed 1–8–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Cancellation of Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Cancellation of agency information collection activities: Proposed collection; comment request.

SUMMARY: This notice rescinds the notice published in the **Federal Register** of December 26, 2000, FR Doc. 00–32857, on page 81516, soliciting comments concerning the proposed revision, and extension to the form RW–859, ''Nuclear Fuel Data Survey.'' A revised **Federal Register** notice soliciting comments will be published in early May, 2001.

Dated: January 3, 2001.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 01–589 Filed 1–8–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC01–719A–000, FERC–719A]

Proposed Information Collection and Request for Comments

January 3, 2001.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is providing notice of its request to the Office of Management and Budget (OMB) for emergency processing of a proposed collection of information in connection with the California natural gas markets, and is soliciting public comment on that information collection.

DATES: The Commission and OMB must receive comments on or before January 10, 2001.

ADDRESSES: Send comments to: (1) Michael Miller, Office of the Chief Information Officer, CI–1, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at

mike.miller@ferc.fed.us; and (2) Amy Farrell, FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 NOEB, 725 17th Street NW, Washington, DC 20503 20426. Ms. Farrell may be reached by telephone at (202) 395–7318 or by fax at (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Mary Morton, Office of the General Counsel, Federal Energy Regulatory Commission. Ms. Morton may be reached by telephone at (202) 208–0642 and by e-mail at *mary.morton@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The Natural Gas Act directs the Commission to ensure just and reasonable rates for transportation and wholesale sales of natural gas. See 15 USC 717c(a). To enable the Commission to fulfill this duty, the Natural Gas Act also authorizes the Commission to conduct investigations of, and collect information from public utilities. See 15 USC 717g, 717i, and 717m.

On December 7, 2000, San Diego Gas & Electric Company (SDG&E), which provides natural gas and electricity to 1.2 million customers in San Diego County, filed a complaint with the Commission. See *San Diego Gas & Electric Company,* Docket No. RP01–180–000. SDG&E is asking the Commission to take certain steps on an emergency basis to remedy what SDG&E describes as the lack of workable competition in the California natural gas market. The Commission published notice of the complaint in the **Federal Register** and set a deadline of December 13, 2000, for comments. Numerous parties have filed comments.

In response to SDG&E's complaint, the Commission must determine if rates for transportation and wholesale sales of natural gas in California are just and reasonable, and, if they are not, which remedies are appropriate. The information provided so far by SDG&E and the intervening parties is not adequate to make these determinations. Therefore, the Commission is requesting additional information from the major natural gas marketers in California. These requests are subject to the Paperwork Reduction Act, which requires OMB to review certain federal reporting requirements. 44 USC 3507. Prices for natural gas in California have suddenly risen to levels significantly higher than those in other parts of the country. These price increases come at the start of a winter predicted to be much colder than average, in combination with an ongoing electricity emergency in California. Therefore, the Commission has requested emergency processing of this proposed information collection.

The Commission will refer to the reports being requested as ''California Natural Gas Marketers' Reports.'' Respondents would provide a one-time-only Report no later than January 16, 2001. The Reports would contain the following information for each gas sales transaction made at or into the California market during the months of November and December, 2000.

The contract's identification number;

The date the contract was entered into;

The identity of the buyer;

The volumes sold and/or transported;

The contract price;

The term of the contract;

The transportation component versus the gas commodity component;

The interstate pipeline that provided transportation; and

The maximum Part 284 transportation rate applicable to the contract. For contracts with a price equal to or greater than $15 per Dth, respondents would also provide:

A copy of the contract;

A copy of each associated upstream contract for transportation or gas purchase; and

The point where the respondent took title to the gas.

Fifteen marketers would be subject to this reporting requirement. The Commission estimates that it would take each respondent no more than 24 hours to generate the Report. Therefore, the total number of hours it would take to comply with the reporting requirement would be 360. The Commission estimates a cost of $50 per hour, based on salaries for professional and clerical staff, as well as direct and indirect overhead costs. Therefore, costs for each respondent would be $1,200, and total costs to comply with this request would be $18,000.

The Commission has submitted this reporting requirement to OMB for approval. OMB's regulations describe the process that federal agencies must follow in order to obtain OMB approval of reporting requirement. See 5 CFR part 1320. The standards for emergency processing of information collections appear at 5 CFR 1320.13. If OMB approves a reporting requirement, then it will assign an information collection control number to that requirement. If a request for information subject to OMB review has not been given a valid control number, then the recipient is not required to respond.

OMB requires federal agencies seeking approval of reporting requirements to allow the public an opportunity to comment on the proposed reporting requirement. 5 CFR 1320.5(a)(1)(iv). Therefore, the Commission is soliciting comment on: (1) Whether the collection of the information is necessary for the proper performance of the Commission's estimate of the burden of the collection of this information, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information to be collected; and (4) How to minimize the burden of the collection of this information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

David P. Boergers,

Secretary.

[FR Doc. 01–518 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–012]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 3, 2001.

Take notice that on December 21, 2000, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective December 1, 2000:

First Revised Sheet No. 14O
First Revised Sheet No. 14P

ANR is filing the attached tariff sheets to reflect a change in the delivery point underlying the negotiated rate contracts with Reliant Energy Services (Reliant) and Dynegy Marketing & Trade (Dynegy) which were previously accepted by Commission's Letter Order issued September 27, 2000. ANR requests that the Commission grant ANR any waivers of the Commission's regulations which are necessary in order to make these tariff sheets effective as of December 1, 2000. A copy of this filing is being mailed to the affected shippers and to each of ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–523 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–507–009]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 3, 2001.

Take notice that on December 22, 2000, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1–A, to become effective February 1, 2001:

First Revised Sheet No. 219C
Original Sheet No. 219D

El Paso states that the above tariff sheets are being filed to implement the Topock Delivery Rights Capacity Allocations required by the Commission's order issued October 25, 2000 at Docket No. RP99–507.

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.W., 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.

David P. Boergers,

Secretary.

[FR Doc. 01–524 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13–016]

Erie Boulevard Hydropower L.P. Green Island Power Authority; Notice of Transfer of Ownership Pursuant to an Order of Condemnation and Designation of New Licensee

January 3, 2001.

On July 14, 2000, as supplemented September 7, 2000, the Green Island Power Authority (Authority) filed a notice, in accordance with section 14(a) of the Federal Power Act (FPA), 16 U.S.C. 807(a), stating that on July 11, 2000, the Supreme Court of the State of New York entered an order of condemnation whereby the property that constitutes the licensed Green Island Project No. 13 was vested in the Authority. Project No. 13 is located on the Hudson River, at the U.S. Army Corps of Engineers' Troy Lock and Dam in Albany County, New York.[1]

Section 14(a) of the FPA states that ''the right of the United States or any State or municipality to take over, maintain, and operate any project licensed under this Act at any time by condemnation proceedings upon payment of just compensation is hereby expressly reserved.'' The Authority's filing demonstrate that it is ''municipality'' as defined in Section 3(8) of the FPA (16 U.S.C. 796(8)); that it has fulfilled the conditions of the condemnation court's order, which therefore vests the project's property in it; and that it intends to operate the project as the licensee.

In accordance with Section 14(a) of the FPA, the Authority is recognized as the licensee for Project No. 13.

[1] The Commission issued the original license for the project to Henry Ford and Son, Inc., in 1921. *See* First Annual Report of the Federal Power Commission, pp. 110, 195. It issued a new license for the project to Niagara Mohawk Power Company in 1977. 57 FPC 817. The new license expires at the end of March 2, 2011. Recently, the Commission approved a transfer of the project license to Erie Boulevard Hydropower, L.P. 88 FERC ¶ 62,082 (1999), *reh'g denied*, 90 FERC ¶ 61,148 (2000).

David P. Boergers,

Secretary.

[FR Doc. 01–519 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–198–000]

Florida Gas Transmission Company; Notice of Filing of Report of Cash-Out Activity

January 3, 2001.

Take notice that on December 22, 2000 Florida Gas Transmission Company (FGT) tendered for filing schedules detailing certain information related to the Cash-Out mechanism from October 1, 1999 through September 30, 2000. No tariff changes are proposed therein.

FGT states that it has experienced a revenue deficiency of $882,959 in the current Settlement Period. A total of $515,000 of this deficiency is related to the Cash-Out Mechanism. As shown on Schedule A, page 2 of 3, lines 1–14, even though the price paid by FGT was less than the price received by FGT for each month in the Settlement Period, the weighted average price paid by FGT for the Settlement Period was $3.1184 while the weighted average price received by FGT was $2.8874. This was a result of shippers generally overburning during periods of lower prices, thus using FGT as a source of supply, and underburning during periods of higher prices, when FGT's cash out indices made FGT a relatively attractive market for gas.

Also, FGT states that the revenue deficiency attributable to the Cash-Out Mechanism, there is a revenue deficiency of $367,959 associated with the Fuel Resolution Mechanism as shown on Schedule A, page 1, lines 7–12. FGT believes this deficiency is primarily attributable to a $1.47 negative differential in the weighted average prices used in the deferred fuel account balances ($3.903/MMBtu paid for over retained fuel versus $2.437/MMBtu received for under retained fuel, as detailed on Schedule A, page 2 of 3,

lines 15 through 28). FGT does not believe this deficiency can be ascribed to any ''gaming'' behavior on the part of shippers, but is instead reflective of the relationship between gas price levels and throughput (and the resulting fuel use) on FGT's system. FGT's fuel reimbursement percentage is based on average fuel usage during prior seasonal periods. Therefore, during periods of relatively high gas prices, the reduced throughput and fuel usage may result in an over recovery of fuel by FGT, which is then valued at the high gas price which led to the reduced throughput and over recovery of fuel. Conversely, low gas prices encourage high throughput and fuel consumption, resulting in under recovered fuel, which is valued at the low gas prices at least partially responsible for increased throughput and under recovery of fuel. FGT believes the significant under recovery of fuel during the production months of December 1999 and January 2000 is attributable to higher than projected throughput as a result of low gas prices relative to alternate fuels. The negative impact of this phenomenon in the annual true-up system balancing costs is directly offset, however, in the calculation of the unit fuel surcharges through which shippers pay lower prices for undercollections by FGT and receive higher prices for overcollections. FGT has discussed this phenomenon with shippers at previous Operating Committee meetings and believe further discussions are warranted in light of the current data.

After further analysis by FGT and further discussions with its shippers of the issues reflected in the results of this Settlement Period, FGT may propose prospective tariff changes at a future time.

Copied of this filing are on file with the Commission and are available for public inspections.

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.

David P. Boergers,

Secretary.

[FR Doc. 01–530 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–034]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

January 3, 2001.

Take notice that on December 22, 2000, Koch Gateway Pipeline Company (''Koch'') filed with the Federal Energy Regulatory Commission (''Commission'') contracts between Koch and the following companies for disclosure of recently negotiated rate transactions. As shown on the contracts, Koch requests an effective date of January 1, 2001.

Special Negotiated Rate Between

Koch Gateway Pipeline and Mobile Energy LLC

Koch Gateway Pipeline and Koch Energy Trading Company

Koch states that copies of the filing are being made available for public inspection during regular business hours in Koch's offices in Houston, Texas. In addition, Koch states that it has served copies of this filing upon 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.

David P. Boergers,

Secretary.

[FR Doc. 01–522 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP–177–004]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 3, 2001.

Take notice that on December 22, 2000, Maritimes & Northeast Pipeline, L.L.C. (''Maritimes'') tendered for filing and acceptance by the Federal Energy Regulatory Commission (''Commission'') the following tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, to become effective on January 1, 2001:

Fifth Revised Sheet No. 9

Maritimes states that it is filing the above tariff sheet to implement two negotiated rate agreements pursuant to Rate Schedule MN365 and Section 24 of the General Terms and Conditions of Maritimes' FERC Gas Tariff.

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.

David P. Boergers,

Secretary.

[FR Doc. 01–526 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–023]

Northern Natural Gas Company; Notice of Proposed Changes in F.E.R.C. Gas Tariff

January 3, 2001.

Take notice that Northern Natural Gas Company (Northern) on December 22, 2000, tendered for filing to become part of Northern's F.E.R.C. Gas Tariff, Substitute Twelfth Revised Sheet No. 66 proposed to be effective December 12, 2000 and Thirteenth Revised Sheet No. 66 and Fourth Revised Sheet No. 66A proposed to become effective on December 22, 2000:

Fifth Revised Volume No. 1

Substitute Twelfth Revised Sheet No. 66
Thirteenth Revised Sheet No. 66
Fourth Revised Sheet No. 66

The above sheets are being filed to implement specific negotiated rate transactions with Oneok Energy Marketing and Trading Company, Texaco Natural Gas, Inc. and OGE Energy Resources, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines. In addition, Substitute Twelfth Revised Sheet No. 66 is being filed to reflect changes made to Footnote 7 on Substitute Eleventh Revised Sheet No. 66 filed on December 15, 2000.

Northern further states that copies of the fling have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–521 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–162–009]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

January 3, 2001.

Take notice that on December 22, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective May 22, 2000.

Sub Original Sheet No. 119
2nd Sub Original Sheet No. 110

Panhandle assets that the purpose of this filing is to comply with the Commission's Order on Rehearing and Compliance Filing issued on November 24, 2000 in Docket No. RP00–162–005 and RP00–162–006, 93 FERC ¶61,211 (2000), to revise the charge for takes in excess of shipper's hourly delivery quantity under Rate Schedule HFT.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to 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.

David P. Boergers,

Secretary.

[FR Doc. 01–525 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–062]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 3, 2001.

Take notice that on December 21, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

Second Revised Sheet No. 8K
Original Sheet No. 8K.01

REGT states that the purpose of this filing is to reflect the addition of a new negotiated rate arrangement involving three contracts.

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.

David P. Boergers,

Secretary.

[FR Doc. 01–520 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–197–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

January 3, 2001.

Take notice that on December 21, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) Thirty First Revised Sheet No. 50 to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the attached tariff sheet is November 1, 2000.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This filing is being made pursuant to tracking provisions under Section 4 of the Transco's Rate Schedule FT–NT.

Included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers 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.

David P. Boergers,

Secretary.

[FR Doc. 01–529 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–196–000]

Venice Gathering System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 3, 2001.

Take notice that on December 22, 2000, pursuant to section 4(e) of the Natural Gas Act and the Commission's Regulations at 18 CFR 154, *et seq.*, Venice Gathering System, L.L.C. tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, to become effective February 1, 2001:

Second Revised Sheet No. 4

VGS states that the filing reflects proposed changes to permit recovery of VGS' proposed cost of service of $14,404,612, based on data from the base period ending September 30, 2000, as adjusted. VGS proposes a capital structure of 64.58% equity and 35.42% debt, a rate base of $48,281,117, and return on equity of 14%. The resulting FTS–2 rate of $0.0812/dth compares to VGS' existing FTS–2 rate of $0.0679. VGS requests an effective date of February 1, 2001.

VGS states that it is willing to explore non-litigation procedures, such as Alternative Dispute Resolution or settlement judge procedures. VGS requests that the Commission consider the feasibility of these options as a means of resolving this proceeding without costly and time consuming litigation.

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 he 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.

David P. Boergers,

Secretary.

[FR Doc. 01–528 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–760–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

January 3, 2001.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER01–760–000]

Take notice that on December 22, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a Notice of Termination of the 1996 Interconnection Agreement between PG&E and Port of Oakland, on file with this Commission as PG&E Rate Schedule FERC No. 194, an Interconnection Agreement (IA), a Letter Agreement, and a Service Agreement for Wholesale Distribution Service (Service Agreement), between PG&E and the Port of Oakland (Port). The IA and Letter Agreement provide the terms and conditions for the continued interconnection of the Electric Systems of Port and PG&E. The Service Agreement is submitted pursuant to the PG&E Wholesale Distribution Tariff (WDT), and permits PG&E to recover the ongoing costs for service required over PG&E's distribution facilities. PG&E has requested certain waivers.

Copies of this filing have been served upon Port, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Edison Mission Marketing & Trading, Inc.

[Docket No. ER01–782–000]

Take notice that on December 22, 2000, Edison Mission Marketing & Trading, Inc., tendered for filing an application for the Federal Energy Regulatory Commission's (Commission) authorization to sell ancillary services at market-based rates and a related amendment to its tariff.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. EME Homer City Generation, L.P.

[Docket No. ER01–781–000]

Take notice that on December 22, 2000, EME Homer City Generation L.P. (EME), tendered for filing an application for the Federal Energy Regulatory Commission's (Commission) authorization to sell ancillary services at market-based rates, related amendment to its tariff, and a revised code of conduct.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Exelon Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.

[Docket No. ER01–780–000]

Take notice that on December 22, 2000, Exelon Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., gave notice, pursuant to *Midwest Independent Transmission System Operator, Inc.,* 84 FERC ¶61,231 (1998), that they intend to withdraw the transmission systems of Commonwealth Edison Company and Commonwealth Edison Company of Indiana from the Midwest ISO. The companies request Commission approval no later than March 1, 2001.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Split Rock Energy, LLC

[Docket No. ER01–779–000]

Take notice that on December 21, 2000, Split Rock Energy, LLC, (Split Rock), tendered for filing in compliance with the Commission's current reporting requirements applicable to market based rate tariffs, Exhibit B dated December 15, 2000.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Company

[Docket No. ER01–778–000]

Take notice that on December 22, 2000, The Dayton Power and Light Company (Dayton), tendered for filing a service agreement establishing The Dayton Power and Light Company (Energy Services) as a customer under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of December 27, 2000 for the service agreement. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Energy Services and The Public Utilities Commission of Ohio.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER01–777–000]

Take notice that on December 22, 2000, Virginia Electric and Power Company (the Company), tendered for filing Service Agreements for Short-Term Market Rate Electric Power Sales and the Resale of Transmission Rights with the following parties:

1. Metropolitan Edison Company
2. Jersey Central Power & Light Company
3. Pennsylvania Electric Company

Under the Service Agreements, the Company will provide services to the customers 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.

The Company requests an effective date of December 22, 2000, the date the service agreements were filed.

Copies of the filing were served upon GPU Energy, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER01–776–000]

Take notice that on December 22, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated January 1, 2001 with CMS Marketing, Service and Trading Company entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 2001 for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on CMS Marketing, Service and Trading Company, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER01–775–000]

Take notice that on December 22, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing Notice of Cancellation of its Wholesale Rate MW–6 with the Village of Riverton, Illinois.

Copies of the filing were served on the Illinois Commerce Commission and the Village of Riverton. CILCO states that the purpose of this filing is to cancel its Wholesale Rate MW–6 as of the end of the contract date with the Village of Riverton, Illinois.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Energy Company

[Docket No. ER01–774–000]

Take notice that on December 22, 2000, Consumers Energy Company (Consumers), tendered for filing executed Firm and Non-Firm Point to Point Transmission Service Agreements with Michigan South Central Power Agency and The Energy Authority (Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

All four agreements have effective dates of November 27, 2000.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison, and the Customers.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER01–773–000]

Take notice that on December 22, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing changes to the Appendix to Attachment K to the PJM Open Access Transmission Tariff and Schedule 1 of the Amended and

Restated Operating Agreement of PJM Interconnection, L.L.C., to limit the amount of Transmission Congestion Credits an entity that acquires a Fixed Transmission Right (FTR) through the FTR auction process may receive if it enters Increment Bids and Decrement Bids in the Day-ahead Market that result in an increase of Transmission Congestion Charges at or near the receipt or delivery point of the FTR.

Because the amendments address market abuse concerns of the PJM Market Monitoring Unit, PJM requests waiver of the Commission's 60-day notice requirement to permit an effective date of December 23, 2000 for the amendments.

Copies of this filing were served upon all members of PJM and each state electric utility regulatory commission in the PJM control area.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. PJM Interconnection, L.L.C.

[Docket No. ER01–772–000]

Take notice that on December 22, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. to clarify that, (1) to be a Member of PJM, an End-Use Customer does not have to be an Eligible Customer under PJM Open Access Transmission Tariff, and (2) to be an Other Supplier an entity must be a PJM member that engages in buying, selling or transmitting electric energy in or through PJM or have a good faith intent to do so.

Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM control area.

PJM on behalf of the PJM Reliability Committee requests a waiver of the Commission's 60-day notification requirement to permit an effective date of December 23, 2000.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER01–771–000]

Take notice that on December 22, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreements: (i) a network integration transmission service agreement for Allegheny Energy Supply Company, L.L.C. (Allegheny), and (ii) a network integration transmission service agreement for American Cooperative Services, Inc., (American).

Copies of this filing were served upon Allegheny, American, and the state commissions within the PJM control area.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER01–770–000]

Take notice that on December 22, 2000, Arizona Public Service Company (APS), tendered for filing an Unexecuted Interconnection and Operating Agreement with Panda Gila River LP under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Panda Gila River LP and the Arizona Corporation Commission.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Central Illinois Light Company

[Docket No. ER01–769–000]

Take notice that on December 20, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission an Interconnection Agreement with AES Medina Valley Cogeneration L.L.C., for Generation Interconnection and Parallel Operation.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Electric and Gas Company

[Docket No. ER01–768–000]

Take notice that on December 22, 2000, Public Service Electric and Gas Company (PSE&G), tendered for filing the following Agreement between Atlantic City Electric Company (ACE) and PSEG Nuclear, LLC (PSEG Nuclear) in their capacity as Hope Creek Generating Station Owners, and ACE and PSE&G in their capacity as Hope Creek Switching Station Owners: (a) an Interconnection Agreement, designated as Service Agreement 208 under PJM Interconnection L.L.C.''s FERC Electric Tariff Third Revised Volume No. 1, to be effective on the initial operation date as PSE&G's Rate Schedule No. 168.

Copies of this filing were served on ACE.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin River Power Company

[Docket No. ER01–767–000]

Take notice that on December 22, 2000, Wisconsin River Power Company (WRPCo), tendered for filing a First Revised Rate Schedule FERC No. 2 (Revised Rate Schedule) between WRPCo and Consolidated Water Power Company, Wisconsin Power & Light Company, and Wisconsin Public Service Corporation.

WRPCo requests that the Commission waive its notice of filing requirements to allow the Revised Rate Schedule to become effective as of January 1, 2001.

Copies of the filing were served upon the Wisconsin Power & Light Company, Wisconsin Public Service Corporation, Consolidated Water Power Company and the Public Service Commissions of Michigan and Wisconsin.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. American Transmission Company LLC

[Docket No. ER01–765–000]

Take notice that on December 22, 2000, American Transmission Company LLC (ATCLLC), tendered for filing an Operating Agreement between Alliant Energy Corporate Services, Inc. and ATCLLC.

ATCLLC requests an effective date of January 1, 2001.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER01–766–000]

Take notice that on December 22, 2000, Consumers Energy Company (Consumers), tendered for filing executed Transmission Service Agreements with the entities listed below (Customers) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison). The Agreements are for Firm or Non-Firm Point to Point Transmission Service or Network Integration Transmission Service. All of the agreements have effective dates of January 1, 2001.

The Customers are:

American Electric Power Company, Inc.
Aquila Energy Marketing Corporation
Cargill-Alliant, LLC
Cinergy Services, Inc.
CMS Marketing, Services and Trading
Consumers Energy—Electric Sourcing and Trading
Detroit Edison Merchant Operation
DTE Energy Trading, Inc.
Duke Power
Florida Power & Light Company
H.Q. Energy Services (U.S.), Inc.
Lansing Board of Water & Light
Northern Indiana Public Service Company

Public Service Company of Colorado
Rainbow Energy Marketing Corporation
Split Rock Energy LLC
Thumb Electric Company
Virginia Electric and Power Company

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison, and the Customers.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. UtiliCorp United Inc.

[Docket No. ER01–764–000]

Take notice that on December 22, 2000, UtiliCorp United Inc. (UtiliCorp), tendered for filing UtiliCorp's FERC Electric Tariff, First Revised Volume No. 28. The revisions to the tariff incorporate references to St. Joseph Light & Power Company, delete references to West Virginia Power, incorporate UtiliCorp's current transmission and ancillary services rates, and provide for use of a Master Power Purchase and Sale Agreement.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Electric and Gas Company

[Docket No. ER01–763–000]

Take notice that on December 22, 2000, Public Service Electric and Gas Company (PSE&G), tendered for filing an Agreement between Atlantic City Electric Company (ACE), Delmarva Power & Light Company (DPL), PECO Energy Company (PECO), and PSEG Nuclear, LLC (PSEG Nuclear) in their capacity as Salem Generating Station Owners, and ACE, DPL, PECO and (PSE&G) in their capacity as Salem Switching Station Owners: (a) an Interconnection Agreement, designated as Service Agreement 208 under PJM Interconnection L.L.C.s FERC Electric Tariff Third Revised Volume No. 1, to be effective on the initial operation date as PSE&G's Rate Schedule No. 169.

Copies of this filing were served on ACE, DPL and PECO.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Consumers Energy Company

[Docket No. ER01–762–000]

Take notice that on December 22, 2000, Consumers Energy Company (Consumers), tendered for filing an executed revised Service Agreement for Firm and Non-Firm Point to Point Transmission Service with Quest Energy, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

Consumers is requesting an effective date of November 29, 2000. Customer is taking service under the Service Agreement in connection with Consumers' Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Company

[Docket No. ER01–761–000]

Take notice that on December 22, 2000, Southern California Edison Company (SCE), tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment (TRBAA) set forth in its Transmission Owner Tariff (TO Tariff) to become effective January 1, 2001. The TRBAA rate is proposed to be a negative $0.00115 per kilowatt-hour.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, and all interested parties.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

24. Potomac Electric Power Company

[Docket Nos. EC00–141–000 and ER00–3727–001]

Take notice that on December 21, 2000, Potomac Electric Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's (Commission) December 12, 2000 order, a supplement to its September 20, 2000 filing, executed versions of the Interconnection Agreements with the rate designations ascribed to them in the Commission's December 12, 2000 order.

Comment date: January 12, 2001, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Energy Supply Conemaugh, LLC

[Docket No. EG01–84–000]

Take notice that on December 26, 2000, Allegheny Energy Supply Conemaugh, LLC filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment date: January 24, 2001, 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.

26. TransCanada Power, L.P.

[Docket No. EG01–85–000]

Take notice that on December 26, 2000, TransCanada Power, L.P., with its principal place of business at 450 1st Street S.W., Calgary, Alberta T2P 5H1, 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. TransCanada Power, L.P. is a Canadian limited partnership which indirectly owns a 64 MW (average net) combined-cycle cogeneration facility at Castleton-on-Hudson, New York.

Comment date: January 24, 2001, 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.

27. Ocean State Power II

[Docket No. EG01–86–000]

Take notice that on December 26, 2000, Ocean State Power II, with its principal place of business at 1575 Sherman Farm Road, Harrisville RI 02830–1124, 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. Ocean State Power II is a Rhode Island general partnership which owns a power generator facility at Burrillville, Rhode Island.

Comment date: January 24, 2001, 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.

28. Ocean State Power

[Docket No. EG01–87–000]

Take notice that on December 27, 2000, Ocean State Power, with its principal place of business at 1575 Sherman Farm Road, Harrisville RI 02830–1124, 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. Ocean State Power is a Rhode Island general partnership which owns a power generation facility at Burrillville, Rhode Island.

Comment date: January 24, 2001, 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.

29. TransCanada Power (Williams Lake) Ltd.

[Docket No. EG01–88–000]

Take notice that on December 26, 2000, TransCanada Power (Williams Lake) Ltd., with its principal place of business at 450 1st Street. S.W., Calgary, Alberta T2P 5H1, 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. TransCanada Power (Williams Lake) Ltd. owns Inland Pacific Enterprises Ltd., which owns a 49% interest in a 66 MW combined cycle power plant at Williams Lake, British Columbia, the output of which is sold under a long-term contract to B.C. Hydro.

Comment date: January 24, 2001, 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.

30. Trans Canada Power (Castleton) LLC

[Docket No. EG01–89–000]

Take notice that on December 26, 2000, TransCanada Power (Castleton) LLC, with its principal place of business at 450 1st Street S.W., Calgary, Alberta T2P 5H1, 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. TransCanada Power (Castleton) LLC is a Delaware limited liability company which owns a 64 MW (average net) combined-cycle cogeneration facility at Castleton-on-Hudson, New York.

Comment date: January 24, 2001, 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.

31. TC Power (Castleton) Ltd.

[Docket No. EG01–90–000]

Take notice that on December 26, 2000, TC Power (Castleton) Ltd., with its principal place of business at 450 1st Street S.W., Calgary, Alberta T2P 5A4, 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. TC Power (Castleton) Ltd. is the sole member of TransCanada Power (Castleton) LLC, a Delaware limited liability company which owns a 64 MW (average net) combined-cycle cogeneration facility at Castleton-on-Hudson, New York..

Comment date: January 24, 2001, 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.

32. Constellation Power Source Generation, LLC

[Docket No. EG01–91–000]

Take notice that on December 28, 2000, Constellation Power Source Generation, LLC (Applicant), a to be formed Delaware limited liability company with its principal place of business at 111 Market Place, Suite 500, Baltimore, Maryland 21202, 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.

Comment date: January 24, 2001, 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.

33. Calvert Cliffs Nuclear Power Plant, LLC

[Docket No. EG01–92–000]

Take notice that on December 28, 2000, Calvert Cliffs Nuclear Power Plant, LLC (Applicant), a to be formed Delaware limited liability company with its principal place of business at 39 W. Lexington Street, Baltimore, Maryland 21201, 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.

Comment date: January 24, 2001, 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.

34. Idaho Power Company

[Docket No. EL01–22–000]

Take notice that on December 20, 2000, Idaho Power Company filed a Petition for Declaratory Order in the above-captioned proceeding.

Comment date: January 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

35. New York Independent System Operator, Inc.

[Docket No. EL01–24–000]

Take notice that on December 22, 2000, the New York Independent System Operator, Inc. (NYISO) filed a Request for Additional Limited Waiver from Certain OASIS Requirements.

Copies of this filing were served on the Commission's Service List in Docket Nos. ER97–1523–000 *et al.*, and on the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: January 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

36. New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–005, ER97–1523–006, OA97–470–006, ER97–4234–004, EC99–31–001]

Take notice that on December 19, 2000, the New York Independent System Operator, Inc. filed a Report on Governance Issues in the above-captioned dockets.

A copy of this filing was served upon all parties in the above-captioned dockets.

Comment date: January 12, 2001, 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).

David P. Boergers,

Secretary.

[FR Doc. 01–517 Filed 1–8–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting; Notice

January 3, 2001.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: January 10, 2001, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items Listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, telephone (202) 208–0400 for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

757th Meeting—January 10, 2001; Regular Meeting (10:00 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
OMITTED
CAE–2.
DOCKET# ER01–459, 000, NEW ENGLAND POWER POOL
CAE–3.
DOCKET# ER01–484, 000, AMERICAN TRANSMISSION COMPANY LLC
CAE–4.
DOCKET# ER00–1411, 000, ILLINOIS POWER COMPANY
CAE–5.
DOCKET# ER01–123, 000, ILLINOIS POWER COMPANY
CAE–6.
OMITTED
CAE–7.
DOCKET# ER00–2015, 000, NEVADA POWER COMPANY
OTHER#S ER00–2018, 000, SIERRA PACIFIC POWER COMPANY
CAE–8.
DOCKET# EL94–38, 001, CITIES OF BATAVIA AND ST. CHARLES, ILLINOIS V. COMMONWEALTH EDISON COMPANY
OTHER#S ER94–913, 001, CITIES OF BATAVIA AND ST. CHARLES, ILLINOIS V. COMMONWEALTH EDISON COMPANY
CAE–9.
DOCKET# ER99–3144, 003, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
OHER#S EC99–80, 003, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
EC99–80, 004, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
EC99–80, 005, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
ER99–3144, 004, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
ER99–3144, 005, ALLIANCE COMPANIES, AMERICAN ELECTRIC POWER SERVICE CORPORATION ON BEHALF OF: APPALACHIAN POWER COMPANY, COLUMBUS SOUTHERN POWER COMPANY, INDIANA MICHIGAN POWER COMPANY, KENTUCY POWER COMPANY, KINGSPORT POWER COMPANY, OHIO POWER COMPANY, WHEELING POWER COMPANY, CONSUMERS ENERGY COMPANY, THE DETROIT EDISON COMPANY, FIRST ENERGY CORPORATION ON BEHALF OF: THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, OHIO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, THE TOLEDO EDISON COMPANY AND VIRGINIA ELECTRIC AND POWER COMPANY
EC00–103, 000, CONSUMERS ENERGY COMPANY
ER00–2869, 000, CONSUMERS ENERGY COMPANY
CAE–10.
OMITTED
CAE–11.
DOCKET# EL01–17, 000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–12.
DOCKET# EL01–9, 000, CLECO EVANGELINE LLC
CAE–13.
DOCKET# EC01–4, 000, CONSUMERS ENERGY COMPANY
OTHER#S ER01–414, 000, CONSUMERS ENERGY COMPANY AND MICHIGAN ELECTRIC TRANSMISSION COMPANY
CAE–14.
DOCKET# RT01–67, 000, GRIDFLORIDA LLC, FLORIDA POWER & LIGHT COMPANY, FLORIDA POWER CORPORATION AND TAMPA ELECTRIC COMPANY
CAE–15.
DOCKET# ER99–28, 002, SIERRA PACIFIC POWER COMPANY
OTHER#S EL99–38, 001, SIERRA PACIFIC POWER COMPANY
ER99–945, 001, SIERRA PACIFIC POWER COMPANY

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
DOCKET# RP97–406, 027, DOMINION TRANSMISSION, INC.
OTHER#S RP01–74, 002, DOMINION TRANSMISSION, INC.
CAG–2.
OMITTED
CAG–3.
DOCKET# RP00–241, 002, PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA V. EL PASO NATURAL GAS COMPANY, EL PASO MERCHANT ENERGY–GAS, L.P. AND EL PASO MERCHANT ENERGY COMPANY
OTHER#S RP00–241, 000, PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA V. EL PASO NATURAL GAS COMPANY, EL PASO MERCHANT ENERGY–GAS, L.P. AND EL PASO MERCHANT ENERGY COMPANY
RP00–241, 001, PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA V. EL PASO NATURAL GAS COMPANY, EL PASO MERCHANT ENERGY–GAS, L.P. AND EL PASO MERCHANT ENERGY COMPANY
CAG–4.
OMITTED
CAG–5.
OMITTED
CAG–6.
DOCKET# RP01–44, 002, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
OTHER#S RP01–44, 001, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–7.
DOCKET# RP01–87, 000, FITCHBURG GAS & ELECTRIC LIGHT COMPANY V. TENNESSEE GAS PIPELINE COMPANY
CAG–8.
DOCKET# RP00–622, 001, EL PASO NATURAL GAS COMPANY
CAG–9.
DOCKET# RP99–301, 008, ANR PIPELINE COMPANY

Consent Agenda—Miscellaneous

CAM–1.
DOCKET# RM01–2, 000, SUBDELEGATIONS

Consent Agenda—Energy Projects—Hydro

CAH–1.
DOCKET# P–184, 074, EL DORADO IRRIGATION DISTRICT
CAH–2.
DOCKET# P–2984, 036, S.D. WARREN COMPANY
CAH–3.
DOCKET# P–1267, 039, GREENWOOD COUNTY, SOUTH CAROLINA
CAH–4.
DOCKET# P–11634, 001, CONTINENTAL LANDS, INC.

Consent Agenda—Energy Projects—Certificates

CAC–1.
OMITTED
CAC–2.
DOCKET# CP00–447, 000, DISTRIGAS OF MASSACHUSETTS LLC
CAC–3.
OMITTED
CAC–4.
OMITTED
CAC–5.
DOCKET# CP00–456, 000, MONTANA POWER COMPANY, AND 3698157 CANADA LTD.
CAC–6.
DOCKET# CP00–457, 000, CANADIAN-MONTANA PIPE LINE CORPORATION AND 3698157 CANADA LTD.
CAC–7.
DOCKET# CP01–19, 000, CHINOOK PIPELINE COMPANY
CAC–8.
DOCKET# CP01–23, 000, NORTH BAJA PIPELINE, LLC
CAC–9.
DOCKET# CP01–41, 000, EL PASO NATURAL GAS COMPANY
CAC–10.
DOCKET# CP00–383, 000, NORTENO PIPELINE COMPANY
OTHER#S CP00–384, 000, NORTENO PIPELINE COMPANY AND SOUTHERN TRANSMISSION COMPANY
CP00–385, 000, NORTENO PIPELINE COMPANY AND SOUTHERN TRANSMISSION COMPANY
CAC–11.
OMITTED
CAC–12.
OMITTED
CAC–13.
DOCKET# CP96–711, 001, DISCOVERY PRODUCERS SERVICES LLC
OTHER#S CP96–712, 001, DISCOVERY GAS TRANSMISSION LLC
CP96–719, 001, DISCOVERY GAS TRANSMISSION LLC

Energy Projects—Hydro Agenda

H–1.
RESERVED

Energy Projects—Certificates Agenda

C–1.
RESERVED

Markets, Tariffs and Rates—Electric Agenda

E–1.
RESERVED

Markets, Tariffs and Rates—Gas Agenda

G–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 01–613 Filed 1–4–01; 4:48 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6931–5]

National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide); Availability of Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is announcing today the following actions: The availability of new information on 5-minute average sulfur dioxide (SO_2) concentrations in the ambient air; The status of EPA's ongoing activities to characterize and address 5-minute peak SO_2 levels that may pose risk to sensitive individuals with asthma, including plans to consider taking final action on the proposed intervention level program (ILP) for the reduction of SO_2 emissions published on January 2, 1997 and to respond to the remand of the final decision on the national ambient air quality standards (NAAQS) for SO_2 published on May 22, 1996; The solicitation of comments on the new air quality information.

DATES: Comments should be submitted on or before March 12, 2001.

ADDRESSES: Comments should be submitted to Susan Lyon Stone, U.S. Environmental Protection Agency (MD–15), Research Triangle Park, NC 27711; email *stone.susan@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Lyon Stone at the same address; e-mail *stone.susan@epa.gov;* telephone (919) 541–1146.

SUPPLEMENTARY INFORMATION: On May 5, 1998, EPA announced its plans for responding to a remand of its final decision not to revise the SO_2 NAAQS (61 FR 25566, May 22, 1996) and for final action on the proposed ILP (62 FR 210, January 2, 1997); identified interim actions that we planned to take to address 5-minute peak SO_2 levels that may pose risk to sensitive individuals; and solicited new information and analyses on 5-minute peak SO_2 levels (63 FR 24782). The sensitive population for the effects of 5-minute peaks of SO_2 consists of children, adolescents and adults with mild or moderate asthma who are physically active outdoors. As discussed in this 1998 notice, the primary issue in our SO_2 NAAQS decision was whether a new 5-minute NAAQS was appropriate to protect sensitive individuals with asthma from the risk posed by exposure to 5-minute SO_2 levels of 0.6 ppm or above. Given the available health effects information; information as to the localized, infrequent, and site-specific nature of the risk involved; and the advice of the Clean Air Scientific Advisory Committee (CASAC), the Administrator concluded that short-term (*i.e.,* 5-minute) peak concentrations of SO_2 do not constitute a public health problem for which the establishment of a NAAQS would be appropriate.

Consistent with our final SO_2 NAAQS decision, and to supplement the protection provided by the existing SO_2

NAAQS, we subsequently proposed an ILP to assist States in determining whether 5-minute peak concentrations of SO_2 posed a significant health risk in the local population, and if so, to identify appropriate remedial measures. A key element of the proposed ILP was the establishment of a concern level of 0.6 parts per million (ppm), 5-minute average SO_2 concentration, and an endangerment level of 2.0 ppm, 5-minute average. The proposed ILP would require that State and tribal plans contain the authority to take whatever action is necessary to prevent further exceedances of such concern and endangerment levels when the State/tribe determines that intervention is appropriate. The proposed ILP includes factors that the State/tribe should consider in making such determinations, including the magnitude and frequency of peak concentrations exceeding these levels, the history and nature of any citizen complaints, available information on potential exposure of sensitive individuals with asthma, and information about the source(s) causing the peak SO_2 concentrations. Based on these factors, the proposed ILP provides for flexibility for the State/tribe to determine the nature and degree of intervention that is warranted in any area and to relocate existing SO_2 monitors to areas where 5-minute peak concentrations may be of concern.

On January 30, 1998, the Court of Appeals for the District of Columbia issued a decision in a case brought by the American Lung Association (ALA) and the Environmental Defense Fund, *American Lung Association* v. *Browner,* No. 134 F.3d 388 (D.C. Cir. 1998) (*ALA*) that challenged our decision not to establish a new 5-minute SO_2 NAAQS. The court found that we had failed to provide an adequate explanation for our determination that no revision to the SO_2 NAAQS was appropriate, and remanded the decision to us to more fully explain our decision. *id.* In the absence of any court-established deadline for EPA action, EPA agreed with ALA to finalize our response to the remand by the end of the year 2000 (63 FR 24782). Subsequently, in light of a decision by the court in another case relating to EPA's 1997 revisions of the NAAQS for ozone and particulate matter, *American Trucking Associations* v. *EPA,* 175 F.3d 1027, 195 F.3d 4, *cert. granted* 120 S. Ct. 2003 (U.S. May 22, 2000) (No. 9901257) (*ATA*), the ALA agreed to extend the time for us to respond to the remand of the SO_2 NAAQS decision to accommodate our need for additional time and pending additional court action in the *ATA* case.

In conjunction with extension of this schedule, we committed to take a number of actions, building upon the actions discussed in our 1998 notice (63 FR 24782). These ongoing actions focus on broadening our efforts to collect and analyze data on 5-minute average SO_2 concentrations, providing further guidance to States on monitoring 5-minute SO_2 concentrations around industrial sources, and addressing specific situations relating to short-term SO_2 exposures that are of concern in local communities. c

Availability of Information on 5-Minute SO_2 Concentrations

This section discusses new information that is now available on 5-minute SO_2 concentrations, and includes descriptions of the nature of such data in EPA's Aerometric Information Retrieval System (AIRS) and data in other formats, and analyses that we have conducted of these data. Our 1998 solicitation of new information and analyses on 5-minute peak SO_2 levels (63 FR 24782) resulted in the submission of relatively little additional 5-minute SO_2 monitoring data. On June 30, 2000, we directly requested the assistance of EPA's Regional Offices and the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officers (STAPPA/ALAPCO) in obtaining any additional 5-minute SO_2 monitoring data that may have been collected but not submitted to AIRS.[1] In response to this request, we have received from nine States additional 5-minute SO_2 monitoring data from more than 48 monitoring sites, recorded during the period 1994–2000. We note, however, that the newly submitted data generally have a number of limitations, such that neither EPA nor the States express any opinions about the validity of these data at this time. More specifically, much of the data has been provided to us in a variety of formats not directly compatible with AIRS; only one State and the District of Columbia submitted their additional data into AIRS. Most of the data files lacked information on monitor location and type, or nearby source types, and a number of States have warned us that the data have not been subjected to appropriate quality assurance/quality control (QA/QC) procedures.[2] To the extent possible and appropriate, we are working with States to address these limitations. However, at this time, we do not believe it is appropriate to disseminate or rely on these data. At such time as the data are validated, they will be available to the public in AIRS.

To supplement prior assessments[3] and improve our understanding of the frequency, magnitude, and number of locations at which high 5-minute concentrations of SO_2 may be occurring, we have undertaken analyses of the data in AIRS that include the following activities:

(1) We have evaluated monitoring data from 83 monitoring sites reporting 5-minute concentrations in 14 States to determine the frequency of peak concentrations greater than or equal to 0.6 ppm, the variations of such frequencies across locations, whether there are industrial sources located nearby that may be contributing to measured peak concentrations, and the size of the surrounding population within a 5-km radius of the monitor.

(2) Since we have AIRS data from far more monitoring sites (695) recording 1-hour average concentrations than from monitors recording 5-minute concentrations, we have constructed and applied mathematical models to aid in estimating the potential for the occurrence of 5-minute peak concentrations at and above 0.6 ppm SO_2 at locations where only 1-hour average concentrations are available. These models are based on determining the relationships of 5-minute peak concentration distributions[4] to 1-hour mean concentration distributions and evaluating the statistical strength of these relationships.

Although we intend to extend these analyses to include additional data to the extent they become certified for inclusion in AIRS, we have substantially completed the analyses described above. A draft report summarizing our preliminary findings has been placed on EPA's website at *http://www.epa.gov/ttn/amtic.*

Status of Ongoing Activities

This section discusses the status of our ongoing activities to characterize and address 5-minute peak SO_2 levels

[1] Robert Perciasepe, Assistant Administrator for Air and Radiation, to S. William Becker, Executive Director, STAPPA/ALAPCO, June 30, 2000; Robert Perciasepe, Assistant Administrator for Air and Radiation, to EPA Regional Administrators, Regions I–X, June 30, 2000.

[2] For example, in our preliminary review, we have noted that a number of recorded values appear to have been automatically flagged by the data loggers as reflecting monitor malfunctions and calibration measurements.

[3] Prior assessments were done as part of our 1996 review of the SO_2 NAAQS and are available in the docket for that rulemaking (Docket No. A–84–25).

[4] Five-minute peak concentrations are taken to be the maximum 5-minute block average within each hour.

that may pose risk to sensitive individuals with asthma. These activities include: (1) Efforts to obtain State certification of newly submitted 5-minute SO_2 monitoring data and related information, to be followed by analysis of this additional certified data, as appropriate; (2) development of guidance on monitoring 5-minute SO_2 concentrations; (3) additional 5-minute SO_2 air quality monitoring, in coordination with States' and industry's monitoring activities; (4) consideration of taking final action on the proposed ILP; and (5) consideration of our response to the remand of our 1996 SO_2 NAAQS decision.

We are now in the process of working with States who submitted new 5-minute SO_2 monitoring data to facilitate their certification of the data. We are also working to obtain related information, as appropriate, such as monitor location, nearby source types, and surrounding population. To the extent that such information warrants further analysis, we intend to extend the analyses discussed above to include these data, and to complete these analyses by mid-2001.

In a separate but related effort, we are evaluating our ambient air monitoring regulations and approaches. As part of a broad, integrated monitoring strategy for all the criteria pollutants, which we expect to propose late Spring 2001, we also expect to propose regulatory changes necessary to reflect current data needs, which in part will involve SO_2 monitoring. We initially proposed revisions to regulations at 40 CFR parts 53 and 58 to modify reference and equivalent methods for SO_2 and to revise the minimum requirements for ambient monitoring in compliance with the SO_2 NAAQS in order to facilitate additional monitoring of 5-minute concentrations (60 FR 58959, March 7, 1995). We will consider the input received from the earlier proposal in developing these changes.

In addition, we also intend to issue a guideline specifically on SO_2 monitoring. We have already developed a draft guideline, which is intended to assist State and local air pollution control agencies in evaluating their networks and the appropriateness of revising those networks to better address the potential for 5-minute concentrations of concern. The draft guideline provides relevant background information, summarizes recommended procedures for network review, suggested procedures for review of available ambient data to determine the potential for high 5-minute concentrations, and recommendations for short-term monitoring network design, including cost estimation procedures to help assess the costs of network revisions. This draft document may be obtained at EPA's website at *http://www.epa.gov/ttn/amtic.* In addition to these efforts, we will work with the States to facilitate implementation of the SO_2 monitoring guideline and the broader integrated monitoring strategy.

We are also starting to develop plans for collecting additional 5-minute SO_2 air quality monitoring data. We intend to work with States and industry to elicit their support and participation in this project, which we expect will provide important new information as to the likelihood and nature of 5-minute peak SO_2 concentrations that may now be occurring around various types of industrial facilities. We anticipate that this project will take approximately two years, including planning, coordination, data collection and analysis. We expect that this information will help inform our response to the remand of the SO_2 NAAQS decision as well as the next periodic review of the SO_2 NAAQS.

In our consideration of taking final action on the proposed ILP (62 FR 210, January 2, 1997), we will take into account comments received in response to this notice as well as comments received on our 1997 proposed action. We received 62 comments on the proposed ILP, of which 11 comments were from State and local agencies and a related organization, 38 comments were from individual industry commenters and trade groups, four were from public advocacy groups, and four comments were from private citizens. Many commenters supported the proposed ILP and its flexible implementation strategy, while others commented that States already have sufficient regulatory authority to deal with sources emitting high 5-minute peaks of SO_2 that may pose a risk to the health of asthmatic individuals living nearby, and therefore an additional regulatory program is not necessary. The commenters disagreed about the significance of the health effects associated with exposure to short-term peaks of SO_2, particularly at the concern level (0.6 ppm SO_2, 5-minute average). Some expressed the view that the health effects associated with exposures at this level are not significant enough to warrant remedial action, while others expressed the view that this level was not sufficiently health protective and urged us to set the concern level at a lower concentration (*e.g.*, 0.3 ppm SO_2, 5-minute average). Many commenters expressed concern about the costs associated with implementing the proposed ILP, especially when compared to the relatively small size of the sensitive population (*i.e.*, individuals with asthma who are active outdoors) that might be affected. In addition, some State and local agency commenters expressed concern about the costs associated with the additional source-based monitoring (*e.g.*, for monitor purchase, monitor relocation, or additional staff members) that might be needed to implement the proposed ILP.

With regard to moving forward with a final ILP, we note that the results of the data analyses completed to date continue to suggest that there may be a number of locations in the country where repeated exposures to 5-minute peak SO_2 levels of 0.60 ppm and above could pose a risk of significant health effects. Taking into account this information, the results of planned additional analyses, and public comments, we will consider taking final action on an ILP. We anticipate reaching a final decision on an ILP by the summer of 2001, as a separate matter from our consideration of our response to the remand of the 1996 SO_2 NAAQS decision.[5]

Since the court decision in the *ALA* case, remanding our decision not to revise the SO_2 NAAQS, we have continued to take a number of actions relating to 5-minute SO_2 peaks of 0.6 ppm or greater, including the solicitation and review of additional information and analyses described above. Although we continue to evaluate this and other information in light of the *ALA* remand, the ruling of the Court of Appeals for the District of Columbia Circuit in the *ATA* case, and its subsequent appeal to the United States Supreme Court, has created potential uncertainty regarding the appropriate framework for decisions under section 109. As a result, we believe that the better course of action is to await a decision from the Supreme Court, which is expected during the spring of 2001, before responding to the *ALA* remand of our SO_2 NAAQS decision. This will better enable us to

[1] Although we are in the process of considering whether to move forward with an ILP during the same time that we continue to consider our response to the remand in the *ALA* case, it is important to note that we view our ILP activities and our response to the *ALA* remand as independent actions. Our consideration of taking final action on the proposed ILP is not intended as a substitute for a decision on the *ALA* remand, nor is it intended to indicate that we have reached any particular outcome regarding the need for a revised SO_2 NAAQS. Regardless of our decision in response to the *ALA* remand, we believe that it is appropriate at this time to consider taking final action on an ILP to provide any supplementary protection from exposures of concern to short-term SO_2 peaks that may be appropriate.

review and assess all relevant information, including the court's opinion and any additional analyses and technical information, that could shed additional light on the appropriate response to the remand. We intend to publish our schedule for considering the relevant information and responding to the remand by mid-2001.

Request for Comments

We are soliciting comments on the data analyses and preliminary findings in our draft report that is now available, to better inform future actions to reduce the health risk that may be posed by potential exposures of exercising asthmatics to short-term peaks of SO_2. More specifically, we solicit comments on the following: the appropriateness of using 1-hour average SO_2 monitoring data as one element in our efforts to estimate the potential for 5-minute peak concentrations greater than or equal to 0.6 ppm SO_2; the usefulness of these types of analyses in identifying the need for additional monitoring or other actions and the sources likely to contribute to high 5-minute SO_2 concentrations; and, for the purpose of assessing the need for additional monitoring around SO_2 sources, the appropriateness of using just the hourly maximum 5-minute average SO_2 concentrations, rather than all the 5-minute averages in an hour, including any relevant data storage and management considerations. We will consider this information in the context of taking final action on the proposed ILP, conducting future analyses of 5-minute SO_2 air quality data, responding to the *ALA* remand and conducting the next periodic review of the SO_2 NAAQS.

Dated: January 3, 2001.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 01–565 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6931–2]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; MERISOL USA LLC

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on a No Migration Petition Reissuance.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to MERISOL USA LLC (Merisol) for a Class I injection well located at Houston, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Merisol, of the specific restricted hazardous wastes identified in the exemption, into a Class I hazardous waste injection well No. WDW–319 at the Houston, Texas facility, until December 31, 2010, unless EPA moves to terminate the exemption under provisions of 40 CFR 148.24. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued October 30, 2000. The public comment period closed on December 7, 2000. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of December 27, 2000.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–7165.

Joan Brown,

Acting Division Director, Water Quality Protection Division (6WQ).

[FR Doc. 01–572 Filed 1–8–01; 8:45 am]

BILLING CODE 6565–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66282; FRL–6761–3]

Notice of Receipt of Requests to Voluntarily Cancel CertainPesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the FederalInsecticide, Fungicide, and Rodenticide Act (FIFRA), as amended,EPA is issuing a notice of receipt of requests by registrants tovoluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 9, 2001, unless indicated otherwise, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail address: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although thisaction may be of particular interest to persons who produce or usepesticides, the Agency has not attempted to describe all thespecific entities that may be affected by this action. If you haveany questions regarding the information in this notice, consult theperson listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies ofthis document and certain other related documents that might be availableelectronically, from the EPA Internet Home Page athttp://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** listing at (http://www.epa.gov/fedrgstr/).

2. *In person*. Contact James A. Hollins at 1921 Jefferson Davis Highway, Crystal Mall 2, Rm. 224, Arlington, VA, telephonenumber (703) 305–5761. Available from 7:30 a.m. to 4:45 p.m.,Monday thru Friday, excluding legal holidays.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applicationsfrom registrants to cancel some 31 pesticide products registeredunder section 3 or 24(c) of FIFRA. These registrations are listedin sequence by registration number (or

company number and 24(c)number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000264 OR–96–0017	Mocap 10% Granular Nematicide Insecticide	*O*-Ethyl *S,S*-dipropyl phosphorodithioate
000264 OR–96–0018	Mocap EC Nematicide - Insecticide	*O*-Ethyl *S,S*-dipropyl phosphorodithioate
000279 OR–78–0020	Thiodan 50WP Insecticide	6,7,8,9,10-Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide
000352 TX–97–0004	Dupont Staple Herbicide	Sodium 2-chloro-6-(4,6-dimethoxypyrimidin-2-yl-thio)benzoate
000352 WA–93–0006	Dupont Escort Herbicide	Methyl 2-(((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)
000498–00155	Spraypak Wasp Jet Spray	*o*-Isopropoxyphenyl methylcarbamate
000498–00165	Spraypak Wasp Spray	*o*-Isopropoxyphenyl methylcarbamate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
000498–00168	Spraypak Wasp Long Range Jet Spray, Formula 2	*o*-Isopropoxyphenyl methylcarbamate
000538–00011	Scotts Halts Crabgrass Preventer	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
000538–00053	Scotts Super Halts Plus	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
000538–00077	Crabgrass Preventer and Dandelion Control Plus Fertilizer	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-
		2,4-Dichlorophenoxyacetic acid
		2-(2-Methyl-4-chlorophenoxy)propionic acid
000538–00129	Pro-turf Fertilizer and Crabgrass Preventer	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
000538–00156	Turf Builder Plus Halts for Lawns	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
002935–00481	Parathion 4 Spray	*O,O*-Diethyl *O*-p-nitrophenyl phosphorothioate
002935–00483	Parathion 8 Aqua	*O,O*-Diethyl *O*-p-nitrophenyl phosphorothioate
003125 TX–84–0005	Guthion 2 L	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
005481 ID–97–0003	Vapam Soil Fumigant Solution for All Crops	Sodium *N*-methyldithiocarbamate
005481 OR–83–0012	Vapam Soil Fumigant Solution	Sodium *N*-methyldithiocarbamate
005905–00513	Parathion 4E Emulsifiable Insecticide Concentrate	*O,O*-Diethyl *O*-p-nitrophenyl phosphorothioate
005905–00514	Parathion 8E Emulsifiable Insecticide Concentrate	*O,O*-Diethyl *O*-p-nitrophenyl phosphorothioate
010163–00197	Betasan 2.9E	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
010163–00202	Betasan 46% Manufacturing Concentrate	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
010163–00203	Betasan 3.6G + Fertilizer	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
010163 CA–97–0001	Prefar 6-E Herbicide	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide
010163 OR–94–0023	Prefar 4-E Herbicide	*S*-(*O,O*-Diisopropyl phosphorodithioate) ester of N-(2-mercaptoethyl)benzenesulfonamide
010292–00017	Liquid Residual Spray Insecticide	o-Isopropoxyphenyl methylcarbamate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
010900–00067	858 P.D. Aqueous Roach & Ant Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
051036–00180	Micro Flo C0./ Parathion 8E	*O,O*-Diethyl *O*-p-nitrophenyl phosphorothioate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
062719–00344	DMA 4 IVM	Dimethylamine 2,4-dichlorophenoxyacetate
062719 TX–95–0011	Lorsban 50W Insecticide In Water Soluble Packets	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
073049 WA–86–0019	3.91% Liquid Concentrate Progibb	Gas cartidge (as a device for burrowing animal control)
		Gibberellic acid
		Gibberellic acid
		Gibberellic acid
		Gibberellic acid
		N6-Benzyladenine, mixture with Gibberellins A4 and A7

Note: Registrants for EPA Registrations 010900–67 and 051036–180 waived the comment period and cancellation of these two products are effective upon publication of this FEDERAL REGISTER notice.

Unless a request is withdrawn by the registrant within 180days (30 days when requested by registrant) of publication of thisnotice, orders will be issued canceling all of these registrations.Users of these pesticides or anyone else desiring the retention ofa registration should contact the applicable registrant during thiscomment period.

The following Table 2, includes the names and addresses ofrecord for all registrants of the products in Table 1, in sequenceby EPA company number:

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000264	Aventis Cropscience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
000279	FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000498	Chase Products Co, Putting The Best At Your Fingertips, Box 70, Maywood, IL 60153.
000538	The Scotts Co., 14111 Scottslawn Rd, Marysville, OH 43041.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd, Box 4913, Kansas City, MO 64120.
005481	Amvac Chemical Corp., Attn: Jon C. Wood, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660.
005905	Helena Chemical Co, 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
010292	Venus Laboratories, Inc., 855 Lively Blvd, Wood Dale, IL 60191.
010900	Sherwin-Williams Consumer Group, 601 Canal Rd., Cleveland, OH 44113.
051036	Micro-Flo Co, Box 772099, Memphis, TN 38117.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/3E, Indianapolis, IN 46268.
073049	Valent Biosciences Corp., 870 Technoloy Way, Libertyville, IL 60048.

III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, onepesticide active ingredient will no longer appear in any registeredproducts. Those who are concerned about the potential loss of thisactive ingredient for pesticidal use are encouraged to workdirectly with the registrant(s) to explore the possibility ofwithdrawing their request for cancellation. The active ingredientis listed in the following Table 3, with the CAS Number and EPACompany Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANT'S REQUEST TO CANCEL

CAS No.	Chemical Name	EPA Company No.
53663–71–1	N6-Benzyladenine, mixt. with Gibberellins A4 and A7	073049

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

Section 6(f)(1) of FIFRA, provides that a registrant of apesticide product may at any time request that any of itspesticide registrations be amended to delete one or more uses.The Act further provides that, before acting on the request, EPAmust publish a notice of receipt of any such request in the**Federal Register**. Thereafter, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request forcancellation must submit such withdrawal in writing to James A.Hollins, at the address given above, postmarked before July 9, 2001, unless indicated otherwise. This written withdrawal of therequest for

cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, andto fulfill any applicable unsatisfied data requirements.

VI. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of thecancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1–year after the date the cancellation request was received by the Agency. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL 3846–4). Exception to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistrationrequirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affectedproduct(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concernsassociated with a particular chemical.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: December 21, 2000.

Richard D. Schmitt,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 01–575 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OW–FRL–6931–1]

Nutrient Criteria Development; Notice of Ecoregional Nutrient Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Ecoregional Nutrient Criteria for Lakes and Reservoirs, Rivers and Streams, and Wetlands.

SUMMARY: The Environmental Protection Agency (EPA) is publishing seventeen Ecoregional Nutrient Criteria Documents for lakes and reservoirs, rivers and streams and wetlands within specific geographic regions (ecoregions) of the United States. These recommended section 304(a) water quality criteria for nutrients were developed with the aim of reducing and preventing eutrophication on a National scale. Each document presents recommended criteria for causal parameters (total phosphorus and total nitrogen) and response variables (chlorophyll a and some form of turbidity). This information is intended to serve as a starting point for States, authorized Tribes and others to develop more refined nutrient criteria, as appropriate, using EPA waterbody-specific technical guidance manuals and other scientifically defensible approaches. EPA will work with States and authorized Tribes as they adopt water quality criteria for nutrients into their water quality standards. EPA expects States and authorized Tribes to adopt or revise EPA ecoregional nutrient criteria published in 2000 into State or Tribal water quality standards by 2004.

Under the Clean Water Act, States, Territories, and authorized Tribes adopt into their water quality standards water quality criteria to protect designated uses. The criteria recommendations presented in these documents are guidance that States, territories, and authorized Tribes may use as a starting point for developing their own criteria as part of their water quality standards. EPA strongly encourages States, Territories and authorized Tribes to refine these recommendations based on the key elements of nutrient criteria development (historical information, reference conditions, models, consideration of downstream effects, and expert judgment) discussed in EPA's published Technical Guidance Manuals (Lakes and Reservoirs: EPA–822–B00–001; Rivers and Streams: EPA–822–B–00–002). While the seventeen documents available today contain EPA's scientific recommendations regarding ecoregional nutrient criteria, the information and recommendations are not regulations, and do not impose legally binding requirements on EPA, States, Territories, authorized Tribes, or the public. As recommendations, they might not apply to a particular situation based upon the circumstances. States, Territories, and authorized Tribes retain the discretion to adopt water quality criteria based on other scientifically defensible approaches to developing regional or local nutrient criteria that differ from these recommendations. EPA may revise these section 304(a) water quality criteria in the future.

EPA is making these recommended section 304(a) nutrient water quality criteria available to the public in accordance with the Agency's process for publishing new and revised criteria (see **Federal Register**, December 10, 1998, 63 FR 68354 and in the EPA document titled, National Recommended Water Quality—Correction EPA 822–Z–99–001, April 1999). EPA invites the public to provide scientific views on these criteria. EPA will review and consider information submitted by the public on significant scientific issues and site-specific data that might not have otherwise been identified by the Agency during development of these criteria. After EPA reviews the submitted significant scientific information, the Agency may publish revised nutrient water quality criteria, or publish a notice informing the public that the submitted information does not warrant revision of the criteria.

EPA encourages the public to provide additional data that could help States and or authorized Tribes to refine these recommended nutrient water quality criteria. EPA has identified specific sections within each document where public input would greatly assist States and authorized Tribes in the task of augmenting the database for deriving ecoregional nutrient water quality criteria. For example, the public can provide information concerning the historical conditions and trends of the water resources within an ecoregion related to cultural eutrophication. EPA will forward all comments received on a particular ecoregional criterion or set of criteria to the appropriate State or Tribe to help foster water quality criteria refinement.

