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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 537

RIN 3206–AJ33

Repayment of Student Loans

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to implement provisions of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 authorizing Federal agencies to repay federally insured student loans when necessary to recruit or retain highly qualified personnel.

EFFECTIVE DATES: August 30, 2001.

FOR FURTHER INFORMATION CONTACT: Michael J. Mahoney, (202) 606–0830 (FAX 202–606–0390).

SUPPLEMENTARY INFORMATION: On March 16, 2001, OPM published proposed regulations implementing provisions of Public Law 106–398. OPM is making them final with no changes. These provisions: Remove the restriction of this incentive to professional, technical, or administrative personnel; remove the limitation of this incentive to employees covered under General Schedule pay rates; broaden the types of loans which qualify under this part under the Higher Education Act of 1965 and the Public Health Service Act; require agencies to report annually to OPM on their use of this incentive; and require OPM to report annually to Congress on agencies' use of this incentive. These regulations reflect the amendments to 5 U.S.C. 5379.

The repayment authority is one of several flexibilities made available to agencies when trying to attract individuals to the Federal service, or retain highly qualified personnel.

These final regulations amend the following: Purpose, Definition of Employee, Definition of Student Loan, and Records and Reports.

Comments

OPM received comments from 3 agencies and 6 individuals.

One agency commented that the $40,000 payment limitation is not clear, and that the final regulations should provide greater clarity as to what this limitation represents. OPM did not adopt this suggestion because we believe the language in the regulation at 5 CFR 537.106(c)(2), which reads, ''a total of $40,000 per employee'', is sufficiently clear. The $40,000 limitation is the maximum an agency may pay to any one employee. The same agency also suggested that the final regulations state whether this benefit is subject to the aggregate limitation on pay. OPM did not adopt this suggestion because that issue is outside the scope of these regulations. However, OPM is amending the questions and answers on student loan repayments on the OPM Web site to clarify that these payments are not subject to that aggregate limitation.

Another agency suggested that OPM serve as a resource for information pertaining to tax withholding and payroll related issues associated with the use of this benefit. OPM does not agree with this suggestion because we have no authority to provide guidance on tax related issues. OPM defers to the Internal Revenue Service (IRS) on tax related matters. However OPM, with input from the IRS, provides information pertaining to the tax related aspects of this benefit in our Questions and Answers. This agency also commented that the annual reporting requirements do not impose an undue burden on agencies.

A third agency suggested that the annual reporting requirement be conducted on a fiscal year basis to coincide with agency reports for other recruitment, retention, and relocation incentives. OPM agrees with this suggestion and will adopt a fiscal year reporting requirement. We will address reporting timeframes in our Questions and Answers.

One individual commented that more guidelines are needed to ensure appropriate implementation of this program and to safeguard against abuses of the program. OPM did not address this suggestion in the final regulations because we have issued accompanying Questions and Answers guidance to assist agencies with their implementation of this program.

Another individual suggested the final regulations clarify what is expected of employees after they receive this benefit. OPM has already addressed this in 5 CFR 537.107 (service agreements) and in 5 CFR 537.108 (loss of eligibility for loan repayment benefits).

Another individual suggested that OPM define the term, ''highly qualified personnel'' in the final regulations. OPM did not adopt this suggestion. A standard definition of ''highly qualified personnel'' may limit agencies in their use of this authority, as there are many ways in which an individual may be deemed highly qualified in relation to the duties they perform or the skills they possess. OPM reminds agencies that they can define the term in their agency plans for using this authority.

Finally, one individual noted the difficulties in showing that an employee would be likely to leave for employment outside the Federal service. The individual commented that proof of an offer of employment is too unrealistic and difficult to obtain, and that private sector employers are not likely to provide such proof. OPM believes the final regulations give agencies wide latitude in how they determine whether an employee may be likely to leave for employment outside the Federal service. The final regulations do not specify that proof from a private sector employer is required in order for this benefit to be used as a retention incentive.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 537

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM amends part 537 to Title 5, Code of Federal Regulations, as follows:

PART 537—REPAYMENT OF STUDENT LOANS

1. The authority citation for part 537 continues to read as follows:

Authority: 5 U.S.C. 5379.

2. Section 537.101 is revised to read as follows:

§ 537.101 Purpose.