EPA's Office of Water, Office of Science and Technology has prepared this document for publication. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

DATES: EPA will accept significant scientific information submitted to the Agency within 90 days of publication of this notice in the **Federal Register**. Any scientific information submitted should be adequately documented and contain enough supporting information to indicate that acceptable and scientifically defensible procedures were used and that the results are reliable.

ADDRESSES: This notice contains a summary of the Ecoregional Nutrient Criteria Documents. Copies of the all or any document may be obtained from the U.S. National Service Center for Environmental Publications (NSCEP), 11029 Kenwood Road, Cincinnati, OH 45242; (513) 489–8190 or toll free (800) 490–9198. The documents are also available electronically at *http://www.epa.gov/ost/standards/nutrient.html.* The waterbody-specific technical guidance manuals, which present the nutrient criteria derivation methodology used by EPA to develop the nutrient water quality criteria, are also available from EPA's nutrient website. An original and two copies of written significant scientific information should sent to Robert Cantilli (MC–4304), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW , Washington, DC 20460. Written significant scientific information may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats to *OW-General@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Cantilli, U.S. EPA, Health and Ecological Criteria Division (4304), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460; or call (202) 260–5546; or e-mail cantilli.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

What Are Section 304(a) Nutrient Criteria?

Section 304(a)(2) of the Clean Water Act directs EPA to develop and publish information on the factors necessary ''to restore and maintain the chemical, physical and biological integrity of the Nation's waters, including the protection and propagation of shellfish, fish and wildlife, the protection of recreational activities in and on the water, and the measurement and classification of water quality.''

Section 304(a)(1) of the Clean Water Act directs EPA to publish, and from time to time revise, recommended criteria for water quality accurately reflecting the latest scientific knowledge, ''including information on the factors affecting rates of eutrophication.'' The intent of EPA's recommended ecoregional nutrient criteria is to represent water quality conditions of surface water that are minimally affected by human development activities and to provide for the protection and propagation of aquatic life and recreation.

Water quality criteria developed under section 304(a) are based solely on data and scientific judgments and do not reflect consideration of economic impacts or the technological feasibility of meeting any specific level of water quality in ambient water. They provide guidance for States and authorized Tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. They also provide guidance to EPA when promulgating water quality standards under section 303(c), when such action is necessary.

EPA published a National Strategy for the Development of Regional Nutrient Criteria in June 1998 that described the approach the Agency would follow in developing nutrient criteria and working with States and authorized Tribes as they adopt nutrient criteria into State and Tribal water quality standards (see **Federal Register**, June 25, 1998, 63 FR 34648; this document is also available from the nutrient website: *http://www.epa.gov/ost/standards/nutrient.html.).* The major focus of the strategy is the development of waterbody-type technical guidance manuals and recommended ecoregion-specific nutrient criteria by the end of 2000. In addition, EPA has established a national nutrient database that States and authorized Tribes can use to compile as well as evaluate nutrient data and perform alternative analyses. This database contains the information upon which today's recommendations were calculated.

EPA's Section 304(a) nutrient criteria recommendations are intended to protect against the adverse effects of cultural eutrophication. Cultural eutrophication (*i.e.,* overenrichment of nutrient levels associated with human activities) of United States surface waters is a long-standing problem. States and Tribes consistently identify excessive levels of nutrients are a major reason why as much as half of the surface waters surveyed in this country do not meet water quality objectives, such as full support of aquatic life.

Nitrogen and phosphorus are the primary causes of eutrophication; algal blooms are often a response to enrichment. Within various waterbody types (e.g., lakes, rivers, estuaries), chronic symptoms of overenrichment include low dissolved oxygen, fish kills, reduced water clarity, and changes from the natural types and diversity of species of flora and fauna. The problem is national in scope, but specific levels of overenrichment leading to these problems vary from one region of the country to another because of factors such as geographical variations in geology and soil types. For these reasons, EPA is developing its recommended nutrient water quality criteria on an ecoregional basis for use by States and authorized Tribes.

Because EPA's nutrient water quality criteria are intended to represent water quality conditions that are reflective of those minimally impacted by human activities, they are presumed to protect any threatened or endangered species that reside in or make use of those waters. However, there remains a small possibility that the nutrient criteria will not protect all listed endangered or threatened species. Consequently, EPA recommends that States and authorized Tribes develop more protective, site-specific modifications of the criteria as necessary to protect threatened and endangered species, where sufficient data exist indicating that endangered or threatened species are more sensitive to a particular level of a nutrient parameter or overenrichment condition than that reflected by EPA's nutrient water quality criteria.

What Guidance Will EPA Develop and Publish for Nutrients Under Section 304(a)?

To assist EPA Regions, States, and authorized Tribes to establish protective and scientifically defensible nutrient criteria, EPA will publish specific technical guidance manuals for various waterbody types. In 2000, EPA published guidance manuals for lakes and reservoirs and for rivers and streams. These documents are available from EPA's nutrient website: *http://www.epa.gov/ost/standards/nutrient.html.* EPA is currently developing guidance manuals for estuarine and coastal waters and for wetlands.

In addition to developing this waterbody-type specific guidance, EPA is working to publish specific nutrient water quality criteria recommendations under section 304(a) for every type of waterbody, *i.e.,* lakes and reservoirs, rivers and streams, wetlands and estuaries and coastal waters (where applicable) for all of the 14 nutrient ecoregions that EPA has identified in the continental United States. Today's notice announces the availability of Ecoregional Nutrient Criteria Documents for lakes and reservoirs in a set of eight ecoregions, for rivers and

streams in a set of eight ecoregions (several of which overlap with the set of eight ecoregions for lakes and reservoirs), and for wetlands in one ecoregion. These ecoregions were chosen based on the availability of nutrient data within each ecoregion. Following development of technical guidance manuals for estuarine and coastal waters and wetlands (in general), EPA intends to publish water quality criteria for these waters on an appropriate regional basis.

EPA expects States and authorized Tribes to use the technical guidance manuals, together with today's recommended water quality criteria and the national nutrient database, to develop State and Tribal quantified water quality criteria for nutrients, to help identify water quality impairments, and to evaluate success in increasing the number of waterbodies across the U.S. which meet State and Tribal water quality standards.

How Should States and Authorized Tribes Establish Nutrient Criteria in Their Water Quality Standards?

EPA will work with States and authorized Tribes as they adopt water quality criteria for nutrients into their water quality standards. EPA recognizes that States and authorized Tribes have several options available to them. EPA recommends the following approaches, in order of preference:

(1) Wherever possible, develop nutrient criteria that fully reflect localized conditions and protect specific designated uses using the process described in EPA's Technical Guidance Manuals for nutrient criteria development. Such criteria may be expressed either as numeric criteria or as procedures to translate a State or Tribal narrative criterion into a quantified endpoint in State or Tribal water quality standards.

(2) Adopt EPA's section 304(a) water quality criteria for nutrients, either as numeric criteria or as procedures to translate a State or Tribal narrative nutrient criterion into a quantified endpoint.

(3) Develop nutrient criteria protective of designated uses using other scientifically defensible methods and appropriate water quality data.

The key parameters addressed in the Ecoregional Nutrient Criteria Documents are total phosphorus, total nitrogen, chlorophyll a, and turbidity (*e.g.,* Secchi depth for lakes; turbidity for rivers and streams). These are the parameters which EPA considers important in nutrient assessment because the first two (nitrogen and phosphorus) are the main causal agents of enrichment, while the two response variables (chlorophyll a and turbidity) are early indicators of system overenrichment for most surface waters. States and authorized Tribes are encouraged to develop additional criteria for additional parameters such as dissolved oxygen, algal biomass, and biological integrity indices. EPA believes that quantitative endpoints are needed for both causal and biological and physical response variables.

Based on the information available to the Agency at the time of publication, the values presented in these documents generally represent nutrient levels that protect against the adverse effects of nutrient overenrichment in aquatic environments. However, these recommended water quality criteria should be viewed as starting points that should be further refined. As set forth in each document, the elements that EPA expects States and authorized Tribes to consider in developing a nutrient criterion are:

(1) Historical data and other information (published literature);

(2) Current reference conditions;

(3) Models to simulate physical and ecological processes or determine empirical relationships among causal (nutrients) and response (biological or physical conditions) variables; and

(4) Evaluation of downstream effects.

EPA also expects States and authorized Tribes to make use of expert judgment when examining the information and establishing criteria.

What Are Regional Technical Assistance Groups?

To assist States and authorized Tribes in developing and refining their own nutrient criteria, and to provide multi-jurisdictional coordination and consistency in the criteria development process, EPA established Regional Technical Assistance Groups (RTAGs). RTAGs are a collection of EPA, State, Tribal representatives who are working together to employ the processes and approaches recommended in EPA's waterbody-specific technical guidance manuals (*e.g.,* those EPA has already published for lakes and reservoirs, and rivers and streams) for the purpose of developing more refined nutrient criteria than those made available today. Criteria refinement can occur by grouping data or performing data analyses at smaller geographic scales than an ecoregion, such as a subecoregion, the State or Tribe level, or specific class of lakes or streams. Refinement can also occur through further consideration of other elements of criteria development, such as published literature or models.

EPA has used data and expertise provided by the RTAGs to date in the development of today's Ecoregional Nutrient Criteria Documents. EPA strongly encourages States and authorized Tribes to fully participate in their respective RTAG, and use this opportunity to pool expertise and resources at the State, Tribal, and federal level. In addition to the criteria development role, the RTAGs also function to facilitate dialogue among stakeholders through public meetings and technical meetings.

How and When Does EPA Expect States and Authorized Tribes to Adopt Nutrient Criteria Into Their Water Quality Standards?

EPA emphasizes that, in the course of carrying out its responsibilities under section 303(c) of the Clean Water Act, it reviews State and authorized Tribal water quality standards to assess the need for new or revised water quality criteria. The Agency views the criteria adoption process as a two phased approach. The first phase includes the development of a plan which outlines the process for adopting criteria. This plan should address items such as the criteria development process, staffing of personnel who will undertake specific tasks, and setting the internal schedule to complete the adoption process within the State and Tribal triennial review or another process. The second phase of the adoption process is implementing the criteria adoption plan. This may involve collecting existing data, sampling to obtain new data, developing a supporting data base, analyzing data to determine reference conditions and predictive relationships among variables, establishing nutrient water quality criteria, and facilitating appropriate public participation in the process.

The Agency presents the following schedule for the adoption of nutrient criteria into water quality standards, which includes a recommended period of time for the formation of a plan for developing and adopting nutrient criteria, as well as a specific period of time during which we expect States and Tribes to adopt the nutrient criteria into their water quality standards:

(1) By the end of 2001, each State and authorized Tribe should complete a plan for developing and adopting nutrient criteria into State or Tribal water quality standards. The plan should describe how and when nutrient criteria will be adopted, either as part of a triennial review, or another process.

(2) By the end of 2004, States and authorized Tribes should adopt nutrient criteria (either numeric criteria or as procedures to translate a narrative nutrient criteria into a quantified endpoint) for the waterbody type and ecoregions associated with the section

304(a) water quality criteria that EPA publishes by the end of 2001. EPA intends to notify States and authorized Tribes by March 2001 which waterbody type and ecoregions EPA expects to address in section 304(a) criteria published by the end of 2001.

EPA recognizes that the ecoregions addressed in the section 304(a) water quality criteria for nutrients published by the end of 2001 may not represent complete coverage across all State and Tribal waters, may not overlap with important watershed boundaries, and may not reflect high priority waters. In developing their own criteria for specific waters, States and authorized Tribes have the flexibility to first address geographic areas and waterbody types other than those specified in the section 304(a) criteria published by the end of 2001, particularly if a State or authorized Tribe has efforts underway to develop criteria for those areas. However, EPA would continue to expect States and authorized Tribes to adopt nutrient criteria by 2004 for all waterbody types and ecoregions addressed in the section 304(a) criteria published by the end of 2001. The plan for developing and adopting nutrient criteria, completed by the end of 2001, should address these considerations.

(3) EPA intends to propose to promulgate nutrient water quality criteria, relying substantially on EPA's section 304(a) water quality criteria, by the end of 2004, where States and authorized Tribes have not substantially completed their adoption of such criteria according to the plan completed by the end of 2001, if the Administrator determines that such new or revised standards are necessary to meet the requirements of the Clean Water Act.

(4) As EPA issues additional section 304(a) nutrient criteria recommendations in 2002 and beyond, States and authorized Tribes should continue to adopt nutrient criteria for the remaining waterbody types and ecoregions. Such efforts should generally follow a schedule similar to the sequence in (1) through (3) above, with the years adjusted to reflect the date EPA issues each set of criteria.

Dated: December 29, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 01–569 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6930–7]

Estuarine and Coastal Marine Waters: Bioassessment and Biocriteria Technical Guidance Document; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the *Estuarine and Coastal Marine Waters: Bioassessment and Biocriteria Technical Guidance* document developed and published pursuant to section 304(a)(8) of the Clean Water Act (CWA). This technical guidance document helps fulfill CWA section 101(a) which states, in summary, ''The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.''

To help protect the biological integrity of the Nation's waters, this technical guidance provides an extensive collection of methods and protocols for conducting bioassessments in estuarine and coastal marine waters and the procedures for deriving biocriteria from the results. Case studies illustrate the bioassessment process and biocriteria derivation procedures. The document outlines physical classification of estuaries and coastal marine waters, and discusses sampling methods and candidate metrics for four core groups of biological indicator assemblages: benthic macroinvertebrates, fish, aquatic macrophytes, and phytoplankton. Three sampling tiers are developed, increasing in sampling effort, precision, and diagnostic ability. Alternative data analysis methods are introduced for biological index development, and the document ends with eight case studies illustrating the implementation of the methods.

Many natural resource agencies throughout the United States are using bioassessments and biocriteria for small rivers and streams and some States are beginning work in lakes and reservoirs. EPA issued guidance documents for these water bodies in 1996 and 1998, respectively (*Biological Criteria: Technical Guidance for Streams and Small Rivers* (EPA–822–B–96–001) and *Lake and Reservoir Bioassessment and Biocriteria Technical Guidance Document* (EPA 841–B–98–007)).

With the use of this guidance State/Tribal and Federal water resource managers will be able to better protect and restore the biological integrity of coastal and estuarine resources. This guidance is not a regulation and does not impose legally-binding requirements on EPA, States, Territories, Tribes, or the public.

Availability of Documents: The guidance is published with the following title and EPA document number; *Estuarine and Coastal Marine Waters: Bioassessment and Biocriteria Technical Guidance,* (EPA 822–B–00–024), dated December 2000. The document and a summary Fact Sheet are available on the EPA website at www.epa.gov/ost/biocriteria/. Paper copies can be obtained from the U.S. EPA, Water Resource Center by phone at: (202) 260–7786, or by sending an e-mail to the Center at center.water-resource@epa.gov, or through conventional mail by sending a letter of request to U.S. EPA Water Resource Center, Ariel Rios Building, 1200 Pennsylvania Ave., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William Swietlik at (202) 260–9569 or by e-mail at *swietlik.william@epa.gov* or Laura Gabanski at (202) 260–5868 or by e-mail at *gabanski.laura@epa.gov.*

Dated: December 22, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 01–573 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6931–6]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–1999 is available for public review and comment. Annual U.S. emissions for the period of time from 1990–1999 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), Hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexaflouride (SF6) emissions. The inventory also includes updated estimates of carbon sequestration in U.S. forests and soils. The technical approach used in this report to estimate greenhouse gas emissions from sources and removals by sinks is consistent with the methodologies recommended by the

Intergovernmental Panel on Climate Change (IPCC). The Inventory of U.S. Greenhouse Gas Emissions and Sinks is the latest in a series of annual U.S. submissions to the Secretariat of the United Nations Framework Convention on Climate Change.

DATES: To ensure your comments are considered for the final version of this document, please submit your comments prior to February 20, 2001. However, comments received after that date will still be welcomed and will be considered for the next edition of this report.

ADDRESSES: Comments should be submitted to Mr. Wiley Barbour at: U.S. Environmental Protection Agency, Office of Atmospheric Programs, Market Policy Branch (MC: 2175), 1200 Pennsylvania Avenue NW., Washington, DC 20460, Fax : (202) 260–6405.

If you wish to send an email with your comments, you may send the email to *barbour.wiley@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Barbour, Environmental Protection Agency, Office of Atmospheric Programs, (202) 260–6972.

SUPPLEMENTARY INFORMATION: You may view and download the document referenced above on the US EPA global warming site at http://www.epa.gov/globalwarming/publications/emissions/.

Dated: January 3, 2001.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 01–567 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6931–4]

Final Reissuance of the National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permit; correction.

SUMMARY: EPA published a new version of the NPDES Storm Water Multi-Sector General Permit (MSGP) in the **Federal Register** of October 30, 2000 (65 FR 64746), which replaced the first version issued on September 29, 1995 (60 FR 50804) and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 5248), September 24, 1996 (61 FR 50020), August 7, 1998 (63 FR 42534) and September 30, 1998 (63 FR 52430). This general permit authorizes the discharge of storm water from industrial activities consistent with the terms of the permit. The permit contained incorrect dates, typographical errors and omissions from any of the following: The fact sheet portion of the final MSGP from October 30, 2000, the proposed MSGP from March 30, 2000 (65 FR 17010), or the original 1995 version of the MSGP and subsequent amendments.

FOR FURTHER INFORMATION CONTACT: Bryan Rittenhouse, 202.564.0577; *rittenhouse.bryan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

The following corrections are to be made to the **Federal Register** of October 30, 2000, (65 FR 64746):

1. On pages 64749–64752 under Table 1.—SECTORS/SUBSECTORS COVERED BY THE FINAL MSGP, the following Standard Industrial Classification (SIC) codes were omitted: 2441 and 2033–2038. Correct the appropriate entries in Table 1. to read:

TABLE 1.—SECTORS/SUBSECTORS COVERED BY THE FINAL MSGP

Subsector	SIC code	Activity represented
Sector A. Timber Products		
	2441–2449	Wood containers.
Sector E. Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing		
4	3271–3275	Concrete, gypsum and plaster products.
Sector U. Food and Kindred Products		
3	2032–2038	Canned, frozen and preserved fruits, vegetables and food specialties.

2. On page 64749, in column 3, remove the sentence ''Certification was not received from Arizona in time for that state to be included in this permit.''

3. On page 64754, column 2, paragraph 1; and on page 64756, column 1, paragraph 2, replace the date ''December 29, 2000'' with: ''January 29, 2001.''

4. On page 64766, first column, under 4. Deadlines, correct the sentences ''Today's MSGP requires that permittees previously covered by the 1995 MSGP must update their SWPPPs to comply with any new requirements of today's MSGP by the date they submit their new NOIs. As noted earlier, the new NOIs are due January 29, 2001.'' to read:

Today's MSGP requires that permittees previously covered by the 1995 MSGP must update their SWPPPs to comply with any new requirements of today's MSGP within 90 days after the effective date of this permit which is January 29, 2001.

5. On page 64773, in column 3, under ''1. Notice of Intent Address'', correct the address given to read:

Storm Water Notice of Intent (4203M)
USEPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460

6. On page 64796, column 1 under Section VI.C Common Pollution Prevention Plan Requirements, Response b, replace the word ''fillers'' with: filters.

7. On pages 64804–64806, under Table 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT, the following SIC codes were omitted: 2441, 3281, 2033–2038 and 3821–3873. Correct the appropriate entries in Table 1–1. to read:

TABLE 1.1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT

SIC code or activity represented	Activity represented
Sector A. Timber Products	
2441–2449	Wood containers.

TABLE 1.1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT—Continued

SIC code or activity represented	Activity represented
Sector E. Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing	
3271–3275	Concrete, gypsum and plaster products.
3281	Cut stone and stone products.
Sector U. Food and Kindred Products	
2032–2038	Canned, frozen and preserved fruits, vegetables and food specialties.
Sector AC. Electronic, Electrical, Photographic and Optical Goods	
3812–3873	Measuring, analyzing and controlling instrument; photographic and optical goods, watches and clocks.

8. On pages 64804–64806 under Table 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT, Sectors Z and AA were omitted. Add this Sector information to Table 1–1 so it reads:

TABLE 1.1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT

SIC code or activity represented	Activity represented
Sector Z: Leather Tanning and Finishing	
3111	Leather tanning and finishing.
Sector AA: Fabricated Metal Products	
3411–3499	Fabricated metal products, except machinery and transportation equipment.
3911–3915	Jewelry, silverware, and plated ware.

9. On page 64809, in the footnotes at the bottom of the second column under footnote 2, replace ''Part 1.2.2.3'' with ''Part 1.2.2.1.3,'' so footnote 2 reads:

[2] The provisions specified in Part 1.2.2.1.3 and Part 1.2.4 related to documenting New Source reviews are requirements of Federal programs under the National Environmental Policy Act of 1969 and will not apply to such facilities in the event that authority for the NPDES program has been assumed by the State/Tribe agency and administration of this permit has been transferred to the State/Tribe.

10. On page 64810 under TABLE 2–1.—DEADLINES FOR NOI SUBMITTAL, correct the date under Deadline to read:

TABLE 2–1.—DEADLINES FOR NOI SUBMITTAL

Category	Deadline
1. Existing discharges covered under the 1995 MSGP (see also Part 2.1.2—Interim Coverage).	January 29, 2001.

11. On page 64811, column 1, under part 2.2.4.1, remove the words ''or proposed'' so that the sentence reads:

Based on the instructions in Addendum A, whether any listed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

12. On page 64824, third column, under 6.G.4.4, correct the definition of Reclamation Phase to read:

Reclamation phase—activities undertaken following the cessation of mining intended to return the land to an appropriate post-mining land use in order to meet applicable mined land reclamation requirements.

13. On page 64827, under Table G–3, add ''(H)'' after Lead in column 4, row 9 (under the headings), and add ''Lead (H)'' in column 4, row 8 so those rows now read:

TABLE G–3.—ADDITIONAL MONITORING REQUIREMENTS FOR DISCHARGES FROM WASTE ROCK AND OVERBURDEN PILES FROM ACTIVE ORE MINING OR DRESSING FACILITIES

[Supplemental Requirements]

Type of ore mined	Pollutants of Concern		
	Total Suspended Solids (TSS)	pH	Metals, total
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).

14. On page 64831, first column, under 6.J.4.4, correct the definition of Reclamation Phase to read:

Reclamation phase—activities undertaken following the cessation of mining intended to return the land to an appropriate post-mining land use in order to meet applicable mined land reclamation requirements.

15. On page 64845, under Table S–1.–SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING, realign the table elements that were present to read (entire table is reproduced):

BILLING CODE 6560–50–U

Table S-1. SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

Sector of Permit Affected / Supplemental Requirements			
Subsector (Discharges may be subject to requirements for more than one sector/subsector)	**Parameter**	**Benchmark Monitoring Cutoff Concentration[1]**	**Numeric Limitation**
Facilities at airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis: monitor ONLY those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur (SIC 45XX)	Biochemical Oxygen Demand (BOD_5)	30 mg/L	--
	Chemical Oxygen Demand (COD)	120.0 mg/L	--
	Ammonia	19 mg/L	--
	pH	6.0 to 9.0 s.u.	–

[1] Monitor once/quarter for the year 2 and year 4 monitoring years.

BILLING CODE 6560–50–U

16. On page 64873, Addendum D-Notice of Intent Form, under section A. Permit Selection, correct the sentence to read:

Permit number assigned to your facility under the previous permit, or the generic permit number for your location (from part 1.1 of the MSGP):

17. On page 64874, column 1, under ''Where to File the NOI Form'', add the following language before the sentence ''You must indicate the NPDES storm water general permit under which you are applying for coverage.'':

If your facility was previously covered by the MSGP and you are transferring to the October 29, 2000 version MSGP, you must indicate your original MSGP registration number that was assigned to you by the NOI Center.

For new filers, i.e., those facilities not previously covered by the MSGP, do the following:

18. On page 64874, in column 1, under ''Where to File the NOI Form'', correct the phone number, ''(202) 260–9541'' to read:

(202) 564–9537

19. On page 64875, under ''Instructions for Completing the Notice of Termination (NOT) Form'', column 2, replace the address given with:

Storm Water Notice of Termination (4203M)

USEPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

20. On page 64875, under ''Instructions for Completing the Notice of Termination (NOT) Form'', column 2, correct the phone number ''(703) 931–3230'' to read:

(301) 495–4145

21. On page 64876, in column 2, under ''Paperwork Reduction Act Notice'', replace both addresses given with the single address:

Director, Office of Environmental Services

Collection Services Division (2823)

USEPA

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Signed and issued this 15th day of December, 2000.

Robert Goetzl,

Acting Director, Office of Ecosystem Protection, Region 1.

Signed and issued this 21st day of December, 2000.

Kathleen C. Callahan,

Director, Division of Environmental Planning and Protection, Region 2.

Signed and issued this 15th day of December, 2000.

Jon M. Capacasa,

Acting Director, Water Protection Division, Region 3.

Dated: December 20, 2000.

A. Stanley Meiburg,

Deputy Regional Administrator, Region 4.

Signed and issued this 15th day of December, 2000.

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

Signed and issued this 18th day of December, 2000.

Stephen S. Tuber,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, Region 8.

Signed and issued this 15th day of December, 2000.

Alexis Strauss,

Director, Water Division, Region 9.

Signed and issued this 15th day of December, 2000.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 01–566 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 2, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 12, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0957.

Title: Wireless Enhanced 911 Service, Fourth MO&O.

Agency Form Number(s): None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state or local governments.

Number of Respondents: 2,500.

Estimated Time Per Response: 3.

Frequency of Response: Once.

Total Annual Burden: 7,500 hours.

Total Annual Cost: 0.

Needs and Uses: The information required to be included in a successful waiver request will be used to assist the Commission in judging whether the request has merit.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–580 Filed 1–8–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1352–DR]

Alabama; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama, (FEMA–1352–DR), dated December 18, 2000, and related determinations.

EFFECTIVE DATE: December 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 18, 2000:

Cherokee and Jefferson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 01–477 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1354–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1354–DR), dated December 29, 2000, and related determinations.

EFFECTIVE DATE: December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 29, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from a severe winter ice storm beginning on December 12, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000) (Stafford Act), I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance, under Public Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs). Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Arkansas, Bradley, Calhoun, Cleveland, Columbia, Crittenden, Dallas, Desha, Drew, Grant, Jefferson, Lafayette, Lincoln, Lonoke, Monroe, Nevada, Ouachita, Polk, Prairie, Pulaski, St. Francis, and Union Counties for Individual Assistance and debris removal and emergency protective measures (Categories A and B), including direct Federal assistance under Public Assistance.

Effective December 29, 2000 the following areas were added: Benton, Clark, Crawford, Cross, Faulkner, Franklin, Garland, Hempstead, Hot Spring, Howard, Jackson, Johnson, Lee, Little River, Logan, Madison, Miller, Mississippi, Montgomery, Perry, Pike, Poinsett, Saline, Scott, Sebastian, Sevier, Washington, White, Woodruff, and Yell counties for Individual Assistance and debris removal and emergency protective measures (Categories A and B), including direct Federal assistance under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 01–479 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3159–EM]

Arkansas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Arkansas (FEMA–3159–EM), dated December 28, 2000, and related determinations.

EFFECTIVE DATE: December 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 28, 2000, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the emergency conditions in certain areas of Arkansas, resulting from a severe winter ice storm beginning on December 12, 2000, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000) (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Arkansas.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. You are further authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency and such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate. Specifically, you are authorized to provide debris removal (Category A) and emergency protective measures (Category B) at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared emergency:

FEMA intends to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. FEMA is further authorized to provide debris removal (Category A) and emergency protective measures (Category B) at 75 percent Federal funding.

This assistance is for the counties of Arkansas, Benton, Bradley, Calhoun, Clark, Cleveland, Columbia, Crawford, Crittenden, Cross, Dallas, Desha, Drew, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Hempstead, Jackson, Jefferson, Johnson, Lafayette, Lee, Lincoln, Little River, Logan, Lonoke, Madison, Miller, Mississippi, Monroe, Montgomery, Nevada, Ouachita, Perry, Pike, Polk, Poinsett, Prairie, Pulaski, St. Francis, Saline, Scott, Sebastian, Sevier, Washington, White, Woodruff, Union, and Yell.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 01–482 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1353–DR]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota, (FEMA–1353–DR), dated December 29, 2000, and related determinations.

EFFECTIVE DATE: December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 29, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe winter storms and tornadoes on November 1–20, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000) (Stafford Act), I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven R. Emory of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Benson, Bowman, Cavalier, Divide, Golden Valley, McKenzie, Ramsey, Towner and Williams Counties for Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 01–478 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3158–EM]

Oklahoma; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Oklahoma (FEMA–3158–EM), dated December 28, 2000, and related determinations.

EFFECTIVE DATE: December 28, 2000

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 28, 2000, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000), as follows:

I have determined that the emergency conditions in certain areas of the State of Oklahoma, resulting from a severe winter and ice storm on December 25, 2000, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*, as amended by the Disaster Mitigation Act of 2000, Pub. L. No. 106–390, 114 Stat. 1552 (2000) (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Oklahoma.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. You are further authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency and such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate. Specifically, you are authorized to provide assistance for debris removal (Category A) and emergency protective measures (Category B) including direct Federal assistance at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint C. Michel Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared emergency:

FEMA intends to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. FEMA is further authorized to provide debris removal (Category A) and emergency protective measures (Category B), including direct Federal assistance at 75 percent Federal funding.

This assistance is for the counties of Atoka, Bryan, Carter, Choctaw, Cleveland, Coal, Garvin, Haskell, Hughes, Johnston, LeFlore, Latimer, Love, Marshall, McClain, McCurtain, McIntosh, Murray, Muskogee, Okfuskee, Oklahoma, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Seminole, and Sequoyah.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 01–480 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3158–DR]

Oklahoma; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Oklahoma (FEMA–3158–DR), dated December 28, 2000, and related determinations.

EFFECTIVE DATE: December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of December 28, 2000:

Adair, Cherokee, Cotton, Creek, Grady, Jefferson, Lincoln, Okmulgee, Stephens, Tulsa, Wagoner and Washington Counties for debris removal (Category A) and emergency protective measures (Category B) under the Public Assistance program including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 01–481 Filed 1–8–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 1, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Alpha Financial Group, Inc., Employee Stock Ownership Plan, Toluca, Illinois; to become a bank holding company by acquiring 31.61 percent of the voting shares of Alpha Financial Group, Inc., Minonk, Illinois, and thereby indirectly acquiring voting shares of Alpha Community Bank, Toluca, Illinois.

In connection with this proposal, Alpha Financial Group, Inc., Employee Stock Ownership Plan has applied to acquire indirectly voting shares of Alpha Insurance Services, Inc., Washburn, Illinois, and thereby engage in Insurance agency and underwriting activities in small towns pursuant to § 225.28(b)(11)(iii)(A) of Regulation Y.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Frandsen Financial Corp., Forest Lake, Minnesota; to acquire 100 percent of the voting shares of Oslo Bancorporation, Oslo, Minnesota, and thereby indirectly acquire Valley State Bank of Oslo, Oslo, Minnesota.

Board of Governors of the Federal Reserve System, January 3, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–483 Filed 1–8–01; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 1, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Regions Financial Corporation, Birmingham, Alabama; to acquire Morgan Keegan Trust Company, FSB, Memphis, Tennessee, and thereby engage in savings association activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 3, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–484 Filed 1–8–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–14]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects: Pediatric and Adult HIV/AIDS Case Reports—New—National Center for HIV, STD, and TB Prevention (NCHSTP). For many years Pediatric and Adult case reports were included in the OMB clearance for the National Disease Surveillance Program—I. Case Reports, OMB Number 0920–0009. This clearance currently includes the formal surveillance of 19 separate reportable diseases which are ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis, dengue, hantavirus, HIV/AIDS, Idiopathic CD4+T-lymphocytopenia, Kawasaki syndrome, Legionellosis, lyme disease, malaria, Mycobacterium avium Complex Disease, plague, Reye Syndrome, tick-borne Rickettsial Disease, toxic shock syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case

report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment.

CDC proposes to separate the two HIV/AIDS case reports from the current clearance in order to have the case reports sent to the appropriate CDC organizational entity. Under the current clearance these forms are managed by the staff within the National Centers for Infectious Diseases (NCID). Separating the packages into two clearances will be more efficient for CDC. These forms are used to report all HIV/AIDS cases for children and adults in all 50 states, Guam, the Pacific Islands, Puerto Rico, and the Virgin Islands. The information collected and the methodology used will remain the same. The data will continue to be used for the purposes described in the previous paragraph. The total annualized burden is 4,373 hours. The total cost to respondents is estimated at $65,595.

Respondents	Number of respondents	Number of responses per respondent	Average burden per respondent (in hrs.)
HIV/AIDS Adult Case Report	55	473	10/60
HIV/AIDS Pediatric Case Report	55	4	10/60

Dated: January 2, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–474 Filed 1–8–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–14–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Geo-Analysis of HIV Prevention Services Provided by CDC to Directly and Indirectly Funded Community-Based Organizations (CBOs). NEW—The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of HIV/AIDS Prevention (DHAP) proposes an evaluation project which will build on the knowledge gained from the previous studies to provide a multi-level, geo-referenced review of CDC-funded, community-based organization (CBO)-provided HIV prevention services. The purposes of this project are: (1) To contribute to the construction of a national database of HIV prevention activities by developing a geo-coded database that identifies, locates and maps all CBOs directly and indirectly funded by CDC in the US and its territories, and (2) to evaluate the comprehensiveness of HIV prevention services in geographic areas across the United States of America and territories through the use of Geographic Information Systems (GIS) technology as the primary analytical tool.

This project is being tasked under the Enhanced Program Assessments with Laboratory Capability Task Order Contract (200–96–0511) because of its program evaluation component. By using GIS to identify gaps in service provision within a given geographic area, program changes can be recommended to those health departments and CBOs participating in the project. These recommended changes may include adjusting services provided or target populations in an effort to close identified gaps.

Collaboration between government agencies and CBOs with access to a particular group at risk has been a traditional approach in public health in the United States. CDC promotes the collaboration and coordination of HIV prevention efforts between CBOs and of CBOs with State health departments, affiliates of National and Regional Minority Organizations(NRMOs), HIV prevention service agencies, and other public agencies including substance abuse programs, educational institutions and the criminal justice system. CDC promotes collaboration as a strategy for (1) improving access to and for at risk populations and communities, (2) improving the direct delivery of services, (3) improving referral of clients to services, and (4) creating comprehensive HIV services in designated geographical jurisdictions.

The use of GIS will enhance the accomplishment of these three goals by providing information to funders and other shareholders to enhance CBOs in their efforts to provide interventions and client referrals and services that are accessible to the populations in need of them. This data will assist the CDC to determine the effectiveness of federal funding, whether the funding is affecting the designated high risk or infected groups such as disproportionately affected minorities where they live, or whether or not there are available programs to link with for more comprehensive services.

The project will use appropriate technology to minimize respondent burden. A self-report mailed questionnaire, three pages in length, will be mailed. Attached, will be two maps of the geographical area (city and surrounding metropolitan area) where each CBO is located. The use of maps eliminates the need to locate maps to respond to questions concerning location and distance. This project will not be requesting information of a sensitive nature. The project deals with the types of interventions offered to high risk or HIV positive individuals, location and access.

The CDC anticipates one person per CBO (total # of approximately 2000) to complete the data collection form once during the 2000 for approximately 30 minutes. Therefore, the total response burden is estimated at 1000 hours.

Respondents	Number of respondents	Number of responses	Average hour burden per response
Directly Funded CBOs	184	1	30/60
Indirectly Funded CBOs	1816	1	30/60

Dated: January 2, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–475 Filed 1–8–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1669]

Electronic Filing of Drug Registration and Listing Information: Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is seeking volunteers to participate in a pilot project involving the electronic filing of drug registration and listing information, as described in FDA's regulations. Manufacturers, repackers, and relabelers who engage in the manufacture, preparation, propagation, or processing of human or veterinary drugs and human biological products are required under current regulations to submit a listing of every product in commercial distribution. This information is currently submitted in paper format. FDA is developing an electronic system for submitting the required information, and is seeking volunteers to test the pilot system.

DATES: Submit written requests to participate in the pilot project by February 8, 2001. Comments on this pilot project can be submitted at any time.

ADDRESSES: Submit written requests to participate and comments regarding this pilot project to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James R. Hunter, Food and Drug Administration, Center for Drug Evaluation and Research (HFD–9), 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779, e-mail: hunterj@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Under current FDA's regulations (part 207 (21 CFR part 207)), manufacturers, repackers, and relabelers who engage in the manufacture, preparation, propagation, compounding, or processing of human or veterinary drugs and human biological products must register annually with FDA by submitting Form FDA 2656 (Registration of Drug Establishment). In addition, registrants must update their product listing information by using Form FDA 2657 and/or Form FDA 2658 every June and December, or at the discretion of the establishment, when any change occurs. This entire process is currently done manually (i.e., with a paper process). This process is very labor intensive and time consuming. FDA is trying to streamline the process by developing an electronic system in which registrants could automatically register and list, as well as provide updates.

The purpose of the pilot project is twofold. First, the pilot project will test FDA's systems for receiving electronic filings under part 207. Second, the pilot project will provide volunteers with experience in using the prototype system that will enable them to provide technical feedback to FDA about the system.

II. Pilot Project Description

The pilot project is part of FDA's efforts to implement electronic filing. Eventually, FDA staff expects to recommend that FDA require electronic filings under part 207. Participants in this pilot project will have the opportunity not only to assist FDA in making its determination on electronic filing, but also to familiarize themselves with the process at an early stage of development.

A. Initial Approach

Initially, a limited group of voluntary participants will take part in testing the electronic filing prototype. This group will be incrementally expanded during the pilot project to ensure that as many volunteers as possible get the opportunity to participate and that all functional components of the system are adequately tested. The initial group of participants will include manufacturers, repackers, relabelers, and private label distributors of human prescription and over the counter drug and biological products and manufacturers of veterinary drug products that currently have more than 25 products listed with the agency. During the pilot project, information submitted will be made available to the public by the agency via the Internet at http://www.fda.gov/cder. Participants in the pilot project will be asked to test specific aspects of the electronic filing system and to provide technical feedback.

B. Scope

Existing registration and listing requirements will not be waived, suspended, or modified for purposes of this pilot project. Thus, participants must continue to submit paper documents in accordance with FDA's existing filing requirements (part 207). The paper copy will serve as the official copy under existing regulations during the pilot project.

The pilot project will test a prototype for electronic filing over the Internet of information to fulfill the requirements of section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360).

Written requests to participate in the pilot project should be submitted to the Dockets Management Branch (address above) and identified with the docket number found in brackets in the heading of this document. Include the participants name, company name, company address, and telephone number. In addition, include in your written request to participate the number of products you currently have listed with the agency, the number of establishments you currently have registered with the agency, the type of products you process (i.e., human, biologic, or veterinary), the process(es) you perform (i.e., manufacture, repackage, relabel, distribute), and the kind of products you process (i.e., prescription, over the counter, active pharmaceutical ingredients (bulk), or, homeopathic).

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this pilot project. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will

consider comments in making its determination on electronic filing and in drafting a guidance document for submitting drug registration and listing information electronically. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 5 p.m., Monday through Friday.

Dated: December 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–534 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Adenoviral Vector Safety; Public Meeting and Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public meeting entitled ''Adenoviral Vector Safety'' and a workshop of the ''Adenoviral Standards Working Group.'' The purpose of the public meeting and workshop is to discuss the scientific and technological issues related to developing voluntary industry reference standards for adenoviral vectors used to deliver human gene therapies. The voluntary industry reference standards will be used to help ensure the safety of adenoviral vectors intendedfor use in humans.

Date and Time: The public meeting and workshop will be held on February 1, 2001. The Adenoviral Vector Safety meeting will be held from 9:30 a.m. to 12 noon.

The Adenoviral Standards Working Group workshop will be held from 1 p.m. to 5 p.m.

Location: The Adenoviral Vector Safety meeting will be held at the Wilson Auditorium, National Institutes of Health, Bldg. 1, 8600 Rockville Pike, Bethesda, MD 20894.

The Adenoviral Standards Working Group workshop will be held at the National Institutes of Health, Bldg. 29B, Conference Rooms A, B, and C, 8600 Rockville Pike, Bethesda, MD 20894.

Contact: Steven R. Bauer, Center for Biologics Evaluation and Research (HFM–521), Food and Drug Administration, Bldg. 29B, rm. 2NN11, Bethesda, MD 20894, 301–827–0684, FAX 301–827–0449, or e-mail: bauer@cber.fda.gov.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone, fax number, and e-mail address) to Steven R. Bauer (address above) by Friday, January 19, 2001. There is no registration fee for the meeting or workshop. Seating is limited, therefore, interested parties are encouraged to register early. Registration at the site will be done on a space available basis on the day of the meeting and workshop, beginning at 8:30 a.m. If you need special accommodations due to a disability, please contact Steven R. Bauer at least 7 days in advance.

Agenda: The Adenoviral Vector Safety meeting will provide a forum for all members of the public to express their concerns about adenoviral vector safety and explore alternatives for enhancing the safety of adenoviral vectors.

The Adenoviral Standards Working Group workshop is cosponsored by FDA's Center for Biologics and Research (CBER) and the Williamsburg BioProcessing Foundation. The workshop will be of primary interest to public health professionals developing new human gene therapy products and manufacturers contemplating the production of such products. The objectives of the workshop are to: (1) Select adenoviruses to use as voluntary reference standards for adenoviral vectors used for human gene therapy products; (2) describe the conditions and facilities to be used when producing bulk quantities of a voluntary reference standard; (3) establish characterization protocols for voluntary reference standards; and (4) address other issues related to voluntary reference standards for adenoviral vectors.

Transcripts: Transcripts of the Adenoviral Vector Safety meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript will also be available on the Internet at http://www.fda.gov/cber/minutes/workshop-min.htm.

Dated: December 29, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–531 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs 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: Psychopharmacologic Drugs 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 February 14 and 15, 2001, 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Sandra I. Titus or Lauren W. Parcover, Center for Drug Evaluation and Research (HFD 21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 14, 2001, the committee will consider the safety and efficacy of new drug application (NDA) 21–253, Zyprexa® (olanzapine intramuscular, Eli Lilly, Inc.), proposed for the rapid control of agitation. On February 15, 2001, the committee will consider the safety and efficacy of NDA 20–919, Zeldox™ (ziprasidone mesylate intramuscular, Pfizer, Inc.), proposed for the acute control and short-term management of the agitated psychotic patient.

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 February 7, 2001. Oral presentations from the public will be scheduled each day between approximately 1 p.m. to 1:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 2, 2001,

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: December 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–532 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Community Health Center and National Health Service Corps User/Visit Survey (OMB No. 0915–0185)

The purpose of this study is to conduct a sample survey which has the following components: (1) a personal interview survey of Community Health Center (CHC) and National Health Service Corps (NHSC) site users; and (2) a record-based study of visits to CHCs and NHSC sites. CHCs and NHSC sites serve predominantly poor minority medically underserved populations. The proposed user and visit survey will collect in-depth information about CHC and NHSC site users, their health status, the reasons they seek care, their diagnoses, and the services utilized in a medical encounter.

The proposed User/Visit Survey builds on a 1995 User/Visit Survey which was conducted to learn about the process and outcomes of care in CHC users. The 1995 User/Visit Survey included a personal interview of approximately 2000 users of 48 selected CHCs as well as medical record abstractions for about 3000 visits to these same health centers. The interview questionnaire was derived from the National Health Interview Survey (NHIS) conducted by the National Center for Health Statistics (NCHS) and the visit survey was an adaptation of the NCHS National Hospital Ambulatory Medical Care Survey (NHAMCS). Conformance with the NHIS and NHAMCS allowed comparisons between these NCHS surveys and the User/Visit Survey.

The proposed User/Visit Survey was developed using similar questionnaire methodology in conjunction with a contractor and will allow longitudinal comparisons for CHCs with the 1995 version of the survey data, including monitoring of process outcomes over time. This User/Visit Survey is the first year that NHSC non-grantee, freestanding sites will be surveyed.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
Site induction	65 sites	1	65	1	65
Site sampling method	65 sites	1	65	1.5	97.5
User survey	40 users at 65 sites	1	2,600	2	5,200
Visit survey	65 sites	50 records	3,250	.5	1,625
Total	2,795		5,980		6,987.5

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 2, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–473 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 2001.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages

Date and Time: January 11, 2001; 9 a.m.–5:30 p.m.; January 12, 2001; 8 a.m.–4 p.m.

Place: The Doubletree Hotel Park Terrace on Embassy Row, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

The meeting is open to the public.

The full Committee will meet beginning January 11, 2001, and adjourn on January 12, 2001, during the hours cited above. Agenda items will include, but not be limited to: Welcome; plenary discussion of Interdisciplinary Education; presentations by speakers representing: the HRSA Bureau of Health Professions; the Association of

Academic Health Centers; the National Institute for Healthcare Improvement; Committee members, the Division of Interdisciplinary and Community-Based Programs (DICP), and Bureau of Health Professions (BHPr) staff supporting Committee activities; presentation of Interdisciplinary, Community-Based Case Studies; and Defining Standards for the Committee Report due to the Secretary and the Congress in November 2001.

Meeting content will be based on the Committee's charge under Section 756 of the Public Health Service Act, to include discussion of Committee reports; scheduling of the next Committee meeting, which shall include but not be limited to: general discussion of topics to be addressed during the next Committee meeting.

Public comment will be permitted before lunch and at the end of the Committee meeting on October 11, 2001. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Mr. Leo Wermers, Principal Staff Liaison, Division of Interdisciplinary, Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–7121.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of Interdisciplinary and Community-Based Programs will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel Park Terrace on Embassy Row, Washington, DC on January 11, 2001. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Mr. Wermers, Division of Interdisciplinary and Community-Based Programs, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–7121.

Proposed agenda items are subject to change as priorities dictate.

Dated: January 3, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–535 Filed 1–8–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in January 2001.

The agenda will include the review, discussion and evaluation of individual grant applications and detailed discussion of information about the Center's procurement plans. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2, section 10(d).

The agenda of the open portion will include CSAP's Director's Report, an update of CSAP's budget, SAMHSA's Administrator's Report, Council's recommendations on programs, and discussions and updates on CSAP programs, administrative matters and announcements.

If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting and roster of committee members may be obtained from Yuth Nimit, Ph.D., Executive Secretary, Rockwall II Building, Suite 910, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Substantive program information may be obtained from the contact listed below.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Dates: January 8, 2001.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015, (202) 362–9300.

Closed: January 8, 2001, 8:30 a.m. to 10:30 a.m.

Open: January 8, 2001, 10:30 a.m. to 5 p.m.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II Building, Suite 910, Rockville, Maryland 20852, Telephone: (301) 443–8455.

Dated: January 2, 2001.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01–472 Filed 1–8–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–84]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 8, 2001.

ADDRESSES: Interested persons are invited to submit comments regrading this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0382) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Housing Development Grant Program Project Settlement Procedures.

OMB Approval Number: 2502–0382.

Form Numbers: HUD–90024, 90025, 90026, 90027, 90028.

Description of the Need for the Information and Its Proposed Use: The collection of project settlement information is necessary upon construction completion, that all project owners account for funds expended. The information provided in the project settlement process will permit HUD to determine that only the amount of funds necessary were awarded to the project and will also permit HUD to determine the owner's minimum equity requirements have been met.

Respondents: Business or other for-profit.

Frequency of Submission: Reporting Other project settlement.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
15		1		8		120

Total Estimated Burden Hours: 120.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 2, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–471 Filed 1–8–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for North Platte National Wildlife Refuge, Scottsbluff, NE

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Draft North Platte National Wildlife Refuge Comprehensive Conservation Plan and Environmental Assessment. This Plan describes how the FWS intends to manage the North Platte NWR for the next 10–15 years.

DATES: Submit written comments by February 8, 2001. All comments need to be addressed to: Brad McKinney, Refuge Manage, U.S. Fish and Wildlife Service, North Platte National Wildlife Refuge, 115 Railway Street, Suite C109, Scottsbluff, NE 69363–1346.

ADDRESSES: A copy of the Draft Plan may be obtained by writing to U.S. Fish and Wildlife Service, North Platte NWR, 115 Railway Street, Suite C109, Scottsbluff, NE 69363–1346 or from http://www.r6.fws.gov/larp/.

FOR FURTHER INFORMATION CONTACT: Brad McKinney, U.S. Fish and Wildlife Service, North Platte NWR, 115 Railway Street, Suite C109, Scottsbluff, NE *brad__mckinney@fws.gov.*

SUPPLEMENTARY INFORMATION: The 2,909-acre North Platte National Wildlife Refuge is located in the Nebraska Panhandle, within the Central Flyway and Kansas/Platte Rivers ecosystem, about eight miles north of the city of Scottsbluff, NE. This Refuge is superimposed over or adjoining three Bureau of Reclamation reservoirs consisting of Lake Minatare, Winters Creek Lake, and Lake Alice. The North Platte NWR was established by Executive Order in 1916 as a ''preserve and breeding ground for native birds.'' Since the Refuge is superimposed over Bureau lands, it remains subordinate to ''Reclamation service uses.'' Management of the North Platte NWR will be guided by its purpose to provide a preserve and breeding ground for migratory birds as well as to provide for the life requirements of other species of wildlife, subject to Bureau uses, and to provide compatible, high quality environmental education and wildlife-oriented recreational opportunities.

Dated: January 3, 2001.

John A. Blankenship,

Regional Director, Denver, Colorado.

[FR Doc. 01–508 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Bruneau Hot Springsnail (*Pyrgulopsis bruneauensis*) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability for public review of a draft recovery plan for the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*). This endangered snail is native to thermal springs habitats along a 6.9-kilometer (4.3-mile) reach of the Bruneau River and its tributary Hot Creek in southwestern Idaho.

DATES: Comments on the draft recovery plan received by March 12, 2001 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: Snake River Basin Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709 (phone: 208/378–5243). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Robert Ruesink, Field Supervisor, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Wood, Fish and Wildlife Biologist, at the above address.

SUPPLEMENTATARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a

primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to the appropriate Federal Agency or other entities so that they can take these comments into account during the course of implementing recovery actions.

The Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) is listed as endangered. The species currently survives in approximately 89, out of 155, small, flowing geothermal springs and seeps along an approximately 6.9-kilometer (4.3-mile) reach of the Bruneau River and its tributary Hot Creek in southwestern Idaho. The species is found in a narrow elevation range of 803.7 to 815.7 meters (2,636.9 to 2,676.1 feet).

The Bruneau hot springsnail has been found in flowing geothermal springs and seeps with temperatures ranging from 15.7 to 36.9 degrees Celsius (60.3 to 98.4 degrees Fahrenheit), with the highest densities of springsnails noted at temperatures ranging from 22.8 to 36.6 degrees Celsius (73 to 98 degrees Fahrenheit). Bruneau hot springsnails are found in these habitats on the exposed surfaces of various substrates, including rocks, gravel, sand, mud, and algal film. The principal threat to this species is the reduction or elimination of its geothermal spring habitats as a result of agricultural-related groundwater withdrawal and pumping.

The objective of this plan is to provide a framework for the recovery of the Bruneau hot springsnail so that protection by the Endangered Species Act is no longer necessary. Recovery is contingent upon conserving and increasing geothermal spring habitats within the recovery area for the Bruneau hot springsnail, while acknowledging that geothermal groundwater can continue to be managed to fulfill other beneficial uses.

The Bruneau hot springsnail will be considered for downlisting to a threatened status when groundwater management activities have been implemented and monitoring indicates an increasing trend in water levels in the geothermal aquifer and occupied geothermal springs for a period of 10 years. Delisting of the species will be considered when: (1) Water levels in the geothermal aquifer have increased and stabilized at 816.96 meters (2,678.54 feet) in elevation (as measured in October at one of the Hot Creek water monitoring wells (USGS well number 03BDC1)); (2) the total number of geothermal springs discharging within the recovery area is 200 or more (this is equivalent to the 1991 level of 211 geothermal springs), distributed within the current range of the Bruneau hot springsnail; (3) more than two-thirds of available geothermal springs within the recovery area (approximately 131 springs) are occupied by stable, medium to high density populations of the Bruneau hot springsnail; and (4) groundwater levels are permanently protected against further reductions through implementation of groundwater management activities.

Public Comments Solicited

We solicit written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: January 3, 2001.

Anne Badgley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 01–505 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: On August 28, 2000, the Bureau of Indian Affairs published a 60-day notice in the **Federal Register** (65 FR 52123) inviting comments on the proposed renewal of the collection of information in 25 CFR part 151, Land Acquisitions, OMB No. 1076–0100. One comment was received to the **Federal Register** notice.

This notice addresses the comment that was inadvertently omitted in the 30-day notice published in the **Federal Register** on November 3, 2000 (65 FR 66257). The comment suggested that Indian tribes be required to consult with local governments or other potentially interested parties prior to an Indian tribe's submission of an application. The comment was not accepted because there is no statutory requirement that Indian tribes consult with local governments or other interested parties prior to beginning the application process.

All other information published in the November 3, 2000 notice remains unchanged.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner or Helen R. Latall, Bureau of Indian Affairs, Division of Real Estate Services, MS 4510–MIB, 1849 C Street, NW, Washington, DC 20240, telephone (202) 208–7737.

Dated: December 20, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–582 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Education Facilities Replacement Construction Priority List as of FY 2000, With Additions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is adding seven educational facilities to the Education Facilities Replacement Construction Priority List (Priority List)

published January 31, 2000 in the **Federal Register** (65 FR 4623). The added schools are the Tiospa Zina Tribal School, Wide Ruins Community School, Low Mountain Boarding School, St. Francis Indian School, Turtle Mountain High School, Mescalero Apache School, and Enemy Swim Day School. In the 1999 application ranking process for replacement school construction projects, these schools received the next highest rankings after the 10 educational facilities placed on the Priority List. The Bureau will use the Priority List to determine the order in which Congressional appropriations are requested for funding education facilities replacement construction projects. Construction funding is not yet currently available for all projects on the Priority List.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Education Facilities Construction Priority List may be addressed to Dr. Kenneth G. Ross, Assistant Director, Office of Indian Education Programs, 201 Third St. NW, Suite 510, Albuquerque, New Mexico 87102, (505) 346–6544/5/6, Fax (505) 346–6553.

SUPPLEMENTARY INFORMATION: The BIA is adding Tiospa Zina Tribal School, Wide Ruins Community School, Low Mountain Boarding School, St. Francis Indian School, Turtle Mountain High School, Mescalero Apache School, and Enemy Swim Day School to the 13 schools shown on the Priority List, in the event that Congressional appropriations are available to fully fund construction costs for these 13 education facilities projects currently on the Priority List prior to the BIA conducting another nationwide application solicitation and ranking process.

On the Priority List as of FY 2000, with Additions (see below), Tiospa Zina Tribal School is ranked No. 14, Wide Ruins Community School is ranked No. 15, Low Mountain Boarding School is ranked No. 16, St. Francis Indian School is ranked No. 17, Turtle Mountain High School is ranked No. 18, Mescalero Apache School is ranked No. 19, and Enemy Swim Day School is ranked No. 20. Education Facilities Replacement Construction projects on the Priority List will be funded for construction in the order in which they are ranked, as appropriations become available, unless a school is not ready for the next phase of funding. In accordance with Congressional directives, the projects do not provide for new school starts nor grade level expansions, and a new cost share demonstration program requires a tribe to contribute 50% of the construction cost of a replacement school. (Pub. L. 106–291, Sec. 153)

This notice is published under authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8.

Education Facilities Replacement Construction Priority List as of FY 2000, With Additions

1. Tuba City Boarding School
2. Second Mesa Day School
3. Zia Day School
4. Baca/Thoreau (Dlo'ay Azhi) Consolidated Community School
5. Lummi Tribal School
6. Wingate Elementary School
7. Polacca Day School
8. Holbrook Dormitory
9. Santa Fe Indian School (Cost Share*)
10. Ojibwa Indian School
11. Conehatta Elementary School (Cost Share*)
12. Paschal Sherman Indian School
13. Kayenta Boarding School
14. Tiospa Zina Tribal School
15. Wide Ruins Community School
16. Low Mountain Boarding School
17. St. Francis Indian School
18. Turtle Mountain High School
19. Mescalero Apache School
20. Enemy Swim Day School

* Tribe or tribal organization commits to cost share in application.

Note: Tribe or tribal organization is required to cost share 50% of the cost for a replacement school. Conehatta Elementary School is the only school that committed to a 50% cost share in its application.

Dated: December 27, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–516 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination to Acknowledge the Chinook Indian Tribe/Chinook Nation (Formerly: Chinook Indian Tribe, Inc.)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Determination.

SUMMARY: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary) by 209 DM 8.

Pursuant to 25 CFR 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Chinook Indian Tribe/Chinook Nation, hereafter referred to as CIT/CN, exists as an Indian tribe within the meaning of federal law. This notice is based on the Assistant Secretary's determination that the group satisfies all seven criteria set forth in 25 CFR 83.7.

DATES: This determination is final and is effective 90 days from publication of the final determination, pursuant to 25 CFR 83.10(l)(4), unless a request for reconsideration is filed with the Interior Board of Indian Appeals pursuant to 25 CFR 83.11.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary—Indian Affairs, (202) 208–7163.

SUPPLEMENTARY INFORMATION: The Assistant Secretary's proposed finding (PF) against acknowledgment of CIT/CN was published in the **Federal Register** on August 22, 1997. Notice, Proposed Finding Against Federal Acknowledgment of the Chinook Indian Tribe, 62 FR 44714. CIT/CN reconsidered its previous decision to proceed under the 1978 regulations and in February 1995 asked if the Bureau of Indian Affairs (BIA) would allow the CIT/CN to have its petition evaluated under the 1994 regulations. However, before the BIA responded to this request, the CIT/CN attorney informed the Branch of Acknowledgment and Research (BAR) that the CIT/CN had decided to continue under the 1978 regulations. Therefore, the PF was conducted under the 1978 regulations. On December 31, 1997, the CIT/CN asked for ''an opinion of whether or not the BAR would allow the Chinook Indian Tribe's petition for Federal acknowledgment to proceed under the ''New Regulations'' of 1994.'' The BIA considered this request, but advised, by a letter dated March 13, 1998, that it could not evaluate the CIT/CN final determination evaluation under the 1994 revised regulations because (1) the petitioner had twice affirmed that it wished to proceed under the 1978 regulations, (2) an evaluation under either set of regulations would ultimately produce the same results, and (3) a change [at that late date, which was after the publication of the PF] would neither reduce the research burden on the Government's researchers nor provide benefits for the administrative process of the petition (BIA 3/13/1998). The AS–IA upheld this position in May 1998 (AS–IA 5/29/1998). The AS–IA now concludes that he erred in upholding BIA's refusal to allow the petitioner to proceed under the 1994 regulations. The AS–IA further concludes that, while the petitioner meets the seven criteria throughout the period from first contact to the present,

as an alternative basis for recognition, the petitioner has demonstrated prior federal acknowledgment in the form of a 1925 Act of Congress, and meets the seven criteria for the period from 1925 to the present.

In a letter dated December 17, 1997, the BIA granted the petitioner's request for an extension to the comment period to June 15, 1998. In the absence of specific provisions in the 1978 regulations, the time frames and procedures in the 1994 regulations were used to provide an appropriate guide to extend the comment period. The BIA granted the petitioner a final 45-day extension to respond to the PF, after the CIT/CN had shown good cause, thus bringing the closing date for comments to the PF to July 30, 1998.

The BIA received third party comments from CIT/CN member Linda C. Amelia on July 22, 1998, and from the Quinault Indian Nation on July 28, 1998. CIT/CN member Edna Miller, and her husband Vince Miller, submitted a number of comments between March 25, 1998, and April 10, 1998. The BIA also received some other letters which supported the CIT/CN petition or repeated Chinook family histories, but these letters were not substantive in nature, and did not address the criteria. The petitioner submitted its response to the PF on July 30, 1998.

The AS–IA makes this final determination based on the documentary and interview evidence which formed the basis for the PF not to acknowledge the CIT/CN, and an analysis of the information and argument received in response to the PF from third party comments on the PF and of the CIT/CN's response to the PF. The AS–IA reached additional factual conclusions after a review and analysis of the existing record in light of the additional evidence.

A review of the information submitted by the CIT/CN and the third parties, as well as those in the PF, establishes that the petitioner has satisfied the criteria under the 1978 regulations for recognition. In addition, the AS–IA concludes that CIT/CN was acknowledged in 1925 and meets the requirements of the 1994 regulations from 1925 forward.

As stated in the Final Notice of the 1994 regulations, these ''new'' regulations ''still maintain the same requirements regarding the character of the petitioner,'' and ''maintain the essential requirement that to be acknowledged a petitioner must be tribal in character and demonstrate historical continuity of tribal existence. Thus, petitioners that were not recognized under the previous regulations would not be recognized by these revised regulations.'' Final Rule, Procedures for Establishing That an American Indian Group Exists as an Indian Tribe, 59 FR 9280, at 9282 (Feb. 25, 1994). The 1994 regulations do, however, reduce the burden of production on petitioners that demonstrate prior recognition by requiring that the petitioner demonstrate historical continuity only for the period from the time of previous acknowledgment to the present. CIT/CN meets the criteria under both the 1978 and 1994 regulations.

Pursuant to 25 CFR 83.10(l)(1), the Assistant Secretary has considered additional data obtained through research to evaluate and supplement the record, and arrange the previously existing data in a suitable context giving due consideration to previous acknowledgment of petitioner.

Criterion (a)

In the PF, the AS–IA found that CIT/CN had been identified as an American Indian tribe on a substantially continuous basis from 1792 to 1855. Thereafter, the record was spotty until 1951, when the tribe began to pursue its claim before the Indian Claims Commission. The AS–IA now finds adequate evidence that the tribe was identified as American Indian on a substantially continuous basis from 1855 to 1951. Specifically, the AS–IA finds that the Executive Order of 1873, Exhibit 1061, Exhibit 854, Exhibit K, Exhibit 1039, and Exhibit J strongly suggest the ongoing identification of a discrete group of Chinook Indians from 1855 to 1907. This group identification is confirmed by the implementation of the 1911 Act of Congress authorizing the Secretary to provide allotments on the Quinault Reservation to ''members'' of certain vaguely-referenced tribes. Ancestors of CIT/CN were among the Quinault Reservation allottees, indicating that both Congress and the Interior Department regarded the Chinook as a ''tribe'' having ''members'' as of 1911. This federal identification of a Chinook Tribe overcomes the absence of conclusive documentary evidence for the period. It also provides context for and increases the significance of the evidence listed above in support of the finding of substantially continuous identification.

CIT/CN continued to be identified by the federal government thereafter. The most definitive are the two express statutory identifications of the Chinook Tribe, one in 1912, and the other in 1925. Members of the Chinook Tribe received services from the Indian Service throughout the 19th century. See H. Doc. No. 517, 60th Cong., 1st Sess. 6–10 (1908). As a result of persistent advocacy by the Chinook and other tribes whose treaties had not been ratified, the Congress provided in the Fiscal Year 1913 appropriation act ''that there be paid to the Lower Band of Chinook Indians of Washington the sum of twenty thousand dollars, to be apportioned among those now living and the lineal descendants of those who may be dead, by the Secretary of the Interior, as their respective rights may appear * * *.'' Act of August 12, 1912, ch. 388, section 19, 62 Stat. 535.

This appropriation grant was made on account of the fact that ''the Lower Band of Chinooks ceded an extensive country north of the Columbia River and were to be paid $ 20,000 and given certain rights and privileges on the ceded lands' in the unratified Point Tansey Treaty; ''the Government thereafter, and while they were pending before the Senate, appropriated the lands ceded by the Indians, the treaties or agreements should be considered and treated by Congress as having the force and effect of a ratified treaty.'' S. Rep. No. 503, 62nd Cong., 2d Sess. 2, 3 (1912). In other words, the 1912 statute was a constructive ratification of the Point Tansey Treaty, but passed statutorily by both houses of Congress. Partly as a result of this statute, the Department enrolled many of the Chinook for the purposes of distributing the monies appropriated. The fact of their enrollment plainly demonstrates their identification as a discrete group.

The second Congressional statute came about because there was a perceived feeling ''that some of these tribes, at least, may be entitled to further payments under the positive contracts made in the treaties with the Government. * * * The [House] Committee [on Indian Affairs] feel[s] that they have been very shabbily treated by the Government, and that they should have an opportunity to have their equities properly presented to the Court of Claims.'' Accordingly, the Act of February 12, 1925, ch. 214, 43 Stat. 886, authorized ''that all claims of whatever nature, both legal and equitable, which the Muckelshoot, San Juan Islands Indians; Nook-Sack, Suattle, Chinook, Upper Chehalis, Lower Chehalis, and Humptulip Tribes or Bands of Indians, or any of them (with whom no treaty has been made), may have against the United States shall be submitted to the Court of Claims, with right of appeal by either party to the Supreme Court of the United States for determination and adjudication, both legal and equitable, and jurisdiction is hereby conferred upon

the Court of Claims to hear and determine any and all suits brought hereunder and to render final judgment therein * * *.''

These two statutes clearly denominate the Lower Band of Chinook Indians, or Chinook Tribe, as one identified by Congress and the Interior Department. The first one appropriates a sum which had been promised to be paid in the 1851 Point Tansey Treaty, and the second statute vests jurisdiction in the Court of Claims to hear and determine legal and equitable claims arising out of the unratified treaty. Both were passed with a specific object in mind, but both explicitly recognized the Lower Band of the Chinook Tribe as such, both as, respectively, the recipient for the appropriated monies and the party plaintiff in whose favor the United States explicitly waived its sovereign immunity in a case before the Court of Claims.

These same statutes from the basis for the AS–IA's finding of prior federal acknowledgment. The regulations and guidelines define the various forms of previous federal recognition and set out a number of examples, but expressly do not limit recognition to them: negotiating or signing a treaty with the federal government; the federal government declaring war on or removing a tribe; placement on a reservation by the federal government; being denominated a tribe by Congressional action or Executive Order; and having collective rights in tribal lands or funds administered by the federal government. 25 CFR 83.8(c). Here, the 1911 and 1912 Acts strongly suggest federal acknowledgment, but need not be relied upon, because the 1925 Act is an unambiguous federal acknowledgment. The Act refers to ''all claims * * * which the * * * Chinook [and other] *Tribes or Bands* of Indians *may have*'' [emphasis added]. By referring to the Tribe in the present tense, Congress expressly acknowledged the existence of the ancestors of the CIT/CN as a tribe.

In this case the explicit statutory recognition is not just probative of the existence of a tribe; it establishes that a tribe has a relationship with the federal government. There is a major consequence flowing from the express statutory recognition. Congress has never enacted a withdrawal of recognition, and the Department is loathe to infer such a withdrawal. Indeed, once recognized, a tribe may lose its federal recognition only by Act of Congress or by the voluntary abandonment of its tribal relations. And while we will not presume continuity of tribal relations, neither should we presume abandonment of tribal relations. Given that the petitioner existed as a distinct community through 1950, that it was sufficiently organized politically to pursue claims before the Indian Claims Commission throughout the 1950s, that it has pursued this acknowledgment process since 1979, and that the genealogical review shows the petitioner to consist primarily of descendants of the 1851 and 1855 treaty tribe and the tribes mentioned in the 1911 and 1925 legislation, the AS–IA finds that criterion (a) is met on a substantially continuous basis from 1911 to the present.

The criterion of substantially continuous identification as Indian from historical times, in 25 CFR 83.7(a), is thus satisfied, because the statutes have never been repealed, amended or otherwise modified. In addition, the CIT/CN by virtue of their direct descent from, continuing relationship to, and regular interaction with the prior acknowledged Chinook satisfy, as a whole, criterion (a).

Criterion (b)

The PF for the CIT/CN petitioner concluded that the petitioner meets criterion 83.7(b) from 1811 to 1854, based on the continuing existence of distinct Chinook Indian villages. Using a combination of evidence to show people lived in village-like settings and maintained distinct cultural patterns, it also concluded that, from 1854 to about 1920, there was evidence that a community of Chinook Indians who had intermarried with Chehalis Indians and whites, lived along the shores of Willapa Bay, particularly in the town of Bay Center and on Shoalwater Bay Indian Reservation. This Bay Center community met the requirements for community found in criterion (b) under the regulations; however, this community did not incorporate the entire Chinook population claimed as ancestors by the petitioner. Significant portions of the petitioner's ancestors lived in other communities along the Columbia River, 25 to 45 miles to the south and southeast of Bay Center. The PF found little or no evidence that the Chinook people living on the Columbia River and those in or near Bay Center formed a community under the regulations.

Data from the 1880 federal census was used to demonstrate that many Chinook descendants, including those who were permanent residents in Bay Center, were fishing side by side in Chinookville, a village which was almost exclusively inhabited by Chinook Indians. The year 1880 was the last year for which there was sufficient evidence demonstrating that CIT/CN, as a whole, met the requirements of criterion 83.7(b).

CIT/CN submitted new evidence during the PF comment period to support a revised finding of continuous, significant social interaction between the Indians living in Bay Center and the Chinook descendants concentrated in Dahlia or Ilwaco on the Columbia River to the south to 1950. Evidence submitted by CIT/CN in response to the PF supports continuous significant social interaction between the Indians living in Bay Center and the Chinook descendants concentrated in Dahlia or Ilwaco between 1880 and 1950. However, there is more limited evidence from 1950 to the present to show that the petitioner, as a whole, met criterion 83.7(b). The AS–IA finds that the evidence is adequate that the Bay Center community satisfies criterion (b) to the present. While this does not encompass the whole of the petitioner, the willingness of the Bay Center community to join with others to pursue the ICC claims and this petition process also tends to demonstrate the existence of a community. To recognize only the Bay Center community would be unproductive, since that group, once federally recognized, could simply enact membership criteria that would make the others eligible for membership. Additionally, the work of Clifford Trafzer supports a finding of community up to 1990. See Trafzer, The Chinook (1990), and Exhibit T. Therefore, by a combination of evidence and taking account of the limitations inherent in demonstrating the historical existence of community, the evidence which is available is sufficient to show that CIT/CN, as a whole, meets criterion 83.7(b).

Alternatively, the AS–IA finds that CIT/CN meets criterion (b) as a result of its prior federal recognition in the 1925 Act. As noted above, we will not presume an abandonment of tribal relations once the tribe is recognized. While the record is not conclusive, there is no affirmative indication of abandonment, and the voluntary pursuit of the ICC claim and this petition argue against any such abandonment. Thus, the evidence is adequate to find that CIT/CN meets criterion (b).

Criterion (c)

The continuity of political influence in section 83.7(c) is met by the polity manifested through the organizations formed to pursue claims under the 1925 statute and the Indian Claims Commission Act of 1946. These organizations were formed to pursue tribal claims, not individual ones, and required descent from the historic Lower Chinook Tribe as a basis for

membership. Their purpose was not just to aid litigation or pursue claims, but encompassed other matters, relating to the welfare and community standing of the Chinook as a whole, for example, health matters, fishery issues and the recovery of human remains and artifacts. These claim organizations were effectually transitional governing bodies and, from the 1920s until the 1950s, were evolving into bodies exercising modern political authority and influence. For this reason, they must be accorded status of organizations wielding political authority and meeting the requirement of political influence or other authority in 25 CFR 83.7(c).

The evidence is undisputed that the focus of the political activity has been the claims, both under the 1925 statute and the Indian Claims Commission Act of 1946. A claims organization has existed since the 1920s. From 1953 onwards, there were two competing Chinook authorities, centered around the claims, and there were also other political activities. At this time a constitution and by-laws were enacted and tribal councillors were later elected. Since informal political organization has been allowed to meet the political influence criterion, and because the claims endeavors were made on behalf of one tribal entity, not individuals, this level or organization meets the requirement of continuing political influence. The present CIT/CN, an amalgamation of the two entities which split in 1953, has a constitution and conducts regular meetings.

Therefore, taking into consideration the limitations inherent in demonstrating political influence or authority on a substantially continuous basis, and realizing that fluctuations in tribal activity occur at different points in time, the combination of evidence demonstrated is sufficient to show that CIT/CN, as a whole, meets criterion 83.7(c).

Criterion (d)

The petitioner submitted a certified copy of a constitution dated June 16, 1984, which described the territory of the petitioner, the membership criteria, election of officers, the duties of the officers, and general membership meetings. The petitioner also submitted copies of 1953 Articles of Incorporation and a 1953 constitution of the Chinook Indian Tribes, Inc., a 1954 constitution of the Chinook Nation, and a 1980 constitution as evidence of previous governing documents.

Section 1 of the 1984 constitution states that the petitioner's membership shall consist of persons who submit satisfactory evidence that they descend from the Chinookan bands or Clatsop tribe that existed at the time of the 1851 treaties. Section 2 of the membership provision states that the CIT council will adopt an ordinance for establishing procedures and proof for enrollment.

The petitioner also submitted a membership ordinance dated June 20, 1987, which ''replaces Section 2 of the 1984 constitution.'' The membership ordinance states that the membership shall consist of descendants of the Cathlamet, Wahkiakum, Willapa, and Lower Band of Chinook Indians and the Clatsop Tribe of Indians who were living at the time of the 1851 treaties who are on the August 1, 1987, membership list, and their descendants. ''New members'' applying after August 1, 1987, must document their descent from persons listed on the 1919 Roblin Schedule of Unenrolled Indians, the 1906 and 1913 McChesney rolls of the Indians living at the time of the 1851 treaties or their heirs, or the 1914 annuity payment roll and have ¼ Indian blood from the specified Chinook bands. The term ''new members'' in the ordinance presumably applies to new family lines not previously represented on the 1987 list.

The 1984 constitution provides also for the adoption of individuals into the tribe under the categories of ''verified tribal affiliation (by tribe and/or BIA)'' or ''unverified tribal affiliation.'' The provision states that the enrollment committee makes a recommendation for adoption to the tribal council which then brings the recommendation before the general assembly. The status and rights of adopted members are not stated.

Therefore, the petitioner meets criterion 83.7(d).

Criterion (e)

The petitioner provided lists dated 1953, 1981, 1983, 1987, 1994, and 1995, which it considered its membership lists. The July 8, 1995, membership list was certified by the petitioner's council as being accurate and complete. There were 1,622 names on the list, including 56 names of deceased members, for a total of 1,566 living members.

Approximately 15 percent of CIT/CN members have not submitted evidence consistent with the petitioner's own constitution or acceptable to the Secretary of the Interior to prove their Chinook descent. These members descend from Rose LaFramboise, a metis woman for whom there is conflicting information regarding her parentage. The petitioner's claim for Chinook ancestry for Rose LaFramboise shows her as the descendant of Amable Petit and Susanne Tawakon, of the Lower Band of Chinook. However, the petitioner also sent undocumented ancestry charts that show Rose as the daughter of non-Chinook parents: a French Canadian Hudson's Bay company employee and his Cayuse/Sioux metis wife, Francois LaFramboise and Denise Dorion. The petitioner did not provide primary documentation to support either claim.

In order to determine which was the correct line of descent, the BIA researched such primary documentation as published Catholic Church records, federal censuses, and BIA records for the claims distributions in the Western Oregon Judgment Fund 1955–1959. None of these records confirmed that Rose was the descendant of Susanne Tawakon. Instead, BIA analysis of the available records concluded that Rose was most likely to be the daughter of Francois and Denise Dorion LaFramboise who were not Chinook.

If Rose LaFramboise was not of direct Chinook descent, she was certainly the sister-in-law to Sophie Durival LaFramboise and to Edwin Scarborough, who were members of well-known Chinook families. Rose had ''connections'' (brother's in-laws) with the Chinook at Dahlia. Rose LaFramboise, her children and grandchildren, resided at Cathlamet with other Chinook descendants from 1870 through the 1920s. Like other Chinook descendants in the area, Rose was identified as ''Indian,'' ''Indian-Mixed,'' and ''½ Indian'' on the census records. Rose LaFramboise's descendants, like their Chinook neighbors, married out of the Chinookan population. Her descendants are on the 1953 membership applicants list submitted by the Chinook Tribes, Inc., the 1987 CIT membership list, and later CIT lists. These connections and associations with other Chinook and identifications in the census records indicate that Rose LaFrambois was considered by others (family and neighbors) to be one of the Chinook. While Rose LaFramboise may not have been Chinook by blood, she appears to have been accepted as a member of the Chinook community in which she lived. This comports with the long-standing definitions of ''Indian'' and ''tribal member'' (Solicitor's Memorandum 1/16/1958.)

However logical it may be to conclude that Rose LaFramboise was considered in her own life time to be Chinook, from the evidence currently available, Rose LaFramboise descendants do not meet the group's own membership criteria as defined in its enrollment ordinance. If the petitioner provides new evidence which proves Rose's descent from the

historical tribe, this will not be a problem. However, if no such evidence is available, there may be problems enrolling LaFramboise descendants for services. The CIT may wish to resolve the LaFramboise membership question by providing documentation acceptable to the Secretary of the Interior which proves Chinook descent, by exercising the adoption policy, or by resolving the conflict between the enrollment ordinance and the group's actual practices.

At present, there is evidence that approximately 85 percent of the 1995 membership descends from either the Wahkiakum, Willapa, Kathlamet, or Lower Band of Chinook or the Clatsop tribe of Indians who were treated by the federal government in 1851. The other 15 percent of the membership descends from Rose LaFramboise, who by birth, adoption, or the customs of the day, appears to have been considered as part of the Chinook. Approximately 82 percent of the CIT membership descends from the Lower Band of Chinook. Some descendants of the other bands married into the Lower Band, creating multiple lines of Chinook and Clatsop descent for most of the CIT membership. Therefore, the group, as a whole, meets criterion 83.7(e).

Criterion (f)

The petitioner's constitution does not address the issue of dual enrollment in federally acknowledged tribes. However, the petitioner provided a list of 50 names of persons who were dually enrolled in 1981 and a list of 68 persons who were dually enrolled in 1987. The BIA compared the 1995 CIT membership list to a 1992 Olympic Peninsula Agency record which listed the names of persons enrolled with various Washington and Oregon tribes and found 82 CIT members were enrolled with Quinault Nation of the Quinault Reservation, Washington. Although 5 percent of the petitioner's members are also enrolled in the Quinault tribe, the petitioner is principally composed of persons who are not members of any federally acknowledged North American Indian tribe.

Therefore, the petitioner meets criterion 83.7(f).

Criterion (g)

Congress passed an act in 1954 to terminate the federal trust relationship to the ''tribes, bands, groups, or communities of Indians located west of the Cascade Mountains in Oregon,'' and specifically stated that the act applied to the ''Chinook,'' ''Clatsop,'' and ''Kathlamet.'' Termination legislation to apply to the Indians of western Washington State, although considered, was not enacted by Congress. The western Oregon termination act clearly stated that it applied not only to tribes or bands of Indians, but also to their ''individual members'' (68 Stat. 724). Because the act listed the historical tribes of western Oregon, not just the tribes which were currently recognized by the federal government, the act not only terminated any existing federal relationships, but also prohibited the establishment of a federal relationship with any of those historical tribes.

The Lower Band of Chinook was always identified as a historical tribe or band north of the Columbia River in modern Washington State. As described by the unratified treaty of 1851, its territory lay exclusively in the state of Washington. Because the 1954 western Oregon termination act was applicable only to tribes, bands, or groups of Indians located in the state of Oregon, that act's reference to the ''Chinook'' did not refer to the historical Lower Band of Chinook of Washington State, or to its descendants. Therefore, the act did not prohibit a federal relationship with the Lower Band of Chinook.

The Clatsop Tribe, however, was always identified as a historical tribe or band south of the Columbia River in the modern state of Oregon. The unratified treaty of 1851 placed its territory exclusively in the state of Oregon. Therefore, a federal relationship with the Clatsop Tribe was prohibited by the western Oregon termination act of 1954. In addition, that act clearly stated that its intent was to prohibit federal services to the individual members of such a tribe. Therefore, those members of the petitioning group whose Indian descent is exclusively from the historical Clatsop Tribe cannot receive federal services because of their status as Indians. This prohibition does not apply to the members of the petitioning group who have mixed Chinook and Clatsop ancestry. It affects only about 3 percent of the petitioner's current members.

The historical Kathlamet Band of Chinook Indians had villages on the Oregon shore of the Columbia River. The 1851 unratified treaty considered Kathlamet territory to be completely within the modern state of Oregon. Some scholars believe, however, that about 1810 the Kathlamet moved north of the Columbia to live near, or among, the Waukiakum Band of Chinook Indians. As a result, members of the petitioner who have Kathlamet ancestry also have Waukiakum or Lower Band ancestry, although there is some limited evidence that 2 percent of the petitioner's members, some of the descendants of Elizabeth Klowsum Springer, may have only Kathlamet Band ancestry. The members of the petitioning group with Kathlamet ancestry, however, descend from Indians who have long been associated with individuals of Waukiakum and Chinook ancestry north of the Columbia River in Washington State. Therefore, the western Oregon termination act of 1954 does not apply to the petitioner's members with Kathlamet ancestry.

Because the petitioner claims to be the successor to the Lower Band of Chinook of Washington State, and because a large majority of its members trace their Indian ancestry to that historical tribe or band, the petitioner, as an entity, is not the subject of congressional legislation which has expressly terminated or forbidden the federal relationship. Thus, with the reservation that a few of the petitioner's current members who trace their ancestry only to the historical Clatsop Tribe would be forbidden federal services as Indians, the petitioner meets criterion 83.7(g).

This determination is final and will become effective 90 days from the date of publication, unless a request for reconsideration is filed pursuant to Section 83.11. The petitioner or any interested party may file a request for reconsideration of this determination with the Interior Board of Indian Appeals (Sec. 83.11(a)(1)). The petitioner's or interested party's request must be received no later than 90 days after publication of the Assistant Secretary's determination in the **Federal Register** (Sec. 83.11(a)(2)).

Dated: January 3, 2001.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 01–609 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA210–01–1610–01–2410]

Public Land and Resources; Planning, Programming and Budgeting

AGENCY: Bureau of Land Management; Interior.

ACTION: Notification of availability of approved land use planning manual and handbook.

SUMMARY: The Federal Land Policy and Management Act (FLPMA) and the regulations at 43 CFR part 1600 require the Bureau of Land Management (BLM)

to prepare Resource Management Plans (RMPs) to provide management direction for the public lands. The objective of land use planning is to ensure that BLM lands are managed under the principles of multiple use and sustained yield (FLPMA, sec. 102 (a) (7)); in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use (FLPMA, sec. 102(a)(8)); and in a manner that recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands (FLPMA, sec. 102 (a) (12)).

The Planning Manual and Handbook provide direction in implementing the requirements of FLPMA and the BLM planning regulations.

SUPPLEMENTARY INFORMATION: In addition to serving as BLM's primary tool for determining resource protection and allocations in the management of the public lands, RMPs provide the public a voice in BLM's land and resource management programs. They establish goals and objectives for resource management, measures needed to achieve them, and parameters for use.

The Land Use Planning Manual and Handbook replace earlier guidance which has been in place since the 1980s. The new guidance is necessary to address new circumstances affecting the management of public lands.

The new planning guidance differs from the earlier guidance in that it:

1. Encourages planning on a variety of scales, including both traditional RMPs at the local level and larger regional-level plans, and combinations of these across different land ownerships and jurisdictions;

2. Encourages greater public participation throughout the planning process and facilitates collaborative and multi-jurisdictional planning;

3. Clarifies the relationship between land use plans and implementation plans;

4. Provides the minimum procedural requirements for completing land use plans and implementation plans;

5. Clarifies the relationships between land use plan and NEPA requirements;

6. Addresses new requirements and approaches for managing public lands or resources; and

7. Addresses the consideration of new information and circumstances, such as new listings of threatened and endangered species, and new requirements and standards for the protection of air and water quality.

As part of the effort to update Manual and Handbook guidance for preparing land use plans, during June and July, 2000, the Bureau of Land Management (BLM) circulated a draft Land Use Planning Manual and Handbook for BLM and public review and comment. About 115 comments were received from agencies, State and local governments, organizations, companies, and the general public. Approximately 35 comments were received from BLM employees and offices.

The goal of the review was to ensure the guidance (1) accurately reflects statutory and regulatory requirements, (2) facilitates the development of land use plans which meet resource use and protection needs, and ensures the involvement of other Federal agencies, tribes, State and local government, and the public, (3) provides an appropriate level of detail (i.e., sufficiently detailed to ensure conformance with specific planning requirements, yet provides a level of flexibility necessary to address various issues associated with individual planning efforts), and (4) is readily understandable and useable by BLM and the public.

We have carefully considered the comments received and have revised the guidance in light of the goals listed above. A summary of the comments and how they were addressed will be available shortly on BLM's Internet homepage (*www.blm.gov*) or by request. Because the approved Manual and Handbook are internal guidance, they are not subject to protest or appeal.

ADDRESSES: Copies of the approved land use planning manual and handbook may be obtained from the Internet at www.blm.gov; from the BLM Washington Office at the following address: BLM, Planning, Assessment and Community Support Group (WO–210), 1849 C Street, NW (LS–1050), Washington, DC 20240–0001; or from any BLM State Office or Field Office.

FOR FURTHER INFORMATION CONTACT: Ted Milesnick at (202) 452–7727, Ann Aldrich at (202) 452–7722, or Paul Politzer at (202) 452–0349.

Dated: December 22, 2000.

Henri R. Besson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 01–192 Filed 1–8–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review (new collection).

State Police Traffic Stop Data Collection Procedures, 2000

The Department of Justice, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 15, 2000, Vol. 65, page 49837, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until February 8, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* State Police Traffic Stop Data Collection Procedures, 2000.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is SP–1. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State government.

Other: None.

42 U.S.C. 3711, *et seq.* authorizes the Department of Justice to collect and analyze statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50 respondents will complete a 30-minute data collection form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the forms is 25 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: January 3, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–476 Filed 1–8–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its rule in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 12–01

UIPL 12–01 provides the Department of Labor's interpretation of Federal law concerning the outsourcing (or contracting out) of UC administrative functions. It is being issued in response to numerous inquiries from States and agencies involved in the administration of the UC program. It also provides answers to questions raised by State Employment Security Agencies and other interested parties.

Dated: January 3, 2001.

Raymond Bramucci,

Assistant Secretary of Labor.

Classification: OWS

Correspondence Symbol: TEUL

December 28, 2000.

Directive: Unemployment Insurance Program Letter No. 12–01.

To: All State Employment Security Agencies.

From: Grace A. Kilbane, Administrator, Office of Workforce Security.

Subject: Outsourcing of Unemployment Compensation Administrative Functions

1. *Purpose.* To inform States of the Department of Labor's (Department) interpretation of Federal law concerning the ''outsourcing'' of unemployment compensation (UC) administrative functions.

2. *References.* Sections 303(a)(1), (3), and (8) of the Social Security Act (SSA); the Intergovernmental Personnel Act of 1970 (IPA); 5 U.S.C. Section 2301(b); 42 U.S.C. Sections 4701 and 4728; 5 CFR Sections 900.603, 900.604; 20 CFR Part 602; 20 CFR Section 652.3; 26 CFR Section 31–3306(i)–1; Office of Management and Budget (OMB) Circular No. A–76 (Revised) (48 *Fed. Reg.* 37110 (August 16, 1983); 64 *Fed. Reg.* 33927 (June 24, 1999)); OMB Office of Federal Procurement Policy (OFPP) Policy Letter No. 92–1 (57 *Fed. Reg.* 45096 (September 30, 1992)).

3. *Background.* The Department has received numerous inquiries concerning the outsourcing (or contracting out) of functions related to the administration of the UC program. This UIPL is issued in response to these inquiries. As this issuance applies only to the outsourcing of UC administrative functions, it is not to be construed as applying to, permitting, or prohibiting the outsourcing of non-UC functions. Further, where outsourcing is permitted, this UIPL neither encourages nor discourages the outsourcing of UC administrative functions.

A longstanding tenet in the administration of public programs is the desirability of using merit systems. In the IPA, Congress declared that the quality of public service is maintained and improved by the development and maintenance of systems of personnel administration consistent with merit principles. (42 U.S.C. 4701.) A basic merit principle is that governmental employees are responsible to the public as represented by the elected officials who head the executive branch of government (for example, the President or Governor). A second merit principle is that public employees covered by a merit system are able to administer the law in an unbiased, professional manner without undue outside influence. Because many decisions made by public employees affect the rights and property of individuals, these decisions must be made in a fair and unbiased manner that is consistent with the rule and intent of the law.

Impartiality in administering the UC program is especially important because UC is a major economic stabilizer. It is often the only source of income during a worker's period of involuntary unemployment. Further, employers are charged for UC paid to their former employees. The lack of impartiality could lead to individuals being improperly paid or denied UC due to outside pressures. In addition, because employers' experience rates are calculated based on the payment of UC to their former workers, impartiality is needed to assure not only that eligibility is determined properly, but that charges to the employer are proper. For reasons such as these, Congress included a specific merit staffing requirement in Federal UC law. This requirement, and other Federal law requirements affecting outsourcing, are discussed below.

4. *Federal Requirements.*

a. *Merit Staffing.* Section 303(a)(1), SSA, contains the merit staffing requirement for the UC program. This section requires, as a condition of States receiving UC administrative grants, that State law include provision for:

(1) Such methods of administration (including after January 1, 1940, *methods relating to the establishment and maintenance of personnel standards on a merit basis,* except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; [Emphasis added.]

Interpretive authority for this merit system requirement was transferred to the U.S. Office of Personnel Management (OPM) in 1970 by the IPA. (42 U.S.C. Section 4728.) However, the enforcement authority for this merit system requirement remains with the Department, and this requirement is a condition for receipt of UC administrative grants.

No specific merit system standards are contained in the SSA. Instead, Section 208(b) of the IPA assigns OPM responsibility for prescribing personnel standards that are to be followed by States which must operate merit-based personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. OPM has implemented these standards at 5 CFR Section 900.603, and OPM, as explained more fully below, prohibits outsourcing of administrative functions in programs to which the standards apply if outsourcing would compromise these standards. Since Section 303(a)(1), SSA, conditions receipt of administrative grants on the provision of a merit system, 5 CFR Section 900.603 applies to the administration of the Federal-State UC program.

The merit system standards at 5 CFR Section 900.603 include: (1) the recruitment, selection, and advancement of employees on the basis of their relative ability, knowledge, and skills, including the open consideration of qualified applicants for initial appointment; (2) providing equitable and adequate compensation; (3) training employees, as needed, to assure high quality performance; (4) retaining employees on the basis of the adequacy of their performance; (5) assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens; and (6) assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

b. *Guidance Pertaining to Outsourcing.* In determining what functions may be outsourced in State offices where Federal merit-staffing requirements apply, States are to rely on guidance in OMB Circular No. A–76 (Revised) and OFPP Policy Letter 92–1. These documents offer guidance on what functions may be outsourced by the Federal government. While these issuances, by their terms, apply only to the Federal government, their guidance, combined with the merit system standards listed above, are considered to be persuasive concerning what functions a State may outsource under a program where a Federal merit-staffing requirement applies. Also, the Department values consistency between what functions may be outsourced by a State and what functions may be outsourced by the Federal Government, as it would be illogical to prohibit a State from outsourcing a function that the Federal Government is permitted to outsource. Therefore, these OMB issuances will also serve as the interpretative guides for the merit-staffing requirement of Section 303(a)(1), SSA, and the Secretary of Labor will use the guidance provided by these documents in determining whether outsourcing a UC administrative function is consistent with the merit system requirement under Section 303(a)(1), SSA, for purposes of certifying a State's law under the SSA.

These OMB issuances distinguish between ''inherently governmental functions,'' which must be carried out by merit-staffed governmental employees and may not be outsourced, and ''commercial activities,'' which may be outsourced. OPM directs Federal grantor agencies to use these two categories as a tool for determining whether a grant-recipient State may outsource a specific function. An ''inherently governmental function'' may not be outsourced as doing so would evade the merit requirements as non-governmental employees would be performing governmental functions.

OFPP Policy Letter 92–1 defines an inherently governmental function as a function ''that is so intimately related to the public interest as to mandate performance by Government employees.'' Such functions include those activities that require ''the exercise of discretion in applying Government authority or the making of value judgements in making decisions for the Government.'' An inherently governmental function involves, among other things, the interpretation and execution of law so as to: (1) bind the Government to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise; (2) determine, protect, and advance its economic, political, or property interests by civil or criminal judicial proceedings, contract management, or otherwise; (3) significantly affect the life or property of the individual; or (4) exert ultimate control over the acquisition, use, or disposition of the property of the Government, including the collection, control, or disbursement of appropriated or other funds.

According to OFPP Policy Letter 92–1, inherently governmental functions do not normally include gathering information for, or providing advice, opinions, recommendations, or ideas to, Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as (but not limited to) building security, mail operations, housekeeping, or facilities operations and maintenance.[1]

Section 6(a) of OMB Circular No. A–76 (Revised) defines a commercial activity as one which is operated by an ''executive agency and which provides a product or service which could be obtained from a commercial source. A commercial activity is not a Governmental function* * * * A commercial activity also may be part of an organization or a type of work that is separable from other functions or activities and is suitable for performance by contract.'' The application of this test is illustrated below in Section 5 of this directive.

c. *Additional Federal Law Requirements.* Sections 303(a)(3) and (8), SSA, also contain requirements applicable to the outsourcing of UC activities. These sections require, as a condition of States receiving UC administrative grants, that State law include provision for:

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for

[1] Much of the guidance on inherently governmental functions contained in OFPP Policy letter 92–1 was codified in the Federal Activities Inventory Reform (FAIR) Act at FAIR Act § 5(2). However, OPM has advised the Department that because the FAIR Act only codified-and did *not* modify-the guidance in OMB Circular A–76 (Revised) and OFPP Policy Letter 92–1, OPM's analysis has not changed.

unemployment compensation are denied;

* * * * *

(8) * * * the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law;

Impartiality is explicit in the requirement of Section 303(a)(3), SSA, that individuals whose claims have been denied be given the opportunity for a fair hearing before an ''impartial tribunal.'' Impartiality may be achieved only when the deciding official is free from partisan political purposes as required by the OPM regulations discussed in section 4.a. of this UIPL. The Department interprets this provision to have been met as long as the first level of appeal available to the individual is merit staffed.

The requirement of Section 303(a)(8), SSA, that amounts received for the administration of the UC program be used solely ''in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of State law'' also restricts outsourcing. Any moneys expended to outsource UC functions that are required to be merit staffed, or any moneys spent on outsourcing UC functions which could be performed more efficiently by governmental personnel, would not be necessary for the proper and efficient administration of the State's UC law.

Also, the ''methods of administration'' requirement of Section 303(a)(1), SSA, beyond the merit staffing requirement, is applicable here. The Department has interpreted Section 303(a)(1), SSA, as requiring that eligibility decisions be accurate. (See 20 CFR part 602.) It follows that the individuals making these decisions must have the knowledge and training necessary to make the correct decisions. Advancement for UC administrative staff based on knowledge, and the provision of training for such staff as needed, are requirements found in the OPM regulations discussed in section 4.a. of this directive.

Finally, outsourcing is not permitted when it otherwise creates a conflict with Section 303(a)(1), SSA, or any other Federal law requirement. For example, Section 303(a)(1), SSA, is interpreted to require that States keep UC information with personal identifiers confidential. An outsourcing arrangement that jeopardizes the confidentiality of the UC information would be impermissible.

5. *Application of Federal Requirements.* This section indicates UC functions which may or may not be outsourced. The items identified in this discussion constitute some of the major functions involved in administering the UC program. It is not necessarily an exhaustive list of functions. For functions that are not identified or discussed in this program letter or its attachments, the Department, in consultation with OPM, will review and decide the permissibility of outsourcing on a case-by-case basis, applying the principles in this issuance.

a. *Functions Which May Not Be Outsourced.* Many functions relating to the UC program are inherently governmental and, therefore, may not be outsourced.

Determining whether to pay (or not pay) UC is an inherently governmental function. Because one of the major functions of the UC program is to act as an economic stabilizer, these decisions ultimately involve the interpretation and execution of law in a manner which affects general economic interests. In addition, decisions made by employees who administer the UC system bind the State government to make payments to individuals based on applicable law and regulation, significantly affect the life of the individual, and affect disbursement of unemployment funds with respect to the individual. These types of decisions are identified specifically in OMB Circular A–76 (Revised) and OFPP Policy Letter 92–1 as inherently governmental.

Whether an individual will receive UC is determined through a process which involves taking claims, determining the facts of the individual's situation, and if necessary, adjudicating issues and hearing and deciding first-level appeals. These three basic functions involved in determining eligibility for UC also are inherently governmental in nature, as they require the exercise of discretion in applying governmental authority.

Claims taking involves providing claimants with an understanding of their rights to UC and with advice concerning when to file as well as what type of claim to file (*e.g.,* intrastate, interstate, or combined-wage). Discretion must be exercised as to what advice is given. Fact-finding is extremely dependent upon the exercise of discretion as it involves asking the necessary questions and establishing the proper facts in order to ensure that a correct eligibility determination be made.

The adjudication of issues cannot be conducted without the adjudicator exercising discretion in the interpretation of the State law. In response to our inquiry, which arose from a request for guidance concerning the merit system requirement as it related to appeals referees, OPM advised the Department that appeals referees must be covered by a merit system, meaning the position must be filled by a merit staffed government employee. This determination was based on the need to insulate hearing officers and adjudicators from political or other extraneous pressures. The need for this requirement is illustrated at the Federal level by the fact that Administrative Law Judges (ALJs) were specifically excluded from the Senior Executive Service (SES) at its creation, because the greatly relaxed merit staffing principles applied to members of the SES are not sufficient to assure the impartiality that is required of ALJs. Requiring adjudicators to be merit-staffed governmental employees is necessary to meet the impartial hearing requirement of Section 303(a)(3), SSA.

While the management of the Unemployment Trust Fund (UTF) is primarily a function of the United States Treasury, each State manages the clearing and benefit payment accounts in the State's unemployment fund. As stated in section 4.b of this directive and in OFPP Policy Letter 92–1, inherently governmental functions include all those where the individual interprets or executes the law so as to ''exert ultimate control over the acquisition, use, or disposition of the property of the Government, including the collection, control, or disbursement of appropriated or other funds.'' Section 6(e)(2) of OMB Circular No. A–76 (Revised) specifically defines monetary transactions and entitlement, such as tax collection and revenue disbursements, control of the treasury accounts and money supply, and the administration of public trusts, as inherently governmental functions. As such, they must be performed by merit-staffed governmental employees.

Determination of employer liability and experience rates are also inherently governmental functions. To determine an employer's experience rate, determinations have to be made concerning noncharging of benefits paid (if allowed under the State law), determinations of successions, rate transfers, and whether penalty rates will be used. Employer monetary liability also includes determinations about whether to assess penalties and interest. Because these decisions have an affect on the amount owed by an employer, they have the potential to significantly affect the property of an individual. Decisions concerning coverage determine the employers who are liable for contributions and workers who accrue benefit rights under State law,

and as such, significantly affect the property of individuals. For these reasons, all these functions must be performed by merit-staffed governmental employees.

Most aspects of the collection of contributions also must be performed by governmental employees. OMB Circular No. A–76 (Revised) specifically identifies monetary transactions and entitlement, such as tax collection and revenue distribution, as ''functions so intimately related to the public interest as to mandate performance by governmental employees.'' Therefore, with the exception of the functions described in section 5.b of this directive, which follows, the functions involved in the collection of contributions must be performed by merit-staffed governmental employees.

b. *Functions for Which Outsourcing is Permitted.* As noted in Section 4.b of this directive, for purposes of the merit system provisions of Section 303(a)(1), SSA, based on OPM's guidance, if a function may be outsourced by the Federal government, it may be outsourced by State governments, if it also does not conflict with State or other Federal law. We note, however, that further limitations on outsourcing, even where it otherwise would be permitted, are explained below in Sections 5.c and 5.d of this directive. The following discussion of permissible outsourcing is illustrative of the types of functions which may be outsourced and is not an exhaustive list of such functions.

One aspect of functions related to the collection of contributions where merit staffing is not required is the collection of *delinquent* contributions which have been determined to be uncollectible by the State agency. In the case of such delinquent contributions, the determination as to the amount owed and the propriety of the decision already have been made by governmental employees. Moreover, the governmental agency will have taken all the actions required by law to collect the contributions due.

The requirement, discussed in section 5.a of this directive, that only merit-staffed governmental employees may collect, control, or disburse funds does not prohibit the use of commercial banks as depositories for clearing and benefit payment accounts, provided that the decisions concerning those accounts (that is, when checks are written, the amount of money to be transferred or drawn down from the UTF, etc.) are made by merit-staffed governmental employees. These banking functions are ministerial in nature and, therefore, are not required to be merit-staffed. Similarly, States are not prohibited from using a commercial bank as the collection point for contributions (that is, a clearing account) because lockbox collection functions are ministerial functions as they involve no judgement.

Audits do not have to be performed by governmental employees. OMB Circular A–76 (Revised) specifically identifies financial auditing as an example of a commercial activity. Because this function involves the gathering of information rather than the determination of liability, the function may be outsourced if doing so is not inconsistent with State and Federal laws relating to procurement of services. The basic UC tax audit function, as well as certain program audit functions (such as workload validation) may be outsourced, to the extent they do not involve the exercise of discretion in applying governmental authority, but rather, involve only the investigation and verification of past actions taken by governmental or contract employees. (See section 5.c of this directive for additional discussion.)

Automated data processing (ADP) functions also are identified in OMB Circular A–76 (Revised) as commercial activities that may be outsourced. ADP functions do not require the use of discretion in applying governmental authority, nor do they impact the decisions concerning whether or not an individual is eligible to receive UC. Therefore, ADP functions may be outsourced.

In all cases where outsourcing is contemplated, safeguards must be in place to ensure that any confidential data available to the contractor is not disclosed. Otherwise, outsourcing would not be appropriate, as it would be inconsistent with the confidentiality requirements of Section 303(a)(1), SSA.

c. *Determinations Concerning Outsourcing Must be Based on the Function, Not the Title of the Position to be Outsourced.* The Department recognizes that many UC staff positions entail the performance of multiple functions. A given UC staff position may include some duties that must be performed by merit-staffed governmental personnel, and some duties that may be outsourced. A decision as to whether it is permissible and/or appropriate to outsource an activity must be made by determining the function(s) performed, and must not be based on the title of the position charged with performing the function(s). If the function involves the application of governmental authority, it may not be outsourced, even if the title of the position suggests the absence of governmental authority. For example, as is usually the case for UC field audits, determining when audits are to be performed and decisions made as a result of the audit (for example, whether the employer owes back taxes, determinations of coverage, etc.) are inherently governmental functions that are an integral part of the UC audit function. Therefore, if auditors have the responsibility for making determinations of monetary liability or coverage decisions based on their audit findings, as is normally the case with tax auditors and in the various quality control programs, the auditors must be merit-staffed governmental employees and not contractors. If the ministerial functions can be separated out from the inherently governmental functions, the ministerial functions may be outsourced. However, a legal prerequisite still applies, as explained in section 5.d.2 of this directive, that doing so must not be less cost effective than having the entire function performed by merit-staffed governmental employees.

When deciding whether to outsource a position, States first should determine whether any inherently governmental functions are included in the duties of the position. If inherently governmental functions are included in the duties of the position, and they cannot be separated from the other function(s) to be performed, the position must be filled by a merit-staffed, governmental employee. If the inherently governmental function(s) can be separated from the position, and performed by merit-staffed governmental employees, then the rest of the function which is not inherently governmental may be outsourced, provided all other requirements for outsourcing are met. The Department will advise States on a case-by-case basis when requested to do so or when issues are identified regarding the outsourcing of specific functions and positions.

d. *Further Limitations on Outsourcing.* The above discussions of outsourcing relate to whether a particular function may be outsourced. However, other factors must be taken into account before outsourcing the function is permissible. These factors relate to whether a *de facto* employer-employee relationship exists between a contractor and governmental employees, and whether the government can perform the function in a more cost effective manner than a contractor.

(1) *Functions, even if commercial activities, may not be outsourced if doing so would create an employer-employee relationship between government and contract employees.* As noted above, commercial activities may

be outsourced. However, even if a function is deemed to be a commercial activity, its outsourcing is impermissible if it creates a *de facto* employer-employee relationship between government and contract employees. A *de facto* employer-employee relationship, where contract employees are under the direction, supervision, and evaluation of government employees, but without merit system protections, would circumvent the Federal merit system requirements. In this case, the *de facto* employer-employee relationship would serve to achieve in a backhanded manner that which could not be achieved otherwise: performance of the work by *de facto* government employees *without* merit system protections. This would undermine the very basis for requiring merit system protections in the first place, and is, therefore, impermissible.

Conversely, under no circumstances may governmental employees be under the direction and control of contract employees. If governmental employees are subject to direction, supervision, and evaluation by contract personnel, the chain of governmental responsibility to the public would be broken. In this case, the contractor, who is not accountable to the public, would exert major influence over the employees, rather than government officials who are directly accountable to the public.

OPM has advised the Department that the existence of a *de facto* employer-employee relationship, in the context of government contractors, is determined under the Federal common law test (as opposed to the State law tests) for determining the existence of an employer-employee relationship. The determination whether an employer-employee relationship exists must be made on a case-by-case basis. Federal regulations defining the employer-employee relationship are found at 26 CFR Section 31.3306(i)–1.

(2) *Functions, even if commercial activities, may not be outsourced if they can be performed in a more cost effective manner by the government.* As noted above, Section 303(a)(8), SSA, requires that a State's law provide for the expenditure of all moneys received by the State under Section 302, SSA, ''solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration'' of the State's UC law. If a UC function can be performed more efficiently and cost effectively by the Government than by a contractor, outsourcing of the function, even if it is a commercial activity, would be inconsistent with Section 303(a)(8), SSA, as it would not constitute ''efficient administration'' of the State's UC law.

(3) *Outsourcing may not be used to circumvent personnel or salary ceilings.* OMB Circular A–76 (Revised) states that the circular shall not be used to justify the outsourcing of functions solely to avoid personnel ceilings or salary limitations. In applying this principle to the States, if such ceilings or limitations exist, granted funds must be used in a manner consistent with the ceilings or limitations in order to insure the ''proper administration'' of the State's law under Section 303(a)(8), SSA.

6. *Frequently Asked Questions.* While developing this directive, the Department received several questions concerning its contents. The following Questions and Answers respond to questions which have not already been addressed.

Q. States frequently hire additional staff to handle temporary workload increases. These staff are let go when the workload decreases. In some cases, these staff may be retirees who return to work. Are these actions inconsistent with merit-staffing?

A. The Department recognizes that it is necessary on occasion to bring on temporary employees to handle temporary workload increases. To ensure that these temporary employees are competent to perform the tasks for which they are hired, they must have been hired through a merit system. If a retiree was hired and trained under a merit system in the first place, the merit system requirement is maintained. No issue is created when these temporary employees are laid-off due to a workload reduction.

Q. Members of Boards of Review which administer the second level of appeals are not required to be merit-staffed. Why is this so? May the higher appeals authority be outsourced?

A. The higher appeals authority may not be outsourced as it performs an inherently governmental function that requires discretion in applying Government authority or the making of value judgements in making decisions for the Government. However, the Department has long held that Boards of Review need not be merit-staffed. Boards exist to provide an independent analysis of, and ensure consistency of, first-level appeals decisions. Board members typically represent both employer and employee interests and as such are chosen for their representation of those groups. This position was stated as early as 1963 in Section 0595(B), Part I, of the *Employment Security Manual.* (This section is now obsolete.)

7. *Action Required.* Administrators are requested to provide this information to the appropriate staff. States should take appropriate action to assure that they meet the requirements of Federal law as explained by this UIPL.

8. *Inquiries.* Questions concerning the outsourcing of UC functions should be directed to the appropriate Regional Office.

9. *Attachments.* OMB Circular No. A–76 (Revised) and OFPP Policy Letter 92–1.

Note: The attachments, both of which have been published in the **Federal Register** previously, are not being published again. They can be obtained in electronic format at the following URL addresses.

OMB Circular No. A–76—*http://www.whitehouse.gov/OMB/circulars/a076/a076.html*

OFFP Policy Letter 92–1—*http://www.arnet.gov/References/Policy__Letters/PL92–1.html*

[FR Doc. 01–513 Filed 1–8–01; 8:45 am]

BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–1 CARP DSTRA2]

Adjustment of Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of negotiation period and request for notification.

SUMMARY: The Copyright Office of the Library of Congress is announcing the 6-month negotiation period for the adjustment of royalty rates and terms for the public performance of copyrighted sound recordings by preexisting subscription services and preexisting satellite digital audio radio services. The Office is also requesting those parties participating in the negotiations to so notify the Office.

DATES: The 6-month negotiation period commences on January 9, 2001. Notification of participation in the negotiation period is due by January 31, 2001.

ADDRESSES: An original and five copies of notification of participation in the settlement negotiations may be hand delivered to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty

Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Since 1995, copyright owners of sound recordings have enjoyed an exclusive right to perform publicly their copyrighted works by means of a digital audio transmission, subject to certain limitations. 17 U.S.C. 106(6). Among the initial limitations placed on the performance of a sound recording was the creation of a statutory license for performances made by nonexempt, noninteractive, digital subscription services. 17 U.S.C. 114 (1995).

After receipt of a petition from the Recording Industry Association of America (''RIAA''), the Librarian of Congress conducted a CARP proceeding to establish rates and terms for the statutory license. The eligible subscription services that participated in that proceeding were Digital Cable Radio Associates, Digital Music Express, Inc. and Muzak, L.P. The Librarian issued a final determination of rates and terms, which was appealed by the RIAA. 63 FR 25394 (May 8, 1998). The U.S. Court of Appeals for the District of Columbia Circuit affirmed the rates, but remanded the matter of certain payment terms to the Library for further proceedings. *Recording Industry Ass'n of America* v. *Librarian of Congress*, 176 F.3d 528 (D.C. Cir. 1999). The remand has yet to be resolved.

In 1998, as part of the amendments made by the Digital Millennium Copyright Act (''DMCA''), the section 114 statutory license was expanded, and a new schedule for rate adjustment proceedings was established. For subscription services in existence prior to passage of the DMCA (defined as ''pre-existing subscription services''), and for satellite digital audio radio services in existence prior to passage of the DMCA (defined as ''pre-existing satellite digital audio radio services''), the Librarian of Congress is required to announce a 6-month negotiation period in the first week of January 2001 for purposes of promoting settlement of the terms and rates of the statutory license. 17 U.S.C. 114(f)(1)(C)(i)(II). This notice fulfills that requirement.

Announcement of Negotiation Period

Pursuant to section 114(f)(1)(C)(i), the Librarian of Congress is announcing a 6-month negotiation period for the settlement of rates and terms for the statutory license for preexisting subscription services and preexisting satellite digital audio radio services. If the 6-month negotiation period fails to yield a full settlement, interested parties must petition the Librarian for a CARP proceeding during the period commencing on July 1, 2001, and ending August 29, 2001. 17 U.S.C. 114(f)(1)(C)(ii)(II).

Request for Notification

In order to facilitate productive settlement discussions during the negotiation period, and to facilitate complete settlement, see 65 FR 10564 (February 20, 2000), it is useful to create a list of parties that wish to participate in the negotiation period. The list should be in a centralized location and available to the public so that interested parties may identify each other and begin their settlement discussions. Consequently, the Library is requesting that those parties wishing to participate in the 6-month negotiation period file notification with the Copyright Office by January 31, 2000.

The list compiled by the Copyright Office is solely for informational purposes and is on a voluntary basis. In other words, parties that wish to participate in the negotiation period are not required to file notification and may file notification with the Office at any time after the January 31, 2001, deadline up until the end of the negotiation period. The notification is not a Notice of Intent to Participate in a CARP proceeding, because, as provided in 17 U.S.C. 114(f)(1)(B), the Library cannot begin a CARP proceeding until petitioned to do so after the end of the negotiation period. If the Library receives such a petition, it will call for Notices of Intent to Participate at a later date.

Dated: January 4, 2001.

David O. Carson,

General Counsel.

[FR Doc. 01–581 Filed 1–8–01; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before February 8, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Brooke Dickson, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on October 12, 2000 (65 FR 60692 and 60693). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Publication Order Form.

OMB number: 3095–NEW.

Agency form number: NATF Form 36.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 5,200.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 867 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. The National Archives Trust Fund (NATF) Form 36 (8/00), Microfilm Publication Order Form, is used by customers/researchers for ordering a roll, rolls, or a microfiche of a microfilm publication.

Dated: December 29, 2000.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–515 Filed 1–8–01; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681]

International Uranium (USA) Corporation; Notice of Receipt of Request To Process Alternate Feed

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Request from International Uranium (USA) Corporation to Amend Source Material License SUA–1358 to Receive and Process Alternate Feed Materials; Notice of Opportunity for Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission has received, by letter dated December 19, 2000, a request from International Uranium (USA) Corporation (IUSA), to amend its NRC Source Material License SUA–1358, to allow its White Mesa Uranium Mill near Blanding, Utah, to receive and process up to 17,750 tons of alternate feed material from the Molycorp Site located in Mountain Pass, California. The material is a result of extraction of lathanides and other rare earth minerals and is presently being stored in ponds as lead sulfide sludge. IUSA and Molycorp estimate the amount of material for this amendment request to be up to 17,750 tons and the average uranium content of the material to be approximately 0.15 percent, or greater. IUSA proposes to receive and process the material for its uranium content and dispose of the byproduct material in the mill's tailings cells.

FOR FURTHER INFORMATION CONTACT: Mr. William von Till, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–8A33, Washington, D.C. 20555. Telephone: (301) 415–6251.

SUPPLEMENTARY INFORMATION: By its submittal dated December 19, 2000, IUSA requested that the NRC amend Materials License SUA–1358 to allow the receipt and processing of material other than natural uranium ore (i.e., alternate feed material) at its White Mesa uranium mill located near Blanding, Utah. These materials would be used as an ''alternate feed material'' (i.e., matter that is processed in the mill to remove the uranium but which is different from natural uranium ores, the normal feed material).

Since 1951, Molycorp has operated a surface mining and milling operation for the recovery and chemical separation of lanthanides and other rare earth metals from bastnasite ores. From 1965 through 1984, Molycorp constructed and operated three lead sulfide ponds for the evaporation of lead sulfides from the clarifier/thickener operation. The lead sulfide sludge contains uranium, which is also precipitated in the thickener. The ponds were taken out of service in 1984, and in 1997 Molycorp drafted a Closure Plan for the decommissioning of the ponds which required the removal and off-site disposal or recovery of the lead sulfide sludge contained in the ponds. This amendment request seeks authorization to process the lead sulfide sludges for their uranium content. IUSA has determined that the material does not contain listed hazardous waste as defined in the Resource Recovery and Conservation Act, as amended, 42 U.S.C. Section 6901–6991. IUSA proposes to temporarily store the material on the existing storage pad until a sufficient quantity of material is available to begin processing. IUSA will utilize water sprays, as required, to minimize dusting during dumping activities. The material will be processed utilizing an acid leach, in existing mill equipment, to dissolve the uranium. The solution will then be advanced through the mill circuitry with no significant physical modifications.

The material will be shipped using exclusive-use trucks from the Mountain Pass facility to the mill in lined, covered, aluminum end-dump trailers. Molycorp estimates that it will ship approximately 60–70 trucks per week for an estimated period of 60 to 90 days. The transportation route as proposed, will follow route I–15 and I–70 to U.S. Highway 191 at Crescent Junction, Utah and through Highway 191 south to the mill.

This application will be reviewed using NRC formal guidance, ''Interim Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores'' provided in the NRC Regulatory Issue Summary 2000–23 (November 30, 2000). The NRC has approved similar amendment requests in the past for separate alternate feed material under this license.

The amendment application is available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington D.C. 20555.

Notice of Opportunity for Hearing

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, Colorado 80265; Attention: Michelle Rehmann; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part

2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to Michael T. Lesar, Acting Chief, Rules Review and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 3rd day of January, 2001.

For the Nuclear Regulatory Commission.

Daniel Gillen,

Acting Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety & Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–601 Filed 1–8–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Reactor Oversight Process Initial Implementation Evaluation Panel; Meeting Notice

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94–463, Stat. 770–776) the U.S. Nuclear Regulatory Commission (NRC), on October 2, 2000, announced the establishment of the Reactor Oversight Process Initial Implementation Evaluation Panel (IIEP). The IIEP functions as a cross-disciplinary oversight group to independently monitor and evaluate the results of the first year of implementation of the Reactor Oversight Process (ROP). A Charter governing the IIEP functions as a Federal Advisory Committee was filed with Congress on October 17, 2000, after consultation with the Committee Management Secretariat, General Services Administration. The IIEP will hold its third meeting on January 22–23, 2001, at the Four Points by Sheraton Bethesda Hotel. The Four Points by Sheraton Bethesda Hotel is located at 8400 Wisconsin Avenue, Bethesda, Maryland 20814 and can be contacted at (301)654–1000. The meeting will take place in the Hotel's Ambassador II Conference Room.

The IIEP meeting participants are listed below along with their affiliation:

A. Randolph Blough—U.S. Nuclear Regulatory Commission
R. William Borchardt—U.S. Nuclear Regulatory Commission
Kenneth Brockman—U.S. Nuclear Regulatory Commission
Mary Ferdig—Ph. D. Candidate, Organization Development Program, Benedictine University; Ferdig Inc. Organizational Research and Development
Steve Floyd—Nuclear Energy Institute
David Garchow—PSEG Nuclear LLC
Richard Hill—Southern Nuclear Operating Company
Rod Krich—Commonwealth Edison Company
Robert Laurie—California Energy Commission
James Moorman, III—U.S. Nuclear Regulatory Commission
Loren Plisco—U.S. Nuclear Regulatory Commission
Steven Reynolds—U.S. Nuclear Regulatory Commission
A. Edward Scherer—Southern California Edison Company
James Setser—Georgia Department of Natural Resources
Raymond Shadis—New England Coalition on Nuclear Pollution
James Trapp—U.S. Nuclear Regulatory Commission

A tentative agenda of the meeting is outlined as follows:

January 22, 2001 Meeting

8:00 am Introduction/Meeting Objectives and Goals/Review of Meeting Minutes from December 11–12, 2000 Meeting
8:30 am Initial Prioritization of Issues Identified Through the Panel
12:00 pm Lunch
1:00 pm Presentation by NRC Staff on (1) Reactor Oversight Process Self-Assessment Data and Insights, (2) Current Reactor Oversight Process Initiatives and Status, and (3) Status of Recommendations and Issues Identified in the Pilot Program Evaluation Panel Report and Commission Staff Requirements Memorandum
5:00 pm Adjourn

January 23, 2001 Meeting

8:00 am Recap of Previous Day's Meeting/ Meeting Objectives and Goals
8:30 am Presentation of Stakeholder Issues/ Views (Invited parties)
12:00 pm Lunch
1:00 pm Initial Prioritization of Issues Identified Through the Panel (continued)
3:00 pm Agenda Planning Session 4:00 pm Public Comments / General Discussion
5:00 pm Adjourn

Meetings of the IIEP are open to the members of the public. Oral or written views may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make oral statements should notify Mr. Loren R. Plisco (Telephone 404/562–4501, e-mail LRP@nrc.gov) or Mr. John D. Monninger (Telephone 301/415–3495, e-mail JDM@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; and the Panel Chairman's ruling regarding requests to present oral statements and time allotted, may be obtained by contacting Mr. Loren R. Plisco or Mr. John D. Monninger between 8:00 a.m. and 4:30 p.m. EST.

IIEP meeting transcripts and meeting reports will be available from the Commission's Public Document Room. Transcripts will be placed on the agency's web page.

Dated: January 3, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–598 Filed 1–8–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena: Revised

A meeting of the ACRS Subcommittee on Thermal-Hydraulic Phenomena is scheduled to be held on January 16–17, 2001, 8:30 a.m., Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The meeting agenda has been revised so that portions of the January 16, 2001 session will be closed to discuss proprietary information per 5 U.S.C. 552b(c)(4) pertinent to the Electric Power Research Institute (EPRI). Notice of this meeting was published in the **Federal Register** on December 28, 2000 (65 FR 82410). All other items pertaining to this meeting remains the same as previously published.

For further information contact: Mr. Paul A. Boehnert, cognizant ACRS staff

engineer, (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: Janaury 3, 2001.

James E. Lyons,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–597 Filed 1–8–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 8, 15, 22, 29, February 5, 12, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 8, 2001

Tuesday, January 9, 2001

9:30 a.m.
Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Wednesday, January 10, 2001

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)
9:30 a.m.
Briefing on Status of Nuclear Materials Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Web address: *www.nrc.gov/live.html.*

Week of January 15, 2001—Tentative

Tuesday, January 17, 2001

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Status of Nuclear Reactor Safety (Public Meeting) (Contact: Mike Case, 301–415–1134)

This meeting will be webcast live at the Web address: *www.nrc.gov/live.html.*

Week of January 22, 2001—Tentative

There are no meetings scheduled for the Week of January 22, 2001.

Week of January 29, 2001—Tentative

Tuesday, January 30, 2001

9:30 a.m.
Briefing on Status of Nuclear Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243)

This meeting will be webcast live at the Website address: *www.nrc.gov/live.html.*

Wednesday, January 31, 2001

9:25 a.m.

Affirmation Session (Public Meeting) (If needed)

9:30 a.m.

Briefing on Status of OCIO Programs, Performance, and Plans (Public Meeting) (Contact: Donnie Grimsley, 301–415–8702)

This meeting will be webcast live at the Website address: *www.nrc.gov/live.html.*

Thursday, February 1, 2001

9:30 a.m.

Briefing on Status of OCFO Programs, Performance and Plans (Public Meeting) (Contact: Lars Solander, 301–415–6080)

This meeting will be webcast live at the Website address: *www.nrc.gov/live.html.*

Week of February 5, 2001—Tentative

There are no meetings scheduled for the Week of February 5, 2001.

Week of February 12, 2001—Tentative

There are no meetings scheduled for the Week of February 12, 2001.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: David Louis Gamberoni, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: January 4, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–669 Filed 1–5–01; 12:32 pm]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register Notice on this information collection request on October 24, 2000, in 65 FR #0206, p. 63640, at which time a 60-calendar day comment period was announced. This comment period ended December 26, 2000. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

Summary of Form Under Review

Type of Request: New information collection.

Title: Political Risk Insurance Survey.

Form Number: OPIC 233.

Frequency of Use: Once per client.

Type of Respondents: Individual business officer representatives of business institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 1 hour per client.

Number of Responses: 480.

Federal Cost: $0.

Authority for Information Collection: Section 234A, of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): OPIC is sponsoring a survey to identify trends relating to its clients' experiences with political risk in emerging markets. The survey results will not only help OPIC identify new products and opportunities to fulfill its mandate to insure investments overseas against a broad range of political risks, but will also provide valuable information to the political risk insurance industry, thereby helping the industry to enhance its programs.

January 3, 2001.

Rumu Sarkar,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 01–544 Filed 1–8–01 8:45 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Interchange Financial Services Corporation, Common Stock, No Par Value) File No. 1–10518

January 3, 2001.

Interchange Financial Services Corporation, a New Jersey corporation (''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 Stock, no par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'').

The Company has stated that the Security has been approved for quotation on the National Market of the Nasdaq Stock Market, Inc. (''Nasdaq National Market''), effective at the opening of business on Wednesday, January 17, 2001. The Company made the decision to transfer the trading of its Security from the Amex to the Nasdaq National Market based on its evaluation of the comparative marketing advantages and financial incentives available to investment companies quoted through the dealer network of the Nasdaq National Market.

The Company has stated in its application that it has complied with the rules of the Amex governing the withdrawal of an issue from listing and registration. The Company's application relates solely to the withdrawal of the Security from listing on the Amex and registration under section 12(b) of the Act,[3] and shall have no effect upon the approval of its application for quotation of the Security on the Nasdaq National Market or its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before January 25, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–542 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 8, 2001.

An open meeting will be held on Wednesday, January 10, 2001, at 2:30 p.m. in Room 1C30, the William O. Douglas Room, and a closed meeting will be held on Thursday, January 11, 2001, at 11:00 a.m.

Commissioner Carey, as duty officer, determined that no earlier notice thereof was possible.

The subject matters of the open meeting will be:

(1) The Commission will consider approving a proposed rule change by the National Association of Securities Dealers, Inc. to establish the Nasdaq Order Display Facility and the Order Collector Facility and to modify its primary trading platform, the Nasdaq National Market System, collectively referred to as the SuperMontage proposal.

For further information contact: Jennifer Colihan, Division of Market Regulation at (202) 942–0735.

(2) The Commission will consider proposing new Exchange Act Rule 19b–6, which would replace current Exchange Act Rule 19b–4. Proposed Rule 19b–6 would streamline the self-regulatory organization rule filing process.

FOR FURTHER INFORMATION CONTACT: Sonia Patton, Division of Market Regulation at (202) 942–0753.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 4, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–614 Filed 1–4–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43789; File No. SR–CBOE–00–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Its Rule Governing the Operation of Its Firm Quote Rule To Permit Split-Price Executions

January 2, 2001.

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 18, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') field with the Securities and Exchange Commission (''Commission'') the proposed new rule as described in Items I, II, and III below, which Items have been prepared by the Exchange.The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rule governing the operation of its Firm Quote Rule to permit split-price executions. Below is the text of the proposed rule change. Proposed new language is *italicized*, and proposed deletions are in brackets.

* * * * *

Rule 8.51 Trading Crowd Firm Disseminated Market Quotes

(a) The classes and series which shall be subject to the requirements of this rule will be determined at the discretion of the appropriate Market Performance Committee (''MPC'').

(1) Only non-broker dealer customer orders shall be entitled to an execution pursuant to the provisions of this paragraph (a). For the purposes of this Rule, the term broker-dealer includes foreign broker-dealers as defined in Rule 1.1(xx).

(2) The firm quote requirement shall be no less than the RAES contract limit applicable to that class of options. However, the appropriate Floor Procedure committee, in its discretion, may establish a different firm quote requirement for a particular class of options that is no less than the RAES contract limit and no more than 50 contracts. For classes or series that are not traded on RAES, the appropriate Floor Procedure Committee may establish a firm quote requirement of between 10 and 50 contracts. The firm quote requirement applies at all times other than during rotation, unless there is a contrary Floor Official ruling pursuant to subparagraph (3) of this paragraph (a). *Except as provided in sub-paragraph (3) below with respect to the price at which an order must be executed*, the firm quote requirement obligates a trading crowd to sell (buy) at lease the established number of contracts at the offer (bid) which is displayed when a buy (sell) order reaches the trading station where the particular option class is located for trading. The Exchange may establish a higher firm quote requirement, of up to 100 contracts, for the trading crowd for options on the Dow Jones Industrial Average. Except in the case of rerouted RAES orders that are eligible for the RAES kickout price in accordance with Interpretation .04 to Rule 6.8, an order ordinarily will be deemed to reach the trading station when a Floor Broker represents the order in open outcry at the trading station.

(3)(A) It is possible that the prevailing market bid or offer may be equal to the best bid or offer on the Exchange's book. In those instances, and in the event the order in the book is for a smaller number of contracts than the represented order, the balance of the represented order must be executed at no worse than the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Market Performance Committee on a class-by-class basis (the ''Book Price Commitment Quantity'') Any portion of the order remaining to be executed after the trading crowd has executed the Book Price Commitment Quantity at the disseminated best bid or offer will be required to be executed at least at (i) the price of any other order(s) in the book that then constitutes the new prevailing market bid or offer for the quantity of such order(s); or (ii) the market-maker disseminated price if that price constitutes the new prevailing market bid or offer (after the booked order(s) has been traded) for the entire remainder of the order. So long as an order in the book constitutes the new prevailing market bid or offer, any remaining balance of the order will be handled in accordance with (i) or (ii) of this paragraph, in such order.

(B) The market-maker disseminated price is the displayed price which reflects either the price established by (1) the Exchange's Autoquote system; (2) another quoting system operated by a trading crowd market-maker, including the Designated Primary Market-Maker; or (3) a verbalized quote by a member of the trading crowd.

(C) Generally, the Book Price Commitment Quantity for a particular option class will be equal to the Book Price Commitment Quantity established pursuant to paragraph (b) of Rule 6.8. However, the appropriate Market Performance Committee may determine to establish a different Book Price Commitment Quantity for any particular option class.

[(3)] *(4)* When orders for the same class (whether for the same series or different series) from the same beneficial owner are represented at the trading station at approximately the same time, then only the first of such orders that cumulatively equal or add up to less than the firm quote requirement shall be entitled to an execution pursuant to paragraph (a)(2) above.

[(4)] (*5*) On a case by case basis, any two Floor Officials may grant exemptions to or suspend the provisions of this paragraph (a) for either a class or series within a class if, in their determination, to do so is in the interest of a fair and orderly market. Additionally, any two Floor Officials may determine that an exemption to Rule 8.51(a) is warranted, on a case by case basis, upon their determination that an obvious error occurred in the posting of the disseminated market quote.

[(5)] (*6*) The senior person then in charge of the Exchange's Control Room shall have the authority to suspend the firm quote requirements of this paragraph (a) with respect to a class of options if a system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner. After exercising such authority, that senior person shall immediately seek approval by two Floor Officials, who may confirm or overrule the decision. If this authority is invoked, the Exchange's Control Room will disseminate a message notifying the public that the displayed quotes are not firm because of a data dissemination problem. Once the problem has been corrected and the market quotes have been updated, the suspension of the firm quote requirements of paragraph (a), shall be lifted by either the senior person then in charge of the Exchange's Control Room, or by two Floor Officials.

(b) With respect to orders (or portions of orders) at the displayed offer (bid), that are not entitled to an execution pursuant to the provisions of paragraph (a), the trading crowd is required to either.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(1) sell (buy) the number of contracts specified in the order *pursuant to the rules of execution described in paragraph (a) (2) and (3);* or

(2) change the displayed offer (bid) to reflect that the previously displayed offer (bid) is no longer available.

* * **Interpretations and Policies*

.01 With respect to subsection (a) of this Rule, if the disseminated bid (offer) is on behalf of an order represented by a Floor Broker, DPM, or OBO and is for less than the firm quote requirement applicable for that class of options, the trading crowd is obligated to buy or sell the necessary number of contracts needed to make the disseminated quote firm for the firm quote requirement for that class of options.

.02–.08 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* The Exchange recently filed a proposed rule change that provides that, under certain circumstances, an order that is routed to the Exchange's Retail Automatic Execution System (''RAES'') may be executed at more than one price.[3] Specifically, the Exchange proposed that RAES orders utilizing the Exchange's Automated Book Priority (''ABP'') system are executed against the book price *up to* the applicable book volume or a larger amount as pre-determined by the appropriate Floor Procedure Committee (''FPC'') for the subject option class.[4] The balance would be (i) routed to the Public Access Routing terminal (''PAR'') if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new best bid or offer; or (iii) executed against an order in the book if such order constitutes the new best bid or offer with the balance of the RAES order being assigned to participating market-makers at the new book price up to the Book Price Commitment Quantity.

b. *Proposed Change.* RAES essentially provides an automated version of the firm quote process and the same logic which suggests there should be split price executions on RAES in certain circumstances applies equally to the firm quote process for orders represented in open outcry. Consequently, the Exchange is now proposing to make a similar change to the Firm Quote Rule.

Specifically, in those instances where the Exchange's book constitutes the prevailing market bid (offer) and a marketable sell (buy) order is represented in open outcry, the represented order would be executed at the book price in an amount *equal to* the amount of the booked order establishing the best bid (offer). However, in the event the order in the book is for a smaller number of contracts than the represented order, the balance of the represented order must be executed at no worse than the same price at which the initial portion of the order was executed up to an amount prescribed by the appropriate Market Performance Committee on a class-by-class basis (the ''Book Price Commitment Quantity''). Any portion of the order remaining to be executed after the trading crowd has executed the Book Price Commitment Quantity at the disseminated best bid or offer will be required to be executed at least at (i) the price of any other order(s) in the book that then equals or represents the prevailing market bid or offer for the quantity of such order; or (ii) the market-maker disseminated price[5] if that price represents the prevailing market bid or offer (after the booked order(s) has been traded) for the entire remainder of the order. So long as an order in the book equals or represents the next prevailing market bid or offer, any remaining balance of the order will be handled in accordance with (i) or (ii) of this paragraph, in such order.

The following example illustrates the application of the proposed rule: The Book Price Commitment Quantity is set at 10 contracts; there ae two sell orders resident in the book priced a 2 9/16 and 2 5/8 respectively—the first is for one contract and the second is for 5 contracts; the crowd's Autoquote market is 2 1/2–2 3/4; and the best bid/offer on the Exchange is 2 1/2–2 9/16 (assume no other market center has a better bid/offer); A market order to buy 50 contracts is represented in the trading crowd. The crowd's obligation with respect to this order would be as follows:

- Ten contracts must be executed at no worse than 2 9/16;
- The new best bid/offer is 2 1/2–2 5/8;
- Ten contracts must be executed at no worse than 2 5/8;
- The new best bid/offer is 2 1/2–2 3/4;
- The remaining 30 contracts must be executed at no worse than 3 3/4.

c. *Book Indicator.* When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange (*i.e.*, it is establishing the best bid or offer and not merely matching the market-maker bid or offer) and is for a size less than the RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a ''Book Indicator.''

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and in particular, with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[3] *See* Securities Exchange Act Release No. 43430 (October 11, 2000), 65 FR 62776 (October 19, 2000) (SR–CBOE–00–21).

[4] That pre-determined contract amount, to be called the ''Book Price Commitment Quantity,'' would be determined by the FPC, and could set from zero contracts up to the maximum RAES eligible order size for that option class. Thus, if the book contains an order for one contract that represents the best bid, and the Book Price Commitment Quantity is set to 40, an incoming market order to sell 50 contracts would execute against the book for one contract and execute against the trading crowd for 39 contracts on RAES at the book price.

[5] The market-maker disseminated price is the displayed price which reflects either the price established by (1) the Exchange's Autoquote system; (2) another quoting system operated by a trading crowd market-maker, including the Designated Primary Market-Maker; or (3) a verbalized quote by a member of the trading crowd.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 publishers its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–41 and should be submitted by January 30, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–540 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43787; File No. SR–CHX–00–28]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Automatic Execution of Agency Limit Orders for Dual Trading System Issues

January 2, 2001.

I. Introduction

On September 14, 2000, the Chicago Stock Exchange, Inc. (''CHX'' 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 relating to automatic execution of agency limit orders for dual trading system issues. The proposed rule change was published for comment in the **Federal Register** on November 16, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend CHX Rule 37(b)(6) under Article XX relating to the automatic execution of agency limit orders for dual trading system issues in the event of a trade-through. Under the proposal, a specialist would be allowed to elect, on an issue-by-issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The current rule provides that agency limit orders (that are not marketable when entered into the Exchange's MAX automatic execution system) will automatically be filled at the limit price when there is a price penetration of the limit price in the primary market for the subject security or securities. Under the proposal, automatic execution of such limit orders will no longer be required. A CHX specialist may elect to provide for automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject security or securities. The obligation to fill the order at the limit price remains the same, whether executed manually or automatically. The Exchange believes that the proposed amendment reasonably anticipates the impact that the decimal pricing environment will have on the national market system, where the number of small orders executed at multiple price levels may increase the number of inadvertent trade-throughs that could otherwise lead to unwarranted automatic executions of large orders in a CHX specialist's limit order book, exposing the specialist to increased liability in a decimal pricing environment.

III. Discussion

The Commission has reviewed carefully the CHX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[4] and with the requirements of Section 6(b).[5] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes the proposal is reasonably designed to guard against the possible situation where the number of small orders executed on the Exchange at multiple price levels increases the number of inadvertent trade-throughs that could otherwise lead to unwarranted automatic executions of large orders in a specialist's limit order book, resulting in increased liability to CHX specialists. The Commission believes the proposal is designed to provide a safeguard as the national market system converts to a decimal pricing environment, and should result in grater stability during the transition. Furthermore, the Commission finds that the proposal is consistent with the section 6(b)(5) requirement that the Exchange's rules be designed to promote just and equitable principles of trade, because the obligation to fill orders at the limit price remains constant, regardless of whether executions are manual or automatic.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43530 (November 7, 2000), 65 FR 69355.

[4] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–CHX–00–28), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–537 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43791; File No. SR–GSCC–00–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Enhancement of Risk Management Processes

January 2, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 17, 2000, the Government Securities Clearing Corporation (''GSCC'') 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 primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will enhance one of the components of GSCC's clearing fund formula by reducing the liquidation amount from 25 percent to 10 percent.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the propose rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of its ongoing review of its risk management process, GSCC is seeking authority to enhance one of the components of its clearing fund formula. Specifically, GSCC is proposing to lower the liquidation amount from 25 percent to 10 percent. GSCC believes that this would more appropriately balance the level of margin it collects against the liquidity needs of its members.

Background

A netting member's clearing fund requirement is based on a formula designed to take into account the three basic risks posed to GSCC by netting members. These risks include: (1) That a member might not pay a funds only settlement amount due to GSCC; (2) that a member may fail to settle a long-term repo; and (3) that a member might not deliver or take delivery of securities that comprise a net settlement position.

As a result, there are three components to each member's clearing fund deposit requirement, as described below, with the sum of the three being a member's overall requirement:

Funds Adjustment (FAD) Component

This component is based on each member's average funds only settlement amount. The relevant variable in this calculation is the size of the settlement amount. It does not matter whether the funds are to be collected from the member or paid to the member.

Repo Volatility Component

This component reflects the interest rate exposure incurred by GSCC in guaranteeing the contractual rate of interest on a repo transaction. The repo volatility factor essentially represents an estimate of the amount that repo.

Receive/Deliver Settlement Component

This component is based on the size and nature of net settlement positions. The margin collected on net settlement positions is determined by applying margin factors that are designed to estimate security price movements. The factors are expressed as percentages and are determined by in historical daily price volatility. By multiplying security settlement values by their corresponding margin factors, GSCC estimate the amount of loss to which it is potentially exposed from price changes.

Margin amounts on receive (long) and deliver (short) positions are allowed to offset each other. The extent to which an offset is allowed is determined by product and the degree of similarly in time remaining to maturity.

GSCC computes four receive/deliver settlement amounts each day. The four results are compared daily, and the largest amount is applied to the clearing fund requirement. The four receive/deliver computations are as follows:

(1) *Post-Offset Margin Amount (POMA):* This computation offsets gains against losses in liquidating a member's positions that are anticipated based on historical experience. The POMA essentially is the total margin on the current day's positions and forward net settlement positions taking into account allowable offset percentages.

(2) *Average POMA:* This computation is based on the member's twenty highest POMA amounts occurring in the most recent 75 business days.

(3) *Adjusted POMA:* This computation is the same as the POMA with the exception that it excludes all trades that are scheduled to settle on the current day. This is done based on the assumption that those trades will in fact settle on the current day and that calculating POMA in this manner will more accurately reflect GSCC's settlement exposure during the current day.

(4) *Liquidation Amount:* This computation is a floor amount designed to ensure that if the margin offsets ordinarily allowed in calculating the receive/deliver settlement component do not reflect actual market conditions during a liquidation period, GSCC nonetheless will have a sufficient level of collateral protection. In other words, this minimum requirement, which is 25 percent of the total margin on all net long and short positions without offsets, protects against the risk that during a liquidation period the yield curve will be aberrational. In such a situation, collection of a minimum amount of margin based on gross calculation should ensure that GSCC will have sufficient collateral to cover liquidation losses.

Proposed Change

GSCC proposes to lower the percentage calculated on the net long and net short positions in the liquidation amount calculation from 25 percent to 10 percent. GSCC believes that 25 percent is overly conservative for the reasons set forth below.

First, the current received/deliver settlement component calculation is overly conservative. GSCC's experience has demonstrated that its POMA and average POMA calculations provide adequate protection against potential settlement risks. The POMA, by itself, is

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

a conservative calculation that is a function of: (1) Margin factors that are designed to cover one day market movements as least 95 percent of the time but that typically exceed this confidence level and (2) a cautious disallowance scheme providing only limited credits (benefits) for hedging across offset classes (for example, GSCC does not allow offsets of zeros against non-zeros).

Furthermore, by calculating an average POMA (based on a member's twenty highest POMA amounts occurring in the most recent 75 business days), GSCC ensures that it calculates a historically sufficient receive/deliver settlement component for a member even when current activity results in a relatively low requirement.

Finally, periodic studies conducted by GSCC assessing the risks presented to it from the potential default by a member on its obligations to GSCC have concluded that GSCC's methodologies for identifying and computing its risks provide it with a high level of protection on a individual and aggregate basis.

Second, the liquidation amount ignores and negates much of the protection afforded by a hedging strategy. The more a member engages in a hedging strategy with respect to its trading, the more it protects its clearing corporation from the risk of its failure. However, GSCC believes that the current 25 percent minimum margin call effectively disregards the protection afforded to GSCC by a member that engages in trading activity on a fully hedged basis. In addition, it penalizes the member by forcing it to post excessive collateral with GSCC.

In sum, the liquidation amount calculation is necessary because it recognizes the fact that an aberrational yield curve may exist at the time of a liquidation. However, GSCC believes that the use of 25 percent is overly conservative and ties up excessive amounts of collateral of netting members. Thus, GSCC believes that the percentage in liquidation amount calculation should be lowered to 10 percent.

GSCC believes that the proposed rule change will revise GSCC's risk management processes in a prudent manner that is consistent with minimizing collateral and operational burdens on and maximizing the liquidity of GSCC netting members. Thus, GSCC believes that the proposed rule change is consistent with Section 17A of the Act because the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions and will in general protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited. Members will be notified of the rule filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of an written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC 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 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–00–02 and should be submitted by January 30, 2001.

For the Commission by the Divisioin of Market Regulation pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–539 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–43785; File No. SR–NYSE–00–39)

Self-Regulatory Organizations; New York Stock Exchange, Incorporated; Order Approving Proposed Rule Change To Amend Arbitration Rules Regarding Pilot Programs for Mediation and Administrative Conferences

December 29, 2000.

I. Introduction

On September 29, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending and extending the pilot programs for mediation and administrative conferences. Notice of the proposal appeared in the **Federal Register** on November 17, 2000.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description

The Exchange proposes to amend and extend the pilot programs under NYSE Rules 638 and 639 for mediation and administrative conferences. The Exchange is amending and extending the pilot programs to continue to offer mediation as a way for parties to settle cases earlier with lower costs.[4] The Exchange believes that the administrative conference allows the

[3] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 240.19b–4.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 43538 (November 9, 2000), 65 FR 69596.

[4] The Commission approved the Exchange's mediation program and administrative conference rule on a two-year pilot basis through November 20, 2000. *See* Securities Exchange Act Release No. 40695 (November 19, 1998), 63 FR 65834 (November 30, 1998). On October 31, 2000, the Exchange's current pilot programs for mediation and administrative conferences were extended for an additional six months. *See* Securities Exchange Act Release No. 43496, (October 31, 2000).

arbitrators to intervene early in the case to set deadlines and resolve preliminary procedural issues. The Exchange is also proposing to amend both pilot programs to include a greater number of cases by lowering the threshold amount to $250,000 from $500,000.

Since November of 1998, the Exchange has sponsored a pilot mediation program. Under the pilot program, a single mediation session of up to four hours is conducted in all cases not involving public customers submitted for arbitration where the amount of the claim is $500,000 or more. The Exchange pays the mediator up to $500 for this single mediation session. There are no costs assessed to the parties unless they select a mediator whose rate is higher or if the parties agree to go beyond the single session. The Exchange represents that of the cases mediated under this provision of the pilot, approximately 31 percent (15 of 48) have settled before arbitration. Further, the Exchange believes that early settlements reduce costs and provide a greater measure of party satisfaction.

Under the pilot, mediation is also available in cases involving public customers where the claim is $500,000 or more upon agreement of the parties. These cases also qualify for the Exchange's $500 incentive payment to the mediator. In all other cases, mediation is available at the parties' own expense. The Exchange, however, will provide the parties with a list of mediators, will assist in facilitating the parties' agreement to mediate and will make its conference room facilities available for the mediation.

To evaluate the pilot, the staff of the Exchange met with mediators and lawyers who participated in mediation under the pilot. Based on the evaluators' comments and the settlement rate, the Exchange is proposing to extend the pilot for two years, as amended.

To encourage greater use of mediation, the Exchange proposes to amend the mediation pilot program to include all cases within a lowered threshold of claims of $250,000 or more. The Exchange represents that most commentators supported the pilot's provision that a single mediation session of up to four hours be conducted in all cases with claims of $250,000 or more. The Exchange believes that this process relieves the parties from having to suggest mediation because the Exchange rule provides for it. Further, the Exchange represents that many parties believe that the other side will view their suggestion to mediate as a sign of weakness. The Exchange believes that this process also assists counsel in getting their clients to consider mediation by making it part of the arbitration process—with little or no cost to them.

As amended, all cases with claims of $250,000 or more will be included in the pilot. This includes case involving public customers. The Exchange believes the pilot's inclusion of customer cases may lead to more and earlier settlements. The Exchange represents that under the present pilot, where the parties have elected to mediate, 78.9 percent (15 to 19) of the customer cases with claims over $500,000 have settled before arbitration.

Under the present pilot, a single mediation session of up to four hours is conducted. The process is voluntary process and neither the Exchange nor the mediator can require a party to mediate. The mediation may last less than four hours or the parties may refuse to participate at all. The pilot's only requirement is that the Director of Arbitration arrange for the mediation. The Director will delegate to the Exchange's staff the tasks of sending the parties a list of mediators and selecting a mediator from the list if the parties do not agree to a mediator. If the parties object to all the names on the list, the Director will appoint a mediator from outside the list. Once the parties or the Director selects a mediator, the Director will schedule the mediation and advise the parties. The mediator may contact the parties to preliminarily discuss the case. The pilot does not require the parties to do anything they do not wish to, including exchange information or documents; and there is no required pre-mediation exchange of exhibits. The Exchange's goal of scheduling mediation is to encourage the parties to try to resolve the dispute as quickly and efficiently as possible. Unless the parties otherwise agree, mediation will not delay the arbitration.

The Exchange will continue to pay the mediator's fee for one session, up to $500, in cases where the rule provides that a single mediation session is to be conducted. The Exchange represents that many commentators noted that the Exchange's provision for a single mediation session and incentive payment of the mediator's fee, up to $500, is helpful in encouraging their clients to agree to try mediation. Further, the Exchange represents that the average mediation settles or reaches an impasse after approximately two sessions.

The Exchange is also proposing to allow parties to mediate without first filing for arbitration. The current pilot only applies to cases already filed with the NYSE for arbitration. Allowing the parties to mediate prior to filing an arbitration may save the parties some costs of arbitration. The party requesting mediation will be required for arbitration under Rule 629 for claims of the same amount. If the case does not settle after mediation, the Exchange will apply the fee to the non-refundable filing fee for arbitration. The parties are also required to pay the mediator's fee and agree on how the fee will be shared. The parties' agreement to mediate will not toll the time limitation for submission of a claim to arbitration.

As under the original pilot, cases with claims for less than $250,000 may also be mediated when the parties agree. However, in these cases the parties are responsible for payment of the entire mediator's fee. The Exchange represents that during the pilot program, where the parties have agreed to mediate claims below $500,000, 76 percent (16 of 21) have settled.

Since November of 1998, the pilot program has provided for an administrative conference with the parties and arbitrators in cases over $500,000. The conference allows the arbitrators to set deadlines early in the case and resolve preliminary issues with the aim of expediting the arbitration. The Exchange represents that to date, 124 administrative conferences have been conducted and most commentators supported the administrative conference with certain changes. The Exchange is proposing to amend and extend the pilot for two years.

In order to expedite a greater number of claims, the Exchange is proposing to lower the threshold for administrative conferences from $500,000 to $250,000. The Exchange is also proposing that, be default, the chairperson of the panel conduct the conference by telephone. The Exchange believes that this will allow the staff to schedule the conference earlier because it will involve coordinating the schedules of fewer persons. In cases involving public customers, a public arbitrator will conduct the administrative conference unless the public customer requests, in writing, a securities arbitrator. The Chairperson shall have discretion to conduct the conference in-person and may request that all of the arbitrators attend the conference. Under the amended pilot, the Director of Arbitration will schedule the conference 90 days after service of the Statement of Claim, rather than 30 days after the answer is filed. The additional period of time is intended to permit the parties to frame the issues for the administrative conference. The administrative conference pilot does not affect the parties' right to request a pre-hearing

conference to resolve discovery disputes and other preliminary matters under NYSE Rule 619.

III. Discussion

After careful review, 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 [5] and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[6] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In particular, the Commission believes that the proposed rule change will continue to help ensure that NYSE members, member organizations, and the public have a fair and impartial forum for the resolution of their disputes.

Mediation is a method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. The Commission believes that it is reasonable and consistent with the Act to extend mediation to more cases because it may result in savings of time and money for a greater number of parties. The Commission notes that the Exchange is amending and extending this pilot program based on its evaluation of the effectiveness of the current pilot program. The Exchange represents that lowering the threshold to claims of $250,000 or more and including cases involving public customers may lead to more and earlier settlements. In addition, the Exchange represents that early settlements reduce costs and increase party satisfaction.

The Commission believes that it is consistent with the Act to require an administrative conference between the parties and the arbitrators in cases where the amount of the claim is $250,000 or more, to expedite the arbitration process and reduce costs of the arbitration. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules, resolve discovery disputes and other preliminary matters, and to attempt to narrow the issues in dispute and avoid costly contests over procedural matters. The Commission believes that reducing the threshold for administrative conferences from $500,000 to $250,000 should provide these benefits to a greater number of claims. Further, the procedural amendments to the pilot program should expedite the process for conducting administrative conferences.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–00–39) is approved. The mediation program, NYSE Rule 638, and the administrative conference rule, NYSE Rule 639, are each approved on a two-year pilot basis through December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–541 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43782; File No. SR–OCC–00–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Definition of Marking Price and Closing Price

December 29, 2000.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') notice is hereby given that on May 2, 2000, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's price determination rules by conforming the definition of ''marking price'' to the definition of ''closing price.'' The rule change would also revise both definitions to clarify that OCC will normally determine underlying stock prices based on the last reported sale price during regular business hours.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to conform the definition of ''marking price'' in OCC Rule 601 to the definition of ''closing price'' in OCC Rule 805. The rule change would also revise both definitions to clarify that OCC will normally determine underlying stock prices based on the last reported sale price during regular business hours.

Background

OCC Rule 805(j) defines the term ''closing price'' for purposes of OCC's exercise by exception procedure. Under this procedure, unless a clearing member specifically instructs OCC to the contrary, expiring equity options in the clearing member's accounts are exercised without any affirmative action by the clearing member if the ''closing price'' of the underlying stock exceeds (in the case of a call) or is less than (in the case of a put) the strike price of the option by a specified interval. That interval is three-quarters of a point in a customers' account and one-quarter of a point in any other clearing member account.[3]

Before February 1999, Rule 805(j) defined ''closing price'' to mean the closing price of an underlying stock ''on its primary market.'' In recognition of the increasing fragmentation of the equity markets, the rule was amended in February 1999 to refer instead to the last reported sale price ''on such national securities exchange or other domestic securities market as [OCC] shall determine.'' [4] Thus, the rule change gave OCC the discretion to designate the market whose closing price will serve as the benchmark in order to avoid

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] See OCC Rule 805(d)(2).

[4] Securities Exchange Act Release No. 41089 (February 23, 1999), 64 FR 10051 (March 1, 1999).

potential disputes as to a stock's primary market.

Rule 601 specifies the procedure for margining short positions in equity options. Open short positions are margined based on prices or quotes for the option itself. Assigned short positions, however, are margined based on the difference between the strike price of the option and the ''marking price'' of the underlying stock.[5] Unlike the definition of ''closing price'' in Rule 805(j), the definition of ''marking price'' in Rule 601(b)(6) still refers to the closing price of an underlying stock on its ''primary market.''

Discussion

1. Conforming Rule 601(b)(6) to Rule 805(j). OCC believes that the definition of ''marking price'' in Rule 601(b)(6) and the definition of ''closing price'' in Rule 805(j) should not be materially different. According to OCC, the two prices are normally determined in the same manner and therefore should be defined in the same way. Therefore, OCC proposes that the Rule 601 definition of ''marking price'' conform to Rule 805 because the same concerns that led OCC to replace the term ''primary market'' in Rule 805 apply equally in the context of Rule 601.

2. *Regular Trading Hours.* OCC believes that with the growth of after-hours trading, questions might arise concerning the time that the ''last reported sale price'' of an underlying stock should be determined for purposes of fixing both the Rule 805 closing price and the rule 601 marking price. OCC therefore proposes that Rule 805(j) and 601(b)(6) be amended to refer to the last reported sale price ''during regular trading hours (as determined by the Corporation [OCC]) * * *.'' This amendment would allow OCC to avoid potential disputes by (i) eliminating any basis for arguing that the closing price or the marking price should be determined based on after-hours trading and (ii) giving OCC discretion to determine when ''regular trading hours'' end.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act[6] because it promotes the prompt and accurate clearance and settlement of equity and index options.

[5] Assigned short positions are margined at OCC from the assignment date through the exercise settlement date (E+3).

[6] 15 U.S.C. 78q–1.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the commission will:

(A) By order approve 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR–OCC–00–04 and should be submitted by January 30, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–543 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43779; File No. SR–PCX–99–44]

Self-Regulatory Organizations; Pacific Exchange Inc.; Order Approving Proposed Rule Change Relating to PCX Rule 6, Options Trading, Trading Practices and Procedures

December 28, 2000.

I. Introduction

On October 29, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend some of its options trading rules. On January 7, 2000, the PXC submitted Amendment No. 1 to the proposed rule change.[3] On May 25, 2000, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on August 23, 2000.[5] On December 22, 2000, the Exchange submitted Amendment No. 3 to the proposed rule change.[6] The Commission did not receive any comments on the proposed rule change. This order approves the proposal, as amended.

[7] 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 Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated January 6, 2000 (''Amendment No. 1'').

[4] *See* letter from Robert P. Pacileo, Senior Attorney, Regulatory Policy, PCX, to Jack Drogin, Assistant Director, Division, SEC, dated May 24, 2000 (''Amendment No. 2'').

[5] Securities Exchange Act Release No. 43149 (August 11, 2000), 65 FR 51392.

[6] *See* letter from Peter D. Bloom, Director, Regulatory Projects, Regulatory Policy, PCX, to Kelly Riley, Division, SEC, dated December 20, 2000 (''Amendment No. 3''). In Amendment No. 3, the Exchange made non-substantive reference changes to proposed PCX Rules 6.51, 6.64 and 6.65 to reflect other amendments made to the rules. Because the changes in Amendment No. 3 were non-substantive, notice is not required.

II. Description of the Proposal

The Exchange proposed to modify its rules to trading practices and procedures on its options floor by clarifying existing provisions, eliminating superfluous provisions, incorporating current policies and procedures, and merging certain Options Floor Procedure Advices (''OFPAs'') into the text of PCX Rule 6.

a. OFPAs

The Exchange proposed to delete the following OFPAs: OFPA A–1, Subject: Responsibility of Floor Brokers at the Opening; OFPA A–3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances; OFPA A–7, Subject: Floor Broker Giving Up a Name Other Than His Own as Executive Member; OFPA C–1, Subject: Procedures for Opening Rotations; OFPA D–7, Subject: Expressing Fractions in Writing; OFPA D–8b, Subject: Priority on Split Price Transactions; OFPA D–11, Subject: Record Retention Requirements; OFPA F–1, Subject: Admission to the Trading Floor, OFPA F–5, Subject: Means of Communication on the Options Floor; OFPA G–1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security; OFPA G–2, Subject: Imbalance of Orders at Openings; OFPA G–5, Subject: Trading Procedures for Combination, Spread, or Straddle Orders Under Priority Rules; OFPA G–10, Subject: Public Outcry/OBO Awareness; and OFPA G–12, Subject: Reporting of Trade Information.

b. Proposed PCX Rule 6.64, Trading Rotations

The PCX proposed to make several changes to PCX Rule 6.64 relating to trading rotations. First, the Exchange proposed to allow two Floor Officials, rather than the Options Floor Trading Committee (''OFTC''), as currently required, to direct that a trading rotation be employed. Second, the Exchange proposed to modify and renumber PCX Rule 6.64, Commentary .01 (a) as proposed PCX Rule 6.64(b), OFPA C–1, Subject: Procedures for Opening Rotations, as proposed PCX Rule 6.64(b)(1) through (7), and OFPA G–2, Subject: Imbalance of Orders at Openings, as proposed PCX Rule 6.64(b)(8).

Third, the Exchange proposed to renumber PCX Rule 6.64, Commentary .01(b) as proposed PCX Rule 6.64(d). In addition, under proposed Rule 6.64(d), the Exchange proposed to specify that the book staff should notify floor brokers by 12:50 p.m. Pacific time that a closing rotation may be necessary. The Exchange also clarified that closing rotations should commence at least ten minutes after the trading floor has been notified. Finally, under proposed Rule 6.64(d), the Exchange proposed to codify an express requirement that only orders that have been entered before 1:02 p.m. Pacific time are eligible for execution during a closing rotation.

Fourth, the Exchange proposed to remember PCX Rule 6.64, Commentary .01(c) as proposed PCX Rule 6.64(d) and to renumber PCX Rule 6.64, Commentary .02 as proposed PCX Rule 6.64(e). Fifth, the Exchange proposed to renumber OFPA A–1, Subject: Responsibility of Floor Brokers at the Opening, as proposed PCX Rule 6.64(f). Finally, the Exchange proposed to renumber Commentaries .03 and .04 as Commentaries .01 and .02 respectively.

c. Proposed PCX Rule 6.65, Trading Halts and Suspensions

Currently, PCX Rule 6.65, Commentary .02 requires an Options Floor Official that authorizes a trading halt and the order book official (''OBO'') assigned to the halted option to file a report with the Exchange Options Floor Committee and the Department of Member Firms. The Exchange proposed to have the report filed with Exchange Operations.

d. Proposed PCX Rule 6.66, Order Identification

The Exchange proposed to remember OFPA A–7, Subject: Floor Broker Giving Up a Name Other Than His Own as Executing Member, as proposed PCX Rule 6.66(d).

e. Proposed PCX Rule 6.67, Orders Required to be in Written Form

First, the Exchange proposed to renumber PCX Rule 6.67, Commentary .02 as proposed PCX Rule 6.67(a). Second, the Exchange proposed to renumber OFPA F–5, Subject: Means of Communication on the Options Floor, as proposed PCX Rule 6.67(d). Third, the Exchange proposes to renumber PCX Rule 6.67, Commentary .01 as proposed PCX Rule 6.67(e). Finally, the Exchange proposed to eliminate OFPA D–7, which reiterated the requirement of PCX Rule 6.67 that all orders must be in a written form that is approved by the Exchange.

f. Proposed PCX Rule 6.68, Record of Orders

The Exchange proposed to renumber OFPA D–11, Subject: Record Retention Requirements, as proposed PCX Rule 6.68(b). In addition, the Exchange proposed to delete language in proposed PCX Rule 6.68(b) that reminded members that, pursuant to PCX Rule 6.68, every member organization is required to maintain and preserve for the period of time required in 17a–4 under the Act.[7] a written record of every order.

g. Proposed PCX Rule 6.69, Reporting Duties

The Exchange proposed to renumber OFPA G–12, Subject, Reporting of Trade Information, as proposed PCX Rule 6.69, Commentary .02. In addition, the Exchange proposed that market maker clearing firms be directed to instruct their respective trading desks to identify market maker orders that are entered from off the floor and not entitled to market maker margin treatment by placing a ''C'' after the market maker's number in the ''firm'' box on the ticket. The Exchange proposed that floor brokers that accept market maker orders by phone to identify such orders in the same manner. Finally, in proposed PCX Rule 6.69, the Exchange proposed to add Commentary .04, which clarifies that time stamping on the back of the hard card does not meet the Exchange's time stamp requirements.

h. Proposed PCX Rule 6.70, Price Binding Despite Erroneous Report

The Exchange proposed to renumber OFPA G–1, Subject: Options Transactions Based on Erroneous Prints of Underlying Security, as proposed PCX Rule 6.70, Commentary .01. In addition, the Exchange added language to provide that members should use reasonable care when effecting transactions based on bids and offers that differ from previous bids and offers because of the probability that a print or market may be erroneous.

i. Proposed PCX Rule 6.73, Manner of Bidding and Offering

The Exchange proposed to renumber OFPC G–10, Subject: Public Outcry/OBO Awareness, as proposed PCX Rule 6.73, Commentary .01. In addition, the Exchange proposed to eliminate the requirement that the OBO by fully aware of all quotes and transactions at his or her assigned post.

j. Proposed PCX Rule 6.75, Priority of Bids and Offers

The Exchange proposed to renumber PCX Rule 6.75, Commentary .03. as proposed PCX Rule 6.75(c)(3). The Exchange also proposed to renumber OFPA A–3, Subject: Procedure for Entering Orders in the Book Under Certain Circumstances, as proposed PCX Rule 6.75, Commentary .03 and OFPA G–5, Subject: Trading Procedures for

[7] 17 CFR 240.17a–4.

Combination, Spread, or Straddle Orders Under Priority Rules, as proposed PCX Rule 6.75, Commentary .04.

k. Proposed PCX Rule 6.76, Priority of Split Price Transactions

In PCX Rule 6.76(a), the Exchange proposed to change reference to ''he'' and ''his'' to ''the member.'' The Exchange also proposed to change language in proposed PCX Rule 6.76 to read as follows: ''[i]f a member purchases one or more option contracts of a particular series at a particular price or prices, the member must, at the next lower price at which another member bids, have priority in purchasing up to the equivalent number of option contracts of the same series that the member purchased at the higher price or prices, provided that the member's bid is made promptly and continuously and that the purchases effected represents the opposite side of a transaction with the same order or offer as the earlier purchase or purchases.''

In addition, the Exchange proposed to eliminate OFPA D–8b, which simply reiterated the requirements of PCX Rule 6.76 pertaining to priority on split price transactions.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5 of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

a. OFPAs

The Commission believes that the proposed rule change should foster efficiency in the implementation and enforcement of the Exchange's rules. Currently, members must refer to both the Exchange's rules and the Exchange's OFPAs to ensure that they are complying with all of the applicable requirements of the Exchange's rules. By combining the OFPAs with the applicable Exchange rules, the Commission believes that it should be easier for Exchange members to locate pertinent rule language and to comply with applicable Exchange rules.

b. Trading Rotations

The Commission finds that the proposed changes to the procedures relating to trading rotations are consistent with the Act because they should foster just and equitable principles of trade by expediting the trading rotation process. Specifically, the Exchange proposed to permit two floor officials to direct that a trading rotation be employed instead of the full OFTC, which should result in faster implementation of trading rotations. Faster implementation of trading rotations should permit the reopening of affected options contracts and, thus, a resumption of normal trading, in a more timely fashion.

The Exchange also proposed to implement a new notification procedure in the event a closing rotation is necessary. Specifically, the Exchange proposed that the book staff notify floor brokers by 12:50 p.m. Pacific time, that a closing rotation may be necessary, and to require that only orders entered by 1:02 p.m. Pacific time will be eligible for execution during the trading rotation. The Commission believes that these new closing rotation procedures should foster efficiency on the floor of the Exchange. The proposal should provide floor brokers with sufficient notice that a closing rotation may be employed and should provide them with ample time to ensure that their orders are entered by 1:02 p.m. Pacific time so that they may be executed during the closing rotation. The Commission believes that providing express procedures for orders entered at or near the close of trading should result in more efficient executions.

c. Reporting Duties

The Exchange proposed to require market making clearing firms to instruct their respective trading desks to identify market maker orders that are entered from off the Exchange floor and not entitled to market maker margin treatment with a ''C'' identifier. Floor brokers will also be required to use this identifier when accepting orders by phone from market makers. The Commission believes that the use of this new identifier should ensure that Exchange members properly handle market maker orders.

d. Erroneous Bids and Offers

The Exchange proposed to amend PCX Rule 6.70, Commentary .01 to direct that reasonable care should also be exercised prior to effecting transactions based on bids or offers that differ from previous bids or offers such that the difference may give rise to the probability that a print or market may be erroneous. The Commission believes that this should foster just and equitable principles of trade by potentially reducing the number of transactions executed based on erroneous market information.

e. OBO Awareness of Quotes and Transactions

The Exchange proposed to eliminate the requirement that OBOs be aware of *all* quotes and transactions that occur at his or her assigned post. While the Commission appreciates that it may be impracticable for the OBO to keep track of all bids and offers and transactions occurring at a particular post, the Commissions believes that the OBO must be aware of a significant amount of quotes and transactions such that he or she can maintain a fair, orderly and competitive market at the post. Thus, the Commission believes that it is appropriate to eliminate the current requirement because it is impracticable but expects that each OBO will continue to be sufficiently aware of the market at his or her post to be able to fulfill his or her responsibilities and obligations. Further, the Commission expects that the Exchange will monitor its floor to ensure that each OBO continues to fulfill his or her responsibilities and that the elimination of this requirement does not negatively impact the efficiency and integrity of each market at each post.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–99–44), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–538 Filed 1–8–01; 8:45 am]

BILLING CODE 8010–01–M

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance with Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (''section 1377''), the Office of the United States Trade Representative (''USTR'') is reviewing, and requests comments on: the operation and effectiveness of and the implementation of and compliance with the World Trade Organization (''WTO'') Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the telecommunications provisions of the North American Free Trade Agreement (''NAFTA''); and, other telecommunications trade agreements with the Asia Pacific Economic Cooperation (''APEC'') members, the European Union (''EU''), the Inter-American Telecommunications Commission (''CITEL''), Japan, Korea, Mexico and Taiwan. The USTR will conclude the review on March 31, 2001.

DATES: Comments are due by noon on Friday, January 26, 2001.

ADDRESS: Comments must be submitted to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: Section 1377 Comments, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Harry Sullivan, Office of Industry (202) 395–9620; or Demetrios Marantis, Office of the General Counsel (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services of the United States that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a telecommunications trade agreement with the United States is inconsistent with the terms of such agreement, or otherwise denies to U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its commitments under the WTO Basic Telecommunications Agreement or with other WTO obligations, *e.g.,* the WTO General Agreement on Trade in Services (''GATS''), including the Annex on Telecommunications and the Reference Paper on Pro-Competitive Regulatory Principles, that affect market opportunities for U.S. telecommunications products and services;

(2) What steps to take regarding out-of-cycle reviews initiated in 2000 under Section 1377 regarding compliance by Germany, Mexico, South Africa, and the United Kingdom with telecommunications trade agreements;

(3) Whether Canada or Mexico has failed to comply with their telecommunications commitments under NAFTA;

(4) Whether APEC or CITEL members, the EU, Japan, Korea, Mexico or Taiwan have failed to comply with their commitments under additional telecommunications agreements with the United States.

See 63 FR 1140 (January 8, 1998) for further information concerning the agreements listed below and USTR Press Releases 00–22 (March 30, 2000), 00–25 (April 4, 2000), 00–46 (June 16, 2000), 00–55 (July 18, 2000), 00–57 (July 28, 2000), 00–66 (October 2, 2000), 00–78 (November 8, 2000), and 00–93 (December 21, 2000) available at *www.ustr.gov,* for the results of the 1999–2000 section 1377 review concerning these agreements.

WTO Agreements

The GATS contains general obligations that apply to all WTO members and services, and specific obligations that apply only to services listed in a WTO member's schedule of commitments. As part of the GATS, WTO members have made both basic and value-added telecommunications commitments. Specifically, the Fourth Protocol to the GATS—generally referred to as the WTO Basic Telecommunications Agreement—is the legal instrument embodying seventy WTO members' basic telecommunications services commitments under the GATS. The agreement entered into force on February 6, 1998, and since that time, an additional nine WTO members have made telecommunications services commitments, some upon their accession to the WTO. Many members also took separate commitments in the area of value-added telecommunications services as part of the GATS, which entered into force on January 1, 1995. A description of each member's specific commitments is available on the Internet at *www.wto.org.*

Under the WTO Basic Telecommunications Agreement, members have made full or qualified commitments in three specific areas: market access, national treatment, and pro-competitive regulatory principles. Members that have made full market access commitments have agreed to permit local, long-distance and international service through any means of network technology, either on a facilities basis or through resale of existing network capacity. Members making full national treatment commitments have agreed to ensure treatment no less favorable to U.S. services or service suppliers than that accorded to their own services or service suppliers. And many members have also adopted pro-competitive regulatory principles—set forth in a Reference Paper and incorporated in the members' schedules—which commit members to establish independent regulatory bodies, ensure interconnection with networks in foreign countries at cost-oriented rates, maintain appropriate measures to prevent anti-competitive practices such as cross-subsidization, and ensure transparency of government regulations and licensing.

The USTR seeks comment on whether any WTO member that has undertaken telecommunications services commitments under the GATS has failed to make the necessary legislative or regulatory changes to implement its commitments, or permits acts, policies, or practices in its markets that run counter to that member's commitments. In addition, the USTR seeks comments on whether any WTO member permits acts, policies, or practices that are inconsistent with other WTO obligations and that affect market opportunities for telecommunications products and services of the United States.

Out of Cycle Reviews Regarding Germany, Mexico, South Africa, and the United Kingdom

The USTR seeks comments on what steps to take regarding out-of-cycle reviews initiated under Section 1377 in 2000 regarding compliance by Germany, Mexico, South Africa, and the United Kingdom with telecommunications trade.

Germany—out-of-cycle review: On June 16, 2000, USTR announced the extension of an out-of-cycle review under section 1377 of Germany's compliance with its WTO telecommunications commitments, notably its Reference Paper commitments to ensure interconnection under non-discriminatory terms and conditions that are transparent and reasonable. The review, initiated on March 30, 2000, focused on: (1) Continued excessive delays by Deutsche Telekom (''DT'') in providing interconnection to competing carriers;

(2) excessive license fees charged by the German government, ranging from $1.4 to $6.0 million; (3) non-transparent DT cost data filed with the German regulator to support DT's position on interconnection fees and other matters; and (4) refusal by DT to perform billing and collection services for new entrants absent a regulatory mandate that DT continue to perform this function. Germany has taken positive steps on most of these issues, pledging to reduce license fees and interconnection backlogs. It has also required DT to bill competitors' customers for long distance service. The USTR seeks comments on whether Germany continues to address these issues in a meaningful fashion.

Mexico—out-of-cycle review: On November 8, 2000, USTR announced that the United States will request the establishment of a WTO dispute settlement panel to examine Mexico's compliance its telecommunications commitments. The U.S. panel request outlines the specific measures which the United States believes are inconsistent with Mexico's WTO commitments, including Mexico's failure to ensure (1) timely, non-discriminatory interconnection for local competitors, which remain unable to interconnect with Telmex at the local level; (2) cost-oriented interconnection for all calls into and within Mexico, including for calls to remote regions where competitive suppliers lack facilities; and (3) competitive alternatives for terminating international calls into Mexico, currently set at a rate of 19 cents per minute, or up to 15 cents per minute higher than cost. The United States has also requested WTO consultations on measures adopted after the initial U.S. consultation request concerning newly issued rules to (1) regulate the anti-competitive practices of Telmex (Mexico's major telecommunications supplier) and (2) establish long-distance interconnection rates for 2001.

South Africa—out-of-cycle review: On June 16, 2000, USTR announced the extension of an out-of-cycle review under Section 1377 of South Africa's compliance with its WTO telecommunications commitments. Specifically, the United States is concerned that South Africa is failing to ensure—consistent with the GATS Annex on Telecommunications—that its dominant telecommunications supplier (''Telkom'') provide access to and use of the private lines needed for the competitive supply of value-added network services (''VANS''). The newly-created regulator, the Independent Communications Authority of South Africa (''ICASA''), has mandated that Telkom provide private lines to Telkom's competitors, but Telkom has contested these decisions in South African courts. ICASA is currently holding public consultation procedures to determine the definition of VANS and Virtual Private Networks (''VPNs''). The USTR seeks comments on whether South Africa is addressing these issues satisfactorily.

United Kingdom—out-of-cycle review: On December 21, 2000, USTR announced the extension of an out-of-cycle review under Section 1377 of the United Kingdom's compliance with its WTO Reference Paper commitments to provide ensure interconnection on terms, conditions, and cost-oriented rates that are sufficiently unbundled. The UK telecommunications regulator (''OFTEL'') is currently carrying out a regulatory proceeding to determine the price at which competitors can gain access to the telephone infrastructure of British Telecom (''BT'') to provide advanced data services (unbundling of the local loop). On August 8, OFTEL announced the new license conditions for BT, which require BT to provide unbundled local loops to other telecom operators. On November 23, OFTEL found in favor of competitors' complaints that BT's proposed contract for local loop access ''was not reasonable'' and published its own terms and conditions for such a contract. USTR requests comments concerning whether UK is properly implementing its WTO Reference Paper obligations.

NAFTA and Other Trade Agreements

The USTR seeks comments on the operation and effectiveness of certain trade agreements regarding telecommunications products and services, including the NAFTA. Chapter 13 of the NAFTA includes market access and national treatment commitments for value-added telecommunications services; and, it includes a national treatment commitment for conformity assessment in relation to telecommunications equipment standards.

Bilateral agreements include, on a country-by-country basis:

Japan: The 1999 Nippon Telegraph and Telephone (NTT) agreement; the 1994 U.S.-Japan Public Sector Procurement Agreement on Telecommunications Products and Services; and, additional telecommunications trade agreements with Japan, including a series of agreements on: international value-added network services (IVANS) (1990–91); open government procurement of all satellites, except for government research and development satellites (1990); network channel terminating equipment (NCTE) (1990); and cellular and third-party radio systems (1989) and cellular radio systems (1994).

Korea: Agreements regarding protection of intellectual property rights (''IPR'')(1996), type approval of telecommunications equipment (1992/1996), transparent standard-setting processes, (1992/1997) and non-discriminatory access to Korea Telecommunications' procurement of telecommunications products. (1992/1996)

Mexico: The 1997 understanding regarding test data acceptance agreements between product safety testing laboratories.

Mutual Recognition Agreements For Conformity Assessment of Telecommunications Equipment: Mutual Recognition Agreements (''MRAs'') regarding telecommunications equipment trade with the European Union (1997), APEC countries (1998), and CITEL countries (1999).

Taiwan: The February 1998 agreement on interconnection pricing for provision of wireless services in Taiwan; and, the July 1996 agreement on the licensing and provision of wireless services through the establishment of a competitive, transparent and fair wireless market in Taiwan. USTR also seeks comments on telecommunications commitments made by Taiwan to the United States in October 1999 and February 1998 as part of its accession to the WTO.

Public Comment: Requirements for Submissions

USTR requests comments on: the operation and effectiveness of—including implementation of and compliance with—the WTO Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the NAFTA; and other telecommunications trade agreements with APEC members, CITEL members, the EU, Japan, Korea, Mexico and Taiwan. All comments must be in English, identify on the first page of the comments the telecommunications trade agreement(s) discussed therein, be addressed to Gloria Blue, Executive Secretary, TPSC, ATTN: Section 1377 Comments, Office of the U.S. Trade Representative, and be submitted in 15 copies by noon on Friday, January 26, 2001.

All comments will be placed in the USTR Reading Room for inspection shortly after the filing deadline, except

business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential information submitted in accordance with 15 CFR 2003.6, must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 15 copies, and must be accompanied by 15 copies of a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the USTR Public Reading Room.

An appointment to review the comments may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 101.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 01–555 Filed 1–8–01; 8:45 am]

BILLING CODE 3901–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. 87–2, Notice No. 10]

RIN 2130–AB20

Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads

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

ACTION: Amendments to Order of Particular Applicability Requiring ACSES Between New Haven, Connecticut and Boston, Massachusetts—Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols.

SUMMARY: FRA amends its Order of Particular Applicability requiring all trains operating on the Northeast Corridor (NEC) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be equipped to respond to the new Advanced Civil Speed Enforcement System (ACSES) system. The amendments specify temporary operating protocols that will minimize the impact of ACSES on MBTA service during the initial implementation of ACSES on the NEC—North End.

DATES: The amendments to the Order are effective January 9, 2001.

FOR FURTHER INFORMATION CONTACT: W. E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6325); Paul Weber, Railroad Safety Specialist, Signal and Train Control Division, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6258); or Patricia V. Sun, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590 ((202) 493–6038).

SUPPLEMENTARY INFORMATION: The Order of Particular Applicability, as published on July 22, 1998, set performance standards for cab signal/automatic train control and ACSES systems, increased certain maximum authorized train speeds, and contained safety requirements supporting improved rail service on the NEC. 63 FR 39343. Among other requirements, the Order required all trains operating on track controlled by the National Railroad Passenger Corporation (Amtrak) between New Haven, Connecticut and Boston, Massachusetts (NEC—North End) to be controlled by locomotives equipped to respond to ACSES by October 1, 1999. In a later notice, FRA amended the Order to set a new implementation schedule and make technical changes. 65 FR 62795, October 19, 2000.

Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols

FRA is making the amendments to this Order effective upon publication instead of 30 days after the publication date in order to realize the significant safety and transportation benefits afforded by the ACSES system at the earliest possible time. All affected parties have been notified. The temporary protocols specified below will provide a safe, operationally sound transition to full ACSES implementation on MBTA territory while minimizing the impact on MBTA service. FRA is not reopening the comment period since these technical changes will be effective only until July 1, 2001.

FRA expects MBTA to make every effort to run ACSES-equipped trains during the approximately six-month period that these protocols are in effect; this additional time should prove sufficient for MBTA to complete implementation of ACSES. However, if MBTA cannot dispatch a train equipped with ACSES, it may revert to the train control methods and maximum operating speeds in effect prior to the effective date of this Order.

Accordingly, for the reasons stated in the preamble, the Final Order of Particular Applicability at 65 FR 62797–62799 (October 19, 2000) (Order) is amended as follows:

1. The authority for the Order continues to read as follows: 49 U.S.C. 20103, 20107, 20501–20505 (1994); and 49 CFR 1.49(f), (g), and (m).

2. The unnumbered paragraph of the Order at 65 FR 62798 that reads ''Effective October 21, 2000, the following performance standards and special requirements shall apply, except for paragraph 9(b), which shall apply February 1, 2001.'' is deleted, and the following paragraph is inserted in its place: ''Effective October 21, 2000, the following performance standards and special requirements shall apply, except for paragraph 9(b), which shall apply February 1, 2001, and paragraph 11, which shall apply January 9, 2001.''.

3. Paragraph 11 is added at the end of paragraph 10 of the Order at 65 FR 62799, to read as follows:

11. Massachusetts Bay Transit Authority (MBTA) Temporary Operating Protocols

(a) Effective upon January 9, 2001 until July 1, 2001, Amtrak must adhere to the following procedures if it becomes necessary to dispatch an MBTA train from its initial terminal with inoperative onboard ACSES equipment:

(1) The train dispatcher must verbally authorize the movement;

(2) The train dispatcher must issue a temporary speed restriction to limit the speed of high speed trains (Amtrak trains hauled by electric locomotives or electric power cars) to 110 miles per hour (mph) in the ACSES territory where the MBTA train with inoperative ACSES equipment will operate; and

(3) Once the MBTA train with inoperative ACSES equipment is verified to have cleared the ACSES territory, the train dispatcher may cancel the 110-mph speed restriction.

(b) The procedures set forth in subparagraph (a) of this paragraph must also be followed if it becomes necessary to dispatch an MBTA train from its initial terminal with a locomotive or control car that is not equipped with onboard ACSES equipment, if no ACSES-equipped MBTA locomotive or control car is available.

(c) Amtrak must promptly notify the regional headquarters office for Region 1 of FRA's Office of Safety of any invocations of this protocol. Included in the notification must be the date, time, and location of the incident, and the reason for invoking the protocol.

Issued in Washington, D.C. on January 3, 2001.

John V. Wells,

Acting Federal Railroad Administrator.

[FR Doc. 01–504 Filed 1–8–01; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–88 (Sub-No. 11X)]

Bessemer and Lake Erie Railroad Company—Abandonment Exemption—in Butler County, PA

Bessemer and Lake Erie Railroad Company (B&LE) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over its line of railroad known as the Hilliard's Branch, extending from Station 195+00 East to End of Track, at Station 380+88.4, in Butler County, PA, a distance of 3.52 miles. The line traverses United States Postal Service Zip Code 16020.

B&LE has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has been handled over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 8, 2001, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 19, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 29, 2001, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas R. Ogoreuc, Esq., Bessemer and Lake Erie Railroad Company, 135 Jamison Lane, Monroeville, PA 15146.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

B&LE has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 12, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&LE shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&LE's filing of a notice of consummation by January 9, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: December 29, 2000.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[1] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–332 Filed 1–8–01; 8:45 am]

BILLING CODE 4915–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Tip Rate Determination Agreement (for use by Employers in the Food and Beverage Industry)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Rate Determination Agreement (for use by employers in the food and beverage industry).

DATES: Written comments should be received on or before March 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Tip Rate Determination Agreement (for use by employers in the food and beverage industry).

OMB Number: 1545–1715.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Average Time Per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 1,737.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 29, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–493 Filed 1–8–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 4804

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4804, Transmittal of Information Returns Reported Magnetically.

DATES: Written comments should be received on or before March 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transmittal of Information Returns Reported Magnetically.

OMB Number: 1545–0367.

Form Number: Form 4804.

Abstract: Under Internal Revenue Code sections 6041 and 6042, all persons engaged in a trade or business and making payments of taxable income must file reports of this income with the IRS. In certain cases, this information must be filed on magnetic media. Form 4804 is a transmittal form for the magnetic media, which indicates the payer, type of document, and total payee records.

Current Actions: Form 4804 is being revised. It was determined that the detailed payer information requested in Block 10 of the form was no longer helping to expedite processing of information returns. By eliminating the need for most of this information, the form was streamlined. Since Form 4802 was a continuation form used to collect additional payer information in Block 10, Form 4802 was eliminated.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 71,058.

Estimated Time Per Response: 18 minutes.

Estimated Total Annual Burden Hours: 20,902.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–494 Filed 1–8–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041 and Related Schedules D, J, and K–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form

1041 and related Schedules D, J, and K–1, U.S. Income Tax Return for Estates and Trusts.

DATES: Written comments should be received on or before March 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Estates and Trusts (Form 1041), Capital Gains and Losses (Schedule D), Accumulation Distribution for Certain Complex Trusts (Schedule J), and Beneficiary's Share of Income, Deductions, Credits, etc. (Schedule K–1).

OMB Number: 1545–0092.

Form Number: 1041 and related Schedules D, J, and K–1.

Abstract: IRC section 6012 requires that an annual income tax return be filed for estates and trusts. The data is used by the IRS to determine that the estates, trusts, and beneficiaries filed the proper returns and paid the correct tax.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 3,496,119.

Estimated Time Per Respondent: 104 hours, 11 minutes.

Estimated Total Annual Burden Hours: 364,219,012.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 28, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–495 Filed 1–8–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

DATES: Written comments should be received on or before March 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: For Tip Reporting Alternative Commitment (TRAC) for Use in the Food and Beverage Industry.

OMB Number: 1545–1549.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 41,800.

Estimated Average Time Per Respondent/Recordkeeper: 7 hours, 6 minutes.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 296,916.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 2, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–496 Filed 1–8–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Tip Reporting Alternative Commitment (TRAC) for Most Industries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Tip Reporting Alternative Commitment (TRAC) For Most Industries.

DATES: Written comments should be received on or before March 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tip Reporting Alternative Commitment (TRAC) For Most Industries.

OMB Number: 1545–1714.

Abstract: Information is required by the Internal Revenue Service in its tax compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeeping: 300.

Estimated Average Time Per Respondent/Recordkeeper: 16 hr., 16 min.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 4,877.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 2, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer,

[FR Doc. 01–497 Filed 1–8–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2001–1

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2001-1, Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

DATES: Written comments should be received on or before March 12, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer-designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC).

OMB Number: 1545–1716.

Notice Number: Notice 2001–1.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or recordkeepers: 20.

Estimated Average Time Per Respondent/Recordkeeper: 44 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden Hours: 870 hours.

The following paragraph applies to all of the collections of information covered by this notice:

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

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 2, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–498 Filed 1–8–01; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,

January 9, 2001

Part II

Environmental Protection Agency

40 CFR Parts 35 and 735

Environmental Program Grants—State, Interstate, and Local Government Agencies; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35 and 735

[FRL–6929–4]

RIN 2030–AA55

Environmental Program Grants—State, Interstate, and Local Government Agencies

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule revises and updates requirements in several Environmental Protection Agency (EPA) regulations governing grants to State, interstate and local government agencies under several environmental programs. The regulation advances ongoing efforts to build more effective State-EPA partnerships and to improve environmental conditions by providing States with increased flexibility to direct resources where they are needed most to address environmental and public health needs. This regulation updates, clarifies, and streamlines requirements governing environmental program grants and establishes requirements for the Performance Partnership Grant (PPG) program. The rule includes results-oriented approaches to planning and managing environmental programs. It also establishes requirements for grant programs that began after the original 40 CFR part 35, subpart A was published. (A regulation governing environmental program grants to Indian Tribes and Tribal Consortia will be published shortly in an upcoming issue of the **Federal Register**.)

DATES: This regulation is effective after February 8, 2001.

Effective Date: This rule applies to grants awarded after February 8, 2001 and it may be applied to currently active PPGs, if agreed to in writing by the Regional Administrator and the recipient.

ADDRESSES: Although this regulation is final, comments may be submitted at any time to the person identified in the section below.

FOR FURTHER INFORMATION CONTACT: Michelle McClendon, Grants Policy, Information, and Training Branch (3903R), United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Telephone: (202) 564–5357.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities eligible to receive the environmental grants listed in 40 CFR 35.100 are regulated by this rule. Regulated categories and entities include:

Category	Regulated entities
Government	State Governments/Agencies. Local Governments/Agencies. Interstate Agencies.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities eligible under EPA's authorizing and appropriations statutes that EPA is now aware could potentially be regulated by this action. Other types of entities could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in § 35.134 and the program-specific provisions in §§ 35.140 through 35.418 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Comments and Record

The record of this final rule includes copies of the proposed and final rules, comments received on the rule, EPA's responses to those comments, and other relevant documents that support the rule. It is available for inspection from 9 am to 4 pm (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M Street, SW; East Tower Basement; Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

III. Background

EPA proposed a rule for environmental program grants for State, interstate, and local government agencies on July 23, 1999 (64 FR 40064). EPA received eight letters of comment on the proposed rule. A summary of the comments and EPA's responses are included in this preamble. The preamble also summarizes a few changes to the rule EPA determined necessary to clarify various provisions. This publication makes the rule final.

Since EPA was formed in 1970, State capacity and responsibility for implementing environmental and public health protection programs has grown steadily. Meanwhile, environmental problems and their solutions have become more complex. In light of these changes, State and EPA leaders recognized that continued environmental progress could be best achieved if EPA and States worked together more effectively—as partners.

In 1995, they agreed to develop and implement the National Environmental Performance Partnership System (NEPPS). NEPPS is designed to: Promote joint planning and priority-setting by EPA and the States; provide States with greater flexibility to direct resources where they are needed most; foster use of integrated and innovative strategies for solving water, air, and waste problems; achieve a better balance in the use of environmental indicators and traditional activity measures for managing programs; and improve public understanding of environmental conditions and the strategies being used to address them.

The changes in this rule are intended to promote State-EPA collaboration; provide opportunities for innovation; and reduce paperwork—while ensuring sound fiscal management and accountability for environmental performance—in a manner consistent with NEPPS. For example, EPA hopes to foster joint planning and priority-setting by explicitly requiring that State priorities and needs be considered, along with national and regional guidance, in negotiating grant work plans. Under this rule, a State can choose to organize its grant work plans in accordance with environmental goals and objectives or in other new ways rather than using categories predefined by EPA. However, EPA must be able to link the grant work plan to EPA's Government Performance and Results Act Goal and Objective Architecture, as discussed in Section VIII. The length of a grant budget period is negotiable. These flexibilities are available to all States, regardless of whether they are actively participating in other aspects of NEPPS.

More than half of the States have elected to negotiate and enter into Performance Partnership Agreements (PPAs) with EPA as the primary mechanism for implementing NEPPS. Although each PPA is different, PPAs typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. (In some cases, comparable negotiated agreements are given a different name, such as Environmental Performance Agreements.) A PPA is generally based on information about the environmental and program conditions of the State as well as national and regional priorities and concerns. A State may apply for and receive any grant, including a Performance Partnership Grant (PPG),

without negotiating a PPA. However, a PPA can provide the strategic underpinning for the work a State plans to carry out with EPA financial assistance, and the PPA can serve as a grant work plan if it meets other grant-related statutory and regulatory requirements.

Recognizing the limitations of traditional categorical grants to allow full achievement of the NEPPS goals, EPA asked Congress for new authority that would give States greater flexibility in the use of federal grant funds. In the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996)) and EPA's FY 1998 Appropriation Act (Pub. L. 105–65, 111 Stat. 1344, 1373 (1997)), Congress authorized the award of Performance Partnership Grants (PPGs), in which State and interstate agencies (and Tribes and Intertribal Consortia) can choose to combine two or more environmental program grants.

Under a PPG, a recipient can achieve cost and administrative savings by reductions in the amount of grant paperwork as well as simplified accounting requirements that do not require the recipient to account for expenditures in accordance with their original funding sources. With PPGs, recipients can negotiate work plans with EPA that direct federal funds where the recipients need them most to address environmental and public health problems. Recipients also can try new multi-media approaches and initiatives, such as children's health protection programs, multi-media inspections, compliance assistance programs, and ecosystem management that were difficult to fund under traditional categorical grants.

This rule is designed to accommodate all potential variations in how EPA and individual States may work to build partnerships. The rule also is designed to minimize duplicative effort by allowing for multiple uses of information or processes wherever appropriate. A State may choose to negotiate a PPA or comparable strategic agreement with EPA. Where a State negotiates both a PPA and PPG, the processes and documentation can be integrated and, if appropriate, identical. Also, a State can receive a separate categorical grant for each environmental program, a PPG covering all programs eligible for inclusion, or a combination of separate categorical grants and PPGs covering only some programs.

These regulations will be codified in 40 CFR part 35 as EPA's Environmental Program Grants regulation. Subpart A applies to State, interstate, and local agencies covering the following programs: Air Pollution Control; Water Pollution Control; Public Water System Supervision; Underground Water Source Protection; Hazardous Waste Management; Pesticide Cooperative Enforcement; Pesticide Applicator Certification and Training; Pesticide Program Implementation; Nonpoint Source Management; State Administration; Water Quality Management Planning; Performance Partnership Grants; Lead-Based Paint Grant Program; State Indoor Radon Grants; Toxic Substances Compliance Monitoring Grants; State Underground Storage Tank Grants; Pollution Prevention State Grants; Water Quality Cooperative Agreements; and State Wetlands Development Grants. EPA is also publishing subpart B in this issue of the **Federal Register**, which applies to Tribes and Intertribal Consortia.

These regulations supplement EPA's Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments regulation (40 CFR part 31). Part 31 applies to grants and subawards to State governments, interstate agencies, and local governments, including councils of governments (whether or not incorporated as nonprofit organizations under State law), and any other regional or interstate governmental entity. (Under a few of the programs included in this rule, grants may be made directly to universities, non-profit organizations, and individuals. In those cases, the rule also supplements EPA's Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (40 CFR part 30).)

This rule deletes 40 CFR 745.330, which authorizes EPA to make grants to States and Indian Tribes under section 404(g) of the Toxic Substances Control Act for lead-based paint programs. Provisions governing those grants are included in this rule and in the companion rule issued as subpart B of 40 CFR part 35 for Tribes and Intertribal Consortia.

IV. Requirements for Environmental Program Grants

Sections 35.100 through 35.118 of the rule apply to all environmental program grants covered by subpart A of part 35, including PPGs. This rule contains changes to foster State-EPA partnerships, improve accountability for environmental and program performance, and streamline administrative requirements. Some of the rule's key features are discussed below.

State-EPA partnerships. To foster joint planning and priority-setting, the rule explicitly requires consideration of State priorities along with national program and regional supplemental guidance in negotiating grants. However, the EPA Regional Administrator must consult with the National Program Manager before agreeing to a State work plan that differs substantially from national program guidance. A State is provided flexibility through the work plan negotiation process, and in particular through its ability to organize work plan components in whatever way fits best. States applying for PPGs will have still greater flexibility as described in the PPG discussion below. Where appropriate, the grant work plan will reflect both EPA and State roles and responsibilities and there will be a negotiated joint performance evaluation process.

Accountability. The rule accommodates results-oriented approaches to planning and managing environmental programs. Definitions and other aspects of the rule are compatible with the Government Performance and Results Act (GPRA) and reflect efforts to establish goals and objectives as well as environmental and program performance measures at both the national and State levels. The rule recognizes the need for a mix of outcome (results and output (activity) measures for management purposes. While the rule encourages States to organize their work plans around goals and objectives, States may continue to use existing structures if they wish. However, EPA must be able to link the grant work plans to EPA's GPRA Goal and Objective Architecture.

Administrative changes. Under the rule, States can negotiate funding periods of one or more years with EPA. EPA recommends, however, that funding periods not exceed five years because it is difficult to account for funds and maintain records for longer periods. (The term ''funding period'' used in this preamble and 40 CFR 31.23 has the same meaning as the term ''budget period'' on EPA's grant and cooperative agreement and amendment forms.)

The rule streamlines some requirements and eliminates other requirements associated with changes made to grant work plan commitments and budgets. These requirements replace those found in 40 CFR 31.30. Prior written approval from EPA is still required for significant changes in a grantee's work plan commitments. Written, but not prior, approval is required for changes requiring increases

in grant amounts and extensions of the funding period. EPA approval is no longer required for other changes in the work plan or budget, changes in key persons, or decisions to carry out portions of the work through subgrants or contracts, unless the Regional Administrator determines, on a case-by-case basis, that circumstances warrant imposing additional approval requirements on a particular recipient.

Pre-award costs. Pre-award costs may be reimbursed under the grants without prior approval so long as they are incurred within the budget period, identified in the approval grant application, and would have been allowable if incurred after the award.

Insular areas. This rule includes conforming changes to reflect the change in status of the Marshall Islands, the Federated States of Micronesia, and Palau. They were previously entities within the Trust Territory of the Pacific Islands, but they have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing entity and, as such, is no longer eligible to receive grants as a territory or possession of the United States. Because the Trust Territory of the Pacific Islands no longer exists, the rule's provisions regarding allotments omit any reference to the Trust Territory, and references to the Trust Territory in environmental program grant statutes, including the references in the definitions of ''State,'' no longer have legal effect.

The Administrator of EPA is authorized to consolidate grants and waive administrative requirements for grants made to certain insular areas (48 U.S.C. 1469a). Through this regulation that authority is delegated to the Regional Administrators.

V. Performance Partnership Grants

Sections 35.130 through 35.138 contain requirements that apply only to Performance Partnership Grants (PPGs). In a PPG, a State or interstate agency recipient can combine funds from two or more environmental program grants into a single grant under streamlined administrative requirements. Funds may be used for eligible cross-media activities or strategies and do not need to be accounted for in accordance with their original program sources. Key features of the PPG rule are discussed below.

Funds and activities eligible for inclusion in a PPG. Funds for any particular environmental program grant may be included in a PPG only if the funds for that grant are appropriated in the same specific appropriation (earmark) as the funds for PPGs. EPA will announce any changes in its appropriation acts that affect the list of programs in § 35.101. Currently, funds from all but two of the environmental program grants listed in § 35.101 are eligible for inclusion in a PPG. Funds for Water Quality Management Planning grants under section 205(j)(2) of the Clean Water Act are not available for inclusion in PPGs because funds for these grants are reserved from a different earmark in the Agency's appropriation act. In addition, there are no funds appropriated for State Administration grants under section 205(g) of the Clean Water Act.

A State or interstate agency PPG recipient may use PPG funds to carry out any activity that would be authorized under at least one of the environmental program grants from which funds are combined in the PPG. This means that a PPG recipient may not spend PPG funds on an activity unless the PPG includes some funds from an environmental program grant under which that activity would be eligible. For example, a PPG recipient could not use PPG funds for an activity that is authorized only under sections 205(g) or 205(j)(2) of the Clean Water Act because no section 205(g) or 205(j)(2) funds will have been included in the PPG. On the other hand, if an activity would be authorized under section 106 of the Clean Water Act, and the PPG includes section 106 funds, then the activity may be funded by the PPG.

A State or interstate agency must meet the requirements for award of each of the environmental programs from which funds are combined in the PPG, with a few specified exceptions. The exceptions are requirements that restrict how a specific environmental program grant can be used after award. These requirements are not appropriate to be carried over to PPGs because: (1) after funds are awarded in a PPG, they may be used for cross-media purposes and; (2) States and interstate agencies do not need to account for the funds in accordance with their original program sources.

Entities eligible for PPGs. The types of organizations eligible for PPGs are determined by the authorizing statutes for the PPG program, which are EPA's FY 1996 and 1998 appropriation acts, (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104–134, 110 Stat. 1321, 1321–299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Pub. L. No. 105–65, 111 Stat. 1344, 1373 (1997)). Consistent with those statutes, only States and interstate agencies are eligible for PPGs under this rule. Interstate agencies are only eligible for PPGs that combine funds from a few existing grant programs because interstate agencies are only authorized to receive grants under those few environmental programs. Specifically, interstate agencies are eligible for PPGs that include funds from the following programs: Air Pollution Control (section 105 of the Clean Air Act); Water Pollution Control (section 106 of the Clean Water Act); Wetlands Development Grants (section 104(b)(3) of the Clean Water Act); and Water Quality Cooperative Agreements (section 104(b)(3) of the Clean Water Act). Recipients must be interstate agencies as defined by either the Clean Water Act, the Clean Air Act, or both, depending on which funds are included in the PPG. Congress authorized EPA to award PPGs to interstate agencies, but only as provided in authorizing statutes; Congress did not intend to change any of the existing program grant eligibility requirements, including the definition of interstate agency. The ability of recipients to make subgrants is not affected by combining funds into a PPG.

Competitive grants and PPGs. States must compete for some of the environmental programs eligible for a PPG (e.g., Pollution Prevention State Grants, Wetlands Program Development, and Water Quality Cooperative Agreements). States must first be selected in the competitive process in order to include these competitive grants in a PPG. In some programs, this process may include awarding funds to a State agency through decisions made during a joint planning process. To maintain the integrity of the competitive process and ensure that the work that was the basis for EPA's selection of the proposal is performed, the State must include the work plan commitments proposed in the competitive grant application in the PPG work plan. EPA will then consider the competitive grant work plan commitments in determining the funding mix of the PPG among EPA's GPRA Goal and Objective architecture. However, as with other program funds included in a PPG, the State does not need to account for these funds in accordance with the funds' original environmental program source. Although a State must agree to complete the work plan commitments proposed in the competitive work plan, it need not account for the funds spent on a specific environmental program or activity. Also, if the time required to complete work under the competitive

program is longer than the funding period for the States' PPG, States must make provisions to carry the activities (and funds, if appropriate) to subsequent PPG funding periods to complete them.

Administrative flexibility. A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget, regardless of how many environmental programs provide the funds for the PPG. Once funds are awarded in a PPG, recipients can direct the funds as needed to achieve work plan commitments and need not account for funds in accordance with their original funding program sources. The minimum cost share required for a PPG is the sum of the cost share amounts required for each of the environmental program grants combined in the PPG. If a program has both a match and a maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that program. Just as federal funds in the PPG do not need to be accounted for on the basis of their original program source, the non-federal share of a PPG may be expended on work plan commitments without regard to the original source of the cost share requirement. These administrative features also make it possible for States to negotiate a work plan that includes cross-media or innovative strategies for addressing environmental problems.

Programmatic flexibility. If approved by the EPA Regional Administrator, a PPG can also provide the State with programmatic flexibility to increase efforts in some program areas where the State's needs are greater and decrease them in others where the State's needs are less. In applying for programmatic flexibility, the State agency must provide a rationale commensurate with the type and amount of flexibility being proposed, explaining the basis for the State's priorities and the environmental or other benefits it expects to achieve. The State must also assure that basic programs are maintained for all programs combined in the grant. The Regional Administrator and State agency will negotiate regarding the environmental and other information that EPA needs to make a decision regarding the application for flexibility. Information useful in supporting a State's proposal for programmatic flexibility may already exist, such as in a PPA, a recent water quality report, or a previous grant evaluation. Such information should be used to the extent possible to minimize duplication of effort.

Performance incentives. One goal of the Performance Partnership Grant program is to find ways to encourage and reward outstanding State recipient performance. EPA believes this regulation establishes the foundation for such an incentive program by assuring—

- States and EPA's regions agree to measurable outcomes and outputs when awards are signed in accordance with the agreement on core measures.
- Outcome and output accomplishments are measured and documented through the joint evaluation process developed and agreed to by the States and EPA under the rule.

We would expect such a program to be based on each year's performance evaluation and might include incentive approaches such as—

- Using a part of each year's funds to provide incentive bonuses to States which are most successful in meeting commitments, and
- Using a part of each year's funds to provide bonuses to States which assume primacy/authorization for programs such as drinking water and hazardous waste.

EPA requested but received no comments on a performance incentive program. We are not including requirements for a performance incentive program at this time. Nevertheless, EPA may develop such a program in the future and may use this rule as a foundation.

VI. Response to Comments

EPA received eight letters commenting on the proposed rule. In general, the comments supported the rule as written but suggested a few changes. Specifically:

1. Two commenters expressed concern that § 35.107(a) codifies EPA guidance, increasing the time period for development of an approved work plan; further limiting the flexibility given to grantees to tailor work plans to local needs; and, effectively precluding local air agencies from negotiating a work plan that targets resources to areas of greatest need within the community.

Section 35.107(a)(2) requires the Regional Administrator and applicants to consider the national program guidance in place at the time of the award in negotiating a work plan, and if an applicant proposes a work plan that deviates significantly from the goals and objectives, priorities, or core performance measures in the national program guidance associated with the proposed activities, then the Regional Administrator must consult with the appropriate National Program Manager (NPM) before agreeing to the work plan. The requirement that the Regional Administrator consult with the relevant NPM before agreeing to a work plan that significantly deviates from national program guidance does not require anything of States; it governs EPA's internal operations. More specifically, § 35.107 is intended to assure that the appropriate NPM is informed of significant deviations from the national program guidance and has an opportunity to participate in the Regional Administrator's decision to agree to a work plan that deviates significantly from national program guidance. Thus, for example, the NPM would be informed, and have an opportunity to consider the implications of a proposed State work plan that does not include core program activities which EPA would be required by law to carry out if the State did not do so. Finally, § 35.107(a)(3) states that applicants should ''base'' grant applications on the national program guidance in place at the time the application is being prepared. The purpose of this provision is to clarify that applicants may use the guidance that is in effect to develop work plans when EPA is late in issuing current guidance.

2. Several commenters expressed concern about the addition of § 35.143(c) which provides that the Administrator may award Clean Air Act section 105 funds on a competitive basis. Section 105(b) of the Clean Air Act directs the Administrator to award funds upon such terms and conditions as the Administrator may find are necessary to carry out the purpose of section 105.

The statute also directs the Administrator to give due consideration, so far as practicable, to the factors of population, the extent of the actual or potential air pollution problem, and the financial need of the respective agencies in establishing regulations for the award of funds. Working in concert with State and local agencies over the years, the Agency has found that a limited amount of funds made available to air pollution control agencies on a competitive basis for section 105 grants has led to innovative and productive approaches for the prevention and control of air pollution (e.g., market-based programs, mobile source public outreach) which are of benefit to all air pollution control agencies and applicable in other areas. Section 35.143(c) simply articulates this long-standing practice of awarding a limited amount of section 105 funds to air pollution control agencies based on a competition. It is not intended to signal a shift on the part of the Agency

in determining how section 105 resources to State and local agencies are distributed.

3. Two commenters stated that § 35.268(d)(5) of the Nonpoint Source Management program regulation requires a level of project reporting that is not required by the statute (section 319 of the Clean Water Act) and out of keeping with the spirit of the National Environmental Performance Partnership System (NEPPS). They recommended that § 35.268(d)(5) be dropped in its entirety.

EPA disagrees with this recommendation. Section 35.268(d)(5) requires recipients to include specific information in their work plan for watershed projects whose costs exceed $50,000. The section 319 program is different from most programs under this rule in several respects. The program does not implement or support the implementation of a national regulatory program. Thus, States' use of the current annual appropriation of $200 million is not guided by a regulatory framework with objective technical or environmentally based standards or guidelines. Rather, under section 319(b) of the Clean Water Act, States are free to implement their programs with or without regulatory standards, using any combination of technical assistance, financial assistance, education or demonstration projects, and other techniques as the States see fit.

In the absence of clear regulations and standards and a reasonable amount of information on funded projects, it would be very difficult for EPA and the States to achieve the information transfer goals of section 319 or to assure that the funds are being used effectively to achieve program goals. In the early years of the national nonpoint source program (1990–1996), EPA addressed these difficulties by using a competitive approach to awarding the State grants. In May, 1996, based on a cooperative EPA/State development process, EPA published, with cover letters of endorsement by both the President of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the Chairman of ASIWPCA's Nonpoint Source Task Force, a new national nonpoint source program and grants guidance which remains in effect. In this guidance, EPA eliminated the competitive approach and reduced reporting burdens for States and EPA and the States also agreed that the States would upgrade their nonpoint source programs.

While agreeing to minimize the grant application burdens for States, however, the guidance also requires States to include in their work plan for watershed projects which cost more than $50,000, a brief (*e.g.,* two or three page) synopsis of the watershed implementation plan outlining the problems to be addressed, the project's goals and objectives; and the performance measures or environmental indicators that will be used to evaluate the results of the project. Section 35.268(d)(5) reflects this EPA-State understanding.

It is EPA's belief that preparing a two or three page summary of $50,000 projects is a small time burden that will have great benefits to the public. It will enable citizens, sister State agencies, and practitioners in any other State to easily learn what projects the State is implementing, where they are located, and what types of measures or practices will be implemented. This will facilitate the involvement of citizens in watershed projects and also the transfer of technology development to other professionals. These are the hallmarks of successful State nonpoint source programs. The summaries will also help assure, in the absence of regulatory benchmarks, that States apply their funds to their highest-priority environmental needs.

4. One commenter objected to § 35.290(b)(4), stating that the language will prevent States from using funds for a State radon proficiency rating program.

It was not EPA's intention to restrict the use of radon funds in this way. We have clarified the language to make it clear that the restriction applies to the use of State radon program grant funds for a federal proficiency rating program, not a State one.

5. One commenter was concerned that EPA awards are often late, causing States to use non-federal resources to finance federal activities in the beginning of many fiscal years.

Unfortunately, delays in awards are most often caused by delays in appropriations, apportionment of funds, and approval of operating plans. While all of these steps are necessary in order for the EPA to determine the final amounts that will be available to the States for grants under the environmental programs, they are not controlled by EPA. Delays occur most often when EPA begins the fiscal year with funding under a Continuing Resolution rather than an annual appropriation act. Under Continuing Resolutions, affected agencies typically receive limited funds for a short period of time covered by the Resolution, making it difficult or impossible for EPA regional offices to fully fund their continuing environmental program grants until EPA's annual appropriation act is enacted. In response to the commenter's characterization of the activities performed with EPA grant funds as ''federal'' activities, EPA would like to clarify that the principal purpose of these grants is to finance State, local, and interstate environmental programs, not federal activities.

6. One commenter was concerned that because ''significant'' is not defined in § 35.114(a), it may lead to inconsistent enforcement.

Section 35.114 requires recipients to obtain the Regional Administrator's prior written approval before making significant changes to the grant work plan or budget after the work plan has been negotiated. Under the Uniform Administrative Regulations for Grant and Cooperative Agreements to State and local Governments (40 CFR part 31), recipients are required to get EPA's prior written approval for ''any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).'' 40 CFR 31.30(d)(1). EPA believes that, for the continuing environmental program grants covered by this rule, prior written approval for changes is necessary only for significant changes, and that the grantee, with assistance from its EPA project officer, if necessary, is in the best position to distinguish significant from insignificant changes in the context of its particular work plan. Further, we believe that defining the term would reduce management discretion and flexibility which we believe essential to the regulation. Accordingly, EPA has decided not to define ''significant'' in § 35.114(a). If there is any question as to whether a post-award change in the work plan is significant, grantees are encouraged to consult with the EPA project officer for the grant before making the change.

7. One commenter questioned whether § 35.145(b) is necessary.

Section 35.145(b) of the proposed rule provided for a waiver of the match requirement for section 105 grants under the Clean Air Act for up to three years after the approval of the recipient's Section 502(b) operating permit program (Title V program). The previous final rule included a similar provision at 40 CFR 35.205(b). Title V permit fees cannot be used to meet the cost share requirement of Section 105 grants. Since Title V fees replaced most recipients' existing fee systems, which had been a significant source of revenue for meeting the cost share requirements of section 105 grants, some air pollution control agencies needed additional time to adjust their programs and meet their match requirements without using Title V fee revenue. However, all affected air

pollution control agencies have now received at least interim approval of their Title V program and those few agencies that needed a waiver have requested and received it. As there is no need to retain this provision in the regulations, it has been deleted from the final rule.

8. One commenter suggested that the requirement to identify funding amounts for each work plan component contained in § 35.107(b)(2)(ii) appears to undermine the purpose of PPGs, which is to allow flexibility in shifting funds to address public health and environmental priorities. The commenter believes targeting the funding amounts during work plan development restricts a State's ability to shift funds to address these priorities. EPA is clarifying that § 35.107(b)(2)(ii) requires recipients to specify the *estimated* work years and the *estimated* funding amounts for each work plan component. EPA believes that estimating the resources necessary to carry out work plan components in the planning stages of the grant represents prudent management practices. However, this requirement will not preclude recipients from shifting funds prior to award to address environmental and programmatic needs and priorities. The negotiated work plan components can be cross-media and supported with any of the funds combined into the PPG. Nor will this requirement preclude recipients from making such changes after the grant has been awarded. Recipients may make changes to grant work plans and budgets in accordance with § 35.114, which requires prior approval or approval for certain types of changes, but requires no approval for all other changes.

9. A commenter questioned whether the data gathered from grant applications and work plans could be correlated in a manner that would allow EPA to determine the costs of implementing GPRA goals and objectives.

EPA agrees that this is not the most precise method of determining the costs of each GPRA subobjective. However, the alternative would be to place a greater burden on recipients by requiring more complex recipient accounting systems which is contrary to the simplification goal of this regulation. EPA does not think that the added benefits of more exact accounting would justify the additional costs associated with obtaining such accounting precision.

10. One commenter stated that there is a conflict between the definition of outcomes and the requirement that work plan commitments include a time frame for accomplishment.

The definition of outcome notes that outcomes may not necessarily be achievable during a grant funding period, whereas § 35.107(b)(2)(iii) (''Work plan requirements'') requires that the work plan include the work plan commitments (which include outcomes) and a time frame for their accomplishment. Nothing in § 35.107(b)(2)(iii) requires that the time frame for accomplishment of the work plan commitments, including outcomes, be within the funding period. Therefore, we have decided not to change the definition of outcome or the requirements for work plans in the final rule.

11. A commenter asked how the requirement of § 35.107(b)(2)(iv) differs from EPA's annual program reviews.

Section 35.107(b)(2)(iv) requires recipients to specify in their work plans a performance evaluation process in accordance with § 35.115 (''Evaluation of Performance''). EPA's annual program review is the joint evaluation process described in § 35.115.

VII. Other Changes in the Proposed Rule

EPA made several changes to the proposed rule to clarify certain provisions even though the provisions were not the subject of comments.

1. On May 3, 1999, EPA published an amendment related to grant fund allotment for its regulations implementing the Water Pollution Control Program under section 106 of the Clean Water Act (40 CFR 35.252). These provisions were not included in the proposed regulation due to timing of the publication. We added the provisions at § 35.162..

2. EPA made editorial changes to the provisions related to the PPG cost share requirements for the Air Pollution Control Program under section 105 of the Clean Air Act to assure this rule is consistent with the Act. There is no substantive change in the final rule, but EPA believes the editorial changes will help grantees to understand and comply with the match and maintenance of effort requirements for section 105 funds when they are included in a PPG and when an air agency withdraws from the PPG.

EPA added a new provision in the final rule to the section governing grants for Air Pollution Control Programs under section 105 of the Clean Air Act. Paragraph (b) of § 35.145 (''Maximum federal share'') provides that ''revenue collected pursuant to a State's Title V operating permit program may not be used to meet the cost share requirements of Section 105.'' This is not a new restriction; it was the basis for the temporary cost share waiver which has been omitted from the final rule because it is obsolete. This restriction was discussed at length in the preamble announcing changes to the Section 105 regulations in 1995 (60 FR 366, 368, Jan. 4, 1995).

EPA added two new provisions to the regulation governing grants for Air Pollution Control Programs to clarify that (1) When expenditure data for the preceding fiscal year is complete, the Regional Administrator shall use that information to determine the agency's compliance with its maintenance of effort requirement (MOE) and (2) if a state does not meet the MOE requirement, EPA will recover the grant funds. This is because section 105 explicitly provides that ''[n]o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year'' (42 U.S.C. § 7405(c)(1)). EPA dos not intend to establish any new requirements with these changes; these provisions have been added to the final rule only to clarify the existing MOE requirements.

3. EPA changed the name of the Pollution Prevention program from Pollution Prevention Incentives for States as identified in the proposed regulation to Pollution Prevention State Grants to make it clear that we award several types of Pollution Prevention grants under section 6605 of the Pollution Prevention Act. Pollution Prevention Incentive Grants are just one type of grant awarded under section 6605.

4. Finally, while the regulation uses the term ''Regional Administrator'' throughout, grants subject to these provisions may also be approved and awarded by officials in EPA Headquarters from time to time. Accordingly, the final rule has been modified by adding § 35.101(c) to clarify that this subpart applies and the phrase ''Regional Administrator'' means ''Assistant Administrator'' in the case of grants awarded from EPA headquarters.

VIII. Implementing GPRA

The Agency has developed an integrated approach for implementing GPRA, the Chief Financial Officers Act (CFOA), and the Federal Financial Management Improvement Act of 1996 (FFMIA). These laws provide EPA with a framework to demonstrate to Congress and the taxpayers the costs to the federal government of EPA's program

goals and objectives. The States, by virtue of delegated program authorities and as recipients of EPA grant funds, play an integral part in achieving those goals and objectives. Thus EPA's reports of Agency resources associated with outcomes and outputs will incorporate—at the GPRA goal, objective, and subobjective level—expenditures incurred in the form of payments under grants and cooperative agreements . In order to comply with the Paperwork Reduction Act and the federal government's general grant regulations, EPA also has a responsibility to minimize additional administrative reporting requirements and costs borne by the States. In addition, under current regulations EPA generally may not impose accounting requirements on States beyond those currently required by 40 CFR part 31.

EPA will therefore use the budget information that States provide in grant applications as a basis for linking the Agency's actual expenditures with outcomes. EPA will be able to rely on State budget information to determine the costs of EPA's results based outcomes according to the requirements of this rule:

(1) States provide the program budget information required as part of the application (see § 35.107(b)(2)(ii));

(2) EPA and the States explicitly define work plan activities, outcomes, and outputs, as well as the program flexibility contained in the work plan (see § 35.107(b)(2)(i)); and

(3) States report back on work plan accomplishments (see § 35.115).

The rule will ensure that these three requirements are met. Additionally, in accordance with § 35.114(a), recipients may make significant changes to the work plan commitments only after obtaining the Regional Administrator's prior written approval. The regional office, in consultation with the recipient, will document these revisions including budgeted amounts associated with the revisions. If necessary, the EPA funding office will make adjustments to original budget linking work plan components to EPA's Goal and Objective Architecture. Once these requirements are met, they provide a reasonable basis for using State grant program budgets to estimate State contributions to the costs of achieving EPA's result's based outcomes.

EPA, in consultation with recipients, is responsible for cross-walking the State budget information (grant application and work plan data) into the GPRA Goal and Objective architecture. Cross-walk information is developed by EPA during the work plan/PPA negotiation process with the State.

IX. Program-Specific Provisions

Requirements applicable to each environmental grant program are located in §§ 35.140 through 35.418.

Eligibility. The requirements that recipients must meet to qualify to receive funds under specific environmental programs are included in the program-specific provisions (see §§ 35.140 through 35.418).

Cost share. The required cost share for each environmental program is identified in the program-specific sections. Some programs do not have cost share requirements, while others have percentage matching share requirements, level of effort requirements, or both.

X. Conclusion

This regulation will be the foundation for continuing efforts to improve partnerships between EPA and its State, interstate, and local environmental protection partners. All recipients will benefit from the streamlined and simplified requirements of the regulation. In addition, it will provide recipients choosing to participate in the PPG program with programmatic flexibility to better use funds to address environmental priorities.

Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any another statute. Grant award and administration matters, such as this rule, are explicitly exempt from the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rulemaking under any other statute.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The UMRA excludes from the definitions of ''federal intergovernmental mandate'' and ''federal private sector mandates'' duties that arise from conditions of federal assistance.

National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices, *etc.*) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

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

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that is determined to be: (1) ''Economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Executive Order 12866

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a ''significant regulatory action'' under the terms of Executive Order 12866 because the Performance Partnership Grant authority is a new type of grant authority and therefore raises novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions and recommendations will be documented in the public record.

Paperwork Reduction Act

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–0033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request has been or will be submitted to the Office of Management and Budget for review.

Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian Tribal governments, because environmental program grants to Tribes and intertribal consortia are not covered in this rule; they are covered under 40 CFR part 35, subpart B, published elsewhere in this **Federal Register**. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

Executive Order 13132—Federalism

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

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Further, because this rule regulates the use of federal financial assistance, it will not impose substantial direct compliance costs on States. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing the proposed rule and all States and local governments have had an opportunity to comment on the proposed rule after it was published. Before promulgating this final rule, EPA considered all of the comments it received regarding this rule.

Congressional Review Act

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

List of Subjects

40 CFR Part 35

Environmental protection, Air pollution control, Coastal zone, Grant programs-environmental protection, Grant programs-Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste

treatment and disposal, Water pollution control, Water supply.

40 CFR Part 745

Environmental protection, Administrative practice and procedures, Hazardous substances.

Dated: December 28, 2000.

Carol M. Browner,

Administrator.

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

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 is revised to read as follows:

Authority: 42 U.S.C. 4368b, unless otherwise noted.

2. Revise § 35.001 to read as follows:

§ 35.001 Applicability.

This part codifies policies and procedures for financial assistance awarded by the Environmental Protection Agency (EPA) to State, interstate, and local agencies, Indian Tribes and Intertribal Consortia for pollution abatement and control programs. These provisions supplement the EPA general assistance regulations in 40 CFR part 31.

3. Subpart A is revised to read as follows:

Subpart A—Environmental Program Grants

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35.250 Purpose.
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Subpart A—Environmental Program Grants

Authority: 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

General

§ 35.100 Purpose of the subpart.

This subpart establishes administrative requirements for all grants awarded to State, interstate, and local agencies and other entities for the environmental programs listed in § 35.101. This subpart supplements requirements in EPA's general grant regulations found at 40 CFR parts 30 and 31. Sections 35.100—35.118 contain administrative requirements that apply

to all environmental program grants included in this subpart. Sections 35.130–35.418 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

§ 35.101 Environmental programs covered by the subpart.

(a) The requirements in this subpart apply to all grants awarded for the following programs:

(1) Performance partnership grants (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. Law 104–134, 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Pub. Law 105–65, 111 Stat. 1344, 1373 (1997)).

(2) Air pollution control (section 105 of the Clean Air Act).

(3) Water pollution control (section 106 of the Clean Water Act).

(4) Public water system supervision (section 1443(a) of the Safe Drinking Water Act).

(5) Underground water source protection (section 1443(b) of the Safe Drinking Water Act).

(6) Hazardous waste management (section 3011(a) of the Solid Waste Disposal Act).

(7) Pesticide cooperative enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(8) Pesticide applicator certification and training (section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(9) Pesticide program implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(10) Nonpoint source management (sections 205(j)(5) and 319(h) of the Clean Water Act).

(11) Lead-based paint program (section 404(g) of the Toxic Substances Control Act).

(12) State indoor radon grants (section 306 of the Toxic Substances Control Act).

(13) Toxic substances compliance monitoring (section 28 of the Toxic Substances Control Act).

(14) State underground storage tanks (section 2007(f)(2) of the Solid Waste Disposal Act).

(15) Pollution prevention state grants (section 6605 of the Pollution Prevention Act of 1990).

(16) Water quality cooperative agreements (section 104(b)(3) of the Clean Water Act).

(17) Wetlands development grants program (section 104(b)(3) of the Clean Water Act).

(18) State administration of construction grant, permit, and planning programs (section 205(g) of the Clean Water Act).

(19) Water quality management planning (section 205(j)(2) of the Clean Water Act).

(b) Unless otherwise prohibited by statute or regulation, the requirements in § 35.100 through § 35.118 of this subpart also apply to grants under environmental programs established after this subpart becomes effective if specified in Agency guidance for such programs.

(c) In the event a grant is awarded from EPA headquarters for one of the programs listed in paragraph (a) of this section, this subpart shall apply and the term ''Regional Administrator'' shall mean ''Assistant Administrator'.

§ 35.102 Definitions of terms.

Terms are defined as follows when they are used in this subpart.

Allotment. EPA's calculation of the funds that may be available to an eligible recipient for an environmental program grant. An allotment is not an entitlement.

Consolidated grant. A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

Funding period. The period of time specified in the grant agreement during which the recipient may expend or obligate funds for the purposes set forth in the agreement.

Environmental program. A program for which EPA awards grants under the authorities listed in § 35.101. The grants are subject to the requirements of this subpart.

National program guidance. Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as the core performance measures and other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, criteria for evaluating programs, and other elements of program implementation.

Outcome. The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant funding period. See ''output.''

Output. An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant funding period. See ''outcome.''

Performance Partnership Agreement. A negotiated agreement signed by the EPA Regional Administrator and an appropriate official of a State agency and designated as a Performance Partnership Agreement. Such agreements typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. A Performance Partnership Agreement may be used as all or part of a work plan for a grant if it meets the requirements for a work plan set out in § 35.107.

Performance Partnership Grant. A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also § 35.130). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

Planning target. The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

Regional supplemental guidance. Guidance to environmental program applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

Work plan commitments. The outputs and outcomes associated with each work plan component, as established in the grant agreement.

Work plan component. A negotiated set or group of work plan commitments established in the grant agreement. A

work plan may have one or more work plan components.

Preparing an Application

§ 35.104 Components of a complete application.

A complete application for an environmental program must:

(a) Meet the requirements in 40 CFR part 31, subpart B;

(b) Include a proposed work plan (§ 35.107); and

(c) Specify the environmental program and the amount of funds requested.

§ 35.105 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed funding period.

§ 35.107 Work plans.

(a) *Bases for negotiating work plans.* The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and State environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) *National program guidance.* If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or core performance measures in the national program guidance associated with the proposed activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) *Use of existing guidance.* An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

(b) *Work plan requirements.* (1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) An approvable work plan must specify:

(i) The work plan components to be funded under the grant;

(ii) The estimated work years and the estimated funding amounts for each work plan component;

(iii) The work plan commitments for each work plan component and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 35.115 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(3) The work plan must be consistent with applicable federal statutes; regulations; circulars; executive orders; and EPA delegations, approvals, or authorizations.

(c) *Performance Partnership Agreement as work plan.* An applicant may use a Performance Partnership Agreement or a portion of a Performance Partnership Agreement as the work plan for an environmental program grant if the portions of the Performance Partnership Agreement that serve as all or part of the grant work plan:

(1) Are clearly identified and distinguished from other portions of the Performance Partnership Agreement; and

(2) Meet the requirements in § 35.107(b).

§ 35.108 Funding period.

The Regional Administrator and applicant may negotiate the length of the funding period for environmental program grants, subject to limitations in appropriations acts.

§ 35.109 Consolidated grants.

(a) Any applicant eligible to receive funds from more than one environmental program may submit an application for a consolidated grant. For consolidated grants, an applicant prepares a single budget and work plan covering all of the environmental programs included in the application. The consolidated budget must identify each environmental program to be included, the amount of each program's funds, and the extent to which each program's funds support each work plan component. Recipients of consolidated grants must account for grant funds in accordance with the funds' environmental program sources; funds included in a consolidated grant from a particular environmental program may be used only for that program.

(b) Insular areas that choose to consolidate environmental program grants may be exempted by the Regional Administrator from requirements of this subpart in accordance with 48 U.S.C. 1469a.

EPA Action on Application

§ 35.110 Time frame for EPA action.

The Regional Administrator will review a complete application and either approve, conditionally approve, or disapprove it within 60 days of receipt. This period may be extended by mutual agreement between EPA and the applicant. The Regional Administrator will award the funds for approved or conditionally approved applications when the funds are available.

§ 35.111 Criteria for approving an application.

(a) The Regional Administrator may approve an application upon determining that:

(1) The application meets the requirements of this subpart and 40 CFR part 31;

(2) The application meets the requirements of all applicable federal statutes; regulations; circulars; executive orders; and delegations, approvals, or authorizations;

(3) The proposed work plan complies with the requirements of § 35.107; and

(4) The achievement of the proposed work plan is feasible, considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

(b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either:

(1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or

(2) Disapprove the application in writing.

§ 35.112 Factors considered in determining award amount.

(a) After approving an application under § 35.111, the Regional Administrator will consider such factors as the applicant's allotment, the extent to which the proposed work plan is consistent with EPA guidance and mutually agreed upon priorities, and the anticipated cost of the work plan relative to the proposed work plan components, to determine the amount of funds to be awarded.

(b) If the Regional Administrator finds the requested level of funding is not justified or the work plan does not comply with the requirements of § 35.107, the Regional Administrator will attempt to negotiate a resolution of the issues with the applicant before determining the award amount. The Regional Administrator may determine that the award amount will be less than the amount allotted or requested.

§ 35.113 Reimbursement for pre-award costs.

(a) Notwithstanding the requirements of 40 CFR 31.23(a) and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred

from the beginning of the funding period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. Such costs must be identified in the grant application EPA approves.

(b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant award.

Post-Award Requirements

§ 35.114 Amendments and other changes.

The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded.

(a) *Changes requiring prior approval.* Recipients may make significant changes in work plan commitments only after obtaining the Regional Administrator's prior written approval. EPA, in consultation with the recipient, will document these revisions including budgeted amounts associated with the revisions.

(b) *Changes requiring approval.* Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the funding period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved.

(c) *Changes not requiring approval.* Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other components of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time.

(d) *OMB cost principles.* The Regional Administrator may waive in writing approval requirements for specific recipients and costs contained in OMB cost principles.

(e) *Changes in consolidated grants.* Recipients of consolidated grants under § 35.109 may not transfer funds among environmental programs.

(f) *Subgrants.* Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.

§ 35.115 Evaluation of performance.

(a) *Joint evaluation process.* The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and a reporting schedule must be included in the work plan (see § 35.107(b)(2)(iv)). The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b).

(b) *Elements of the evaluation process.* The evaluation process must provide for:

(1) A discussion of accomplishments as measured against work plan commitments;

(2) A discussion of the cumulative effectiveness of the work performed under all work plan components;

(3) A discussion of existing and potential problem areas; and

(4) Suggestions for improvement, including, where feasible, schedules for making improvements.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70.

(d) *Evaluation reports.* The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

§ 35.116 Direct implementation.

If funds remain in a State's allotment for an environmental program grant either after grants for that environmental program have been made or because no grant was made, the Regional Administrator may, subject to any limitations contained in appropriation acts, use all or part of the funds to support a federal program required by law in the State in the absence of an acceptable State program.

§ 35.117 Unused funds.

If funds for an environmental program grant remain in a State's allotment either after an initial environmental program grant has been made or because no grant was made, and the Regional Administrator does not use the funds under § 35.116 of this subpart, the Regional Administrator may award the funds to any eligible recipient in the region, including the same State or an Indian Tribe or Tribal consortium, for the same environmental program or for a Performance Partnership Grant, subject to any limitations in appropriation acts.

§ 35.118 Unexpended balances.

Subject to any relevant provisions of law, if a recipient's Financial Status Report shows unexpended balances, the Regional Administrator will deobligate the unexpended balances and make them available, to either the same recipient in the same region or other eligible recipients, including Indian Tribes and Tribal Consortia, for environmental program grants.

Performance Partnership Grants

§ 35.130 Purpose of Performance Partnership Grants.

(a) *Purpose of section.* Sections 35.130 through 35.138 govern Performance Partnership Grants to States and interstate agencies authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, (Pub. L. 104–134; 110 Stat. 1321, 1321–299 (1996)) and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, (Pub. L. 105–65; 111 Stat. 1344, 1373 (1997)).

(b) *Purpose of program.* Performance Partnership Grants enable States and interstate agencies to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures subject to the requirements of this subpart. The Performance Partnership Grant program is designed to:

(1) Strengthen partnerships between EPA and State and interstate agencies

through joint planning and priority-setting and better deployment of resources;

(2) Provide State and interstate agencies with flexibility to direct resources where they are most needed to address environmental and public health priorities;

(3) Link program activities more effectively with environmental and public health goals and program outcomes;

(4) Foster development and implementation of innovative approaches such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and

(5) Provide savings by streamlining administrative requirements.

§ 35.132 Requirements summary.

Applicants and recipients of Performance Partnership Grants must meet:

(a) The requirements in §§ 35.100 to 35.118, which apply to all environmental program grants, including Performance Partnership Grants; and

(b) The requirements in §§ 35.130 to 35.138, which apply only to Performance Partnership Grants.

§ 35.133 Programs eligible for inclusion.

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental programs eligible, in accordance with appropriation acts, for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (17). (Funds available from the section 205(g) State Administration Grants program (§ 35.100(b)(18)) and the Water Quality Management Planning Grant program (§ 35.100(b)(19)) may not be included in Performance Partnership Grants.)

(b) *Changes in eligible programs.* The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

§ 35.134 Eligible recipients.

(a) Eligible agencies. All State agencies (including environmental, health, agriculture, and other agencies) and interstate agencies eligible to receive funds from more than one environmental program may receive Performance Partnership Grants

(b) *Designated agency.* A State agency must be designated by a Governor, State legislature, or other authorized State process to receive grants under each of the environmental programs to be combined in the Performance Partnership Grant. If it is not the designated agency for a particular grant program to be included in the Performance Partnership Grant, the State agency must have an agreement with the State agency that does have the designation regarding how the funds will be shared between the agencies.

(c) *Programmatic requirements.* In order to include funds from an environmental program grant listed in § 35.101 of this subpart in a Performance Partnership Grant, applicants must meet the requirements for award of each of the environmental programs from which funds are combined in the agency's Performance Partnership Grant, except the requirements at §§ 35.268(b) and (c), 35.272, and 35.298 (c), (d), (e), and (g). These requirements can be found in this regulation beginning at § 35.140.

§ 35.135 Activities eligible for funding.

(a) A recipient may use a Performance Partnership Grant, subject to the requirements of paragraph (c) of this section, to fund any activity that is eligible for funding under at least one of the environmental programs from which funds are combined into the grant.

(b) A recipient may also use a Performance Partnership Grant to fund multi-media activities that are eligible in accordance with paragraph (a) of this section and have been agreed to by the Regional Administrator. Such activities may include multi-media permitting and enforcement and pollution prevention, ecosystem management, community-based environmental protection, and other innovative approaches.

(c) A recipient may not use a Performance Partnership Grant to fund activities eligible only under a specific environmental program grant unless some or all of the recipient's allotted funds for that program have been included in the Performance Partnership Grant.

§ 35.136 Cost share requirements.

(a) An applicant for a Performance Partnership Grant must provide a non-federal cost share that is not less than the sum of the minimum non-federal cost share required under each of the environmental programs that are combined in the Performance Partnership Grant. Cost share requirements for the individual environmental programs are described in §§ 35.140 to 35.418.

(b) When an environmental program included in the Performance Partnership Grant has both a matching and maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that environmental program.

§ 35.135 Application requirements.

(a) An application for a Performance Partnership Grant must contain:

(1) A list of the environmental programs and the amount of funds from each program to be combined in the Performance Partnership Grant;

(2) A consolidated budget;

(3) A consolidated work plan that addresses each program being combined in the grant and that meets the requirements of § 35.107; and,

(4) A rationale, commensurate with the extent of any programmatic flexibility (i.e., increased effort in some programs and decreased effort in others) indicated in the work plan, that explains the basis for the applicant's priorities, the expected environmental or other benefits to be achieved, and the anticipated impact on any environmental programs or program areas proposed for reduced effort.

(b) The applicant and the Regional Administrator will negotiate regarding the information necessary to support the rationale for programmatic flexibility required in paragraph (a)(4) of this section. The rationale may be supported by information from a variety of sources, including a Performance Partnership Agreement or comparable negotiated document, the evaluation report required in § 35.125, and other environmental and programmatic data sources.

(c) A State agency seeking programmatic flexibility is encouraged to include a description of efforts to involve the public in developing the State agency's priorities.

§ 35.138 Competitive grants.

(a) Some environmental program grants are awarded through a competitive process. An applicant and the Regional Administrator may agree to add funds available for a competitive grant to a Performance Partnership Grant. If this is done, the work plan commitments that would have been included in the competitive grant must be included in the Performance Partnership Grant work plan. After the funds have been added to the Performance Partnership Grant, the recipient does not need to account for these funds in accordance with the funds' original environmental program source.

(b) If the projected completion date for competitive grant work plan commitments added to a Performance Partnership Grant is after the end of the

Performance Partnership Grant funding period, the Regional Administrator and the applicant will agree in writing as to how the work plan commitments will be carried over into future work plans.

Air Pollution Control (Section 105)

§ 35.140 Purpose.

(a) *Purpose of section.* Sections 35.140 through 35.148 govern Air Pollution Control Grants to State, local, interstate, or intermunicipal air pollution control agencies (as defined in section 302(b) of the Clean Air Act) authorized under section 105 of the Act.

(b) *Purpose of program.* Air Pollution Control Grants are awarded to administer programs that prevent and control air pollution or implement national ambient air quality standards.

(c) *Program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

§ 35.141 Definitions.

In addition to the definitions in § 35.102, the following definitions apply to the Clean Air Act's section 105 grant program:

Implementing means any activity related to planning, developing, establishing, carrying-out, improving, or maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

Nonrecurrent expenditures are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature that would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

Recurrent expenditures are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

§ 35.143 Allotment.

(a) The Administrator allots air pollution control funds under section 105 of the Clean Air Act based on a number of factors, including:

(1) Population;

(2) The extent of actual or potential air pollution problems; and

(3) The financial need of each agency.

(b) The Regional Administrator shall allot to a State not less than one-half of one percent nor more than 10 percent of the annual section 105 grant appropriation.

(c) The Administrator may award funds on a competitive basis.

§ 35.145 Maximum federal share.

(a) The Regional Administrator may provide air pollution control agencies, as defined in section 302(b) of the Clean Air Act, up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution or implementing national primary and secondary ambient air quality standards.

(b) Revenue collected pursuant to a State's Title V operating permit program may not be used to meet the cost share requirements of section 105.

§ 35.146 Maintenance of effort.

(a) To receive funds under section 105, an agency must expend annually, for recurrent section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(b) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's grant application, to that agency's expenditure level in the second preceding fiscal year. When expenditure data for the preceding fiscal year is complete, the Regional Administrator shall use this information to determine the agency's compliance with its maintenance of effort requirement.

(c) If the expenditure data for the preceding fiscal year shows that an agency did not meet the requirements of § 35.146, the Regional Administrator will take action to recover the grant funds for the year in which the agency did not maintain its level of effort.

(d) The Regional Administrator may grant an exception to § 35.146(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that a reduction in expenditure is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

(e) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.

§ 35.147 Minimum cost share for a Performance Partnership Grant.

(a) To calculate the cost share for a Performance Partnership Grant (see §§ 35.130 through 35.138) in the initial and subsequent years that it includes section 105 funds, the minimum cost share contribution for the section 105 program will be the match requirement set forth in § 35.145, or the maintenance of effort established under § 35.146 in the first year that the section 105 grant is included in a Performance Partnership Grant, whichever is greater.

(b) If an air pollution control agency includes its section 105 air program funding in a Performance Partnership Grant and subsequently withdraws that program from the grant:

(1) The required maintenance of effort amount for the section 105 program for the first year after the program is withdrawn will be equal to the maintenance of effort amount required in the year the agency included the section 105 program in the Performance Partnership Grant.

(2) The maximum federal share for the section 105 program in the first and subsequent years after the grant is withdrawn may not be more than three-fifths of the approved cost of the program.

(c) The Regional Administrator may approve an exception from paragraph (b) of this section upon determining that exceptional circumstances justify a reduction in the maintenance of effort, including when an air pollution control agency reduces section 105 funding as part of a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

§ 35.148 Award limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate or intermunicipal agency:

(1) That does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, Tribal, and international interests; and

(2) Without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian Tribe or Tribes.

(b) The Regional Administrator will not disapprove an application for or terminate or annul a section 105 grant without prior notice and opportunity for a public hearing in the affected State or States.

Water Pollution Control (Section 106)

§ 35.160 Purpose.

(a) *Purpose of section.* Sections 35.160 through 35.168 govern Water Pollution Control Grants to State and interstate agencies (as defined in section 502 of the Clean Water Act) authorized under section 106 of the Clean Water Act.

(b) *Purpose of program.* Water Pollution Control Grants are awarded to assist in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies. Some of these activities may also be eligible for funding under sections 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants), 205(j)(2) (Water Quality Management Planning), and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, 35.400, and 35.410.)

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

§ 35.161 Definition.

Recurrent expenditures are those expenditures associated with the activities of a continuing Water Pollution Control program. All expenditures, except those for equipment purchases of $5,000 or more, are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

§ 35.162 Basis for allotment.

(a) *Allotments.* Each fiscal year funds appropriated for Water Pollution Control grants to State and interstate agencies will be allotted to States and interstate agencies on the basis of the extent of the pollution problems in the respective States. A portion of the funds appropriated for States under the Water Pollution Control grant program will be set aside for allotment to eligible interstate agencies. The interstate allotment will be 2.6 percent of the funds available under this paragraph.

(b) *State allotment formula.* The Water Pollution Control State grant allotment formula establishes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. The formula provides a funding floor for each State with provisions for periodic adjustments for inflation and a maximum funding level (150 percent of its previous fiscal year allotment).

(1) *Components and component weights.* (i) *Components.* The six components used in the Water Pollution Control State grant allotment formula are: Surface Water Area; Ground Water Use; Water Quality Impairment; Point Sources; Nonpoint Sources; and Population of Urbanized Area. The components for the formula are presented in Table 1 of this section, with their associated elements, sub-elements, and supporting data sources.

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Table 1: Components of the Revised Section 106 State Allotment Formula

Formula Component	Element	Sub-Element	Data Source
1. Surface Water Area			U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States.*
2. Ground Water Use	a. Non-agricultural withdrawals		U.S. Department of the Interior, U.S. Geological Survey, *Preliminary Estimates of Water Use in the United States.*
	b. Population served by CWSs that use GW for the majority of their source water		U.S. Environmental Protection Agency, Office of Water, *Safe Drinking Water Information System.*
3. Water Quality Impairment	a. Impaired rivers and streams (miles)		U.S. Environmental Protection Agency, Office of Water, *National Water Quality Inventory* (based on State submitted §305(b) reports).
	b. Impaired lakes, ponds, and reservoirs (acres)		
	c. Impaired estuaries (square miles)		
	d. Impaired wetlands (acres)		
	e. Impaired ocean waters (shoreline miles)		
	f. Impaired Great Lake (shoreline miles)		
4. Potential Point Sources	a. Agriculture (total animal units)		U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture.*
	b. Industrial	i. Manufacturers	U.S. Department of Commerce, Bureau of the Census, Economic Census, *Census of Manufactures.*
		ii. Mining operations	U.S. Department of Commerce, Bureau of the Census, Economic Census, *Census of Mineral Industries.*
		iii. Power plants	U.S. Department of Energy, Office of Coal, Nuclear, Electric, and Alternate Fuels, *Inventory of Power Plants in the U.S.*
	c. Municipal dischargers		U.S. Environmental Protection Agency, Office of Water, *Wastewater Facilities Database.*
5. Nonpoint Sources	a. Agriculture		U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture.*
	b. Logging.		U.S. Department of Commerce, Bureau of the Census, Economic Census, *Census of Manufactures.*
	c. Abandoned mines	i. Abandoned soft-rock (coal) mining operations	U.S. Department of the Interior, Office of Surface Mining, *Abandoned Mine Land Inventory System.*
		ii. Abandoned hard-rock mining operations	U.S. Department of the Interior, Bureau of Mines, *Minerals Availability System/ Mineral Inventory Location System.*
6. Population of Urbanized Area			U.S. Department of Commerce, Bureau of the Census, *Census of Population and Housing.*[1]

[1] The population living in urban areas (*Census* designated places with 2,500 or more residents) rather than population living in urbanized areas (one or more *Census* designated places and the associated urban fringe that together have 50,000 or more residents) will be used for PR and the Insular Areas (VI, AS, GU, and CNMI).

(ii) *Component weights.* To account for the fact that not all of the selected formula components contribute equally to the extent of the pollution problem within the States, each formula component is weighted individually. Final component weights will be phased-in by Fiscal Year (FY) 2004,

according to the schedule presented in Table 2 of this section:

TABLE 2.—COMPONENT WEIGHTS IN THE WATER POLLUTION CONTROL STATE GRANT ALLOTMENT FORMULA

Component	FY 2000 (percent)	FY2001–FY2003 (percent)	FY2004+ (percent)
Surface Water Area	13	13	12
Ground Water Use	11	12	12
Water Quality Impairment	13	25	35
Point Sources	25	17	13
Nonpoint Sources	18	15	13
Population of Urbanized Area	20	18	15
Total	100	100	100

(2) *Funding floor.* A funding floor is established for each State. Each State's funding floor will be at least equal to its FY 2000 allotment in all future years unless the funds appropriated for States under the Water Pollution Control grant program decrease from the FY 2000 amount.

(3) *Funding decrease.* If the appropriation for Water Pollution Control State grants decreases in future years, the funding floor will be disregarded and all State allotments will be reduced by an equal percentage.

(4) *Inflation adjustment.* Funding floors for each State will be adjusted for inflation when the funds appropriated for Water Pollution Control State grants increase from the preceding fiscal year. These adjustments will be made on the basis of the cumulative change in the Consumer Price Index (CPI), published by the U.S. Department of Labor, since the most recent year in which Water Pollution Control State grant funding last increased. Inflation adjustments to State funding floors will be capped at the lesser of the percentage change in appropriated funds or the cumulative percentage change in the inflation rate.

(5) *Cap on annual funding increases.* The maximum allotment to any State will be 150 percent of that State's allotment for the previous fiscal year.

(6) *Cap on component ratio.* A component ratio is equal to each State's share of the national total of a single component. The cap on each of the six State formula components ratios is 10 percent. If a State's calculated component ratio for a particular component exceeds the 10 percent cap, the State will instead be assigned 10 percent for that component. The component ratios for all other States will be adjusted accordingly.

(7) *Update cycle.* The data used in the State formula will be periodically updated. The first update will impact allotments for FY 2001, and will consist of updating the data used to support the Water Quality Impairment component of the formula. These data will be updated using the currently available Clean Water Act section 305(b) reports. After this initial update, the data used to support all six components of the Water Pollution Control State grant allotment formula will be updated in FY 2003 (for use in the determination of FY 2004 allotments). Thereafter, all data will be updated every five years (e.g., in FY 2008 for FY 2009 allotments and in FY 2013 for FY 2014 allotments.) There will be an annual adjustment to the funding floor for all States, based on the appropriation for Water Pollution Control State grants and changes in the CPI.

(c) *Interstate allotment formula.* EPA will set-aside 2.6 percent of the funds appropriated for the Water Pollution Control State grant program for interstate agencies. The interstate agency Water Pollution Control grant allotment formula consists of two parts: a base allotment and a variable allotment.

(1) *Base allotment.* Each eligible interstate agency shall be provided a base allotment of $125,000 to help fund coordination activities among its member States. However, no more than 50 percent of the total available interstate set-aside may be allotted as part of the base allotment. If, given the 50 percent limitation placed on the base allotment, the amount of interstate set-aside funds is insufficient to provide each interstate agency with $125,000, then each interstate agency will receive a base allotment equal to 50 percent of the total interstate set-aside divided by the total number of eligible interstate agencies.

(2) *Variable allotment.* The variable allotment provides for funds to be distributed to interstate agencies on the basis of the extent of the pollution problems in the respective States. Funds not allotted under the base allotment will be allotted to eligible interstate agencies based on each interstate agency's share of their member States' Water Pollution Control grant formula allotment ratios. Updates of the data for the six components of the Water Pollution Control State grant allocation formula will automatically result in corresponding updates to the variable allotment portion of the interstate allotments. The allotment ratios for those States involved in compacts with more than one interstate agency will be allocated among such interstate agencies based on the percentage of each State's territory that is situated within the drainage basin or watershed area covered by each compact.

§ 35.165 Maintenance of effort.

To receive a Water Pollution Control grant, a State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

§ 35.168 Award limitations.

(a) The Regional Administrator may award section 106 funds to a State only if:

(1) The State monitors and compiles, analyzes, and reports water quality data as described in section 106(e)(1) of the Clean Water Act;

(2) The State has authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority;

(3) There is no federally-assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the State agency;

(4) The State's work plan shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 205(g) and (j) of the Clean Water Act; and

(5) The State filed with the Administrator within 120 days after

October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(b) The Regional Administrator may award section 106 funds to an interstate agency only if:

(1) The interstate agency filed with the Administrator within 120 days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(2) There is no federally-assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the interstate agency.

Public Water System Supervision (Section 1443(a))

§ 35.170 Purpose.

(a) *Purpose of section.* Sections 35.170 through 35.178 govern Public Water System Supervision Grants to States (as defined in section 1401 (13)(A) of the Safe Drinking Water Act) authorized under section 1443(a) of the Act.

(b) *Purpose of program.* Public Water System Supervision Grants are awarded to carry out public water system supervision programs including implementation and enforcement of the requirements of the Act that apply to public water systems.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 141, 142, and 143.

§ 35.172 Allotment.

(a) *Basis for allotment.* The Administrator allots funds for grants to support States' Public Water System Supervision programs based on each State's population, geographic area, numbers of community and non-community water systems, and other relevant factors.

(b) *Allotment limitation.* No State, except American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, shall be allotted less than $334,500 (which is one percent of the FY 1989 appropriation).

§ 35.175 Maximum federal share.

The Regional Administrator may provide a maximum of 75 percent of the State's approved work plan costs.

§ 35.178 Award limitations.

(a) *Initial grants.* The Regional Administrator will not make an initial award unless the applicant has an approved Public Water System Supervision program or agrees to establish an approvable program within one year of the initial award.

(b) *Subsequent grants.* The Regional Administrator will not award a grant to a State after the initial award unless the applicant has assumed and maintained primary enforcement responsibility for the State's Public Water System Supervision program.

Underground Water Source Protection (Section 1443(b))

§ 35.190 Purpose.

(a) *Purpose of section.* Sections 35.190 through 35.198 govern Underground Water Source Protection Grants to States (as defined in section 1401(13)(A) of the Safe Drinking Water Act) authorized under section 1443(b) of the Act.

(b) *Purpose of program.* The Underground Water Source Protection Grants are awarded to carry out underground water source protection programs.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR 124, 144, 145, 146, and 147.

§ 35.192 Basis for allotment.

The Administrator allots funds for grants to support State's underground water source protection programs based on such factors as population, geographic area, extent of underground injection practices, and other relevant factors.

§ 35.195 Maximum federal share.

The Regional Administrator may provide a maximum of 75 percent of a State's approved work plant costs.

§ 35.198 Award limitation.

The Regional Administrator will only award section 1443(b) funds to States that have primary enforcement responsibility for the underground water source protection program.

Hazardous Waste Management (Section 3011(a))

§ 35.210 Purpose.

(a) *Purpose of section.* Sections 35.210 through 35.218 govern Hazardous Waste Management Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 3011(a) of the Act.

(b) *Purpose of program.* Hazardous Waste Management Grants are awarded to assist States in the development and implementation of authorized State hazardous waste management programs.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR part 124, subparts B, E, and F; 40 CFR parts 260 through 266; 40 CFR parts 268 through 273; and 40 CFR part 279.

§ 35.212 Basis for allotment.

The Administrator allots funds for Hazardous Waste Management Grants in accordance with section 3011(b) of the Solid Waste Disposal Act based on factors including:

(a) The extent to which hazardous waste is generated, transported, treated, stored, and disposed of in the State;

(b) The extent to which human beings and the environment in the State are exposed to such waste, and;

(c) Other factors the Administrator deems appropriate.

§ 35.215 Maximum federal share.

The Regional Administrator may provide up to 75 percent of the approved work plant costs.

§ 35.218 Award limitation.

The Regional Administrator will not award Hazardous Waste Management Grants to a State with interim or final hazardous waste authorization unless the applicant is the lead agency designated in the authorization agreement.

Pesticide Cooperative Enforcement (Section 23(a)(1))

§ 35.230 Purpose.

(a) *Purpose of section.* Sections 35.230 through 35.235 govern Pesticide Enforcement Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticides Enforcement Cooperative Agreements are awarded to assist States to implement pesticide enforcement programs.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

§ 35.232 Basis for allotment.

(a) *Factors for FIFRA enforcement program funding.* The factors considered in allotment of funds for enforcement of FIFRA are:

(1) The State's population,

(2) The number of pesticide-producing establishments,

(3) The numbers of certified private and commercial pesticide applicators,

(4) The number of farms and their acreage, and

(5) As appropriate, the State's potential farm worker protection concerns.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

§ 35.235 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

Pesticide Applicator Certification and Training (Section 23(a)(2))

§ 35.240 Purpose.

(a) *Purpose of section.* Sections 35.240 through 35.245 govern Pesticide Applicator Certification and Training Grants to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(2) of the Act.

(b) *Purpose of program.* Pesticide Applicator Certification and Training Grants are awarded to train and certify restricted use pesticide applicators.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 162, 170, and 171.

§ 35.242 Basis for allotment.

The Regional Administrator considers two factors in allotting pesticides applicator certification and training funds:

(a) The number of farms in each State; and

(b) The numbers of private and commercial applicators requiring certification and recertification in each State.

§ 35.245 Maximum federal share.

The Regional Administrator may provide up to 50 percent of the approved work plan costs.

Pesticide Program Implementation (Section 23(a)(1))

§ 35.250 Purpose.

(a) *Purpose of section.* Sections 35.250 through 35.259 govern Pesticide Program Implementation Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticide Program Implementation Cooperative Agreements are awarded to assist States to develop and implement pesticide programs, including programs that protect workers, groundwater, and endangered species from pesticide risks and for other pesticide management programs designated by the Administrator.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

§ 35.251 Basis for allotment.

(a) *Factors for pesticide program implementation funding.* The factors considered in allotment of funds for pesticide program implementation are based upon potential ground water, endangered species, and worker protection concerns in each State relative to other States and on other factors the Administrator deems appropriate for these or other pesticide program implementation activities.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

§ 35.252 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

Nonpoint Source-Management (Section 319(h))

§ 35.260 Purpose.

(a) *Purpose of section.* Sections 35.260 through 35.268 govern Nonpoint Source Management Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 319 of the Act.

(b) *Purpose of program.* Nonpoint Source Management Grants may be awarded for the implementation of EPA-approved nonpoint source management programs, including ground-water quality protection activities, that will advance the implementation of a comprehensive approved nonpoint source management program.

§ 35.265 Maximum federal share.

The Regional Administrator may provide up to 60 percent of the approved work plan costs in any fiscal year. The non-federal share of costs must be provided from non-federal sources.

§ 35.266 Maintenance of effort.

To receive section 319 funds in any fiscal year, a State must agree to maintain its aggregate expenditures from all other sources for programs for controlling nonpoint pollution and improving the quality of the State's waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986.

§ 35.268 Award limitations.

The following limitations apply to funds appropriated and awarded under section 319(h) of the Act in any fiscal year.

(a) *Award amount.* The Regional Administrator will award no more than 15 percent of the amount appropriated to carry out section 319(h) of the Act to any one State. This amount includes any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the State.

(b) *Financial assistance to persons.* States may use funds for financial assistance to persons only to the extent that such assistance is related to the cost of demonstration projects.

(c) *Administrative costs.* Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with these funds shall not exceed 10 percent of the funds the State receives in any fiscal year. The cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs are not subject to this limitation.

(d) *Requirements.* The Regional Administrator will not award section 319(h) funds to a State unless:

(1) *Approved assessment report.* EPA has approved the State's assessment report on nonpoint sources, prepared in accordance with section 319(a) of the Act;

(2) *Approved State management program.* EPA has approved the State's management program for nonpoint sources, prepared in accordance with section 319(b) of the Act;

(3) *Progress on reducing pollutant loadings.* The Regional Administrator determines that the State made satisfactory progress in the preceding fiscal year in meeting its schedule for achieving implementation of best management practices to reduce pollutant loadings from categories of nonpoint sources, or particular nonpoint sources, designated in the State's management program. The State must have developed this schedule in accordance with section 319(b)(2)(c) of the Act;

(4) *Activity and output descriptions.* The work plan briefly describes each significant category of nonpoint source activity and the work plan commitments to be produced for each category; and

(5) *Significant watershed projects.* For watershed projects whose costs exceed $50,000, the work plan also contains:

(i) A brief synopsis of the watershed implementation plan outlining the problem(s) to be addressed;

(ii) The project's goals and objectives; and

(iii) The performance measures or environmental indicators that will be used to evaluate the results of the project.

Lead-Based Paint Program (Section 404(g))

§ 35.270 Purpose.

(a) *Purpose of section.* Sections 35.270 through 35.278 govern Lead-Based Paint Program Grants to States (as defined in section 3 of the Toxic Substances

Control Act), under section 404(g) of the Act.

(b) *Purpose of program.* Lead-Based Paint Program Grants are awarded to develop and carry out authorized programs to ensure that individuals employed in lead-based paint activities are properly trained; that training programs are accredited; and that contractors employed in such activities are certified.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR part 745.

§ 35.272 Funding coordination.

Recipients must use the lead-based paint program funding in a way that complements any related assistance they receive from other federal sources for lead-based paint activities.

State Indoor Radon Grants (Section 306)

§ 35.290 Purpose.

(a) *Purpose of section.* Sections 35.290 through 35.298 govern Indoor Radon Grants to States (as defined in section 3 of the Toxic Substances Control Act, which include territories and the District of Columbia) under section 306 of the Toxic Substances Control Act.

(b) *Purpose of program.* (1) State Indoor Radon Grants are awarded to assist States with the development and implementation of programs that assess and mitigate radon and that aim at reducing radon health risks. State Indoor Radon Grant funds may be used for the following eligible activities:

(i) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as public buildings, school buildings, high-risk residential construction types);

(ii) Development of public information and education materials concerning radon assessment, mitigation, and control programs;

(iii) Implementation of programs to control radon on existing and new structures;

(iv) Purchase by the State of radon measurement equipment and devices;

(v) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(vi) Payment of costs of EPA-approved training programs related to radon for permanent State or local employees;

(vii) Payment of general overhead and program administration costs in accordance with § 35.298(d);

(viii) Development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(ix) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including State participation in the EPA Home Evaluation Program; and

(x) A toll-free radon hotline to provide information and technical assistance.

(2) States may use grant funds to assist local governments in implementation of activities eligible for assistance under paragraphs (b)(1)(ii), (iii), and (vi) of this section.

(3) In implementing paragraphs (b)(1)(iv) and (ix) of this section, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give preference to low-income persons.

(4) Funds appropriated for section 306 may not be used to cover the costs of federal proficiency rating programs under section 305(a)(2) of the Act. Funds appropriated for section 306 and grants awarded under section 306 may be used to cover the costs of State proficiency rating programs.

§ 35.292 Basis for allotment.

(a) The Regional Administrator will allot State Indoor Radon Grant funds based on the criteria in EPA Guidance in accordance with sections 306(d) and (e) of the Toxic Substances Control Act.

(b) No State may receive a State Indoor Radon Grant in excess of 10 percent of the total appropriated amount made available each fiscal year.

§ 35.295 Maximum federal share.

The Regional Administrator may provide State agencies up to 50 percent of the approved costs for the development and implementation of radon program activities.

§ 35.298 Award limitations.

(a) The Regional Administrator shall not include State Indoor Radon funds in a Performance Partnership Grant awarded to another State Agency without consulting with the State Agency which has the primary responsibility for radon programs as designated by the Governor of the affected State.

(b) No grant may be made in any fiscal year to a State which in the preceding fiscal year did not satisfactorily implement the activities funded by the grant in the preceding fiscal year.

(c) The costs of radon measurement equipment or devices (see § 35.290(b)(1)(iv)) and demonstration of radon mitigation, methods, and technologies (see § 35.290(b)(1)(ix)) shall not, in the aggregate, exceed 50 percent of a State's radon grant award in a fiscal year.

(d) The costs of general overhead and program administration (see § 35.290(b)(1)(vii)) of a State Indoor Radon grant shall not exceed 25 percent of the amount of a State's Indoor Radon Grant in a fiscal year.

(e) A State may use funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(f) Recipients must provide the Regional Administrator all radon-related information generated in its grant supported activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(g) Recipients must maintain and make available to the public, a list of firms and individuals in the State that have received a passing rating under the EPA proficiency rating program under section 305(a)(2) of the Act.

Toxic Substances Compliance Monitoring (Section 28)

§ 35.310 Purpose.

(a) *Purpose of section.* Sections 35.310 through 35.315 govern Toxic Substances Compliance Monitoring Grants to States (as defined in section 3(13) of the Toxic Substances Control Act) under section 28(a) of the Act.

(b) *Purpose of program.* Toxic Substances Compliance Monitoring Grants are awarded to establish and operate compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures within the States with respect to which the Administrator is unable or not likely to take action for their prevention or elimination.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR parts 700 through 799.

§ 35.312 Competitive process.

EPA will award Toxic Substances Control Act Compliance Monitoring grant funds to States through a competitive process in accordance with national program guidance.

§ 35.315 Maximum federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

§ 35.318 Award limitation.

If the toxic substances compliance monitoring grant funds are included in a Performance Partnership Grant, the toxic substances compliance monitoring work plan commitments must be included in the Performance Partnership Grant work plan.

State Underground Storage Tanks (Section 2007(f)(2))

§ 35.330 Purpose.

(a) *Purpose of section.* Sections 35.330 through 35.335 govern Underground Storage Tank Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 2007(f)(2) of the Act.

(b) *Purpose of program.* State Underground Storage Tank Grants are awarded to States to develop and implement a State underground storage tank release detection, prevention, and corrective action program under Subtitle I of the Resource Conservation and Recovery Act.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 280 through 282.

§ 35.332 Basis for allotment.

The Administrator allots State Underground Storage Tank Grant funds to each EPA regional office. Regional Administrators award funds to States based on their programmatic needs and applicable EPA guidance.

§ 35.335 Maximum federal share.

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

Pollution Prevention State Grants (Section 6605)

§ 35.340 Purpose.

(a) *Purpose of section.* Sections 35.340 through 35.349 govern Pollution Prevention State Grants under section 6605 of the Pollution Prevention Act.

(b) *Purpose of program.* Pollution Prevention State Grants are awarded to promote the use of source reduction techniques by businesses.

§ 35.342 Competitive process.

EPA Regions award Pollution Prevention State Grants to State programs through a competitive process in accordance with EPA guidance. When evaluating State applications, EPA must consider, among other criteria, whether the proposed State program would:

(a) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to businesses seeking assistance in the development of source reduction plans;

(b) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(c) Provide training in source reduction techniques. Such training may be provided through local engineering schools or other appropriate means.

§ 35.343 Definitions.

In addition to the definitions in § 35.102, the following definitions apply to the Pollution Prevention State Grants program and to §§ 35.340 through 35.349:

(a) Pollution prevention/source reduction is any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants; or

(3) Reduces or eliminates the creation of pollutants through:

(i) Increased efficiency in the use of raw materials, energy, water, or other resources; or

(ii) Protection of natural resources by conservation.

(b) Pollution prevention/source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

§ 35.345 Eligible applicants.

Applicants eligible for funding under the Pollution Prevention program include any agency or instrumentality, including State universities, of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 35.348 Award limitation.

If a State includes a Pollution Prevention State Grant in a Performance Partnership Grant, the work plan commitments must be included in the Performance Partnership Grant work plan (see § 35.138).

§ 35.349 Maximum federal share.

The federal share for Pollution Prevention State Grants will not exceed 50 percent of the allowable pollution prevention State grant project cost.

Water Quality Cooperative Agreements (Section 104(b)(3))

§ 35.360 Purpose.

(a) *Purpose of section.* Sections 35.360 through 35.364 govern Water Quality Cooperative Agreements to State water pollution control agencies and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern Water Quality Cooperative Agreements to other entities eligible under sections 104(b)(3) which are generally subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment program or biosolids projects.

§ 35.362 Competitive process.

EPA will award Water Quality Cooperative Agreement funds through a competitive process in accordance with national program guidance.

§ 35.364 Maximum federal share.

The Regional Administrator may provide up to 100 percent of approved work plan costs.

State Wetlands Development Grants (Section 104(b)(3))

§ 35.380 Purpose.

(a) *Purpose of section.* Sections 35.380 through 35.385 govern State Wetlands Development Grants for State and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern wetlands development grants to other entities eligible under section 104(b)(3) which are generally subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards State Wetlands Development Grants to assist in the development of new, or refinement of existing, wetlands protection and management programs.

§ 35.382 Competitive process.

State Wetlands Development Grants are awarded on a competitive basis. EPA annually establishes a deadline for receipt of proposed grant project applications. EPA reviews applications and decides which grant projects to fund in a given year based on criteria

established by EPA. After the competitive process is complete, the recipient can, at its discretion, accept the award as a State Wetlands Development Grant or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the wetlands development program work plan commitments must be included in the Performance Partnership Grant work plan.

§ 35.385 Maximum federal share.

EPA may provide up to 75 percent of the approved work plan costs for the development or refinement of a wetlands protection and management program.

State Administration (Section 205(g))

§ 35.400 Purpose.

(a) *Purpose of section.* Sections 35.400 through 35.408 govern State Administration Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(g) of the Act.

(b) *Purpose of program.* EPA awards these grants for the following two purposes:

(1) *Construction management grants.* A State may use section 205(g) funds for administering elements of the construction grant program under sections 201, 203, 204, and 212 of the Clean Water Act and for managing waste treatment construction grants for small communities. A State may also use construction management assistance funds for administering elements of a State's construction grant program which are implemented without federal grants, if the Regional Administrator determines that those elements are consistent with 40 CFR part 35, subpart I.

(2) *Permit and planning grants.* A State may use section 205(g) funds for administering permit programs under sections 402 and 404, including Municipal Wastewater Pollution Prevention activities under an approved section 402 program and State operator training programs, and for administering statewide waste treatment management planning programs, including the development of State biosolids management programs, under section 208(b)(4). Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 205(j)(2) (Water Quality Management Planning), and 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) of the Clean Water Act. (See §§ 35.160, 35.410, 35.360, and 35.380.)

(c) *Associated program requirements.* Program requirements for State construction management activities under delegation are provided in 40 CFR part 35, subparts I and J. Program requirements for water quality management activities are provided in 40 CFR part 130.

§ 35.402 Allotment.

Each State may reserve up to four percent of the State's authorized construction grant allotment as determined by Congress or $400,000, whichever is greater, for section 205 (g) grants.

§ 35.405 Maintenance of effort.

To receive funds under section 205(g), a State agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to such expenditures during fiscal year 1977, unless the Regional Administrator determines that the reduction is attributable to a non-selective reduction of expenditures in State executive branch agencies (see § 35.165).

§ 35.408 Award limitations.

The Regional Administrator will not award section 205(g) funds:

(a) For construction management grants unless there is a signed agreement delegating responsibility for administration of those activities to the State.

(b) For permit and planning grants before awarding funds providing for the management of a substantial portion of the State's construction grants program. The maximum amount of permit and planning grants a State may receive is limited to the amount remaining in its reserve after the Regional Administrator allows for full funding of the management of the construction grant program under full delegation.

(c) For permit and planning grants unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 106 (Water Pollution Control) and 205(j) (Water Quality Management Planning) of the Clean Water Act.

Water Quality Management Planning Grants (Section 205(j)(2))

§ 35.410 Purpose.

(a) *Purpose of section.* Sections 35.410 through 35.418 govern Water Quality Management Planning Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(j)(2) of the Act.

(b) *Purpose of program.* EPA awards Water Quality Management Planning Grants to carry out water quality management planning activities. Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, and 35.400.) EPA awards these grants for purposes such as:

(1) Identification of the most cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

(2) Development of an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under paragraph (b)(1) of this section.

(3) Determination of the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(4) Determination of those publicly owned treatment works which should be constructed with State Revolving Fund assistance. This determination should take into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction.

(5) Implementation of section 303(e) of the Clean Water Act.

(c) Program requirements for water quality management planning activities are provided in 40 CFR part 130.

§ 35.412 Allotment.

States must reserve, each fiscal year, not less than $100,000 nor more than one percent of the State's construction grant allotment as determined by Congress for Water Quality Management Planning Grants under section 205(j)(2). However, Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands must reserve a reasonable amount for this purpose. (See 40 CFR 35.3110(g)(4) regarding reserves from State allotments under Title VI of the Clean Water Act for section 205(j) grants.)

§ 35.415 Maximum federal share.

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

§ 35.418 Award limitations.

The following limitations apply to funds awarded under section 205(j)(2) of

the Clean Water Act. The Regional Administrator will not award these grants to a State agency:

(a) Unless the agency develops its work plan jointly with local, regional and interstate agencies and gives funding priority to such agencies and designated or undesignated public comprehensive planning organizations to carry out portions of that work plan.

(b) Unless the agency reports annually on the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(c) Unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under section 106 (Water Pollution Control) of the Clean Water Act.

Part 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692, and 42 U.S.C. 4852d. Water Act.

§ 745.330 [Removed]

2. 40 CFR 745.330 is removed.

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Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 381 and 441

Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 97–054F]

RIN 0583–AC26

Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing regulations to limit the amount of water retained by raw, single-ingredient, meat and poultry products as a result of post-evisceration processing, such as carcass washing and chilling. Raw livestock and poultry carcasses and parts will not be permitted to retain water resulting from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected in accordance with a written protocol, that any water retained in the carcasses and parts is an inevitable consequence of the process used to meet applicable food safety requirements. In addition, the establishment will be required to disclose on the labeling of the meat or poultry products the maximum percentage of retained water in the raw product. The required labeling statement will help consumers of raw meat and poultry products to make informed purchasing decisions. Establishments having data demonstrating that there is no retained water in their products can choose not to label the products with the retained-water statement or to make a no-retained-water claim on the product label.

FSIS is also revising the poultry chilling regulations to improve consistency with the Pathogen Reduction/Hazard Analysis and Critical Control Points (PR/HACCP) regulations, eliminate ''command-and-control'' features, and reflect current technological capabilities and good manufacturing practices.

DATES: *Effective Date:* This rule is effective on January 9, 2002. Establishments wishing to implement the provisions of this final rule prior to the effective date should contact the appropriate FSIS District Office. FSIS will provide instructions to its inspection program personnel for facilitating early implementation.

Comments: Comments on the guidance material published in Appendix A should be received by April 9, 2001. Comments responding to information requested in the preamble to this final rule should be received by FSIS by April 9, 2001.

ADDRESSES: Submit one original and two copies of written comments to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, 300 12th Street, SW., Washington, DC 20250–3700. Please refer to docket number 97–054F in your comments. All comments submitted on this rule, as well as the research and background information used by FSIS in developing this document, will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday. The final regulatory impact analysis referred to in this document and summarized in the section discussing the Agency's compliance with Executive Order 12866 is available for viewing on the Agency's Internet homepage located at *''http://www.fsis.usda.gov''*.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

FSIS carries out the mandates of the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (21 U.S.C. 1031 to 1056) to ensure that meat, meat food, poultry, and egg products prepared for distribution in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. The FMIA and PPIA prohibit anyone from selling, transporting, offering for sale or transportation, or receiving for transportation in commerce, of any adulterated or misbranded meat or poultry product (21 U.S.C. 610, 458).

Under the Acts (21 U.S.C. 601(m)(8); 453(g)(8)), a product is adulterated if, among other circumstances in which it might be adulterated, ''any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.'' Under the same Acts (21 U.S.C. 601(n)(1), (12) and 21 U.S.C. 453(h)(1), (12)) a product is misbranded if, among other circumstances in which it might be misbranded, ''its labeling is false or misleading in any particular.''

FSIS provides continuous inspection in meat and poultry slaughtering and processing establishments and in egg product processing plants to ensure that the establishments sell in commerce only products that are not adulterated or misbranded. At meat and poultry slaughtering establishments, FSIS enforces requirements intended to prevent the adulteration of carcasses and parts during post-evisceration processing, handling, and storage. Some of these requirements concern the washing and chilling of the carcasses and parts.

After evisceration, raw livestock and poultry carcasses are subject to various processes, including washing and chilling, to ensure the safety of the products. In livestock slaughtering establishments, air chilling causes carcass weight loss from evaporation of the natural water in the carcass during evaporative cooling. Spraying water on livestock carcasses during air chilling either replaces the water that would have evaporated during air chilling or prevents the water in the carcass from evaporating. The result is that livestock carcasses subjected to a water spray do not lose weight through evaporation. Establishments should operate water spray systems in a manner that does not result in an increase in the average weight of a group of livestock carcasses produced during a scheduled period of operations over the carcasses' pre-chilled weight. FSIS Directive 6330.1, which describes the Agency's policies on the spray-chilling of carcasses, recognizes that it is technologically feasible and commercially practical to chill livestock carcasses in a manner that, on average, does not result in an increase in the carcass weight above the pre-chilled weight.

However, the processing and chilling methods used for some edible meat byproducts and organ meats may result in water retention. For example, cheek meat, meat from ears and tails, and organ meats are washed, cleaned, and chilled to preserve safety and wholesomeness before being shipped. Chitterlings (swine intestines) are washed and chilled before shipment and are packaged with water. A few establishments chill beef cheek meats in water, a process that may result in the absorption of water. The product is labeled to indicate the maximum percentage added water it may contain to alert buyers to the fact that the product may weigh more because of the chilling process.

Unlike meat packers, poultry processors have traditionally chilled poultry using the water-immersion chilling method. Although air chilling is permitted, immersion chilling is more rapid and cost efficient. The use of water immersion chilling is limited to whole poultry carcasses or major carcass portions. Poultry establishments are required to reduce the internal temperature of water-chilled poultry carcasses to 40 °F or less within 4 to 8 hours after slaughter, depending on the size of the carcass (9 CFR 381.66(b)).

Chilling poultry carcasses in water-immersion chillers always results in some absorption and retention of water, primarily in the skin and the tissue immediately under the skin. Also, some water becomes bound to the muscle tissue.

FSIS has consistently required that the retention of water in meat and poultry products be minimized. FSIS is mandated to prevent the distribution in commerce of meat, meat food and poultry products that are adulterated or misbranded.

Immersion chilling of poultry could result in a product becoming misbranded or economically adulterated through the retention of absorbed water. Nonetheless, since immersion chilling is an efficient way to control bacterial growth in poultry products and to ensure that establishments consistently meet applicable chilling time and temperature requirements, FSIS has permitted the retention of some water in poultry products. The Agency requires, however, that retained water amounts be minimized (9 CFR 381.66(d)(1)) and has set limits on the amount of water a poultry product may retain (9 CFR 381.66(d)(2)–(4)).

The Agency promulgated regulations limiting water absorption and retention in poultry products in 1959, 1961, and 1970 (24 FR 9566, December 1, 1959; 26 FR 6471, July 19, 1961; 35 FR 15739, October 7, 1970). The retained-water limits were based on carcass weight and intended use of the product. For example, higher limits were provided for birds that were to be cut-up than for those to be sold as whole birds because, when the birds are cut up, water retained at or near those higher limits declines below the regulatory limits for whole birds. If water has not been minimized, the product may be considered adulterated. Such product may also be considered misbranded if its labeling does not disclose the presence of retained water at levels higher than the required limits. Until a Federal court set aside the regulatory limits on retained water in poultry products, public knowledge of the limits obviated the need for a requirement for retained water to be disclosed on a product label. Without published limits on retained water, FSIS cannot adequately protect consumers from adulteration and misbranding due to excessive retained water in whole birds.

FSIS, however, lacks information on which to decide what level, if any, of retained water would not constitute adulteration, or to determine whether the limits that are in use do not result in adulteration.

Provisions To Limit Retained Water in Raw Meat and Poultry Products

On September 11, 1998, FSIS proposed regulations that would limit the amount of water retained by raw carcasses and parts of livestock and poultry as a result of post-evisceration processing, such as carcass washing and chilling. Under the proposal, meat and poultry carcasses and parts could not retain water from such processing unless the establishment preparing the carcasses and parts demonstrated that water retention is an unavoidable consequence of procedures necessary to meet applicable food safety requirements. FSIS also proposed to require that the establishment disclose on the product labeling the maximum percentage of retained water in the product. The labeling statement would provide information that would be helpful to consumers in making purchasing decisions. An establishment having data demonstrating that there is no retained water in the products could choose not to label the products with the retained-water statement or to make a no-retained-water claim on the product label. The proposed requirements were intended to replace those set forth in 9 CFR 381.66(d)(2)–(8). The purpose of the proposed requirements was to restrict, as much as feasible, the amount of water absorbed and retained in raw meat and poultry products.

The proposed rule was prompted by longstanding industry petitions and by the Agency's need to reform its regulations to make them more consistent with its Pathogen Reduction/Hazard Analysis and Critical Control Point System (PR/HACCP) regulations, in accordance with its regulatory reform agenda. The rulemaking gained further impetus in the wake of a July 23, 1997, Federal court decision in *Kenney* v. *Glickman* vacating the regulations in 9 CFR 381.66(d)(2) that contain the water-retention tables for poultry.

As explained above, FSIS has consistently required that the retention of water in meat and poultry be minimized and has considered product with too much retained water to be adulterated. FSIS used the retained water limits specified in § 381.66(d)(2) to determine whether poultry establishments were meeting the requirement to minimize water absorption and absorption and retention in whole birds. The decision in *Kenney* v. *Glickman,* however, removed this regulation because its basis was inadequate, and left the Agency without a regulatory limit, greater than zero percent, at or below which it could consider retained water in whole poultry to have been minimized. The limits for cut-up or ice-pack poultry in 9 CFR 381.66(d)(3)–(6)) were unaffected by the Court decision. This final rule replaces retained water limits that have been set out in the regulations with a requirement that products not retain water unless establishments demonstrate that the retained water is an unavoidable consequence of meeting food safety requirements.

FSIS is aware that it may be difficult to eliminate water retention for poultry and some meat products while continuing to meet applicable food safety requirements. Even in operations that yield raw product with zero-percent retained water, there is a certain amount of process variability. FSIS therefore proposed an alternative to a zero-percent retained-water requirement. Establishments would be required to collect data, in accordance with a protocol approved by FSIS, and demonstrate that water retention is an unavoidable consequence of the process used to meet a food safety requirement, such as the *Salmonella* performance standards or time/temperature chilling requirements. FSIS expected that, to determine that any unavoidable water retention is the minimum feasible, the protocol would provide for testing the process under alternative equipment settings or other variables.

FSIS said in the proposal that it would accept data generated from an approved protocol to support water retention levels for multiple establishments using similar post-evisceration processing techniques and equipment. Depending on the design of the protocol and the adequacy of the data collected under it, the Agency stated that the data could be used to justify an industry-wide water-retention limit, a limit applying to poultry products processed by several establishments, or a limit applying only to a single establishment's product. Establishments using an industry-wide or multi-establishment limit would have to be able to demonstrate that the conditions under which their products

are processed match those specified in the protocol used to justify the limit.

Comments

FSIS received 252 letters commenting on the proposed rule. Most were from members of the regulated industry. Sixty-one were from companies, company officials, or other individuals associated with the meat industry, or trade associations representing the industry, including both producers and packers. One hundred and sixty-nine were from companies, company officials or other individuals associated with the poultry industry, or from trade associations representing the industry, including both producers and processors. The rest were sent in by consumer-advocacy groups and other consumer-oriented organizations (3), individual consumers (7), weights and measures officials (7), a trade association not exclusively concerned with meat and poultry (1), technology firms (3), and the European Union. Consumers, consumer groups, and commenters representing livestock producer and meat packing interests tended to favor the proposal or to criticize it for not going far enough in restricting water retention. Poultry interests tended to oppose the proposal or to favor extensive modifications. Technology firms were divided on the merits of the proposal and on processes for improving food safety.

Comment summaries (each termed ''Comment'') by topic and Agency responses follow:

Alleged Inequitable Regulatory Treatment

Comment: Meat industry groups said that FSIS must eliminate the substantial inequity in the regulatory treatment of meat, compared with the treatment of poultry. They said that requirements for chilling meat and poultry products must be the same. The ''equity'' issue, they said, remains unresolved by the proposal, and that FSIS is maintaining the *status quo* without offering compelling food safety reasons for doing so. Poultry chilling, they said, should be subject to the same ''rigorous requirements'' as those that apply to the chilling of meat. The rule should be science-based, equitable, and HACCP-consistent.

On the other side, poultry groups said that the proposal does not treat poultry equitably with meat. They said that the meat industry uses spray chilling and does not have to adhere to chilling time/temperature requirements as does the poultry industry. Moreover, they said, organ meats are chilled in water without regulatory limitation.

Poultry groups also suggested that the proposed regulations may not apply equally to livestock and poultry parts. They said that ''parts'' in the meat regulations has a connotation different from that of ''parts'' in the poultry regulations. They asserted that there are few proposed changes that would affect the chilling and labeling of meats.

Response: FSIS disagrees that it is not resolving the ''equity'' issue. This rulemaking clearly applies to both meat and poultry products. Both meat and poultry establishments must abide by the retained-water minimization requirements of this final rule. Also, the retained-water labeling requirement will make both meat and poultry product establishments accountable to consumers for water retention.

The point of the poultry industry commenters with respect to the spray chilling of meat carcasses is well taken, and it is true that meat carcasses do not have to meet chilling time/temperature requirements as do poultry carcasses.

FSIS acknowledges the need to address the issue involving the chilling time and temperature requirements for poultry that were raised in both the American Meat Institute's 1997 petition and industry comments on this rulemaking. However, as the Agency indicated in the preamble to the proposed rule (63 FR 48963, 48965), FSIS did not intend to address this issue in this but in a future rulemaking.

FSIS does not agree with the poultry industry statement about the meaning of ''parts'' in the meat and poultry regulations, nor does the Agency see the relevance of the point to this rule. Raw, single-ingredient meat and poultry products, including parts of either meat or poultry carcasses, are covered. Some products of the meat industry that previously have not been covered by a retained-water regulation, *e.g.* livestock organs and offal, are now covered by this rule—a fact to which members of the meat industry have objected.

If applying ''the same rigorous requirements'' to poultry as to meat means requiring the poultry industry to adopt non-immersion-chilling methods, this final rule will not accomplish that objective. The food safety rationale for mandating the use of a particular technology has not been demonstrated.

Comment: FSIS is biased in favor of the poultry industry when it states that immersion chilling reduces overall pathogen levels. There are other ways to reduce pathogens. The Agency is particularly biased in stating that installing air chilling or air-spray systems in the poultry industry would be economically infeasible.

Response: FSIS acknowledges that pre-chill treatments can be advantageous in controlling bacteria and in achieving the objectives of the rulemaking. FSIS has never suggested, however, that the purpose of immersion chilling is to *remove* pathogens, but has stated that chilling reduces the temperature of the carcass and thus inhibits the growth of pathogens and other bacteria. FSIS stated in the Preliminary Regulatory Impact Analysis (PRIA) that requiring the poultry industry to install air chilling or air-spray chilling systems would entail major construction costs (63 FR 48976). FSIS does not consider this conclusion of its analysis to be evidence of bias.

Comment: Poultry has been immersion-chilled for decades. The poultry and meat industries are different and should be regulated differently.

Response: Different technologies may be needed to produce safe products from different species. FSIS is not banning or discouraging the use of immersion-chilling technologies to produce safe poultry products. The Agency is obligated, however, to take the same regulatory approach to meat as to poultry products, unless it finds, based on the available record, that different approaches are necessary.

Technology of Chilling and Bacterial Control

Comment: FSIS should encourage investment in technology adjustments that prevent water retention in poultry. The meat industry uses steam vacuum and steam-and-hot-water pasteurization without adding water weight via water retention in carcasses.

Response: By requiring establishments to justify unavoidable retained water in food safety terms and to apply retained-water labeling to their products, the final rule will provide an incentive for technological adjustments that minimize water retention in carcasses.

Comment: Consumer groups and meat industry commenters asserted that FSIS has failed to consider the most recent information on the effectiveness of chilling technologies other than immersion chilling. They said FSIS seemed to dismiss air chilling because it could result in product discoloration. Some noted that European processors use air chilling, which does not have the cross-contamination risks of chiller baths.

Response: In framing the proposed regulation, FSIS did not assume that immersion chilling will be the technology of choice for either the meat or the poultry product industry.

FSIS has taken no position on the safety or quality of air-chilled product but has limited data on the effectiveness of air chilling, especially in large-scale operations of the kind that supply most of the poultry products sold in the United States.

Comment: Immersion chilling is the best way to prevent potential food safety problems. Using chilled water is the most efficient, effective way to remove carcass heat and is the best way to achieve the purposes of HACCP. One company reported data on post-chill compared with pre-chill carcasses that show a 73-percent reduction in pathogenic organisms and an 85-percent reduction in generic *E. coli.* After a trisodium phosphate (TSP) carcass-rinse treatment, the incidence of *Salmonella* and *E. coli* is 0 percent. (Carcasses not rinsed with TSP show 96 percent and 30 percent, respectively. *Campylobacter* was found in 78 percent of untreated carcasses, and in 46 percent after TSP treatment.) The company maintained that air-chilling methods are not so effective, but that immersion chilling is an effective and economical way to meet the USDA time/temperature requirement.

Response: FSIS appreciates the food safety accomplishments of firms using any post-evisceration processes, but consumer protections other than food safety must also be ensured. Although immersion chilling can be effective in controlling microbial growth, products exposed to the process will retain water. This final rule is intended to address this problem.

Comment: A poultry processor who uses air chilling stated that air chilling is economically feasible. Analysis of retail prices shows air-chilled poultry yields 7 to 8 percent more poultry meat to the consumer than does water-chilled poultry.

Response: FSIS is not endorsing the use by the regulated industry of a particular technology.

Comment: Consumer groups cited recent studies, including a 1987 conference paper by C.J. Thomas, *et al.,* and a 1997 paper by M. Ristic, as evidence of the advantages of air-chilling technology.

Response: The paper by C.J. Thomas *et al.* refers only in passing, in a question-and-answer section, to an increasing use of air-chilling processes. The paper is not really about air chilling.

The Ristic (1997) paper cited by the commenters and other studies by the same author have consistently shown air-spray chilling to have certain advantages over other methods. The studies do not compare the feasibility of air-spray chilling with that of other chilling technologies in an industry with a production volume as high as that in the United States, nor do they provide a basis for regulatory action with respect to one or another technology.

Comment: A European Union official asked if there are scientific studies that support immersion chilling, rather than air-spray chilling, of livestock carcasses.

Response: FSIS is not aware of any peer-reviewed study on the water-immersion chilling of whole livestock carcasses. Among studies on the efficacy of livestock-carcass spray chilling, including systems using anti-microbial solutions, are:

Gill, C.O., and T. Jones, 1992. Assessment of the hygienic efficiencies of two commercial processes for cooling pig carcasses. Food Microbiology 9(4):335–343.

Gill, C.O., and J. Bryant, 1997. Assessment of the hygienic performances of two beef carcass cooling processes from product temperature history data or enumeration of bacteria on carcass surfaces, 1997. Food Microbiology 14(6):593–602.

Gill, C.O., and T. Jones, 1997. Assessment of the hygienic performance of an air-cooling process for lamb carcasses and a spray-cooling process for pig carcasses. International Journal of Food Microbiology, 38(⅔):85–93.

Grier, G.G., and B.D. Dills, 1988. Bacteriology and retail case life of spray-chilled pork. Canadian Institute of Food Science and Technology journal 21:295–299.

Hamby, P.L., J.W. Savell, G.R. Acuff, C. Vanderzant, and H.R. Cross, 1987. Spray-chilling and carcass decontamination systems using lactic and acetic acid. Meat Science 21:1–14.

Jericho, K.W.F., G. O'Laney, and G.C. Kozub, 1998. Verification of the hygienic adequacy of beef carcass cooling processes by microbiological culture and the temperature-function integration technique. Journal of Food Protection 61(10):1347–1351.

Stevenson, K.E., R.A. Merkel, and H.C. Lee, 1978. Effects of chilling rate, carcass fatness, and chlorine spray on microbiological quality and case-life of beef. Journal of Food Science 43:849–852.

Comment: The ozonation process achieves significant *E. coli* reductions on carcasses sampled at post-chill. Any rule permitting immersion chillers to use ozonation should be supported.

Response: If it is true that ozonation reduces generic *E. coli* populations, establishments may find the process useful in meeting requirements of the PR/HACCP regulations. The FSIS regulations do not prohibit use of ozonation equipment with immersion chillers. However, the Food and Drug Administration must approve the use of ozone for food processing purposes before FSIS can allow it.

Time/Temperature Chilling Requirement for Poultry

Comment: Some commenters disputed the FSIS statement that ''for most poultry establishments, the inevitable retained-water amount is the 'minimum' level that can be reached with existing immersion chiller equipment while still meeting the chilling requirement (for poultry to reach a temperature 40 °F or below within a specified number of hours).'' They stated that the poultry chilling requirement (9 CFR 381.66(b)(2)) is a command-and-control regulation that the final rule should eliminate. Commenters favoring both the meat-industry and the poultry-industry sides of the water-retention issue argued for immediate repeal of the poultry chilling requirement. Some even thought the proposal was premature and should be withdrawn because it did not address this matter.

Response: FSIS views the poultry time/temperature 40 °F chilling requirement as a food safety performance-standard issue that would best be addressed in a separate notice-and-comment rulemaking, which the Agency plans to conduct. The Agency believes that any performance standard that might replace the 40 °F requirement should be science-based, HACCP-consistent, and applicable to all species subject to mandatory inspection. The Agency is continuing to study this matter and hopes to be able to propose regulatory amendments in the coming months. In the meantime, FSIS will permit establishments to vary the parameters of their chilling or other processing operations as necessary to meet the objectives of their data collection protocols.

Product Quality Argument ''Arbitrary and Capricious''

Comment: The product-quality-based water-weight allowance is arbitrary and capricious, claimed the plaintiffs in the *Kenney* case. Quality is no problem in Europe, where poultry is air-chilled or air-spray-chilled. Adding water is adding an ingredient to make a multi-ingredient product. The product should be labeled to show the amount of retained water that is necessary for food safety purposes *and* the amount that is necessary for food-quality purposes.

Response: The commenters' criticism is unwarranted. This rule is primarily

intended to limit water retention resulting from processing to the amount that is unavoidable to achieve a food safety objective. However, FSIS has stated that, in their data collection protocols, establishments may specify determining product quality as a secondary or tertiary purpose of the data collection activity. This rulemaking does not provide for an additional retained-water amount that an establishment may consider necessary to maintain product quality.

Ready-to-cook poultry in Europe is dryer than ready-to-cook poultry in the United States. Whether United States consumers will eventually demand poultry that is similar to the European product is a question that can be answered by the market.

FSIS does not agree with the statement that water should be considered an ingredient in immersion-chilled poultry products. Water is not added to the products being chilled to create new products.

Zero Retained Water

Comment: Various commenters supported a zero-retained-water standard for both meat and poultry products. They said FSIS was wrong to reject, as a reason for a zero-retained-water standard, the argument that the information benefit to consumers is unlikely to exceed costs.

Consumer groups commented that FSIS's own figures show consumers pay almost $1 billion/year for retained water in poultry. They said FSIS should be proposing zero retained water, and that neither meat nor poultry products should be allowed to gain water. The proposal falls well short of what is needed, they said, strongly preferring Option 2 (zero retained water) in the regulatory analysis to Option 6 (retained water limits established by processes necessary to meet food safety requirements—the selected option). They said FSIS should reconsider Options 2 and 4 (retained water limits based on best available technology within traditional production practices).

Response: Mandating zero water retention for the poultry industry would be tantamount to requiring the re-tooling of the industry on an economically prohibitive scale. FSIS calculated that the resulting benefit to consumers, an informational benefit, would be slight in comparison to the impact on the national economy. The Agency calculated that consumers could receive a desirable informational benefit at a lower cost to society.

The proposal did not specify any acceptable amount of retained water, only that any amount that is retained be no greater than the unavoidable amount resulting from post-evisceration processing to achieve regulatory food safety requirements.

In the PRIA, FSIS suggested that the value of poultry production could be viewed as the production of poultry and the production of water. The Agency also said that another view was that the water has no effect on the price of poultry meat, but that the consumer is simply not being informed of the wholesale-price of poultry or turkey on a zero-added-water basis. The Agency's concern in much of the PRIA was the effect of full disclosure of retained water on consumer purchasing. The Agency concluded that this effect was unclear, though beneficial. The Agency did not take the position that water is literally being sold at poultry prices.

In the FRIA, the Agency has not attempted to quantify the overall benefits of the rule. However, FSIS rejected Option 2 and Option 4 because the costs to industry would be substantially disproportionate to consumer benefits.

This rule will ensure that water retention is limited to the amount unavoidable for food safety reasons, and that consumers are informed about this water retention. In establishing zero water retention as the default requirement, the rule compels the industry to justify scientifically any amount of water retention in raw, single-ingredient, meat or poultry product. Water in excess of the amount that is scientifically justified will adulterate the product.

Comment: Individual commenters generally supported the proposal on the ground that consumers would not purchase meat containing too much water. Some even thought the Agency should permit zero-percent retained water. Commenters said they do not know the exact water weight of poultry product because it is not labeled. Some said that added water in curing or other processing is a consumer rip-off. One commenter said immersion-chilling water is a ''fecal soup'' in which poultry are marinated.

Response: FSIS appreciates commenters' support for the general direction of this rulemaking. The Agency disagrees with the characterization of poultry chillers because the chillers efficiently reduce carcass temperatures and slow microbial growth. FSIS also disagrees that this rule should impose an unconditional limit of zero-percent retained water in raw meat and poultry products. Regarding added water in cured products, curing is outside the scope of the rulemaking. In any event, if a product that contains a curing solution weighs more than it did in the untreated state, that fact must be reflected on the product label.

Comment: A commenter with a veterinary background claimed that continuous chillers are insanitary common baths to which there are economically feasible alternatives. These alternatives—chilling tunnels, chill-spray conveyor lines, immersion-chilled vacuum-packaged product—should be explored, said the commenter. Other alternatives are unsatisfactory. Radiation treatments are not wholly effective.

The commenter stated that irradiation at doses lower than those resulting in off-odors yields spore formers like *C. botulinum* Type C. Irradiation kills spoilage bacteria that can be indicators of unwholesomeness.

As for antimicrobial interventions used with immersion chillers, chlorination of chiller water is not entirely effective and forms toxic organochlorine compounds that have environmental impacts. Phosphates used in post-chill dips facilitate water retention.

Eliminating retained water in poultry would ''correct a consumer fraud and [an] advantage poultry has over other parts of the food industry.'' The result of imposing regulatory limits on water retention after continuous chillers were introduced was to allow the poultry industry to sell ''legally adulterated product.''

Response: Studies do not bear out the feasibility of using technologies other than immersion chilling that would achieve the same food safety benefit on the same scale. FSIS is not aware of any technology other than food irradiation that is 100-percent effective in eliminating pathogens on raw meat or poultry products. Irradiated product generally is not shelf-stable. Through proper control, sufficient numbers of spoilage organisms remain to successfully compete against outgrowth of *C. botulinum.*

Regarding chlorination, FSIS agrees that organochloride compounds form in chlorinated poultry chill water. Nevertheless, FSIS considers the potential food safety benefits of chlorination to outweigh the risks.

The adulteration hazard of phosphates (extra water pick-up) that are used on raw products is exaggerated for two reasons. First, some phosphate compounds, such as orthophosphate dips, have been approved for use on raw products but are not in general use. Second, the treatment of raw products with such anti-microbial phosphate solutions as TSP should not be equated

with the addition of phosphate compounds to pickle-cured meat products to reduce the amount of cooked out juices. Such food additives become components of the products and do cause the products to hold water.

On the charge that regulatory water retention limits constitute legalized adulteration and a fraud, the Agency points out that the water retention that it is allowing would have to be disclosed on the label. Therefore, there would be no fraud. The Agency also believes that in appropriate circumstances, it could determine that some water retention is necessary, is unavoidable, and would not need to be disclosed. However, those circumstances have not been established in this rulemaking.

Data-Collection Protocol Requirement

Comment: Requiring an establishment-generated data-collection protocol for determining minimum unavoidable retained moisture would be arbitrary and capricious. FSIS has failed to articulate uniform criteria for such a protocol or a process for review of protocols.

Response: FSIS does not have the data necessary to set a regulatory limit on the amount of moisture a raw, single-ingredient product may retain. FSIS has put the burden of developing data to justify a level of retained water other than zero on official establishments because they are in the best position to determine what they have to do simultaneously to meet food safety requirements and to minimize retained water in their products. FSIS published suggested protocol specifications for comment on December 9, 1997 (62 FR 64767), and a list of expected elements of protocols with the proposed rule. The Agency received few comments on the expected protocol elements. These elements of protocol design give industry flexibility in collecting data that will be useful in determining water-retention limits on an establishment-by-establishment or industry-wide basis.

Regarding protocol review procedures, as discussed below, in response to comments, the Agency has decided not to pre-approve the data collection protocols establishments will use because to do so would contradict its regulatory policy which is opposed to command-and-control regulation.

Comment: The proposal, with its requirement for data-collection protocols to be pre-approved by FSIS, represents a return to command-and-control regulation.

Response: FSIS proposed that it review the data-collection protocols because of the need to ensure a degree of uniformity in and scientific validity of data-collection procedures for establishing the amount of unavoidable water retention. FSIS agrees with the commenter, however, that the proposed pre-approval of protocols would be a command-and-control requirement. The Agency, therefore, will not be pre-approving such protocols. FSIS is requiring, however, that an establishment notify the Agency as soon as the protocol is available for review. FSIS will then have 30 days in which it may object to or require changes in the protocol.

Comment: A poultry industry association opposed ''pre-clearance of retained water after pre-clearance of data protocols.''

Response: As stated in the preamble of the proposal (at 63 FR 48964), the labels with the retained-water statements will be generically approved pursuant to 9 CFR 317.5(b)(2) and 381.133(b)(2). Generically approved labels may be used without being submitted to the Agency for approval provided that they show all mandatory features and are not false or misleading. FSIS samples generically approved labels at establishments to determine their compliance with labeling requirements. With respect to labels with retained-water statements, the Agency may, from time to time, examine the data collected by establishments to ensure that the basis for label statements is sound. The Agency, however, will not pre-approve either the data or the water-retention limits the data are purported to justify.

Protocol Approval Process

Comment: A European Union official suggested that FSIS clarify the protocol approval process: Would the establishment, after it is recognized as eligible, have to ''submit systematically a dossier'' on final treatment of livestock and poultry carcasses and parts?

Response: Foreign establishments recognized as eligible to export to the United States will not have to submit a dossier to FSIS on water retention. However, they will have to maintain a file containing data that demonstrate either that the product they ship contains no retained water, or that it contains no more than the amount that is stated on the product label and that such amount is no greater than the amount that is unavoidable in achieving food safety objectives. The data must be collected under a protocol that is acceptable to the foreign government.

Process for Determining Amount of Unavoidable Retained Water

Comment: FSIS should more fully describe the process for demonstrating that retained water is unavoidable.

Response: FSIS is not prescribing a method for determining the unavoidable amount of retained water. Each establishment should be able to choose the method that is most appropriate for its processing situation. However, a slaughtering establishment should consider varying its process in whatever manner seems most likely to reduce carcass microbial counts and maintain them at a low level. The establishment should then measure the water retention amounts corresponding to the respective microbial reductions. A series of trials to achieve pathogen reduction by running chilling equipment at different settings, making other process changes, and plotting the microbial and water-retention data, should show what the retained water levels in the product were when any observed increase or decrease in microbial counts occurred.

The establishment might consider plotting available *E. coli* process-control data, or *Salmonella* or other microbial data that it has collected, on a time chart with water-retention data collected on the same product on the same dates. It should then be possible to observe the retained-water levels corresponding to microbial counts on the same products. From this information, an establishment should be able to determine what is the unavoidable level of retained water that corresponds to the lowest microbial counts.

FSIS is not prescribing any particular method for establishments to use to determine the amount of retained water in their products. A number of chemical and physical methods are available for determining the amount of moisture in foods, such as the method described in Appendix A of this document.

Retained-Water Limits

Comment: There is no connection between water retention and HACCP.

Response: Although this rulemaking is intended to establish a basis for controlling retained water in raw meat and poultry products, it is understood that retained water is an unavoidable consequence of certain processes commonly used to achieve food safety objectives, such as immersing chickens as a means of lowering the temperature of carcasses while limiting the opportunity for pathogen growth. This objective derives from the need to meet the pathogen reduction performance standard, a food safety requirement that must be met (63 FR 48963). While the

Agency does not prescribe the critical control points or critical limits that establishments must include in their HACCP plans, the failure by an establishment to meet the pathogen-reduction performance standards constitutes failure to maintain an adequate HACCP plan (9 CFR 310.25(b)(3)(iii), 381.94(b)(3)(iii)). Thus, there is a relationship between this rule and HACCP.

Comment: It is difficult to predict with precision the amount of water that may be retained. It would be difficult for the industry to devise protocols and guidelines necessary to comply with the proposed rule. Changes in systems would require changes in protocols, which would have to be resubmitted for approval to the Agency. This requirement would be burdensome to the industry and the Agency.

Response: Under this final rule, FSIS may review, but will not pre-approve, data-collection protocols developed by establishments. FSIS does not expect the development and use of a data-collection protocol for determining unavoidable water retention to be continuous. In most cases, protocol development will be largely a one-time-only expense. FSIS is taking a flexible approach toward the data-collection protocols. FSIS understands that there are many factors that determine water retention. If variables in the model used in a protocol changed, FSIS would not necessarily expect a whole new protocol to be developed. The Agency is mainly interested in knowing that the protocols are scientifically valid, that the data collected under them will reflect water-retention amounts that are unavoidable, and that the data support the water-retention statements on product labeling. For this reason, FSIS is requiring that an establishment make its new or revised protocol available for review by the Agency, but FSIS will not be pre-approving the protocol.

Comment: The proposed requirements for limiting water retention and labeling the amount of retained water are redundant. If there is a labeling requirement, there should be no requirement for industry to limit water retention. If there is a water-retention requirement, there is no need for a labeling requirement.

Response: The retained water minimization and labeling requirements are not redundant but address two different legal prohibitions—adulteration and misbranding. This rule is intended to prevent adulteration and misbranding of raw meat and poultry products by ensuring that water retention in the products is minimized and by improving the availability of information on water retention. The retained-water minimization requirement stems from the Agency's long-held view that excessive water retention is a form of product adulteration. The labeling requirement is intended to help prevent misbranding. It is intended to help prevent potential buyers from being misled about a characteristic of the product—retained water—by providing them with information about the characteristic. Product labeling is one of the most useful ways to provide such information. The labeling requirement is especially necessary in the wake of the U.S. Court decision in *Kenney* which, by setting aside the regulations that prescribed limits for water retention in ready-to-cook whole poultry, left consumers without any information that retained water was being held below a certain maximum percentage.

Simply imposing a regulation that limited water retention would not inform consumers of the retained water content of products unless specific water retention limits were clearly presented in the regulation. For reasons discussed elsewhere in this document, FSIS has found that it is not in a position to impose such a regulation. On the other hand, simply requiring labeling would not be consistent with the adulteration provisions of the FMIA and PPIA. Unlimited retained water would constitute economic adulteration even if identified through labeling.

If an outcome of this rule were that no raw, single-ingredient meat or poultry product retained any water from processing, a labeling requirement might eventually be unnecessary.

Comment: A weights and measures official said, regarding FSIS's view that ''excessive'' water retention may constitute adulteration, that the proposal did not limit water in raw, single-ingredient products but only required a more technical justification.

Response: The final rule clearly does limit water retention. The rule does not flatly mandate zero-percent water retention, but requires a demonstration that any water retention is unavoidable. Any retained-water percentage greater than zero percent will be considered excessive unless the percentage is justified by data collected under a valid protocol.

Food Safety Requirements

Comment: FSIS must identify the food safety requirements to be met in the post-evisceration or chilling process.

Response: In the PR/HACCP regulations, FSIS has identified process-control criteria and pathogen-reduction performance standards that establishments must meet. In the expected elements published with the proposed rule on retained water, FSIS stated its preference concerning the purpose of a data-collection protocol: To determine the amount or percentage of moisture absorption and retention that is unavoidable using a particular chilling system while achieving the pathogen-reduction performance standard for *Salmonella*. In conducting hazard analyses and developing their HACCP plans, establishments may identify additional or other food safety objectives. It has been unnecessary in this rulemaking to set out further food safety requirements.

Retained-Water Labeling

Comment: Poultry industry commenters suggested that the retained-water labeling requirement was a punishment for using the most effective techniques. Some thought the retained-water labeling provision might decrease consumer demand for the labeled products.

Response: FSIS has an obligation to balance the interests in any situation. While it is true that any water that will be declared on the label will be the unavoidable result of an effective process, it is also true that the misbranding and economic adulteration provisions of the FMIA and PPIA make clear the obligation of producers raw meat or poultry products not to mislead consumers. FSIS thinks that if they market as meat or poultry a product that contains something other than meat or poultry, that fact should be disclosed. Comments received in response to the proposal are inconclusive on how consumers will regard product with labeled retained-water amounts, although consumer advocacy groups and some individual commenters favored the labeling proposal.

Comment: Plaintiffs in *Kenney* opposed the proposed labeling provision, saying it would only be sanctioning the reporting of illegal water retention.

Response: FSIS disagrees. The Court in the *Kenney* case held that, under the PPIA, the Secretary of Agriculture had the authority to require labeling of the amount of retained water in and to define a poultry product. (*Kenney* v. *Glickman,* No. 4–94–CV–10402 (S.D. Iowa, Jul. 23, 1997) (order granting plaintiff and respondent motions for summary judgment) at pp.12, 13.)

Comment: A turkey processor said that the proposal would create a bag-printing headache for the poultry industry because turkey processors ship many products under private-label brands.

Response: FSIS does not foresee a problem in this regard. The purchasing specifications provided by firms for which processed birds are prepared cannot be lower than the minimum water retention of which the processor's technology is capable. The processor should be able to order or produce bags labeled with a retained-water statement that routinely complies with the regulation.

Comment: Industry groups suggested that if labeling is needed, a percent-retained-water statement could be either in the product name or in the ingredient statement, or the retained moisture could be reflected in nutrition labeling of the product.

Response: Placing the retained-water statement in an ingredient statement would imply that the product is fabricated of more than one ingredient. This implication would be misleading, because the water that would be listed in the ingredient statement is retained from processing and not literally added to the product to create a new meat or poultry product.

FSIS also does not agree that nutrition labeling can be used. First, assuming that retained water could be regarded as part of the product, and that the nutrition labeling were accurate, few consumers would notice changes in the percentages of protein, fat, or other nutrients resulting from a change in the percentage of retained water in the product. Also, a retained water statement in a nutrition facts panel would not be as conspicuous as one on the principal display panel. Moreover, because nutrition labeling of single-ingredient products is still voluntary, relatively few consumers of such products would have the advantage of even the limited amount of information on water retention that nutrition labels could convey.

Comment: A local weights and measures agency stated that percent-retained-water labeling should be standardized and placed in a uniform location on the package.

Response: FSIS wants to be as flexible as possible, consistent with the objective of informing the consumer of the amount and presence of retained water in affected product. The Agency is requiring that the retained water statement be contiguous to the product name or elsewhere on the principal display panel of the label.

Comment: Several companies and groups wrote that if FSIS insists on a labeling requirement, it should apply only to processor-packaged product intended for sale to consumers at retail. The final rule should exempt from the labeling requirement products intended for export, products shipped in bulk for further processing, and product to be sold to institutions and food-service operations.

Response: The commenters appear to be alluding to exemptions in the FSIS nutrition labeling regulations for products intended for further processing, certain products that are not for sale to consumers, products intended for export, certain products sold at retail stores, and items on restaurant menus (9 CFR 317.400(a)(2), (3), (6), (7); 381.500(a)(2), (3), (6), (7)). Those regulations were intended to be consistent with the aim of the Nutrition Labeling and Education Act and regulations implemented by the Food and Drug Administration, to assist consumers in maintaining healthy dietary practices. The preamble to the FSIS nutrition labeling final rule states the Agency's goal of providing consumers with more accurate and complete nutritional information (58 FR 635; January 3, 1993). In response to comments on its nutrition labeling proposed rule, FSIS did provide exemptions in the final rule of the sort the commenter refers to, on the ground that there was little value in requiring nutrition information where the consumer will not see it (58 FR 639).

However, unlike the nutrition labeling regulations, this final rule is intended to provide information directly both to household consumers and to large purchasers of meat and poultry products. Product shipped in bulk should be labeled accurately to ensure accurate formulation of further-processed products. Also, product shipped to institutions and food-service operations should be labeled with the same accuracy as product shipped to household consumers.

On the matter of exported product, the industry does not produce, and FSIS does not regulate, a separate class of raw, single-ingredient, meat or poultry product for export to which this rule would not appropriately be applicable. Thus, FSIS disagrees that export product should be subject to retained-water labeling requirements different from those to which product for domestic sale is subject.

Comment: The proposed retained-water labeling requirement should be adopted immediately.

Response: FSIS appreciates the support for the labeling provision of the proposal. The Agency, however, is setting the effective date of the final rule at 1 year following publication of the rule in the **Federal Register** to mitigate the effects of the rule on establishments—particularly those that are considered small businesses under Small Business Administration criteria—that may have to consider changing or updating their chilling processes and equipment.

This 1-year pre-implementation period will enable FSIS to prepare sampling, testing, and document review procedures; train Agency personnel in the new procedures; and develop a new national reference database on the natural moisture content of raw products in the various meat and poultry product classes. However, establishments can voluntarily implement the provisions of this rule in advance of the effective date.

Comment: A local weights and measures official commented that the labeled water retention amount on poultry products should not be based on an average but should be applicable to 95 percent of individual birds.

Response: FSIS notes that this comment was based on the analysis in the PRIA of rulemaking Option 1—to allow any percentage of retained water so long as the percentage amount is on the product label. FSIS will expect establishment data collection protocols (see § 441.10(d)) to include the sampling and testing methods for determining that food safety requirements (pathogen reductions) are being met and the testing methods for determining water retention. FSIS will also expect the protocols to explain how water retention data are to be reported and evaluated. The data collected by the establishment should show with reasonable confidence—*i.e.,* 95-percent statistical confidence—that a given package retains no more water than is unavoidable, and no more than the label states.

Labeling Format

Comment: Rather than the statement ''up to X% retained water'' or ''less than X% retained water,'' the label of affected products should state, ''contains X% added water.'' The ''up to X%'' statement prevents the consumer from calculating the true price per pound without added water weight. A ''contains X%'' statement would be consistent with the ban on qualifying terms in the Fair Packaging and Labeling Act.

Response: Current production practices yield product with varying levels of water retention. It is therefore difficult for an establishment to target an exact water-retention percentage for all its products of a certain class. FSIS has taken this fact into consideration and has framed the labeling requirements of this final rule in a way that will minimize inadvertent industry noncompliance.

It is true that a consumer may not be able to compute the exact percentage of retained water in a product labeled ''with up to X% retained water.'' The establishment that prepared the product, however, will have had to determine a water-retention range based on the data used to determine the amount of retained water that is unavoidable in the product. The establishment will be free to label its product with the water-retention amount that reliably represents the amount that is in the packaged product.

Consumers of the product will have available more information on water retention than they have had in the past.

Retained-Water Labeling and Product Tare

Comment: If FSIS insists on a labeling requirement, product tare should be addressed. For example, if product labeled as having 4-percent retained water that loses 2 percent of the water is sold in a wet-tare jurisdiction, how would the product be labeled? How would the regulation be applied?

Response: Compliance with net-weight regulations is determined by following the wet-tare and dry-tare procedures in National Institute of Standards and Technology (NIST) Handbook 133, which is incorporated by reference in the FSIS regulations at 9 CFR 317.19 and 381.121b. The actual net weight of the product, as determined on a lot-average basis by these procedures, is compared with the labeled net weight of the product.

The commenter did not say whether the 2-percent moisture loss was additional to or part of the 4-percent retained-water amount represented on the label. FSIS assumes that the 2-percent loss is from the 4-percent amount. Thus, in the example presented by the commenter, the retained-water statement should reflect that the product contains at least 2 percent or as much as 4 percent water from processing.

Using the 3-pound dry-tare chicken example presented in the PRIA and FRIA, the product net weight in a wet-tare jurisdiction would be as much as 2.94 lb. or as little as 2.88 lb. The labeled net weight corresponding to a ''2-percent'' retained-water statement would be 2.94 lb. The loss to the product, labeled with this net weight, of an additional 2 percent in water weight would raise the issue of short weighting. The actual net weight of the package would enter the ''gray area'' provided in the NIST Handbook 133 procedures for determining net-weight compliance in wet-tare jurisdictions. FSIS and local weights and measures authorities would then follow the procedures provided for gray-area product. Depending on the wording of the retained-water statement, this loss of additional moisture could mean that the statement is inaccurate, and the product misbranded for that reason.

If a company has had difficulty in determining the unavoidable amount of retained water in the product, the company should recheck the data on which its determination of ''unavoidable'' is based, its data-collection protocol, and its processing procedures.

If the company knows that the product will lose 2 percent of net weight because of water loss while in distribution channels, the company should adjust the retained-water statement to account for the fact. If the company knows that a retained-water product will continue to retain a certain percentage when it is sold in the wet-tare jurisdiction, the retained water statement must account for that percentage of water retention.

National Standard for Retained Water

Comment: Several commenters said that if FSIS proceeds with the rulemaking, the Agency should develop national standards for ''unavoidable moisture retention.'' Products should be able to exceed the national standard if labeled. Some argued that, based on information in the PRIA at 63 FR 48978, water retention could be held to 2–5% with appropriate technology. Others suggested that the Agency could simply justify scientifically the water retention limits in the regulations that were set aside.

Response: To be valid, a national standard such as envisioned by the commenters would have to be applicable to homogeneous products produced under similar conditions.

The currently available data on water retention provide an inadequate basis for setting any retained-water standard because the data that could be applied to the industry are based on industry practices that conformed to the regulations that the U.S. District Court set aside in *Kenney* v. *Glickman.* The Court set the regulations aside, in part, because USDA had not adequately explained how the particular water retention limits in the regulations were determined or why water retention could not be reduced below those levels.

FSIS would have to have new data, collected under new protocols and criteria that meet the concerns expressed in the Court decision in *Kenney* to be able to revive the previous regulations, including updated tables listing the water retention limits for poultry. In other words, the Agency would have to be able adequately to explain how the particular water retention limits were determined and why they could not be further reduced. Moreover, the Agency would have to be able to explain adequately how such regulations would apply to meat and poultry. Commenters did not state how this could be done.

FSIS agrees with the commenter who cited the analysis in the PRIA of available water retention data. This analysis indicates that water retention can be held at substantially below the regulatory limits that were set aside by the United States District Court in *Kenney* v. *Glickman.* It thus seems unlikely that new data would support the limits in the regulations that were set aside.

Comment: Even with supporting data, an industry-wide water-retention standard could still be ''arbitrary and capricious.''

Response: Depending on the design of the protocol and the adequacy of the data collected, a limit applying to the products of one or more establishments could be scientifically justified and not be arbitrary and capricious.

Costs of Rule

Comment: Compliance to ensure labeling accuracy should not result in added costs.

Response: The data-collection and labeling requirements will be minimal for meat establishments whose products do not gain water. Poultry establishments will have to collect data to determine the minimum water-retention levels in their products and will have to be able to verify on a continuing basis the accuracy of their product labels. Establishments will not necessarily have to conduct more tests or collect more data than they have been collecting under the regulations that this rule replaces. Thus, day-to-day costs of complying with the requirements for labeling accuracy will not be greater than past costs of complying with water-retention requirements.

Measuring Retained Water

Comment: The water retention amount should be measured as the difference between the ''hot carcass weight'' and finished package weight of the product. The second amount should be measured at the point of packaging.

Response: Establishments may use in-plant methods, such as weighing carcasses before and after washing or chilling procedures, as a means of controlling water retention. However, FSIS emphasizes that compliance with

this final rule will primarily depend on whether the retained-water amount of the product in distribution channels, *i.e.* the retained water weight of the product at the time it enters commerce, is no greater than the amount that is demonstrably unavoidable. FSIS intends to subject product samples collected in-distribution to an oven-drying test (described in Appendix A of this document) to determine the amount of water in the samples. Those amounts will be compared with the amount of naturally occurring water in the products to determine compliance with labeling and the retained-water-minimization provisions of the final rule. FSIS will, however, conduct in-plant verification of establishment process controls, and this verification may occasionally involve comparing hot carcasses weights with the weights of carcasses after spray chilling.

Compliance, Oversight and Control

Comment: FSIS must explain how compliance with the regulation is to be determined. A European Union official requested information on methods currently used to detect water content. One company suggested that moisture gain be determined at the last possible point before consumer packaging. Another observed that the poultry industry views retained water as the amount in the product to be lost over time as the product is en route to the consumer.

Response: Until now, FSIS and official establishments have measured water content by sampling and weighing carcasses before the carcass wash and after chilling. In poultry slaughtering establishments, carcasses are sampled and weighed before and after immersion chilling. In livestock slaughtering establishments, sampled carcasses are weighed after slaughter before and after being subject to spray-chilling processes. These traditional in-plant methods for determining the effectiveness of retained water controls continue to be available to the Agency and industry.

Under this final rule, though, FSIS will be verifying compliance with the retained-water limitation and labeling requirements primarily by reviewing establishment water-retention data collected under the required data-collection protocol. The Agency also plans to conduct in-plant and in-distribution tests of the moisture content of products using the oven-drying method described in the Agency's Chemistry Laboratory Guidebook and in Appendix A of this document. FSIS will not be dictating to industry the in-plant sites for measuring and controlling retained water.

Establishments must be aware that the Agency will be most concerned with the amount of retained water in product that has entered commerce.

Comment: The proposed rule has no provision for compliance oversight in distribution channels and at retail or food-service operations.

Response: The regulation clearly applies to products in distribution channels, although it does not specify how the Agency will enforce regulatory requirements outside official establishments. Official slaughtering establishments will be primarily responsible for minimizing water retention, subject to meeting the food safety objectives of their HACCP plans and of the PR/HACCP and other regulations. FSIS will conduct in-plant and in-distribution activities to verify labeling accuracy and retained-water minimization.

Comment: Correction of the water-adulteration problem at retail would trigger costly recalls and reduce consumer confidence in regulatory bodies.

Response: If a recall is necessary to prevent the sale of adulterated product, the Agency will expect the industry to take the necessary action.

Weights and Measures Checks

Comment: ''Weights and Measures officials generally inspect prepackaged meat and poultry at the retail level. Any changes * * * should either have no effect on point-of-sale package weight inspection procedures or, even better, simplify them.''

Response: Net-weight compliance procedures will be largely unaffected by this rulemaking. FSIS will be following NIST Handbook 133 procedures for determining whether or not product is misbranded with respect to net weight. These procedures are used by State and local weights and measures officials, so there will be no difference between the procedures followed by the Federal Government and the States with respect to net weight.

Offal Products

Comment: From companies and associations representing the meat industry: Offal products should be exempt from the rule because they are not considered meat products. Moreover, FSIS Standards and Labeling Division policy covers ''purge'' from organ products.

Response: In the interests of equitable regulation, offal products and other products of the meat industry and any poultry products with which there is a water-retention issue are subject to the present rule. This final rule supersedes current policy notices and directives affecting water retention; as appropriate, the Agency will revise or cancel those documents.

FSIS Priorities

Comment: The proposal is a misapplication of FSIS resources, which should be focused on food safety concerns. Consumers are more interested in knowing about product safety than retained water.

Response: While the Agency's primary concern is food safety, the FMIA and PPIA provide other consumer protections as well, including that consumers have the right to be apprised of what they are buying.

Consumer Situation

Comment: Some commenters asserted that FSIS offered no data showing consumers are misled about retained water in poultry products.

Response: It is true that FSIS has not gathered survey data showing that consumers are being misled about retained water, but from inquiries it has received over the years, the Agency is aware of consumer concerns about water in packaged poultry. Although consumers did not petition the Agency for a retained-water-labeling requirement, a number of individuals and consumer advocates who commented on the proposal regarded informing consumers about retained water as an important purpose of the rule. Some requested immediate implementation of the labeling requirement.

Comment: The proposed rule could adversely affect industry and consumers. Product quality could be adversely affected. The proposal itself (at 63 FR 48980) suggests that retained-water labeling, by inducing a reduction in retained water in raw products, would actually be harmful to consumers who may prefer a moist product.

Response: The information on consumer receptiveness to poultry products that might be less moist is inconclusive. The Agency acknowledged in the PRIA, to which the commenter refers, that consumers in the United States have become accustomed to purchasing fresh poultry that is very moist. FSIS requested comment on whether consumers would be more or less likely to purchase a package of meat or poultry that appeared less moist but received little information on this matter in response.

FSIS Response to Kenney Case Decision

Comment: The proposal is not justified by the limited scope of the decision in *Kenney*. FSIS misinterpreted the decision, in which the Court found poultry with retained water not to be adulterated and recommended science-based limits.

Also, the decision in the *Kenney* case does not require the Agency to mandate retained-water labeling.

Response: The Agency does not agree with the commenter's view that the Agency misinterpreted the District Court decision in the *Kenney* case, nor does the Agency infer from the decision that it is not warranted to proceed with this rulemaking. The Court affirmed the Agency's right to define a poultry product to include poultry product with retained water. Although the Court did not specifically instruct the Agency to revise the retained water regulations that the Court set aside, the Court clearly affirmed the Agency's authority to regulate the amount of retained water in poultry products. This final rule will limit the amount of retained water in raw meat and poultry products and FSIS believes the retained water limitation will be scientifically based.

Regarding the labeling requirement in the final rule, it will prevent misbranding of products subject to the rule.

Comment: Poultry industry commenters argued that FSIS is responding to competitive, not consumer, concerns and to lobbying by the meat industry. The Agency is responding to ''perceived inequity'' rather than to food safety concerns.

Response: FSIS took seriously the determination by the Court that the basis for its regulation of retained water in poultry was inadequate. As a result of the decision, the Agency believed it was necessary to re-examine the basis for regulation and determine the most appropriate, science-based approach for regulating retained water in poultry. The Agency's response on this issue was grounded in its obligation to ensure that consumers are protected from adulterated and misbranded product.

Comment: According to some poultry industry commenters, the rule is arbitrary and capricious in that it makes unjustified sweeping changes to the Agency's long-established policy of not requiring that meat or poultry be labeled to show retained-water content. The rule could be invalidated under the ''arbitrary and capricious'' standard applied by the Supreme Court (in *Automobile Manufacturers Assn.* v. *State Farm*) to the Department of Transportation's rescission of a rule requiring the installation of passive restraints in new cars. Simply requiring that meat and poultry establishments justify retained water in their products would fully satisfy the mandate of the U.S. District Court in *Kenney* v. *Glickman.*

Response: FSIS disagrees that, in requiring labeling of raw, single-ingredient meat and poultry products to state the retained-water content of the products, it is making ''arbitrary and capricious'' sweeping policy changes. Rather, FSIS is attempting to carry out its statutory obligation to prevent the distribution of products that are adulterated or misbranded under circumstances in which a regulation intended to prevent adulteration or misbranding of poultry products has been invalidated.

With respect to the labeling issue, FSIS thinks that the *State Farm* case is inapposite. FSIS is willing to concede that it had a policy not to require labeling of poultry products for retained water. However, the *Kenney* decision represents a change in circumstances that requires that the Agency rethink its policies and change them if it is unable to justify them within the legal context established by the Court's decision. The case has left the Agency without a published, regulatory limit on retained water to prevent adulteration. Because there is no longer such a limit, the case has also left the public without access to information about the characteristics of poultry products. In the absence of a specific level of retained water that is unavoidable in the production of a safe product, FSIS finds that the level of retained water is a fact that is material in that the product is being represented as meat or poultry. Failure to disclose this fact would misbrand the product.

Therefore, FSIS is requiring that meat and poultry products be labeled to show the maximum amount of water they may retain. In the absence of data, the Agency is taking the most logical and reasonable course of action available to it.

Regarding the U.S. District Court decision in the *Kenney* case, the Court agreed with the Department's contention that the PPIA (21 U.S.C. 457(b)(2)) gives the Secretary the authority to determine that the composition of a poultry product includes a limited amount of water retained from processing. The Court also stated that, given the deference that must be shown the Secretary on this matter, ''the Secretary did not abuse his discretion or act contrary to law by failing to conclude that a label that does not disclose the retained water in a poultry product was false or misleading.'' The Court further held that, notwithstanding the quantity-of-contents labeling provisions of the PPIA, the Secretary was within his discretion in not finding poultry with retained water to be misbranded.

However, the Court found that the Secretary acted arbitrarily and capriciously in not adequately explaining the reasons for the water retention limits for poultry products and in not explaining why water retention could not be further reduced. In other words, the Secretary did not provide a basis for determining whether and what amount of water retention should be permitted or could be considered non-adulterative, or what amount of water retention is unavoidable in a poultry product. Put another way, the Secretary did not provide a basis for distinguishing a poultry product with permissible retained water from such a product adulterated by excessive retained water. The Court also found the Secretary to have acted arbitrarily and capriciously in not according the same regulatory treatment to meat and to poultry. The Court therefore set aside the regulation that provided the water retention limits for poultry products (9 CFR 381.66(d)(2)).

Thus, this situation is distinguishable from that in *State Farm*. FSIS is not simply abandoning a long-held, well-justified position. When asked to justify its position on retained water in poultry, the Agency could find no basis for it in the record compiled when the position was adopted. Thus, the Court in *Kenney* found that FSIS water retention levels for poultry were not sustainable. When FSIS sought a reliable basis for arriving at a new level, it could find no evidence that would justify any water retention in poultry. In view of this, and the Agency's obligation, in the absence of evidence that justifies a contrary approach, to treat meat and poultry products the same way in its regulations, FSIS is left with little choice but to insist that meat and poultry products contain no retained water unless there is a substantial justification for permitting some water retention.

FSIS is not stating in this final rule what the justification for retained water should be beyond stating that it must be an unavoidable consequence of processing to meet food safety requirements. This is the only justification FSIS can find for the presence of retained water in a livestock or poultry carcass.

As stated previously in this document, the Agency has consistently required that establishments minimize retained water in meat and poultry

products, but the Agency no longer has a quantitative limit or measure other than zero-percent retained water by which to determine that retained water has been minimized. For this reason, and because the Court found that the Agency did not have a basis for determining unavoidable retained water in a product, the Agency must insist that, in addition to justifying the presence of retained water, establishments also substantiate the amount of retained water that is unavoidable.

In order to determine whether or not a poultry product is economically adulterated by retained water, the Agency must have available to it data that show what the amount of unavoidable retained water is and the amount that the product retains. Hence, the requirement that establishments collect such data according to written protocols.

Effect on Pathogens

Comment: Increasing water retention in achieving non-required *Salmonella* levels (*i.e.*, reducing *Salmonella* levels *below* the pathogen reduction performance standards) would defeat the purpose and goal of the rule.

Response: FSIS encourages establishment efforts to improve the safety of meat and poultry products by reducing the incidence of Salmonella below the prescribed performance standards. We recognize that achieving such results may cause the product to have increased retained water that would be required to be labeled on the package. However, we feel that the requirement to label a product to indicate the maximum amount of water that may be retained in the product is necessary to reflect the material fact that water has been retained.

Comment: The proposal (at 63 FR 48977) suggested the possibility that pathogens on product could increase with decreased retained water, and that efforts to reduce the retained-water level would harm consumers.

Response: The commenter misinterpreted the proposal. The commenter took out of context a step in the Agency's reasoning on the potential costs of a rejected option: that of establishing retained water limits based solely on the capabilities of existing equipment. In fact, this rule is based on the chosen option of limiting water retention to the amount that is unavoidable in meeting food safety requirements.

Comment: A consumer group commented that FSIS has paid insufficient attention to Lillard (1990), who reports a significant increase in the incidence of *Salmonella* on post-chill poultry carcasses.

Response: The Lillard (1990) paper cited by the commenter did indeed show that *Salmonella* incidence increased on post-chill as compared with pre-chill poultry. The study identified immersion chilling as the most significant point of cross contamination in modern commercial poultry processing. However, the study also confirmed that the immersion chilling process has a washing effect, and that even though *Salmonella* incidence may have increased on the birds, the microbiological quality of the poultry carcasses, as determined by enumeration of aerobic bacteria and *Enterobacteriaceae,* improved. In other words, though bacteria might be spread from bird to bird during the process, the overall level of bacteria on the birds decreased.

Comment: A consumer group said that FSIS should determine the pathogen levels in poultry package liquid and the relationship between these levels and the risk of cross-contamination in the kitchen. FSIS should compare the benefits in lower social and medical costs from contaminated poultry, compared with increased costs to the poultry industry and consumers from eliminating all retained water.

Response: As explained in the FRIA, FSIS has assumed as an indirect benefit of the final rule the possible health effects from reducing retained water. However, to determine the relationship between pathogen levels in poultry and the risk of cross contamination in the consumer's home, and to compare the increased costs to the poultry industry of this rule with the possible health benefits to society from reducing retained water, would require a lengthy study. If such a study were a prerequisite for this final rule, the rule and its beneficial effects would be delayed.

Apparent Inconsistency in Proposed Rule

Comment: There is, apparently, an inconsistency between the preamble use of the term ''raw, single-ingredient, meat, meat products, and poultry products'' and the term ''carcasses and parts'' in the proposed regulation concerning products to be covered by the labeling requirement.

Response: ''Raw, single-ingredient meat, meat products and poultry products'' are broadly comprised of ''carcasses and parts,'' whether of livestock or of poultry. The term ''carcass'' in the FSIS regulations denotes ''all parts, including viscera, of any slaughtered livestock'' (9 CFR 301.2(p)) and in the poultry products regulations ''all parts, including viscera, of any slaughtered poultry'' (9 CFR 381.1(b)(9). By the term ''carcasses and parts,'' FSIS means a class of product included in the terms ''meat and meat food product'' and ''poultry product,'' namely, raw, single-ingredient products that have been subject to no more than minimal processing, such as cutting or grinding, before being sold in commerce. The current regulatory definitions for ''meat food product'' and for ''poultry product'' include product made partly or wholly from carcasses and parts of livestock or poultry for use as human food. Thus, FSIS finds no inconsistency between the use of terms in the preamble of the proposed rule and the proposed regulatory text.

Time and Flexibility for Final Rule Implementation

Comment: If FSIS proceeds to a final rule, the Agency should give industry time and flexibility to minimize cost impacts. The industry should have flexibility similar to that provided in the sausage casings notice (FSIS Docket No. 96–020N: 61 FR 39853; July 31, 1996).

Response: FSIS believes that the commenter is referring to the labeling options that would be available to establishments subject to the proposed rule on sausage casings, ''Labeling of Natural or Regenerated Collagen Sausage Casings'' (FSIS Docket No. 96–020N: 62 FR 38220; July 17, 1997). Under that proposal, the labels of sausages in natural casings made from livestock or poultry viscera or regenerated collagen casings would have to identify the type of livestock or poultry from which the casings are derived, if different from the livestock or poultry meat component of the sausage. The casing identification could be on the principal display panel or in the ingredient statement. Establishments producing, manufacturing, or using natural or regenerated collagen casings would have to keep records on the livestock or poultry source of the casings.

FSIS is trying to minimize the cost impacts of the labeling requirements of this final rule by providing ample time for implementation and allowing the industry to use existing stocks of labels until they are exhausted. FSIS also is providing a degree of flexibility by permitting establishments to place the required retained water statement either contiguous to the product name or elsewhere on the principal display panel of the label.

Recommendations for Various Technical Changes

Comment: The qualifier ''mature'' should be restored to the term ''reproductive organs'' in § 381.1(b)(44).

Response: As discussed in the proposal, FSIS is revising the definition of ''ready-to-cook poultry'' to account for the elimination of the requirement to remove kidneys from mature birds. The qualifier ''mature'' was inadvertently dropped from the term ''mature reproductive organs'' in the proposed regulatory text and is restored in this final rule. The verb phrase expressing the action taken with respect to mature reproductive organs and kidneys is changed from ''have been removed'' to ''may have been removed'' (in § 381.1(b)(44)) to reflect the fact that the decision to remove these organs is HACCP-based. Some establishments, in operating their HACCP systems, have shown that they can determine when poultry kidneys constitute a hazard (*e.g.,* when they contain cadmium) and when they do not.

Comment: The phrase ''feet, crop and oil glands'' appears twice in proposed § 381.1(b)(44).

Response: FSIS is correcting this typographical error.

Comment: Remove § 381.65(a) and (b). These are covered by HACCP or Sanitation SOP.

Response: FSIS agrees that sanitary handling and processing of poultry and the protection of poultry products from adulterants ought to be covered by establishment Sanitation SOP's and HACCP plans. FSIS is removing paragraph (b) of 9 CFR 381.65 for that reason, as proposed, but retaining paragraph (a). The paragraph requires establishments to conduct operations and procedures in a manner that will ensure sanitary processing, proper inspection, and products that are not adulterated. These are basic performance objectives for any official establishment. The requirement to ensure proper inspection is especially pertinent to poultry processing and is not duplicated by the SSOP and HACCP regulations. Paragraph (c) is being re-designated as paragraph (b). FSIS will review the requirements in these and other paragraphs for further streamlining.

Comment: Remove § 381.65(d) because it is redundant with proposed § 441.10.

Response: Proposed § 381.65(d) is a re-designation of § 381.65(k), which requires ready-to-cook poultry to be adequately drained after chilling to remove ice and free water before packaging or packing. FSIS agrees that it is redundant with the new 9 CFR 441.10 and is removing it.

Comment: Paragraph (d)(8) in § 381.66 requiring the plant to notify the inspector of changes in washing, chilling, and draining procedures should be removed.

Response: FSIS is removing 9 CFR 381.66(d)(8) as proposed.

Comment: Proposed § 381.66(c)(2)(i), restricting how plants operate chillers, should be revised to eliminate prescriptive requirements for the continuous overflow of water between chiller sections and references to the design of multi-section chillers. The paragraph should only require that the chiller be operated in a manner consistent with meeting pathogen reduction performance standards.

Response: FSIS agrees in principle with the suggested change and is revising the paragraph. The Agency is removing the prescriptive design requirements for chillers and replacing them with a performance standard requirement that is consistent with the PR/HACCP regulations.

Comment: Proposed § 381.66(c)(2)(ii) should be revised to refer to split carcasses as defined in § 381.170(b)(22). FSIS should revise the second sentence, the chilling method to be applied to individual poultry parts, because it is not consistent with HACCP.

Response: FSIS agrees that the wording of proposed § 381.66(c)(2)(ii) should be modified as suggested by the commenter.

FSIS is removing the second sentence of the paragraph, which prohibits the chilling in water and ice of individual parts from salvage operations. While the purpose of this prohibition, to prevent the marketing of parts that retain too much water, coincides with some of the objectives of this final rule, it is a command-and-control requirement that is inconsistent both with HACCP and with the basic thrust of this final rule. FSIS published the retained-water proposal in the same issue of the **Federal Register** as the final rule permitting the continuous chilling of transversely split carcasses (63 FR 48957; September 11, 1998). The split-carcass-chilling final rule left unchanged the prohibition against the chilling in water and ice of individual parts.

This final rule, however, applies to transversely split carcasses and other portions and parts of poultry. It applies to all raw, single-ingredient, poultry products. This final rule makes redundant the requirements concerning the specific chilling method applied to these parts or portions of poultry. Therefore, the Agency is removing these requirements.

Comment: Delete the proposed § 381.66(d)(1) and (2) as redundant with § 441.10.

Response: While 9 CFR 381.66(d)(1), which requires that poultry washing, chilling, and draining practices minimize water absorption and retention, may appear to some to be redundant with 9 CFR 441.10, it articulates a general principle with which the Agency agrees irrespective of the present rulemaking: Retained water should be minimized. 9 CFR 381.66(d)(1) does not, however, present a measurable criterion for judging minimization, as 9 CFR 441.10 does. Therefore, FSIS finds it appropriate to adopt both provisions.

FSIS finds that the proposed 9 CFR 381.66(d)(2), requiring the establishment to supply measuring devices or scales for use in measuring retained water, should be retained to ensure that both the establishment and the Agency can conduct in-plant checks for compliance with this final rule.

Comment: Delete 9 CFR 381.66(f)(3), a prior-approval requirement for FSIS approval for off-premises freezing of ready-to-cook poultry. This prescriptive requirement is inconsistent with HACCP.

Response: The commenter's suggestion is beyond the scope of the present rulemaking. FSIS regards the procedures for freezing poultry as encompassing a separate set of issues that are peripheral to the concerns of this rulemaking, which are focused on the chilling of poultry.

Effect on International Trade

Comment: The proposal could distort international trade because the only establishments that will be considered eligible to export to the United States will be those that are able to demonstrate that ''residual water content is due to the final decontamination of the products and not to the chilling process.''

Response: The final rule does not identify any specific post-evisceration process that an establishment must use for any purpose. Further, the rule is not expected to have significant impacts on international trade. Any imports containing retained water will have to be appropriately labeled, and poultry products are likely to be more affected than meats. Only six countries, however, Canada, France, Great Britain, Hong Kong, Israel, and Mexico, are listed as eligible to ship poultry products to the United States. Currently, about 5 million pounds of poultry imports enter the United States

annually. This is a relatively small amount of trade.

Provisions of the Final Rule

Under § 441.10(a), raw livestock and poultry carcasses and parts may not retain any amount of water resulting from post-evisceration processing, absent a demonstration, with data, by the establishment preparing them that such water is the unavoidable consequence of a process used to meet applicable food safety requirements. The data must have been collected according to a written protocol.

Under § 441.10(c)(1), the establishment must keep this protocol on file and available to FSIS personnel. The protocol must explain how the data will be collected and used in making the required demonstration for the product the protocol covers. Under § 441.10(c)(2), the establishment must notify FSIS as soon as its data-collection protocol—whether new or revised—is available to the Agency. Within 30 days after receipt of this notification, FSIS may object to or require the establishment to make specified changes in the protocol. FSIS will take this action if it determines that the protocol is not valid, or that the data collected under it will not be sufficient to demonstrate that the amount of water retained in the product is an unavoidable consequence of the process used to meet applicable food safety requirements.

FSIS is including in § 441.10(d) the expected elements of a protocol for gathering water retention data. These protocol elements were published for comment as Appendix A of the September 11, 1998, proposal.

Under § 441.10(b), meat or poultry products will have to bear a label statement of the maximum percentage of water absorbed and retained as a result of post-evisceration processes. A qualifying statement accompanying the product name could read, ''may contain up to ____ percent absorbed water.'' The percentage must reflect the maximum percentage of water that may be retained in the product. Alternatively, the label may simply bear an accurate statement of the percentage of retained water in the product. Establishments having data or information to demonstrate that their products do not contain retained water will not have to label the products and could include a no retained water claim on the product label. The labels will be generically approved pursuant to 9 CFR 317.5(b)(2) or 381.133(b)(2).

This requirement, which is responsive, in part, to the AMI petition discussed above, would ensure that accurate information concerning the product is conveyed to the consumer in accordance with the misbranding provisions of the FMIA and the PPIA (especially 21 U.S.C. 601(n)(1), (6); 453(h)(1), (6)). It will ensure that the product labeling is not misleading with respect to water retained by the product.

FSIS had proposed that the retained-water statement be contiguous to the product name on the product label. In response to comments, the Agency is providing some flexibility in this matter by also permitting the statement to appear either contiguous to the product name or elsewhere on the principal display panel of the label. The placement of the required information on the label will ensure that the information will be likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

With the required labeling information, consumers will be in a better position to compare packaged raw meat or poultry products containing retained water with alternatives in the meat case. The market will provide incentives to plants to adopt new, cost-effective technologies for reducing retained water. The rule will not affect raw products that now bear complete labeling or nutrition labeling, such as pre-basted frozen turkeys, or further processed products, such as deli meats. This final rule also will not cover cooked and cured pork products, such as those subject to protein-fat-free requirements (9 CFR 318.19(a)(5), 319.104–.105, 327.23).

As stated elsewhere in this document, the Agency's concern in this rule is to ensure that products in commerce will not be adulterated or misbranded. To alleviate some confusion on this point that was expressed in a number of the comments received, the labeling provision in new § 441.10(b) has been more precisely phrased than in the proposal.

Changes in Poultry Chilling Regulations

FSIS is amending the chilling requirements for poultry by removing various prescriptive requirements and specifications, such as the minimum amount of fresh water intake by continuous chillers for each poultry carcass. The removal of those requirements should encourage processors to use the most efficient and effective methods of controlling microorganisms. Establishments will have the flexibility to take advantage of the latest technologies and procedures.

This final rule amends 9 CFR 381.65, which concerns general operating procedures, by removing provisions that are redundant, excessively detailed, or inconsistent with the PR/HACCP final rule. The final rule eliminates current paragraph (b), the prohibition on handling and storing materials that could cause adulteration of poultry products in any room where poultry products are processed, handled, or stored. This provision is unnecessary because HACCP plans have been implemented in every affected establishment and because each HACCP plan must specify the measures to be taken to protect poultry products from physical, chemical, or biological contamination. The requirements in paragraphs (a) and (c) of 9 CFR 381.65 will be retained as paragraph (a) and (b) because they set out general principles of sanitation and commercial practice to which all establishments must adhere.

The requirements in paragraphs (h) and (j) of 9 CFR 381.65, relating to poultry thawing and dressing techniques, are being replaced with two performance standards. The first requires simply that establishments use thawing procedures that will prevent adulteration of, or net weight gain by, the product. The second requires that water used in washing ready-to-cook poultry be permitted to drain freely from the carcass. A new paragraph (c), which replaces paragraph (h), requires that frozen poultry be thawed for further processing in a manner that will prevent product adulteration but would not require that any specific thawing method be used.

The thawing regulation that is being replaced does not prevent practices that may constitute hazards to food safety. For example, it does not prevent re-exposure of thawed, or partially thawed, product to a thawing medium that may have become contaminated by previous use and that may be too warm to prevent microbial growth. Paragraph (h)(1)(i) specifies a maximum permitted thawing medium temperature of 70 °F, which is too high to prevent microbial growth in product that is re-exposed to or held in the medium. The regulation conflicts with HACCP because establishments should assess thawing processes when conducting their hazard analyses. Establishments must be given the responsibility and flexibility to choose thawing measures that are effective and that do not create food safety hazards.

A new paragraph (d) replaces paragraph (j), which specifies the manner in which carcass wash water is to be drained, with a performance standard requiring simply that the wash water be permitted to drain freely from the carcass.

Paragraph (d), which contains a requirement to remove kidneys from

mature chickens and turkeys, is being eliminated. The kidneys of mature chickens and turkeys are a source of cadmium, which can accumulate in the human liver and kidneys and cause acute or chronic health problems. Kidneys with excess cadmium are a ''food safety hazard reasonably likely to occur'' that establishments will identify in their hazard analyses and control through their HACCP systems. Thus, paragraph (d) is redundant with the HACCP regulations. The requirement to remove kidneys is referenced in the definition of ''ready-to-cook poultry'' at 9 CFR 381.1(b)(44). Therefore, the Agency is amending that definition.

Paragraph (i), which specifies how poultry carcasses are to be cut open for evisceration, is being removed. The regulation is outdated and prescriptive and may be an obstacle to improved product safety. The regulation is intended to ensure that opening cuts are made without cutting the intestinal tract and without contaminating the carcass. Unnecessary cuts are prohibited because they may result in carcass contamination during evisceration or excessive water absorption during chilling. The regulation is also intended to maximize the viewing of the interior and viscera of the carcass during the postmortem inspection.

In recent years, the poultry industry has developed new methods of poultry evisceration that do not result in adulteration. For example, ultrasound techniques are available for use as a diagnostic aid to detect malformities or other defects before carcasses are opened. Also, equipment is available that can remove the viscera intact, using vacuum suction, without breakage or spillage of intestinal contents, and other available evisceration systems require that the carcass be opened by a longitudinal cut. The regulation generally limits the opening cut to the area around the vent (cloaca) to prevent birds from carrying excess water under the skin that could cause water-control test failures. Because of this limitation, the new technologies, which can improve efficiency and product wholesomeness, are not likely to be implemented. Establishments, however, should have the flexibility to innovate and to implement promising new technologies, consistent with their HACCP plans.

Paragraph (k), a requirement to adequately drain ready-to-cook poultry after chilling to remove ice and water before packaging, is redundant because of new part 441, and FSIS is removing it.

Paragraphs (l) through (p) are also being removed. These paragraphs include requirements concerning the chilling of poultry parts, the removal from establishments of offal resulting from evisceration, the cleanliness of containers, the sturdiness of packaging materials, and the use of protective coverings. These are all matters that are to be addressed by establishments in their Sanitation SOP's and HACCP plan.

Finally, paragraph (q), concerning the harvesting of detached ova for human food, is being re-designated as paragraph (e) and revised to reduce duplication with requirements in § 590.440 for handling ova and to eliminate a command-and-control requirement to identify the ova past the point of inspection. Also, the reference to a section of the egg products inspection regulations has been amended to account for the recent redesignation (63 FR 72353) of those regulations to Title 9, CFR.

In 9 CFR 381.66, paragraph (a) is being revised. This paragraph requires poultry to be chilled or frozen in a manner that promptly removes animal heat from the carcasses and does not adulterate the product. The second sentence of the paragraph, a command-and-control requirement to file a description of the chilling or freezing procedures with the inspector in charge, is being removed.

The general chilling requirements for poultry, paragraph (b), remain the same. FSIS has long regarded the chilling of poultry to a safe internal temperature within a minimum number of hours as a useful food safety precaution. However, as mentioned above, the Agency intends to undertake rulemaking on this matter. The table of maximum times and temperatures in paragraph (b) is based on the duration of the lag phase of bacterial growth on the surfaces of dressed, ready-to-cook poultry carcasses under plant conditions. Although interested persons are encouraged to submit data that would justify a change in this provision, amending the paragraph is outside the scope of the present rulemaking.

The numerous detailed, prescriptive, command-and-control requirements in paragraph (c) are being removed. For example, the amended paragraph (c)(2)(i) does not specify chilling media temperatures or the use of recording thermometers. New paragraph (c)(1) requires that potable water be used, and new paragraph (c)(2)(i) requires that sufficient water be used to maintain the sanitation of chilling media. However, specific requirements (paragraphs (c)(2)(ii)–(iii) and (c)(2)(v)) concerning the operation of continuous chilling systems, including the minimum amount of fresh water intake per bird, are being removed.

Paragraph (c)(2)(iv) is being re-designated as (c)(2)(ii) and revised as discussed above in the response to comments. This paragraph, which concerns the chilling of major portions of poultry carcasses, was the subject of a September 18, 1999, final rule (63 FR 48958; proposed at 62 FR 31017; June 6, 1997).

Paragraph (c)(2)(vi), the highly detailed and prescriptive requirements concerning water-reconditioning systems for poultry chillers, including the requirement for prior approval of such systems by FSIS, is being removed. Establishments subject to the poultry product inspection regulations are not using these systems because none have proven feasible in commercial operations.

The requirements in paragraphs (c)(4)(i) and (c)(4)(ii), concerning the holding of poultry in chilling tanks, are being removed, and in paragraph (c)(5), the highly specific requirements concerning the use of continuous chillers to chill giblets are also being removed. Establishments will address the food safety hazards associated with these procedures in their HACCP plans. However, the requirement to chill giblets to less than 40 °F in under 2 hours will remain at this time.

Paragraph (d) of § 381.66 is being completely revised. The general requirement to minimize water absorption by raw poultry, and the requirement to furnish equipment necessary for water tests, will remain. The tables setting water absorption and retention limits for the various kinds and weight classes of poultry are being eliminated, as are the requirements for daily water testing by FSIS inspectors. The requirement to notify FSIS of any adjustments in washing, chilling, and draining methods is also being removed.

FSIS is removing paragraph (d)(10), which specifies how poultry may be ice-packed in barrels and requires FSIS approval for the use of alternative types of containers. Establishments will ordinarily have procedures for determining appropriate containers for a product. If, in their hazard analyses, they determine that there are food safety hazards reasonably likely to occur that are associated with containers, they will address these hazards in their HACCP plans.

The Agency is likewise removing paragraph (d)(11), which requires establishments to prevent free water from being included in giblet packages. Among other things, paragraph (d)(11) requires use of a specific type of giblet wrapping material and incorporates by

reference the testing standards that must be met in evaluating the material. This kind of detailed specification is no longer necessary under the Agency's new regulatory approach. Also, establishments must comply with the regulations on net quantity of contents and net weight (9 CFR 317.18–.19, 381.121–121b). This provision will give establishments flexibility in choosing giblet packaging materials, but also the responsibility to ensure that their choice is suitable, as well as safe, for this use. By complying with the retained-water limitation requirements (discussed below) and by appropriately labeling product, establishments will be ensuring that water absorption is controlled as well as ensuring that consumers are appropriately informed.

Finally, paragraph (e), on air chilling, and paragraph (f), governing the freezing of poultry, are being retained substantially in their present form. Paragraph (f)(6), concerning immersion or spray freezing compounds and equipment, will be removed because it is a prior-approval requirement inconsistent with the HACCP regulations and is duplicative of other inspection regulations.

Implementation of the Final Rule

FSIS foresees little difficulty in implementing the revised poultry chilling regulations, which relieve poultry establishments of certain burdens without raising misbranding or adulteration issues. FSIS will ensure compliance with the revised regulations through normal inspection.

To implement the retained-water provisions of this final rule, on the other hand, both the Agency and the regulated industry will have to adopt new procedures. FSIS personnel will verify an establishment's control of water retention by checking establishment records or by conducting in-plant or in-distribution tests of sampled products. FSIS intends to sample product in distribution channels and in official establishments, using the oven-drying method described in Appendix A to determine the amount of moisture in product samples. At poultry processing establishments, the traditional method of weighing birds before and after chilling to determine moisture pick-up will continue to be available to both the Agency and the establishments as a process control check.

FSIS also will conduct independent tests of the establishment's retained-water control as part of investigations of suspected problems or in the course of special studies. The overall focus of the Agency's activities will be to ensure that raw products that enter commerce do not contain water in excess of the amount that is unavoidable in achieving food safety objectives.

FSIS is providing a full year from the publication date for implementation of this final rule to mitigate the effects of the rule on establishments that may have to consider changing or updating their chilling processes and equipment. The extended implementation period should be especially helpful to establishments that meet the small-business-entity size criteria defined by the Small Business Administration.

During the period before the effective date, FSIS will provide its field inspection personnel with the instructions they will need to carry out their review of protocols and verify that establishment data demonstrate the amount of water retention that is unavoidable and support product labeling statements. The Agency will prepare sampling, testing, and document review procedures for Agency use; train Agency personnel in the new procedures; and develop a new national reference database on the natural moisture content of raw products in the various meat and poultry product classes with which this rule is concerned.

To develop this national database on natural moisture content, FSIS will test product samples drawn at official establishments. The Agency will use a common, analogous point of reference in livestock carcass and poultry product preparation at which to determine the naturally occurring percentage of moisture in meat products and poultry products, namely, the point at which the calculated yield weight is determined. (Calculated yield weight of a carcass is its predicted ''green weight''—the weight of the carcass after dressing and before any additional in-plant processing.) In poultry plants, this point is at the re-hanging operation (after de-feathering and hock removal). The analogous point in livestock slaughtering establishments is before the pre-evisceration carcass wash. FSIS has chosen these common reference points to reduce the possibility of measurement errors caused by various carcass-washing procedures.

To determine the moisture content of a product sample, the Agency plans to rely on the oven-drying method described in its Chemistry Laboratory Guidebook and in Appendix A of this document. This method involves weighing, before and after drying, a dish containing a homogenized meat or poultry product sample. The method can be applied to products at any point in processing or distribution. Similar oven-drying methods for determining the amount of moisture in meat, meat products, and poultry products are described in the Official Analytical Methods of the Association of Official Analytical Chemists and in ISO 1442, published by the International Organization for Standardization.

After developing sufficient information on the natural water content of raw meat or poultry products, FSIS will be in a better position to verify that the establishment is complying with the requirement to minimize retained-water amounts when the final rule becomes effective. To determine whether an establishment is complying with the regulations, the Agency will verify the establishment's protocol documentation and the data collected under the protocol, including data on retained-water minimization and pathogen reduction. FSIS also will verify compliance with the requirement that product labels display retained-water amounts, and that the actual retained water in the products corresponds to the labeled amount.

Usually, the verification will consist only of a document check. However, the Agency will occasionally test products for moisture content to verify the establishment's findings.

FSIS will randomly sample raw meat and poultry products both in-plant and in-distribution and will test the products for retained water content. FSIS will collect and run tests on product samples and statistically analyze the results of the tests.

The Agency will directly measure the moisture content of the raw products sampled in-plant at pre-shipment using its oven-drying method. The Agency will compare the results of these tests with the naturally occurring amounts of water in the national reference database and with the retained-water statements on the product labels to determine whether the products are in compliance with the requirement to minimize retained water, and whether they are correctly labeled with a retained-water statement.

To measure the amount of retained water and determine compliance with the final rule in in-plant situations when using the weighing method, FSIS will compare product weights taken after chilling, but before the product leaves the establishment, to the pre-final-wash weight or (in poultry plants) the calculated yield weight. In livestock slaughtering plants, the Agency expects to be comparing pre-final wash or ''hot'' carcass weights with the ''cold weights'' taken after spray chilling in establishments using the spray-chill process.

The Agency does not expect to use calculated yield weight data as a basis for comparing hot and cold livestock carcass weights because such data are not available for most livestock establishments. The great majority of such establishments do not weigh carcasses after de-hiding or de-hairing and before the pre-evisceration wash. FSIS is aware that there may be a slight, measurable gain in carcass weight immediately after the pre-evisceration wash. However, this gain is usually more than offset by moisture loss on the kill floor. Thus, the ''hot'' carcass weight does not include a moisture gain resulting from the pre-evisceration wash.

FSIS is not prescribing any particular method that official establishments must use to measure the amount of retained water in their products. Establishments are free to use any scientifically valid method for this purpose. Establishments may want to use the food chemistry method described in Appendix A and used by FSIS to determine the moisture content of their products. Because of the destructive nature of the method and the delay in getting results, establishments may find it more convenient on a day-to-day basis to compare the weights of carcasses and parts before and after they are exposed to washes, sprays, or immersion chilling. The data from such checks would have to be available to FSIS to verify. As mentioned, poultry establishments will continue to be able to use the traditional method involving the weighing of birds before and after chilling as a check on water retention controls.

FSIS also will conduct surveys of products in plants and in distribution channels to obtain an overview of national compliance with the regulations and to update the national reference database on the moisture content of meat and poultry products. The Agency will compare the results of these surveys with the information in its database to determine whether any adjustments in its enforcement of the regulations are necessary. Comments are requested on sampling and survey methods that the Agency should consider using both for initially building the national reference database and for the on-going compliance overview.

FSIS will continue to verify that products are in compliance with the net-weight requirements for meat and poultry products. As stated elsewhere in this document, neither the net-weight requirements nor the obligation of an establishment to comply with them is affected by this final rule.

FSIS expects there to be requests for adding water solutions to meat and poultry manufacturing trimmings in an effort to reduce the pathogen levels on product. Such applications may or may not result in retained water, as well as chemical residues. FSIS expects such applications to adhere to the same criteria as other applications resulting in retained water. FSIS will allow establishments to implement the provisions of this final rule in advance of the effective date provided the establishment informs the appropriate District Office in order that inspection program personnel are provided with the necessary instructional materials. FSIS expects to provide instructions regarding early implementation of the final rule.

Executive Order 12866 and Regulatory Flexibility Act

Current Practices in the Poultry Industry

The regulations controlling retained water in poultry carcasses have consisted of three major components: (1) A performance standard requiring washing, chilling, and draining practices that will minimize water absorption and retention at time of packaging; (2) limits for maximum retained water in birds that will be packaged as whole carcasses; and (3) limits for maximum retained water in birds that will be ice-packed or cut up prior to packaging. The performance standard is to minimize the water that is absorbed and subsequently retained, *i.e.*, it is not interpreted as requiring minimization of both water absorption and water retention. In implementing the standard, FSIS concludes that the performance standard is met when retained water is under the maximum limits.

Until the *Kenney* case, argued in U.S. District Court and referred to earlier in this document, various limits on maximum retained water applied to the various weight classes of whole chickens and turkeys. For example, the maximum retained water for most whole chickens weighing 4.25 pounds or less was 8 percent. The maximum retained water for chicken that is ice-packed or subsequently cut up into parts has been 12 percent. In its July 1997 decision, the U.S. District Court found that the regulation specifying water absorption and retention limits for ready-to-cook poultry that is to be frozen, cooked, or consumer-packaged as whole poultry was arbitrary and capricious because the Secretary of Agriculture did not explain in the rulemaking record how he determined the particular water retention levels, why water retention cannot be reduced below those levels, or why meat and poultry should be treated differently with respect to water retention. The Court therefore set aside the water retention limits for poultry to be consumer packaged, frozen, or cooked as whole poultry. In the wake of the decision, there have been no regulatory criteria by which to determine whether retained water has been minimized in chilled or frozen whole birds.

As discussed previously, FSIS is mandated by the FMIA and PPIA to prevent the distribution in commerce of meat or poultry products that are adulterated or misbranded. Without limits on retained water, FSIS cannot adequately protect consumers from adulteration and misbranding due to excessive retained water in whole birds. Hence, the Agency is establishing a new regulatory basis for minimizing retained water.

FSIS is replacing the regulations under which poultry establishment was considered to be ''minimizing'' retained water when it was operating within the regulatory limits. FSIS is aware that not all establishments have really been minimizing retained water. Data analyzed for this FRIA show that some poultry establishments have been controlling their processes to retain the maximum allowed amount of water. While this is considered acceptable in the sense that product is not adulterated, it is not consistent with a regulatory intent to minimize. However, it may be consistent with food safety objectives to reduce pathogens.

The existence of the 12-percent limit for cut-up chicken is in itself inconsistent with the concept of minimization. Many establishments pack both whole-and cut-up chicken. In meeting the 8-percent limit for whole birds, they demonstrate that their minimum is below 8 percent. The 12 percent limit serves as an opportunity to maintain water levels in cut-up poultry. The 12-percent limit is also available as default when the 8-percent limit is not achieved. An establishment can divert birds to cut-up operations when they fail the whole bird limit.

With this final rule, FSIS also is addressing the issue of inconsistent treatment of meat and poultry in its regulations because, under the final rule, both meat and poultry products will be subject to the same requirements.

Need for the Rule

The FMIA and PPIA, which the Agency administers, make clear the

obligation of producers of raw meat or poultry products not to mislead consumers. FSIS thinks that if they market as meat or poultry a product that contains something other than meat or poultry, that fact should be disclosed. It has been the consistent policy of FSIS to ensure that information that accurately discloses the contents of meat or poultry products is made available to consumers of those products.

As noted earlier in this document, a 1997 U.S. District Court decision set aside the regulatory limits on retained water in poultry products. The District Court found that the Agency had not presented the basis for its retained water levels, why water retention could not be reduced below those levels, or why meat and poultry should be regulated differently with respect to water retention.

The District Court ruling left FSIS without regulatory criteria for determining whether retained water had been minimized or what levels constituted adulteration. The Agency also no longer had available published retained water limits that it could enforce in an effort to protect consumers from misbranded product.

Analysis of Alternatives

This rule resulted from an analysis of six alternative regulatory approaches for addressing retained water in raw meat and poultry products. The six alternatives are as follows:

1. No limit on retained water but mandatory labeling that identifies the percentage of retained water in the product. FSIS did not recommend this alternative for adoption because it would not reduce retained water so that economic adulteration would continue to persist. It would, however, be advantageous to consumers because it would enable them to compare alternative packages of poultry with varying quantities of retained water and prices and select the package to suit their budgets.

2. A requirement that all establishments meet a water limit based on best available technology, with mandatory labeling to indicate any retained water. FSIS did not propose this option because the adoption of the best available technology would be a step backward into a regime of command and control. It would also impose considerable costs on plants that are currently not employing such a technology without a corresponding improvement in food safety. For example, if the best available technology is determined to be the continuous chillers, there are several small and medium size plants that do not employ this technology. The economic impact of such an option would be significant on these plants. In the current environment of regulatory reform, FSIS is moving away from command and control to incentive-based performance standards. Such standards permit plants to reduce their retained water levels irrespective of the technology they employ. A moisture limit based on the best performance achievable with existing equipment, with mandatory labeling to show any retained water. FSIS did not adopt this option because, beyond stating that water retention should be minimized consistent with maximizing the safety of the product, it would be difficult, if not impossible, for FSIS to define the best performance achievable. This option would also encourage establishments to continue to use existing equipment, perhaps beyond the economic life of the equipment.

3. A standard of zero retained moisture. FSIS did not recommend this option because the costs of this option might exceed the benefits. Finally, some minimum amount of retained water might be necessary for reducing pathogens.

4. A requirement that no retained water could be included in net weight. FSIS did not recommend this option for adoption because it would require establishments to adjust their scales to account for retained water. The costs of adjusting these scales could be excessive. Moreover, enforcement of net weight requirements is an area where Federal, State and local authorities share responsibility and must cooperate. The enforcement procedure, as adopted by the National Conference on Weights and Measures, are published in NIST Handbook 133, Third Edition, Supplement, ''Checking the Net Contents of Packaged Goods''. The National Institute of Standards and Technology (NIST) has a statutory responsibility for ''cooperation with the states in securing uniformity of weights and measures laws and methods of inspection.

5. A requirement of zero retained water unless the water retention is unavoidable in processes necessary to meet food safety requirements, *e.g.,* to reduce pathogens, with product labeling to indicate the presence of retained moisture, where applicable. FSIS recommended this option because it prioritizes food safety above retained water. It also includes the provision of labeling the retained water to help consumers decide amongst alternative packages with different levels of retained water and prices.

FSIS chose the last alternative. The selected option does not allow retained water in an affected product unless it is an unavoidable consequence of the process or processes used to meet applicable food safety requirements. By ''unavoidable consequence'' the Agency means an unavoidable and irreducible side effect. Under this option, inspected establishments, associations, or other groups, using acceptable protocols must establish levels of unavoidable retained water. Also, the maximum amount of retained water that can be present must be stated on the product label. FSIS has found that this option is likely to provide greater benefits than other options because it is more flexible and likely to prove less costly than some of the proposed alternatives. A food safety requirement can be a regulatory prescription, such as the temperature to which a product must be chilled and held. It can also be a preventive measure taken at a CCP or a critical limit in the establishment's HACCP plan. For example, the proposed rule might increase human handling for transferring products from the chillers to the freezer, thereby increasing cross contamination. A critical control point at such handling could reduce, if not eliminate, cross contamination. Given a food safety requirement, an establishment must choose a method for satisfying the requirement.

The method selected for meeting food safety requirements may have unintended consequences that cannot be eliminated. A consequence of an antimicrobial treatment of carcasses or a carcass chilling method may be an increase in the water content of carcasses and parts. FSIS is requiring that the amount of water that might be retained in carcasses and parts as a result of using such an anti-microbial or chilling method be an unavoidable and irreducible effect of using that method.

To be applicable to the raw products of an inspected establishment, a non-zero retained-water limit would have to be based on supporting data collected in accordance with a written protocol that has been subject to review by FSIS. This final rule will allow an individual establishment or industry trade association or other group using the same or similar processing techniques to develop a protocol and carry out data-generating studies according to the protocol. Depending on the design of the protocol, the data gathered could justify water-retention limits for a single establishment, a group of establishments with similar equipment processing similar classes of raw product, or all such establishments in an industry. To establish a non-zero retained water limit, an inspected establishment, industry trade association, or other group would have to generate the necessary supporting data. The labels of products would have to state the presence of retained water in the products.

Cost Estimates

The analysis estimates a range of costs the poultry industry will incur to meet this new regulatory requirement. If establishments are able to demonstrate that current levels of retained water are unavoidable in achieving applicable food safety standards, establishments will not incur additional costs for reducing retained water. These establishments would only incur costs for establishing limits and costs for labeling the product. The costs of

establishing limits for the poultry industry are estimated to be $1.5 million (in 1998 dollars). This estimate is based on each establishment conducting its own tests. The cost should be lower if associations or other groups establish limits for different types of chiller systems. Labeling costs are estimated to be $18.4 million (in 1998 dollars) if all raw, single-ingredient poultry continues to retain water.

To the extent that establishments cannot demonstrate that current retained water levels are unavoidable in achieving applicable food safety standards, significant costs could be incurred as establishments modify processes to minimize retained water levels. FSIS estimates that the average retained water for chicken, as a percentage of net weight is currently in the 5.0 to 6.5 percent range. The corresponding level for turkey is 4.0 to 4.5 percent. Reducing retained water could entail a wide range of process modifications, depending on the type of chilling equipment currently used and amount of retained water that would have to be removed. FSIS estimates that, if extensive modifications to chilling systems were needed throughout the industry, the fixed costs associated with removing a substantial portion of the existing retained water could run to well over $100 million. The substantial portion was defined in the PRIA, viz., that it would take 12 hours to drain substantial portion of the retained water in chickens. The 12-hour drain would reduce the existing level range from 5–6.5 percent, by 4 to 5 percentage points, *i.e.,* to 1–1.5 percentage range, or by about 80 percent. The fixed costs estimates of these extensive modifications were taken from USDA/ERS study, discussed in the PRIA, and are summarized below.

The drip-dry process for chicken requires production workers to remove chickens from a production line, place the chickens in vats, place the vats in a cool room for 12 hours, and return the chickens to the poultry line. Besides labor, this process requires cooling space, stainless steel vats that hold up to 500 chickens, and a forklift to transfer chickens from a production line to a storage room and then back to the line after the drip-dry process is complete.

To extend draining or dripping time, many establishments would have to add refrigerated facilities, purchase vats for storing birds being drained, hire additional personnel, and purchase additional stock handling equipment. There would be inventory costs due to holding birds off the market for a longer time before shipment. Holding birds at inspected establishments would also reduce the corresponding retail shelf life.

The ERS staff developed some cost estimates for holding poultry based on the following industry input:

1. One common method of draining uses stainless steel vats at a cost of $1,000 each.

2. Vats hold approximately 500 chickens or 100 turkeys.

3. Cooler space costs $125 per square foot.

4. Vats can be stacked two high.

5. Stacked vats with aisles require 12 square feet of space per vat.

6. Forklifts to move vats cost $24,000 each.

The Daily Moisture Records sometimes include a record of the additional drain time required. The time varies with the initial water level, the drain configuration and the location of the excess water, *i.e.,* under skin versus between muscle tissues or within muscle tissues. Based on the violations data, it was determined that a 12-hour drain would be the minimum time required to remove most of the retained water from chickens.

Most of the drain time for turkeys ranged from ½ to 1 hour on an ''hour per percentage reduction'' basis. All of the turkey violations noted were less than 1 percent above the existing limit whereas some of the chickens started at water levels 4 to 5 percentage points above the existing limits.

To drain chickens for 12 hours is equivalent to saying the industry would need to add extra capacity to drain half a day's production, since most chicken is processed in establishments running two shifts.

Since average chicken production is 29.5 million birds per day (assuming a 260-day work year), half a day's production is 14.75 million birds. Using the above factors, this would require 29,510 vats at $29.5 million; 354.12 square feet of cooler space at $44.3 million' and $4.8 million of forklifts assuming the largest 200 chicken establishments would each require an additional forklift. In this 12-hour case, the total fixed costs would be $78.6 million ($29.5 + 44.3 + 4.8).

In addition, half a day's turkey production at 557,000 birds requiring 5,570 vats would cost $5.57 million and cooler space would cost $8.36 million. Assuming that the largest 70 turkey establishments would require an additional forklift at a cost of $1.68 million, the total fixed costs for draining all turkeys for 12 hours would be $15.61 million ($5.57 + 8.36 + 1.68).

In short, the total fixed costs for a 12-hour draining of chickens and turkeys would be $94.2 million ($$78.6 + $15.61). Since these costs were estimated in 1997, updating them with to the year 2000 would amount to about $100 million.

Variable costs of holding poultry to drain would include increased labor costs, higher utility costs, increased overheads, and the cost of carrying additional inventory. Holding half a day's production is equivalent to continually storing a wholesale value of $37 million poultry ($19.2 billion divided by 520 shifts/year). At a 5 percent interest rate, the annual cost of draining poultry for 12 hours would be $1.85 million.

It would be conservative to assume a minimum average of one additional employee per establishment. Since there are 300 establishments, the cost at $21,500 per employee per year would result in an annual labor cost of $6.4 million ($21,500 x 300). The total variable costs of $8.25 million ($1.85 + $6.4) would increase to about $10 million in the year 2000 when updated by an increase in Employment Cost Index.

To sum up, the first year costs of draining poultry would amount to $110 million ($100 m + $10 m). These are the costs of reducing retained water in the range of 1–1½ percent. Since the retained water is not reduced to zero, these are merely the lower bounds. The upper bound costs would be the costs of reducing retained water to zero percent.

However, if extensive modifications were not needed, the industry would only incur the costs of establishing retained water limits and meeting the labeling requirements of the final rule.

Benefits of Final Rule

Because of longstanding industry petitions and the decision in the *Kenney* case, FSIS has had to develop new regulatory requirements to carry out its responsibilities for protecting the public from economic adulteration. Prevention of economic adulteration is a consumer benefit. Consumers also will benefit from the additional information on retained water that will be provided as a result of the labeling requirement. The information on retained water should contribute to a sounder basis for purchasing decisions. Consumers are currently not being informed about the amount of retained water. Consumers will benefit from having improved knowledge of product quantity in terms of meat or poultry meat content.

The final rule will provide the meat industry with additional flexibility for meeting the pathogen reduction performance standards. Meat processors will be able to use pathogen reduction techniques without having to be

concerned about meeting the existing zero retained water requirement. Of course, if their single-ingredient raw products retain water, the products will have to be labeled to indicate how much water may be retained.

This final rule also will provide affected establishments with increased flexibility to choose the most appropriate means for implementing HACCP plans for protecting the safety or raw product while minimizing the potential for economic adulteration. By removing certain command-and-control requirements and providing increased flexibility for HACCP implementation, this final rule may reduce the costs of HACCP implementation.

As discussed in the preamble, this final rule eliminates many requirements, including the following:

1. The requirement that poultry establishments provide FSIS with a description of all chilling and freezing procedures.

2. The requirement that poultry establishments notify FSIS before any changes in chilling procedures are implemented and provide FSIS with test results demonstrating the effectiveness of the changes.

3. The requirements that meat carcasses cannot show any weight gain resulting from the use of carcass spray systems.

4. Elimination of minimum water intake requirements for immersion chillers.

Finally, the rule will also provide all affected establishments with the flexibility and market incentives to implement new procedures for meeting pathogen reduction performance standards. In addition, by replacing command-and-control requirements with HACCP-consistent performance standards, the final rule will eliminate some recordkeeping and reporting burdens, provide for increased flexibility, and reduce the costs of HACCP implementation.

Impact on Small Entities

The final rule should not have a significant impact on a large number of small businesses. Almost half of all federally inspected poultry slaughter establishments are large business entities, based on the Small Business Administration size criterion of more than 500 employees.

These establishments, and indeed most poultry establishments, use immersion chilling to meet the existing chilling requirements for poultry, *e.g.,* 9 CFR 381.66(b)(2) requires that poultry carcasses under 4 pounds must be chilled to 40 °F within 4 hours following evisceration. It follows that, for most poultry establishments, the unavoidable retained water amount is the minimum level that can be reached with existing immersion chiller equipment while still meeting the chilling requirement. FSIS recognizes that this minimum must be established within practical limits for operating parameters such as drip time and chiller water temperature. The industry already has information concerning the chiller variable settings that minimize water retention. Therefore, the poultry industry can establish water retention limits for various chiller systems with minimal costs. FSIS also recognizes the possibility that some poultry establishments may have to use anti-microbial interventions that result in higher levels of retained water to meet the *Salmonella* standards than they do to meet the existing chilling requirements.

Fifty to 60 poultry slaughter establishments process under a million birds annually. Many of these smaller operations do not use continuous immersion chillers. They use ice or slush to meet the existing chilling requirements. Few, if any, would have to reduce the current level of retained water. The establishments most affected by this final rule are the firms operating immersion chillers in a manner that targets the maximum allowable retained water.

This final rule should not have a significant impact on the meat industry because that industry is already achieving zero-percent retained water. This final rule, however, provides an alternative for establishments that are having or will have trouble meeting the *Salmonella* performance standards. These establishments could use a full range of anti-microbial rinses or hot-water rinses without having to worry about meeting a zero-percent retained-water limit. If they can demonstrate that they need a non-zero limit to meet the *Salmonella* standards, they can use the flexibility provided by the final rule and establish a new water limit as long as they state the maximum percentage of water absorbed and retained on product labels. Of the meat products affected by this final rule, edible organs prepared in slaughtering plants are most likely to retain water. Of the 1,200 establishments that prepare these products, about 85 percent are small. Most of these establishments will have to label their products to indicate the maximum retained-water percentage in the products.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking or packaging requirements on federally inspected meat and meat products or poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA. States and local jurisdictions also may exercise concurrent jurisdiction, for the same purpose, over imported meat and poultry products that are not at an official establishment after the entry of such imported articles into the United States.

This final rule is not intended to have retroactive effect.

There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this final rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629; February 16, 1994), ''Federal Actions to Address Environmental Justice in Minority and Low-Income Populations,'' FSIS has considered potential impacts of this final rule on environmental and health conditions in low-income and minority communities.

This final rule will provide new, uniform regulations limiting the amount of water retained by raw, single-ingredient, meat and poultry products as a result of post-evisceration processing, such as carcass chilling, considered necessary to minimize pathogen growth on the products. As explained in the economic impact analysis, the regulations should generally benefit consumers of meat, meat products, and poultry products. The regulations will not require or compel meat or poultry establishments to relocate or alter their operations in ways that could adversely affect the public health or environment in low-income and minority communities. Further, this final rule will not exclude

any persons or populations from participation in FSIS programs, deny any persons or populations the benefits of FSIS programs, or subject any persons or populations to discrimination because of their race, color, or national origin.

FSIS estimates that as many as 4 percent of meat and poultry establishments under Federal and State inspection are owned by women or members of non-white minority groups. Therefore, of the establishments affected by this rule, as many as 4 percent of the establishments may be under female or minority ownership. FSIS has no reason for supposing, however, that the effects of this rule, whether adverse or beneficial, on such establishments would be disproportionate.

Additional Public Notification

Public awareness of all stages of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and provide copies of this **Federal Register** publication of this final rule in the weekly FSIS Constituent Update. The FSIS Constituent Update is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at ''http://www.fsis.usda.gov''. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to the Agency's constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, readers of this document may fax their requests to the Congressional and Public Affairs Office, at (202) 720–5704.

Paperwork Requirements

Title: Retained Water in Raw Meat and Poultry Products; Poultry Chilling.

Type of Collection: Labels and labeling records; data or information supporting labeling statements.

Abstract: Slaughtering establishments would have to have data to support percent-absorbed-water statements on product labels and to demonstrate that the amount of absorbed water in the product is unavoidable under the establishments' HACCP plans. The data would have to have been collected under written protocols.

This final rule will require an estimated 210,000 hours to develop the data to support retained water levels above zero. All 300 federally inspected poultry establishments will need to conduct studies to establish minimum retained water levels. The FRIA assumed that the average establishment would conduct studies for two product categories. The FRIA assumed that a reasonable study would examine 10 alternative chiller settings with four 50-bird water tests conducted for each setting. Each test would require 2.5 hours. Thus, it would take an estimated 200 hours for each of 300 poultry establishments, or more than 30,000 hours.

The FRIA assumed that at most 500 meat establishments need to develop non-zero water levels to meet the existing pathogen-reduction performance standards. With larger carcasses, the recording time is doubled to 200 hours per establishment. These 500 meat establishments would also require 100 hours to collect microbial samples. Thus, the information collection would be 300 hours for each of 500 establishments, or 150,000 hours.

All 800 establishments with non-zero levels would also have to develop new, generically approved labels.

Estimate of Burden: Protocols for determining minimum feasible water retention in product classes (3,000 hours); data supporting absorbed-water label statements or the lack thereof (210,000 hours). Changes to product labels would be generically approved and, therefore, establishments would not incur a burden from label submission.

Respondents: Meat and poultry product establishments or trade associations.

Estimated Number of Respondents: 800.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 213,000 hours.

Copies of this information collection assessment can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th SW., Washington DC 20250.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of 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.

Specifically, FSIS is interested in comments regarding the label requirements. Some commenters expressed concern about the usefulness, or ''practical utility,'' of the information on the maximum percentage of retained water that must be disclosed on the label. FSIS welcomes any information and data to support this requirement or that presents alternatives. FSIS will fully address any comments in its information collection request that it will submit to the Office of Management Budget 60 days after publication of this rule.

Comments may be sent to Lee Puricelli, see address above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20253.

Comments are requested by March 12, 2001. To be most effective, comments should be sent to OMB within 30 days of the publication date.

List of Subjects

9 CFR Part 381

Food labeling, Poultry and poultry products.

9 CFR Part 441

Consumer protection standards, Meat and meat products, Poultry products.

For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III, as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Paragraph (b) of § 381.1 is amended by revising the definition of *Ready-to-cook poultry* to read as follows:

§ 381.1 Definitions.

* * * * *

(b) * * *

(44) *Ready-to-cook poultry.* ''Ready-to-cook poultry'' means any slaughtered

poultry free from protruding pinfeathers and vestigial feathers (hair or down), from which the head, feet, crop, oil gland, trachea, esophagus, entrails, and lungs have been removed, and from which the mature reproductive organs and kidneys may have been removed, and with or without the giblets, and which is suitable for cooking without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry or other parts of poultry, such as reproductive organs, head, or feet that are suitable for cooking without need of further processing.

* * * * *

3. Section 381.65 is revised to read as follows:

§ 381.65 Operations and procedures, generally.

(a) Operations and procedures involving the processing, other handling, or storing of any poultry product must be strictly in accord with clean and sanitary practices and must be conducted in a manner that will result in sanitary processing, proper inspection, and the production of poultry and poultry products that are not adulterated.

(b) Poultry must be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure that breathing has stopped prior to scalding. Blood from the killing operation must be confined to a relatively small area.

(c) When thawing frozen ready-to-cook poultry in water, the establishment must use methods that prevent adulteration of, or net weight gain by, the poultry.

(d) The water used in washing the poultry must be permitted to drain freely from the body cavity.

(e) Detached ova may be collected for human food and handled only in accordance with 9 CFR 590.440 and may leave the establishment only to be moved to an official egg product processing plant for processing. Ova from condemned carcasses must be condemned and treated as required in § 381.95.

4. Section 381.66 is amended by revising paragraphs (a), (c), and (d) and removing paragraph (f)(6), to read as follows:

§ 381.66 Temperatures and chilling and freezing procedures.

(a) *General.* Temperatures and procedures that are necessary for chilling and freezing ready-to-cook poultry, including all edible portions thereof, must be in accordance with operating procedures that ensure the prompt removal of the animal heat, preserve the condition and wholesomeness of the poultry, and assure that the products are not adulterated.

* * * * *

(c) *Ice and water chilling.* (1) Only ice produced from potable water may be used for ice and water chilling. The ice must be handled and stored in a sanitary manner.

(2)(i) Poultry chilling equipment must be operated in a manner consistent with meeting the applicable pathogen reduction performance standards for raw poultry products as set forth in § 381.94 and the provisions of the establishment's HACCP plan.

(ii) Major portions of poultry carcasses, as defined in § 381.170(b)(22), may be chilled in water and ice.

(3) Previously chilled poultry carcasses and major portions must be maintained constantly at 40 °F or below until removed from the vats or tanks for immediate packaging. Such products may be removed from the vats or tanks prior to being cooled to 40 °F or below, for freezing or cooling in the official establishment. Such products must not be packed until after they have been chilled to 40 °F or below, except when the packaging will be followed immediately by freezing at the official establishment.

(4) Giblets must be chilled to 40 °F or below within 2 hours from the time they are removed from the inedible viscera, except that when they are cooled with the carcass, the requirements of paragraph (b)(2) of this section must apply. Any of the acceptable methods of chilling the poultry carcass may be followed in cooling giblets.

(d) *Water absorption and retention.* (1) Poultry washing, chilling, and draining practices and procedures must be such as will minimize water absorption and retention at time of packaging.

(2) The establishment must provide scales, weights, identification devices, and other supplies necessary to conduct water tests.

* * * * *

(f) * * *

(6) [Removed]

5. A new Part 441 is added to subchapter E to read as follows:

PART 441—CONSUMER PROTECTION STANDARDS: RAW PRODUCTS

Authority: 21 U.S.C. 451–470, 601–695; 7 U.S.C. 450, 1901–1906; 7 CFR 2.18, 2.53.

§ 441.10 Retained water.

(a) Raw livestock and poultry carcasses and parts will not be permitted to retain water resulting from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected in accordance with a written protocol, that any water retained in the carcasses or parts is an unavoidable consequence of the process used to meet applicable food safety requirements.

(b) Raw livestock and poultry carcasses and parts that retain water from post-evisceration processing and that are sold, transported, offered for sale or transportation, or received for transportation, in commerce, must bear a statement on the label in prominent letters and contiguous to the product name or elsewhere on the principal display panel of the label stating the maximum percentage of water that may be retained (*e.g.*, ''up to X% retained water,'' ''less than X% retained water,'' ''up to X% water added from processing''). The percent water statement need not accompany the product name on other parts of the label. Raw livestock and poultry carcasses and parts that retain no water may bear a statement that no water is retained.

(c)(1) An establishment subject to paragraph (a) of this section must maintain on file and available to FSIS its written data-collection protocol. The protocol must explain how data will be collected and used to demonstrate the amount of retained water in the product covered by the protocol that is an unavoidable consequence of the process used to meet specified food safety requirements.

(2) The establishment must notify FSIS as soon as it has a new or revised protocol available for review by the Agency. Within 30 days after receipt of this notification, FSIS may object to or require the establishment to make changes in the protocol.

(d) Expected elements of a protocol for gathering water retention data:

(1) *Purpose statement.* The primary purpose of the protocol should be to determine the amount or percentage of water absorption and retention that is unavoidable using a particular chilling system while achieving the regulatory pathogen reduction performance standard for *Salmonella* as set forth in the PR/HACCP regulations (9 CFR 310.25(b), 381.94(b)) and the time/temperature requirements set forth in 9 CFR 381.66. Additional purposes that could be included are determining chilling system efficiency and evaluating product quality.

(2) *Type of washing and chilling system used by the establishment.* Any post-evisceration washing or chilling processes that affect water retention levels in and microbial loads on raw products should be described. For poultry establishments, the main chiller types, identified by the mechanism used to transport the birds through the chiller or to agitate the water in the chiller, are the drag-through, the screw type, and the rocker-arm type.

(3) *Configuration and any modifications of the chiller system components.* A description of chiller-system configurations and modifications should be provided. The description should include the number and type of chillers in a series and arrangements of chilling system components, and the number of evisceration lines feeding into a chiller system. If there is a pre-chilling step in the process, its purpose and the type of equipment used should be accurately described. Any mechanical or design changes made to the chilling equipment should be described.

(4) *Special features in the chilling process.* Any special features in the chilling process, such as antimicrobial treatments, should be described. Also, the length and velocity of the dripping line should be described, as well as the total time allowed for dripping. Any special apparatus, such as a mechanism for squeezing excessive water from chilled birds, should be explained.

(5) *Description of variable factors in the chilling system.* The protocol should describe variable factors that affect water absorption and retention. In poultry processing, such factors are typically considered to be the time in chiller water, the water temperature, and agitation. The protocol should consider air agitation, where applicable. Additional factors that may affect water absorption and retention are scalding temperature and the pressure or amount of buffeting applied to birds by feather removal machinery, and the resultant loosening of the skin. Another factor that should be considered is the method used to open the bird for evisceration.

(6) *Standards to be met by the chilling system.* For example, the chilling system may be designed simply to achieve a reduction in temperature of ready-to-cook poultry to less than 40 °F within the time limit specified by the regulations, or in less time. As to the standard for pathogen minimization, the *Salmonella* pathogen reduction standards, as set forth in the PR/HACCP final rule, have been suggested. Although there is not yet an applicable *Salmonella* standard for turkeys, establishments are free to adopt practicable criteria for use in gathering data on turkeys under the protocols here suggested. Additional microbiological targets, such as *E. coli* or *Campylobacter* levels, or reductions in numbers of other microorganisms, may also be used.

(7) *Testing methods to be employed.* The protocol should detail the testing methods to be used both for measuring water absorption and retention and for sampling and testing product for pathogen reductions. The protocol should call for water retention and pathogen reduction tests at various chilling equipment settings and chilling time-and-temperature combinations. The method to be used in calculating water absorption and retention should be reproducible and statistically verifiable. With respect to the pathogen-reduction aspect of the testing, FSIS recommends the methods used for *E. coli* and *Salmonella* testing under the PR/HACCP regulations. The number of samples, the type of samples, the sampling time period, and the type of testing or measurement should be included in the protocol.

(8) *Reporting of data and evaluation of results.* The protocol should explain how data obtained are to be reported and summarized. The criteria for evaluating the results and the basis for conclusions to be drawn should be explained.

(9) *Conclusions.* The protocol should provide for a statement of what the data obtained demonstrate and what conclusions were reached.

Done at Washington, DC: January 3, 2001.

Thomas J. Billy,

Administrator.

Note: Appendix A will not be codified in Title 9 of the Code of Federal Regulations.

Appendix A—Method for Determining Moisture in Meat and Meat Products and Poultry Products

A. Introduction

Theory: In this determination, a weighed sample is heated, cooled, and then re-weighed. The loss in weight is calculated as moisture content.

B. Equipment

Apparatus:

a. Covered aluminum dish. At least 50 mm. diameter and not greater than 40 mm. deep, containing a paddle.

b. Mechanical convection oven, preferably one equipped with a booster heater.

c. Food chopper with plate openings ≤ ⅛″ (3 mm.), or Robot Coupe or equivalent food processor.

C. [Reserved.]

D. [Reserved.]

E. Sample Preparation Procedure for Fresh Meat or Poultry

For accurate and reliable measurement, the raw meat or poultry sample should be finely ground to a homogeneous consistency.

F. Analytical Procedure

a. Accurately weigh sample (representing approximately 2 g. of dry material) into an aluminum dish.

i. Weigh the sample as rapidly as possible to minimize loss of moisture.

ii. The weight of the pan should include the paddle, which is used in spreading the sample across the bottom of the pan, thereby presenting a greater sample surface area, which is beneficial to moisture removal.

iii. If the sample is relatively dry when received, a small quantity of distilled water may be added to the pan only after the sample weight is obtained. This quantity of water will be helpful in spreading the sample across the bottom of the pan, and will introduce no error since it will be evaporated when the sample is oven-dried.

b. Dry, with cover removed, for 16–18 hours at 100–102 °C, or for 4 hours at 125 °C in mechanical convection oven.

Do not overload the drying oven or sample may be insufficiently dried and give low results. Drying time will start when the original temperature has been reached. Use the oven's booster heater, if the oven is so equipped, to minimize this recovery time.

G. Calculations

1. Procedure

$$\text{Percent} = \frac{100\ (B - C)}{A}$$

A = sample weight
B = weight of dish + sample before drying
C = weight of dish + sample after drying

Note: If laboratory is not air-conditioned, and humidity is high, dishes should be desiccated before the initial and final weighings.

Reference: Official Methods of Analysis of the Association of Official Analytical Chemists, 16th Edition, 950.46.

[FR Doc. 01–460 Filed 1–4–01; 10:35 am]

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Federal Register

Tuesday,
January 9, 2001

Part IV

Department of Education

Bilingual Education: Field-Initiated Research Program; Inviting Applications for New Awards for Fiscal Year (FY) 2001; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.292B]

Bilingual Education: Field-Initiated Research Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program. The statutory authorization for this program is contained in section 7132 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 7452, as amended by the Improving America's Schools Act of 1994, Public Law 103–382 (October 20, 1994).

Purpose of Program: The purpose of this program is to provide grants for field-initiated research activities related to the improvement of bilingual education and special alternative instructional programs for limited English proficient (LEP) children and youth.

Eligible Applicants: Institutions of higher education, nonprofit organizations, State educational agencies, and local educational agencies that have received grants under subparts 1 or 2 of Part A of title VII of the ESEA within the previous five years.

Applications Available: January 9, 2001

Deadline for Transmittal of Applications: February 8, 2001.

Deadline for Intergovernmental Review: March 12, 2001.

Available Funds: $1,000,000.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Per Year: $115,000.

Estimated Number of Awards: 8.

Note: The Administration has requested $1,000,000 for new awards under the Field-Initiated Research program in FY2001. The actual level of funding, if any, depends upon final congressional action.

Project Period: 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and, (b) The regulations in 34 CFR part 299, General Provisions, ESEA.

Description of Program

Funds under this program are available to carry out field-initiated research conducted by current or recent recipients of grants under subparts 1 or 2 who have received those grants within the previous five years. Research under this program may provide for longitudinal studies of students or teachers in bilingual education, monitoring the education of those students from entry in bilingual education through secondary school completion.

Priorites

Invitational Priorities: The Secretary is particularly interested in applications that meet the following invitational priorities. However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)):

Applications that propose to focus on research that leads to answering significant questions on the assessment of academic achievement for LEP students.

Applications that propose to address the following question: At what point along the language proficiency continuum does testing a student in the second language in the content areas yield meaningful and valid results?

Applications that propose to study the comprehensiveness, alignment, and validity of state-wide testing and data analysis systems. Information related to the substance of this invitational priority can be found at the *LEP Students and High-Stakes Assessment* published in April, 2000, available at the NCBE website: www.ncbe.gwu.edu and also in the report: *An Analysis of State Policies for the Inclusion and Accommodation of English Language Learners in State Assessment Programs.* During 1998–1999, available at the website of the Center for Equity and Excellence in Education of the George Washington University: *http://ceee.gwu.edu*.

Note: The Secretary is particularly interested in applications from SEAs that address these invitational priorities.

Note: For further information on assessment issues, see ''High Stakes Assessment: A Research Agenda for English Language Learners'', which is available from the National Clearinghouse for Bilingual Education, telephone—1–800–321–6223 or website at: *http://www.ncbe.gwu.edu.*

Selection Criteria

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for the project* (5 points). (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance* (10 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project.

(ii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(iii) The likelihood that the proposed project will result in system change or improvement.

(iv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) *Quality of the project design* (50 points). (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed project is based upon a specific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(iii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(d) *Quality of project personnel* (20 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(e) *Adequacy of resources* (5 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of the management plan* (10 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963); or you may view the latest SPOC list on the OMB Web site at the following address: *http://www.whitehouse.gov/omb/grants.*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department. Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.292B, U.S. Department of Education, Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (EST) on the date indicated in this Notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Grants involving research on human subjects will require compliance with the Department's Protection of Human Subjects Regulations, 34 CFR part 97. The regulations and information about the regulations can be found at *http://ocfo.ed/humansub.htm.* For quick overview, see in particular ''Information About the Requirements at the Application/Proposal Stage and After Award.''

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention (CFDA #84.292B), Washington, DC 20202–4725 or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (EST) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.292B), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for the Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden Statement.

d. Notice to All Applicants.

e. Checklist for Applicants.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Budget Information—Non-Construction Programs (ED Form 524) and instructions.

h. Eligibility Certification.

i. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

j. Certifications Regarding: Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

k. Certification Regarding Human Subject Regulations 34 CFR part 97. Grants involving research on human subjects will require compliance with the Department's Protection of Human Subjects Regulations (ED 424).

l. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**NOTE:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

m. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and *TWO* copies of the application. Please mark each application as original or copy. No grant may be awarded unless a completed application has been received.

For Further Information Contact: Socorro Lara, U.S. Department of Education, 400 Maryland Ave., SW., Room 5090, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9730. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternative format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7452.

Dated: January 3, 2001.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Public Reporting Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0547 (Exp. 04/30/2002). The time required to complete this information collection is estimated to average 145 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086, Switzer Building, Washington, DC 20202–6510.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 50 pages, using the following standards: (1) A page is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides. (2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures and graphs. If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch. The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents described below. If, in order to meet the page limit, you use print size, spacing or margins smaller than the standards specified in this notice, your application will not be considered for funding.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead.

Additional Guidance

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Eligibility Certification.
3. Budget Information Form (ED Form 524).

4. Itemized budget for each year.

5. Certification Regarding Human Subject Regulations 34 CFR Part 97. Grants involving research on human subjects will require compliance with the Department's Protection of Human Subjects Regulations (ED 424).

6. Assurances—Non-Construction Programs Form (SF 424B).

7. Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).

8. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).

9. Disclosure of Lobbying Activities Form (SF–LLL).

10. Form on General Education Provisions Act (GEPA) Requirement.

11. Table of Contents.

12. Application narrative, including abstract (not to exceed 50 pages).

13. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
Legal Name:_____
Address: _____
_____
_____ _____ _____ _____ - _____
City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number: |__|__|__|__|__|__|__|__|__|

3. Applicant's T-I-N |__|__| - |__|__|__|__|__|__|__|

4. Catalog of Federal Domestic Assistance #: **84.292B] →**

5. Project Director:_____
Address:_____
_____ _____ _____ _____
City State Zip code + 4
Tel. #: ( ) _____-_____ Fax #: ( )_____-_____
E-Mail Address:_____

6. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)
Title:_____
_____

7. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State	H - Independent School District
B - County	I - Public College or University
C - Municipal	J - Private, Non-Profit College or University
D - Township	K - Indian Tribe
E - Interstate	L - Individual
F - Intermunicipal	M - Private, Profit-Making Organization
G - Special District	N - Other *(Specify):*_____

8. Novice Applicant ___Yes ____ No

Application Information

9. Type of Submission:

-PreApplication	*-Application*
____Construction	____Construction
____Non-Construction	____Non-Construction

10. Is application subject to review by Executive Order 12372 process?
____ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/_____
____ No *(If "No," check appropriate box below.)*
____ Program is not covered by E.O. 12372.
____ Program has not been selected by State for review.

11. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period? ____Yes _____No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:
_____ ***OR*** _____
c. IRB approval date: ____ Full IRB **or**
_____ ____ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	**$** _____**.00**
b. Applicant	**$** _____**.00**
c. State	**$** _____**.00**
d. Local	**$** _____**.00**
e. Other	**$** _____**.00**
f. Program Income	**$** _____**.00**
g. TOTAL	**$** _____**.00**

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
_____
b. Title: _____
c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
d. E-Mail Address: _____
e. Signature of Authorized Representative
_____ Date: ___/___/_____

ED 424 (rev 11/12/99)

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

DUNS Number Instructions

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling **1-800-333-0505** or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL:

http://www.dnb.com/dbis/aboutdb/intlduns.htm

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

Dun & Bradstreet, a global information services provider, has assigned D-U-N-S numbers to over 43 million companies worldwide.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

BILINGUAL EDUCATION: FIELD-INITIATED RESEARCH PROGRAM

ELIGIBILITY CERTIFICATION

Application Information

_____
Name of Institution

_____

_____

_____
Address (give city, county, state, zip code)

_____
Type of Institution (IHE, NPO, SEA, LEA)

Grant(s) received under subpart 1 or 2 of Title VII of the Elementary and Secondary Education Act (or Part A of Title VII of ESEA, as in effect prior to its amendment on October 20, 1994):

Grants must have been received within the previous five years.

_____	_____
_____	_____
_____	_____
Grant number/PR number	Type of grant

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (đ) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control Number: 1890-0004 Expiration Date: 02/28/2003
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ACertification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,≅ without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

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Federal Register

Tuesday,

January 9, 2001

Part V

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; New Jersey; Open Market Emissions Trading Program; Revised Interpretation of Operating Permit Requirements for Emissions Trades; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ34–1–193, FRL–6929–3]

Approval and Promulgation of Implementation Plans; New Jersey; Open Market Emissions Trading Program; Revised Interpretation of Operating Permit Requirements for Emissions Trades

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to conditionally approve New Jersey's State Implementation Plan (SIP) revision for ozone. This SIP revision relates to New Jersey's Open Market Emissions Trading Program, which provides a more cost-effective mechanism for sources to meet regulatory requirements for reducing oxides of nitrogen and volatile organic compound emissions. This action proposes a conditional approval of the regulations which implement New Jersey's Open Market Emissions Trading Program, and will help to meet the national ambient air quality standard for ozone. This action also proposes a revised interpretation that the permits provisions of the Clean Air Act do not mandate that emissions quantification requirements resulting from the application of emissions trading program be included in the SIPs.

DATES: Written comments must be received on or before March 12, 2001. Representatives from EPA and New Jersey will hold public information sessions to meet with members of the public and discuss the proposed rule as follows:

Wednesday, February 7, 2001, 3:00 p.m. to 5:00 p.m., and 7:00 p.m.; and

Thursday February 15, 2001, 3:00 p.m. to 5:00 p.m., and 7:00 p.m.

ADDRESSES: All comments should be addressed to:

Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

The public information session for February 7, 2001 will be held at the New Jersey Department of Environmental Protection Building, First Floor Hearing Room, 401 East State Street, Trenton, New Jersey; and the public information session for February 15, 2001 will be held at Newark City Hall, Room B29, 920 Broad Street, Newark, New Jersey.

Copies of the state submittal and supporting documents are available for inspection during normal business hours, at the following addresses:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency Region II, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4014.

SUPPLEMENTARY INFORMATION:

Overview

The Environmental Protection Agency (EPA) is proposing to conditionally approve the New Jersey State Department of Environmental Protection's (New Jersey's) Open Market Emissions Trading (OMET) Program.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

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EPA's Proposed Action

What Action Is EPA Proposing Today?

EPA is proposing a conditional approval of New Jersey's revision to the ozone State Implementation Plan (SIP) submitted to EPA on October 27, 1998 and supplemented on April 27, 2000. This SIP revision relates to New Jersey's new Subchapter 30 regulation for New Jersey's Open Market Emissions Trading (OMET) Program.

Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit written comments on EPA's proposed action, as discussed in the **DATES** and **ADDRESSES** sections
- Fulfill New Jersey's and EPA's requirements under the Clean Air Act (the Act)
- Make New Jersey's OMET Program federally-enforceable.

What Is Emissions Trading?

Air emission trading is a program where one source, for example a power plant, reduces its emissions below the level it is required to meet. This source then sells or trades these reductions as credits to another source which continues to release emissions above its required levels. In return for this flexibility, the second source must purchase additional credits beyond those needed to comply, therefore reducing overall emissions. Emissions trading uses market forces to reduce the overall cost of compliance for sources, while maintaining emission reductions and environmental benefits.

What Is Open Market Emissions Trading?

In an open market emission trading program, a source generates short-term emission reduction credits, called discrete emission reduction credits or DER's (discrete credits) by reducing its

emissions. The source can then use these discrete credits at a later time, or trade them to another source to use at a later time. Open market programs rely on many sources continuing to generate new discrete credits to balance with other sources using previously generated discrete credits.

For example, a power plant burns a cleaner fuel for a summer to reduce oxides of nitrogen (NO_X) emissions. This emission reduction could generate discrete credits. The power plant trades these discrete credits to a paperboard manufacturer. In the future, the paperboard manufacturer can use the discrete credits to meet its NO_X control requirements. While the paperboard manufacturer is using the discrete credits, other sources are also reducing emissions and generating discrete credits. But the paperboard manufacturer must also purchase an additional amount, 10 percent, of discrete credits above the number of credits they would otherwise need to comply. The paperboard source, or any other source, will never use this additional amount for compliance. This is known as a retirement of credit to benefit the environment. The total effect is to reduce emissions.

What Are EPA's Proposed Conditions for Approval?

EPA is proposing the following seven conditions for approving New Jersey's OMET Program. These areas of New Jersey's OMET Program do not fully satisfy EPA's guidance. A Technical Support Document (TSD), prepared in support of this proposed action, contains a full description of EPA's conditions for approval. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section and on EPA Region II's website at http://www.epa.gov/region02/air/air.htm.

1. Using Approved Emission Quantification Protocols

New Jersey's OMET Program contains emission quantification protocol development criteria in Subchapter 30.20. This provision is consistent with the approach outlined in Option 1 of EPA's proposed policy on open market trading programs (60 **Federal Register** (FR) 39668, August 3, 1995) and model open market trading rule (60 FR 44290, August 25, 1995), and the first requirement contained in EPA's proposed action for the State of Michigan's Emissions Averaging and Emission Reduction Credit Trading Rules (62 FR 48972, September 18, 1997).

New Jersey's OMET Program also requires mobile source generators and users to use a protocol which complies with EPA guidance. Therefore, with respect to mobile sources, New Jersey's OMET Program is consistent with Option 1 and Option 2 of EPA's proposed model rule and the first and second requirements contained in EPA's proposed action for Michigan.

With respect to stationary sources, New Jersey's OMET Program does not directly require protocols to comply with all applicable EPA guidance. New Jersey's adoption documents state it will review any EPA-approved protocols or guidance for stationary sources to determine whether it needs to incorporate it by reference, similar to what the State did with mobile sources. In addition, subchapter 30 already contains the requirement that discrete credits be real, surplus and properly quantified. The generator bears the burden of proving that it has in fact generated discrete credits in accordance with the rules and certified the discrete credits are real, surplus and properly quantified (Subchapter 30.21). Also, based on its experience in emissions trading programs, New Jersey has included protocol development criteria in subchapter 30.20 which addresses the general elements that would be characteristic to stationary sources and, therefore, contained in the stationary source protocol.

However, to further ensure that the criteria of real, surplus and quantified in New Jersey's OMET Program are met, New Jersey must also incorporate into subchapter 30.20 a requirement that if an EPA-approved protocol exists, sources must use that protocol for quantifying emission reductions at applicable stationary sources, and to allow sources to deviate from the EPA protocol only if they first get the approval of EPA.

2. Providing for Monetary Penalties

New Jersey's OMET Program establishes at subchapter 30.22 that any person who fails to comply with any provision of the OMET Program is subject to both civil administrative penalties and applicable criminal penalties. However, there are two provisions in subchapter 30 which provide for the temporary relief from monetary penalties.

Subchapter 30.11(f) requires a user source to hold the full quantity of discrete credits needed for compliance before using them, and must continue to hold them until the Notice of Use is due. But this provision also allows the source to purchase additional credits it may need for compliance, provided this additional amount is multiplied by three. Subchapter 30.11(h) allows a 60-day period for sources to substitute good credits when New Jersey or EPA determines the credits are invalid for any reason. While these two provisions require the source to make up for the credits used, they provide an exception from the principle that a user source must be potentially subject to monetary penalties at any time when the user does not hold sufficient valid credits prior to the use of the credits.

New Jersey must revise subchapter 30 to include the potential for monetary penalties at any time when the user does not hold sufficient valid credits. Section 113 of the Act requires that all violations of the Act be potentially subject to monetary penalties equivalent to $10,000 per violation per day under State law and $27,500 per violation per day under Federal rules. Every requirement under a trading program is a requirement of the Act. Therefore, any violation of the trading provisions must be potentially subject to monetary penalties from the very first day of the violation.

A source committing a violation must be potentially subject to a monetary penalty. Whether the regulatory agency actually imposes a monetary penalty depends on enforcement discretion which covers considerations such as:

- The amount of money the source saved by committing the violation
- The amount of environmental damage caused by the violation
- Evidence of knowledge that the act was a violation
- Evidence of intentional fraud.

EPA recognizes New Jersey includes the independent verifier requirement to provide confirmation of the correct generation and quantification of discrete credits to prevent the generation and use of invalid credits. However, while the verification step may minimize the likelihood of the use of invalid credits, there is still the possibility of sources using invalid credits. Under subchapters 30.11(f) and (h) it is possible for a source to buy credits that may not be valid, to claim to have bought valid credits that may be invalid credits, or to buy fewer credits than the amount needed for compliance. When New Jersey determines the source is holding invalid credits or when the source discovers it needs additional credits for compliance after the use of the credits, the source only has to buy the additional valid credits which they should have bought in the first place (only now the source can buy the credits at a later date).

Trading programs should encourage sources to ensure that they hold

sufficient credits in advance of use and that they use valid credits. The potential for Federal and state penalties immediately upon the discovery of a violation is an incentive which the regulatory agency cannot achieve by merely requiring the purchase of replacement credits. Therefore, New Jersey must revise subchapter 30, to address sections 30.11(f) and (h), and include the potential for monetary penalties at any time when the user does not hold sufficient valid credits.

New Jersey should also revise subchapter 30 (or Subchapter 3 at N.J.A.C. 7:27A) to clarify what constitutes a violation and provide the potential to assess daily penalties. In some cases, a user's failure to comply with subchapter 30 may prevent the use of discrete credits for compliance with an emission limit. In such cases, if the user exceeds the emission limit it would be in violation of existing provisions and the existing rules contain penalties for such violations. Also, the general sections at subchapter 3.5 specify that each violation constitutes a separate and distinct offense, and each day during which a violation continues will constitute an additional, separate, and distinct offense. However, New Jersey should clarify that during a particular compliance period, if a source does not hold sufficient valid credits at any time, the source is subject to a violation. New Jersey should also clarify that if the source is using credits to comply with a requirement over an extended compliance period, such as a 30-day rolling average, then the source could be subject to a violation of the entire compliance period.

3. Claiming Ownership of Discrete Credits

Subchapter 30.4(a) states the owner or operator of a source is eligible to generate discrete credits and claim ownership. In addition, a person that does not own or operate a source may generate discrete credits by reducing emissions from either (1) a reduction in mobile source activity levels in an activity reduction plan approved by EPA and the State, or (2) a reduction in an electric generator's activity level resulting from electrical energy efficiency measures.

However, New Jersey's OMET Program does not include a requirement specifying which parties are eligible to generate discrete credits in situations where more than one party has a potential claim. This issue is significant because the rights to credits generated by a particular credit generation strategy will be unclear in some cases. For instance, a manufacturer of a device that reduces automobile emissions might attempt to register credits based on the sale of the device within New Jersey. However, an owner of a vehicle fleet might also attempt to register credits based on his or her installation of those same devices within the fleet. Registration of both sets of credits would double count the emission reductions, leading to the generation of excess credits.

New Jersey must address the issue of ownership claims in its regulation and make provisions for reporting ownership claims in the Notices of Discrete Credit Generation.

4. Notifying Metropolitan Planning Organizations

New Jersey must require notification of the relevant Metropolitan Planning Organizations and Departments of Transportation in the event of mobile source generation activities. To avoid double-counting the emission reductions generated by mobile sources in trading programs, the state must ensure coordination between the emission trading program and the conformity analyses in the area in which the trading program takes place. Metropolitan Planning Organizations should not use any reductions they receive notice about, for transportation conformity. Similarly, the trading program should not use reductions the Metropolitan Planning Organizations rely on in a transportation conformity determination. New Jersey should require a generator of mobile-source emission reductions to notify the Metropolitan Planning Organizations in the area, and the State Department of Transportation of the generator's intention to generate emission reductions. The generator must provide enough information to the Metropolitan Planning Organizations about the likely emission reductions from the activity to allow the Metropolitan Planning Organizations to adjust its regional conformity analyses appropriately. Once notified, the Metropolitan Planning Organizations may not use these emission reductions to satisfy the requirement for transportation conformity.

5. Notifying the Federal Land Manager

EPA has a policy of providing special protection for Class I areas (pristine environments such as international parks, large national parks and wilderness areas), as required under sections 160 through 169 of the Act. New Jersey contains a Class I area—the Brigantine National Wildlife Refuge. This policy includes keeping Federal Land Managers informed of activities that could affect air quality in Class I areas. In accordance with this policy, New Jersey must revise subchapter 30, or submit procedures as part of the SIP, which require 30-day prior notification to the relevant Federal Land Manager before any discrete credit use activity occurs approximately within 100 km of a Class I area.

6. Accounting for Discrete Credits in Emission Inventory

The Act requires states to have an emissions inventory that specifically accounts for actual emissions of all major stationary sources and minor/area source categories. EPA's General Preamble guidance to the Act also requires the inventory to consider credits available for use as if they are ''in the air'' for all attainment demonstrations. Therefore all attainment modeling demonstrations must include all unused credits, that sources can eventually use, as actual emissions. While this can ''inflate'' an area's actual emissions inventory above the level of what will probably occur, it does not inflate emissions above what could potentially occur. For emission trading purposes, EPA has and continues to require that attainment, reasonable further progress and rate-of-progress demonstrations use a worst-case emissions scenario. This is to discourage the accumulation of large banks of credits that could potentially ruin any attainment plan or demonstration if the credits were all used at the same time. New Jersey must submit to EPA additional information on how the emission inventories account for unused credits under New Jersey's OMET Program.

7. Including Toxic Disclosure Information in Notices

Subchapter 30.7(b)(1) and 30.14(b)(4) require the Notices which document the generation and use of discrete credits to include information on any increase in emissions of any hazardous air pollutant as a result of generating or using discrete credits. However, EPA's proposed open market policy also requires the Notices to include information on any forgone emission reductions in hazardous air pollutants due to the generation or the use of discrete credit, instead of non-discrete credit compliance with otherwise applicable requirements. New Jersey must revise the provisions on Notice requirements to include information on forgone emission reductions.

What Other Clarifications Should New Jersey Make in Their Program?

New Jersey should clarify the following provisions in Subchapter 30. While these provisions are not approval issues, clarification would make the OMET program more understandable and enforceable.

- Subchapter 30.20(f)(2)(i) and (ii) reference alternative monitoring plans and test methods approved by New Jersey. New Jersey should clarify that these references are already part of the SIP, and are not Director discretion issues.
- Subchapter 30.4(a)(1) and the ''curtailment'' definition refer to mobile source activity level reductions approved by New Jersey. New Jersey should specify that while these actions may be eligible to generate discrete credit, the generation strategy must still comply with any applicable EPA guidance concerning mobile source emission quantification protocols.
- New Jersey should revise the definition of ''SIP'' as a plan developed by the State and approved by EPA.
- New Jersey should clarify the definition of ''surplus'' includes emission reductions in excess of an established program baseline which are not required by SIP requirements or State regulations, relied upon in any applicable attainment plan or demonstration, or credited in any reasonable further progress or milestone demonstration so as to prevent the double-counting of emission reductions.
- New Jersey should clarify that in the definition of ''Volatile organic compound,'' EPA, not the State, has the final decision on an acceptable VOC test method.
- New Jersey should clarify the units for the definitions of ''activity'' and ''economic output'' correspond to the applicable emission rate.
- New Jersey should clarify the provisions for determining the baseline period to be consistent with how New Jersey historically determines normal source operation in the State's rules.

How Can New Jersey Get Full Approval for Their Program?

EPA is proposing conditional approval of New Jersey's OMET Program, provided New Jersey commits to correct the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section, in writing, on or before February 8, 2001. New Jersey must then correct the deficiencies and submit them to EPA within one year of EPA's final action on the OMET SIP revision.

If New Jersey submits a commitment to comply with EPA's conditions, EPA will publish a final conditional approval of New Jersey's OMET Program. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the October 27, 1998 submittal. If New Jersey does not make the required commitment to EPA, EPA is proposing to disapprove the OMET Program.

What Guidance Did EPA Use To Evaluate New Jersey's Program?

In 1994, EPA issued Economic Incentive Program (EIP) rules and guidance (40 CFR part 51, subpart U), which outlined requirements for establishing EIPs that States are required to adopt in some cases to meet the ozone and carbon monoxide standards in designated nonattainment areas. There is no requirement for New Jersey to submit an EIP, so its OMET Program need not necessarily follow the EIP rule. However, since subpart U also contains guidance on the development of voluntary EIPs, New Jersey did follow certain aspects of the EIP guidance in the development and submittal of its OMET Program.

EPA also published an August 3, 1995 proposed policy on open market trading programs and an August 25, 1995 model open market trading rule. EPA's proposed policy describes the elements of an open market trading program that EPA considers to be desirable and necessary for a program to be approvable as a SIP revision. The proposed policy also allowed States to adopt rules that varied from the proposed model rule. In a March 10, 1998-letter from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation to Congressman Thomas J. Bliley, EPA clarified its policy on open market trading. The letter says EPA will work with states to develop open market programs tailored to their individual circumstances and use the August 1995 proposal as guidance.

Also available for reference is EPA's September 18, 1997 Proposed Action on the State of Michigan's Trading Rules. This proposal includes additional Agency guidance on several open market trading provisions.

EPA's basis for evaluating New Jersey's OMET Program, is whether it meets the SIP requirements described in section 110 of the Act. More specifically, EPA used the EIP of 1994 as guidance for voluntary EIPs. In those areas where the EIP does not address certain provisions in an open market system, EPA used (as stated in the March 10, 1998 Bliley letter) the proposed policy on open market trading as relevant guidance, in coordination with the proposal on Michigan's Program, and other guidance documents, to determine the approvability of New Jersey's OMET Program. For further discussion of how these documents provide the basis of today's proposed action, see the section ''What is the Basis for Today's Proposal?''

What Is EPA's Evaluation of New Jersey's Program?

EPA has determined New Jersey's new subchapter 30 regulation for New Jersey's OMET Program is consistent with EPA's guidance, except for the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section. New Jersey's OMET Program is based upon and is consistent with EPA's EIP guidance of 1994, EPA's proposed open market policy of 1995, and EPA's proposal of 1997 on Michigan's Program.

New Jersey's subchapter 30 contains provisions for definitions, generation, transfer, verification and use of discrete credits, the registry, geographic restrictions, recordkeeping, public availability, demonstrating compliance and penalties.

Given the documentation in the SIP submittal and the provisions of New Jersey's OMET Program, EPA believes New Jersey has demonstrated the State's other regulations will achieve at least the same quantity of NO_X and volatile organic compound (VOC) emission reductions, with or without the OMET Program, including the early reduction strategies under the OMET Program. Furthermore, given the extra reductions inherent in New Jersey's reasonably available control technology (RACT) program, the State will continue to meet the reasonable further progress and SIP attainment requirements. Based upon these analyses and documentation, and the commitment for a periodic program audit, EPA believes that New Jersey's OMET Program will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act.

EPA has also determined, with the exceptions discussed in the ''What are EPA's Proposed Conditions for Approval?'' section, the emission quantification protocol criteria, monetary penalty structure, geographic scope of trading, early reduction credit, and program audit provisions of New Jersey's OMET Program are consistent with EPA's guidance.

EPA has determined the amendments and administrative changes made to subchapters 16 (VOC RACT), 18 (emission offset program), and 19 (NO_X RACT) to be consistent with Subchapter

30, are consistent with EPA's guidance. EPA will discuss the amendments and administrative changes made to subchapter 22 (operating permits) in a future proposed rule on the operating permit program revisions to part 70.

Finally, EPA has determined the provisions submitted on April 27, 2000 as a supplement to the SIP revision, allowing municipal waste combustors to use discrete credits to comply with certain Federal NO_X emission standards, are consistent with EPA's guidance.

A TSD, prepared in support of this proposed action, contains the full description of New Jersey's submittal and EPA's evaluation. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section and on EPA Region II's website at http://www.epa.gov/region02/air/air.htm.

New Jersey's Open Market Emissions Trading Program

How Do Sources Generate Credits?

Sources participating in the OMET Program generate discrete credits by reducing emissions below a baseline over a discrete time period. The generation baseline is established by existing requirements, and is determined by the lower of allowable emissions or actual past emissions. Sources which generate discrete credits must submit a ''Notice'' to a private Registry identified by New Jersey, which includes information about the source generating the reductions, the methods of generating the reductions, the amount of reductions, and the methods used to measure the reductions. An official representative of the source must certify the following:

- Information in the Notice is true, accurate and complete.
- Emission reductions generated are real and surplus.
- The source used an emission quantification protocol, according to subchapter 30, to calculate the emissions reductions.
- A prohibited generation strategy is not the basis for the emission reduction.

How Do Sources Use Credits?

New Jersey's OMET Program requires discrete credits to be verified by a New Jersey licensed professional engineer or certified public accountant, before they are used. The verifier must be independent of the generator source. In verifying a batch of discrete credits, the verifier must make a diligent inquiry that goes beyond simply relying on the generator's representations. The verifier must submit a Notice to the Registry.

Sources that wish to trade or use discrete credits must provide Notices to the Registry with information about the source's intent to use discrete credits, as well as the source's use of the discrete credits. The Notices must also include:

- Number of discrete credits to be used.
- The requirements the source will comply with through the use of discrete credits.
- Copy of the generation Notice for the discrete credits used.
- Statements that the discrete credits were not previously used or retired.
- Certifications similar to the other Notices.

A generating source can use discrete credits at a later time, or trade them to another source to use at a later time. The source using discrete credits must purchase an additional 10 percent of discrete credits above the number of credits they would otherwise need to comply. This additional amount is not used for compliance, but retired to benefit the environment.

What Are the Other Requirements of New Jersey's Program?

New Jersey's OMET Program also contains requirements on the geographic scope of trading, recordkeeping, public availability of information, and quantification protocols.

Sources can trade VOC or NO_X discrete credits. Discrete credits must be designated as either ozone season (May 1 through September 30) or non-ozone season credits. Discrete credits generated outside of the ozone season cannot be used during the ozone season.

How Does New Jersey's Program Protect the Environment?

New Jersey submitted these rules as a SIP revision to allow sources which emit ozone precursors—NO_X and VOCs—flexibility in complying with requirements already in the SIP. The program provides emissions sources with a financial incentive to reduce emissions below levels required by applicable Federal and State requirements and below the source's actual emissions of the recent past. Sources that make these extra reductions going beyond requirements generate discrete credits that they can use later or sell to other sources. Discrete credits may be used by sources to comply with emissions limits. The program is not a means of limiting emissions; instead, trading is meant to provide an opportunity to comply with existing emission limits in a more cost effective manner.

However, the OMET Program protects the environment in several ways:

- New Jersey has demonstrated that in each ozone season the number of discrete credits generated will be equal to or greater than the number used.
- The calculation of the number of discrete credits needed for use is conservative since the source must retire an additional 10 percent of credits.
- The OMET Program specifically requires credits to be surplus to reductions already relied on in the SIP.
- The emission inventory must reflect the generator's emissions before they can generate credit.

How Is New Jersey's Program Enforced?

New Jersey's OMET Program divides compliance responsibilities between the generator, verifier and user of discrete credit. In general, the generator, verifier and user are responsible for actions within his or her control, and a generator, verifier or user is in violation of subchapter 30 if they do not fulfill their respective responsibilities.

The generator is responsible for ensuring that it has created discrete credits according to the OMET Program and that the discrete credits are real, surplus, and properly quantified.

The verifier is responsible for making the Notice of Discrete Credit Verification true, accurate and complete and using diligent inquiry to check that the generated discrete credits are real, surplus, and properly quantified.

The user is responsible for ensuring that its use of discrete credits complies with the provisions of the OMET Program, including requirements on the geographic scope of trading (subchapter 30.17) and the prohibitions on use (subchapter 30.13). A user is also responsible for ensuring a discrete credit is not used unless the Registry shows that the user holds the discrete credit, the credit is verified, the credit was not previously used or retired, and the discrete credit is valid.

In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities. The verification step does not replace the liability of the generator or the user under the OMET Program.

How Does New Jersey's Program Interact With Title V Permits?

The purpose of the Title V permitting program, codified in 40 CFR Part 70, is to ensure that a single document identifies all applicable requirements under the Act for sources that are ''major sources'' or are otherwise required to obtain subject to a federally enforceable operating permit. Part 70 contains provisions designed to streamline the process of modifying operating permits for facilities that wish

to participate in an emissions trading programs like the New Jersey OMET program. *See, e.g.*, 40 CFR 70.6(a)(8), 70.7(e)(2)(B). New Jersey has revised several provisions in its operating permits regulation, N.J.A.C. title 7, chapter 27, subchapter 22, in an effort to establish appropriate procedures for facilities to make changes to their operating permits so that they can participate in the OMET program. These revisions to the New Jersey operating permits regulation will be reviewed separately to determine whether they are consistent with the federal operating permits regulations and the Clean Air Act.

How Does New Jersey's Program Provide for Emissions Quantification Protocols?

A key element in the design and implementation of trading programs, including open market trading programs, is methods for quantifying amounts of emissions. Precisely determining these amounts would be important to determine the amount of emissions by which a source may be exceeding its SIP or permit limits, and therefore the amount of emissions reductions the source would need to acquire in an emissions trade in order to meet those limits; as well as the amount of emissions a source may generate to sell. These methods are often referred to as emissions quantification protocols, or, simply, protocols.

The 1992 preamble to the part 70 rulemaking (57 FR 32250, July 21, 1992) (1992 Permits Rule Preamble) discusses emission quantification methods in the context of reviewing emissions trading within a permitted facility to meet its SIP limits, where the approved SIP authorizes such trading or emission averaging.

The provisions of 40 CFR 70.4(b)(12)(ii) would allow a source to trade emissions within the permitted facility to meet its SIP limits, where the permit does not already provide for such emissions trading but the SIP does. This method would allow a source which had not anticipated needing to trade emissions within the facility to take advantage of emissions trading provisions in the SIP after a 7-day notice, without having to modify its permit to include new compliance provisions to enforce for the emissions trade. For trades to occur under § 70.4(b)(12)(ii), the Part 70 preamble explains that:

> Any such SIP would have to include compliance requirements and procedures for such trades * * * these procedures must assure that any trade is quantifiable, accountable, enforceable and based on replicable procedures for ensuring the emission reductions that the trading program was intended to provide, including necessary test methods, monitoring, recordkeeping, and reporting.'' See 57 FR 32250, 32268 (July 21, 1992).

Similarly, the 1992 Permits Rule Preamble allowed States to use the minor permit modification process to make changes to operating permits to allow facilities to participate in emissions trading programs, if the underlying SIP or EPA rule explicitly provided that minor permit modification procedures could be used. 57 FR at 32287. The 1992 Permits Rule Preamble also stated that trading programs approved in SIPs and EPA regulations would have to contain compliance requirements and protocols to assure that market-based programs were quantifiable, accountable, enforceable and based on replicable procedures for determining emission reductions expected from the program. *Id.*

In 1995, EPA proposed guidance for state open market trading programs submitted for EPA approval as part of the SIP. The 1995 proposal provides guidance on the emissions quantification criteria identified in the part 70 preamble in the context of designing SIP-based programs to allow trading among facilities. Specifically, the 1995 guidance allows for a state's SIP-approved open market trading rule to contain only the criteria and process for sources to develop protocols. This guidance recommends that the protocols, which contain the specifics of quantifiable and replicable procedures, need not be included in the SIP, but instead may be included with the permit at the time of the emission trade.

By notice dated September 15, 1999, EPA published notice of, and opportunity for comment on, the Draft Economic Incentive Program Guidance. 64 FR 50086 (Draft EIP Guidance). Under this draft guidance proposal, States with EIPs would submit protocols as SIP revisions, although in certain limited circumstances trading could proceed on an interim basis if specified procedures were followed before EPA took action on those SIP submittals. Draft EIP Guidance, section 6.2(c).

The 1992 Permits Rule Preamble stated that Title V required emissions quantification protocols to be included in the SIP in order for intra-facility trading to be available through the seven-day notice procedure. It could be interpreted that similar requirements would apply for inter-facility trading. The 1992 Permits Rule Preamble also expressed EPA's view that emissions quantification protocols should be included in SIPs in order for the minor permit modification process to be used to allow facilities to participate in inter-facility trading programs, if the underlying SIP or EPA rule explicitly provided that minor permit modification procedures could be used. Today, EPA proposes to clarify that Title V does not require that protocols be included in the SIP. Rather, the requirements of Title V would be satisfied with the inclusion of protocols in the permits themselves. EPA is not, however, proposing today to revise the provisions of the Draft EIP Guidance, which recommend that protocols be included in the SIP to meet the requirements of CAA section 110 (including section 110(a)(2)(A), mandating ''enforceable emissions limitations''). In subsequent guidance or rulemaking, which could include further action on the Draft EIP Guidance, EPA intends to clarify the relationship between protocols and SIP revisions for purposes of the section 110 requirements.

In addition, EPA proposes to approve New Jersey's OMET Program on the basis that at the time New Jersey adopted and submitted it to EPA, New Jersey relied on the guidance provided in 1995. As a result, EPA proposes to approve the provisions of the OMET Program that the SIP must include criteria for protocol development but not the protocols themselves.

When Was New Jersey's Program Proposed and Adopted?

On August 2, 1995, New Jersey's Governor signed legislation requiring the State to promulgate an open market emissions trading program. After a public workshop on September 19, 1995, New Jersey proposed the OMET Program on February 20, 1996 and held a public hearing on March 7, 1996. New Jersey requested public comments by March 21, 1996. New Jersey adopted the OMET program on July 1, 1996 with an operative date of August 2, 1996. New Jersey published Correction Notices on August 5, 1996, November 18, 1996 and June 2, 1997.

On July 6, 1999, New Jersey proposed amendments to the OMET Program and held a public hearing on August 5, 1999. New Jersey requested public comments by August 20, 1999. New Jersey adopted the amendments on April 7, 2000 with an operative date of June 6, 2000.

When Was New Jersey's Program Submitted to EPA and What Did It Include?

New Jersey submitted its OMET Program SIP revision to EPA on October 27, 1998. EPA determined the submittal

administratively and technically complete on December 22, 1998.

New Jersey's OMET Program SIP revision included the following elements:

- New Subchapter 30
- Amended Subchapters 3, 16, 18, 19 and 22
- A memorandum of understanding between the States of Connecticut and New Jersey
- Ten applications for discrete credit generation strategies from May 1, 1992 through August 2, 1996, as supporting information
- A detailed evaluation of the EIP requirements, including a summary of trading activity to date.

On April 27, 2000, New Jersey submitted a SIP revision to EPA containing amendments to Subchapter 30. EPA is including two provisions of the amended Subchapter 30 SIP revision as a supplement to the October 27, 1998 SIP revision. These two specific provisions relate to allowing municipal waste combustors to use discrete credits to comply with certain Federal NO_X emission standards, as these Federal rules specifically acknowledge the ability of New Jersey owners and operators to comply with the Federal NO_X standard using discrete credits.

EPA is including these provisions as part of the rulemaking for the October 27, 1998 SIP revision to make these provisions federally-enforceable and therefore available as an option for sources in New Jersey to meet the December 19, 2000 final compliance date for Increment 5 of 40 CFR 62.14108(a)(5) of subpart FFF.

Other Significant Items Related to New Jersey's Program

How Does New Jersey's Program Avoid Adverse Local Impacts of Hazardous Air Pollutant Emissions?

In VOC trading programs, it is important to recognize that many VOCs are also classified as hazardous air pollutants (HAPs). EPA is committed to protecting the health and environment of local communities from any negative impacts related to VOC trading. EPA is also committed to providing flexibility for local decision making that can allow for different circumstances in different localities.

While sources involved in VOC trading are required to meet all applicable current and future air toxics requirements, such as maximum achievable control technology (MACT), EPA believes VOC trading programs should build in additional safeguards for HAPs. In the September 15, 1999 proposed revisions to the EIP guidance, EPA outlined a draft framework for addressing HAP-related issues in VOC trading programs. The draft framework says VOC trading programs must contain the following general safeguards:

- A program review of the trading program to evaluate the impacts of VOC trades involving HAPs on the health and environment of local communities
- Prevention and/or mitigation measures to address any negative impacts
- Public participation in program design, implementation and evaluation
- Availability of sufficient information for meaningful review and participation.

New Jersey's OMET Program is more restrictive than EPA's proposed open market trading model rule with respect to HAPs. The proposed model rule requires a user source to disclose the amount of HAPs emitted as a result of the use of discrete credits. New Jersey's OMET Program prohibits the generation or use of discrete credits which would result in more than a ''*de minimis*'' increase in HAP emissions. These *de minimis* levels are the same as the levels which make a source subject to MACT requirements. New Jersey's OMET Program also requires disclosure of smaller increases in HAP emissions resulting from discrete credit generation or use.

EPA believes New Jersey's OMET Program is consistent with the proposed framework for addressing HAP-related issues in VOC trading programs as outlined below, even though New Jersey adopted its OMET Program prior to the proposed revisions to the EIP.

Periodic Program Evaluation provisions: New Jersey's OMET Program includes a periodic program evaluation in the form of an audit to occur at least every three years.

New Jersey defined this program audit as part of the initial program design and will include any appropriate analyses and/or criteria contained in EPA guidance on audits. Evaluation can also occur on a source-by-source basis through the public accessibility of the Registry on the Internet at www.omet.com. Regulators and the public are able to track the generation and use of discrete credits to review the implementation of specific trades.

Prevention and Mitigation provisions: The prevention provision in New Jersey's OMET Program of unacceptable impacts from potential or actual trades or other types of transactions including HAPs is an up-front prohibition on the generation and use of discrete credits which are accompanied by an increase in HAPs above a *de minimis* level. Retrospective mitigation will also occur through the program audit.

Public Participation provisions: New Jersey provided for public participation in the design of the OMET Program through a public workshop on September 19, 1995 to have an open discussion of the issues with interested parties on open market trading. After the workshop, New Jersey proposed their OMET Program on February 20, 1996 and held a public hearing on March 7, 1996. After adopting the OMET program on July 1, 1996, New Jersey established a stakeholder workgroup which has generally met every other month since the adoption of the OMET Program. These meetings are open to the public and discuss implementation of the OMET Program and ways to improve its environmental and economic effectiveness. New Jersey's program audit will also include an opportunity for public review and comment.

Information Availability provisions: New Jersey's OMET Program provides for the availability of sufficient information. Subchapter 30 contains numerous provisions which require the Notices filed with the Registry to contain the sufficient and appropriate information. These Notices specifically contain information and statements related to the emissions of HAPs. Also, subchapter 30.19 requires all information to be publicly available.

As of this writing, EPA believes New Jersey's OMET Program is consistent with EPA's current thinking on addressing HAP-related issues in VOC trading programs. As EPA develops additional guidance, EPA will provide this guidance to New Jersey as the State continues to discuss these and other issues in the program audit and, where appropriate, require New Jersey to revise the OMET Program.

How Does EPA's Proposed Action Affect Earlier Credits?

New Jersey submitted ten applications for discrete credit generation strategies from May 1, 1992 through August 2, 1996 as part of the OMET SIP submittal. New Jersey submitted these discrete credit generation strategies to EPA in response to EPA guidance on credits generated prior to rule adoption, and as supplemental information to support the OMET SIP submittal.

EPA reviewed these ten credit generation strategies, independent of its review of the OMET SIP revision, to see how sources were implementing the OMET Program. EPA, in its role of program oversight, decided to conduct this review to provide a comprehensive

evaluation of New Jersey's OMET Program.

In the review of the ten strategies, EPA first determined whether each strategy was consistent with the criteria contained in subchapter 30.6(b)(2) for emission reductions generated between May 1, 1992 and August 2, 1996. EPA confirmed that each of the ten strategies met the criteria for submitting a Notice of Certification of Discrete Credit Generation to New Jersey by October 31, 1996. Further, EPA acknowledges these ten strategies to be the only discrete credit generation strategies which meet the criteria of subchapter 30.6(b)(2), and would not expect any other pre-adoption credits to exist.

EPA determined there were varying degrees of deficiencies in each of the ten credit generation strategies. The deficiencies in each strategy ranged from minor calculation errors to missing information to inconsistencies between the strategy and subchapter 30 and EPA guidance. If EPA discovered a deficiency in any of the strategies, it was not a deficiency with the protocol development criteria contained in subchapter 30, but an issue with the specifics of the strategy. Independent of the review of the OMET SIP revision, EPA notified New Jersey in an October 20, 1999 letter of the deficiencies as a result of EPA's review. In this correspondence, EPA summarized its approach to the review of the ten strategies, identified the deficiencies of each strategy and described its expectations for New Jersey and the sources to address the deficiencies. EPA clarified that the Agency is not proposing to approve or disapprove the strategies as part of the proposed action on subchapter 30. Rather, EPA provided this information to give the participants in the OMET Program an opportunity to address any deficiencies (according to the provisions of the OMET Program) prior to final approval of the OMET SIP revision.

EPA expects the sources to address the deficiencies contained in the correspondence prior to the verification or the use of the subject discrete credits. In fact, verifiers should consider EPA's comments in its review, to fulfill the requirement that the verification of generated discrete credits be based on diligent inquiry by the verifier.

Upon a final approval of New Jersey's OMET SIP revision, subchapter 30 will be federally-enforceable. Since subchapter 30 is a SIP flexibility mechanism, compliance with its terms is essential in order to avoid complying with other applicable requirements of the SIP. Also, the generator and the verifier may have other responsibilities related to proper quantification and verification of the discrete credits. EPA suggests the generators, verifiers and any users of the discrete credits review these specific discrete credit generation strategies before subchapter 30 becomes subject to EPA enforcement.

How Will New Jersey Audit the Program?

New Jersey's October 27, 1998 SIP submittal letter contains an enforceable commitment to meet reasonable program audit requirements established in Federal regulations and/or guidance. New Jersey will ensure that an audit is performed at least every three years which meets applicable EPA guidance, and will provide timely post-audit reports to the EPA. New Jersey recognizes its responsibility to ensure that the OMET Program, as implemented, is consistent with the goals of rate of progress and of attainment in New Jersey, in respect to the national ambient air quality standard for ozone and does not result in continued non-attainment in New Jersey and downwind areas. At a minimum, New Jersey will include the following elements in the audit:

- An evaluation of the net effect of the New Jersey OMET Program on actual emissions
- Verification that in each ozone season the number of discrete credits generated will be equal to or greater than the number used; and,
- An evaluation of the cost savings.

Also, the audit will determine whether there is a shortfall between the results claimed for the New Jersey OMET Program and the actual results obtained during program implementation. If there is a shortfall, New Jersey will submit to EPA, with the post-audit report, measures to remedy program deficiencies and, if applicable, measures to make up any emissions shortfall within a specified period of time consistent with relevant reasonable further progress and attainment requirements.

Since New Jersey's commitment to do a program evaluation includes reference to ''any applicable EPA guidance on audits,'' New Jersey and EPA will not only use the guidance contained in the 1995 proposed open market policy, but could use the guidance contained in the 1999 proposed EIP as part of the program evaluation. In addition, New Jersey should specifically evaluate the inclusion of energy efficiency measures in the OMET Program as part of the periodic program audit.

What Is the Basis for Today's Proposal?

As discussed in the section ''What Guidance Did EPA Use to Evaluate New Jersey's Program?'' the 1994 EIP includes requirements for mandatory EIPs and guidance for voluntary EIPs. 40 CFR part 51, subpart U; 59 FR 16690. EPA proposed revised guidance to accommodate open market trading programs, by notices dated August 3, 1995, 60 FR 39668, and August 25, 1995, 60 FR 44290. EPA proposed action on a Michigan emission trading program by notice dated September 18, 1997, 62 FR 48972. EPA received comments on both of these proposals.

Subsequent to these proposals, in a letter to Congressman Thomas J. Bliley, dated March 10, 1998, Richard D. Wilson, EPA's Acting Assistant Administrator for Air and Radiation, stated that EPA would ''work with the States to develop open market programs tailored to their individual circumstances. In this process EPA and the States are using the August 1995 [open market trading] proposal as guidance and taking into account both State circumstances and the many useful comments we received in response to the proposal.''

New Jersey adopted its SIP on July 1, 1996 and submitted it to EPA on October 27, 1998. In response to requests by EPA, New Jersey supplemented the submittal with minor revisions on April 27, 2000.

By notice dated September 15, 1999, EPA proposed revised guidance for economic incentive programs. 62 FR 50086. This proposal would revise in certain respects the Agency guidance provided in the 1994 EIP, the 1995 open market trading program proposals and the guidance provided in the 1997 EPA proposal to approve the Michigan program. The public comment period on the September 15, 1999 proposal ended December 10, 1999. EPA is currently considering the public's comments in developing a final revision to the EIP guidance.

In developing its OMET SIP revision, New Jersey relied on EPA's statements that New Jersey could base its SIP revision on the 1995 open market trading proposal. On several occasions during the adoption process, EPA and State officials confirmed EPA's support for New Jersey's reliance on the 1995 proposal (September 21, 1995 note to the file regarding a public workshop in Trenton, New Jersey; and, March 15, 1996, March 21, 1996, April 30, 1996, and May 22, 1996 letters from EPA to New Jersey.) By the same token, New Jersey's submittal of the SIP revision accorded with EPA's representations to

Congressman Bliley that States could use the 1995 guidance to assist them in developing their open market trading programs. EPA evaluated the SIP revision against the guidance available at the time of the program's development and submittal. This guidance included both EPA's 1995 open market trading proposal, and the guidance provided in the **Federal Register** notice accompanying the 1997 EPA proposal to approve Michigan's trading program. In light of this reliance, EPA is today proposing to approve the New Jersey SIP revision, except for the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section. In doing so, EPA is proposing to apply, on an interim basis, both the 1995 open market trading program proposals and the guidance contained in the 1997 EPA proposal to approve the Michigan program, in light of New Jersey's reliance on those two proposals, recognizing that some aspects of these proposals may be further revised by the policies of the 1999 EIP proposal, if and when it is finalized.

How Will New Jersey Address Future EPA Trading Guidance?

EPA believes the basis for today's proposed action is a reasonable approach in the interest of supporting trading programs. However, due to EPA's lack of experience with open market trading programs and the many issues that such programs raise, EPA will use any future final revised EIP guidance as a basis for re-evaluating New Jersey's OMET Program, in coordination with the State, to ensure that its operation is consistent with the Clean Air Act and federal regulation. EPA will notify the State of any deficiencies in the OMET Program, within 18 months after EPA issues a final revised EIP guidance. As with any SIP, EPA may require New Jersey to revise the OMET Program where necessary and re-submit the OMET Program according to the requirements and deadlines under section 110(k)(5) of the Act. According to section 110(k)(5), New Jersey may have up to 18 months to revise and re-submit the OMET Program after EPA notifies the State of any deficiencies.

What is the Status of the 1994 Economic Incentive Program?

The 1994 EIP established, through notice-and-comment action, rules for mandatory EIPs and guidance for voluntary EIPs. Any final action that EPA may take to approve the New Jersey OMET Program, to the extent that action differs from the guidance portion of the 1994 EIP, would revise that portion of the 1994 EIP action only for purposes of today's action on the New Jersey SIP submittal. EPA's proposed 1999 EIP guidance, once completed through notice-and-comment action, may further revise the guidance portion of the 1994 EIP action.

Conclusion

EPA is proposing to conditionally approve the New Jersey SIP revision for Subchapter 30 and approve revisions to Subchapters 16, 18, and 19. This SIP revision implements New Jersey's OMET Program. EPA is proposing conditional approval of New Jersey's OMET Program, provided New Jersey commits to correct the deficiencies discussed in the ''What are EPA's Proposed Conditions for Approval?'' section, in writing, on or before February 8, 2001. New Jersey must then correct the deficiencies and submit them to EPA within one year of EPA's final action on the OMET SIP revision.

If New Jersey submits a commitment to this effect, EPA will publish a final conditional approval of New Jersey's OMET Program. EPA will consider all information submitted prior to any final rulemaking action as a supplement or amendment to the October 27, 1998 submittal. If New Jersey does not make the required commitment to EPA, EPA is proposing in the alternative to disapprove the OMET Program.

EPA is requesting public comment on the issues discussed in today's action. EPA will consider all public comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by attending the public information sessions discussed in the **DATES** section, and by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section.

Administrative Requirements

Executive Order 12866

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

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Executive Order 13132

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

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

National Technology Transfer and Advancement Act

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 28, 2000.

Carol M. Browner,

Administrator.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JANUARY 9, 2001

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Program regulations:

Low-documentation direct operating loan (Lo-Doc) regulations; implementation; published 1-9-01

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Low-documentation direct operating loan (Lo-Doc) regulations; implementation; published 1-9-01

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Rural Housing Service

Program regulations:

Low-documentation direct operating loan (Lo-Doc) regulations; implementation; published 1-9-01

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Rural Utilities Service

Program regulations:

Low-documentation direct operating loan (Lo-Doc) regulations; implementation; published 1-9-01

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Turtle excluder devices; published 1-9-01

COMMODITY FUTURES TRADING COMMISSION

Organization, functions, and authority delegations:

Information, disclosure and request; published 1-9-01

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Spinosad; published 1-9-01

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

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California; published 11-24-00

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Agricultural Marketing Service

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

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Oregon; receipt authorization; comments due by 1-17-01; published 12-18-00

Spain; Spanish Pure Breed horses; comments due by 1-16-01; published 11-16-00

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National Oceanic and Atmospheric Administration

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Pacific halibut and sablefish; comments due by 1-16-01; published 12-14-00

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Atlantic bluefin tuna; comments due by 1-16-01; published 12-21-00

DEFENSE DEPARTMENT

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ENERGY DEPARTMENT

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ENERGY DEPARTMENT

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Electric distribution transformers; efficiency standards; comments due by 1-16-01; published 12-1-00

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LIST OF PUBLIC LAWS

This completes the listing of public laws enacted during the second session of the 106th Congress. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

The list will resume when bills are enacted into public law during the next session of Congress. A cumulative list of Public Laws will be published in the **Federal Register** on Tuesday, January 16, 2001.

H.R. 5528/P.L. 106–568
Omnibus Indian Advancement Act (Dec. 27, 2000; 114 Stat. 2868)

H.R. 5640/P.L. 106–569
American Homeownership and Economic Opportunity Act of 2000 (Dec. 27, 2000; 114 Stat. 2944)

S. 2943/P.L. 106–570
Assistance for International Malaria Control Act (Dec. 27, 2000; 114 Stat. 3038)

H.R. 207/P.L. 106–571
Federal Physicians Comparability Allowance Amendments of 2000 (Dec. 28, 2000; 114 Stat. 3054)

H.R. 2816/P.L. 106–572
Computer Crime Enforcement Act (Dec. 28, 2000; 114 Stat. 3058)

H.R. 3594/P.L. 106–573
Installment Tax Correction Act of 2000 (Dec. 28, 2000; 114 Stat. 3061)

H.R. 4020/P.L. 106–574
To authorize the addition of land to Sequoia National Park, and for other purposes. (Dec. 28, 2000; 114 Stat. 3062)

H.R. 4656/P.L. 106–575
To authorize the Forest Service to convey certain lands in the Lake Tahoe Basin to the Washoe County School District for use as an elementary school site. (Dec. 28, 2000; 114 Stat. 3063)

S. 1761/P.L. 106–576
Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 (Dec. 28, 2000; 114 Stat. 3065)

S. 2749/P.L. 106–577
To establish the California Trail Interpretive Center in Elko, Nevada, to facilitate the interpretation of the history of development and use of trails in the settling of the western portion of the United States, and for other purposes. (Dec. 28, 2000; 114 Stat. 3068)

S. 2924/P.L. 106–578
Internet False Identification Prevention Act of 2000 (Dec. 28, 2000; 114 Stat. 3075)

S. 3181/P.L. 106–579
National Moment of Remembrance Act (Dec. 28, 2000; 114 Stat. 3078)

H.R. 1795/P.L. 106–580
National Institute of Biomedical Imaging and Bioengineering Establishment Act (Dec. 29, 2000; 114 Stat. 3088)

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