This part provides regulations to implement 5 U.S.C. 5379, as amended, which authorizes agencies to establish a program under which they may agree to repay (by direct payment on behalf of the employee) all or part of any outstanding federally insured student loan or loans previously taken out by a candidate to whom an offer of employment has been made, or a current employee of the agency, in order to recruit or retain highly qualified personnel.

3. In § 537.102 the definitions of *Employee* and *Student loan* are revised to read as follows:

§ 537.102 Definitions.

* * * * *

Employee has the meaning given that term in 5 U.S.C. 2105, except it does not include an employee occupying a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy advocating character (i.e., employees serving under Schedule C appointments).

* * * * *

Student loan means—

(a) A loan made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965; or

(b) A health education assistance loan made or insured under part A of title VII of the Public Health Service Act, or under part E of title VIII of that Act.

4. In section 537.110 the section heading is revised and the existing text is designated as paragraph (a), and paragraph (b) is added, to read as follows:

§ 537.110 Records and Reports.

* * * * *

(b) Before January 1st of each year, each agency must submit a written report to the Office of Personnel Management stating when the agency made student loan repayments on behalf of an employee during the previous fiscal year. Each report must include:

(1) The number of employees selected to receive this benefit;

(2) The job classifications of the employees selected to receive benefits under this part; and

(3) The cost to the Federal government for providing benefits under this part.

[FR Doc. 01–19008 Filed 7–30–01; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV01–916–3 IFR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the reporting requirements under the marketing orders for California nectarines and peaches by modifying the requirement that all handlers submit a monthly destination report. This rule relaxes the requirement by establishing an exemption for handlers who ship fewer than 50,000 containers or container equivalents of tree fruit, including nectarines, peaches, and plums. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative (NAC) and Peach Commodity Committees (PCC) (committees). The handling of plums grown in California is regulated by a California State marketing order.

DATES: August 1, 2001; comments received by October 1, 2001 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule in the petition. The Act provides that the

district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies the reporting requirements under the orders' rules and regulations by establishing an exemption from filing mandatory monthly destination reports for handlers who handle less than 50,000 containers or container equivalents for nectarines, peaches, and plums. While nectarines and peaches are regulated under the Federal marketing orders, plums are regulated under a California state marketing order. Most handlers, however, handle and report on a combination of these fruit.

Under this modification, handlers who shipped less than 50,000 containers or container equivalents of any combination of nectarines, peaches, and plums in the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, provided their shipments continue to total less than 50,000 containers or container equivalents of these fruit in the previous season.

Handlers who begin operation during or after the 2001 season will also be exempt from filing monthly destination reports during their first year of operation. These handlers will continue to be exempt from such reporting requirements as long as their shipments of these tree fruit total less than 50,000 containers or container equivalents, in the previous season.

Handlers who are not exempt, but in some subsequent year ship less than 50,000 containers or container equivalents, will be exempt the following season and will be exempt in subsequent seasons, provided their shipments continue to total less than 50,000.

Under the orders, reporting requirements are established in §§ 916.60 and 917.50 for fresh shipments of California nectarines and peaches, respectively. Such reports are to be filed with the committees. The information authorized includes: (1) The name of the shipper and the shipping point; (2) the car or truck license number (or name of the trucker), and identification of the carrier; (3) the date and time of departure; (4) the number and type of containers in the shipment; (5) the quantities shipped, showing separately the variety, grade, and size of the fruit; (6) the destination; and (7) the identification of the inspection certificate or waiver pursuant to which the fruit was handled. Other information may be requested by the committees, with the approval of the Secretary, to enable the committees to carry out their duties.

Sections 916.160 and 917.178 of the orders' rules and regulations specify the reporting procedures for handlers of nectarines and peaches, which include the requirements related to destination reports.

Information from destination reports is utilized by the NAC and PCC to determine the quantities of nectarines and peaches shipped to various markets. Such information permits the committees to target marketing research and promotion efforts more effectively, giving the committees the flexibility to direct their limited marketing funds to open new markets or expand existing markets.

The more accurate the information obtained from handlers, the more precisely the committees can address their marketing research and promotion efforts. However, this information collection comes at a cost to the committees and to handlers, especially smaller handlers who generally lack the staff to prepare such reports.

The NAC and PCC, which are responsible for local administration of the orders, met on May 3, 2001, and unanimously recommended that these reporting requirements be revised, beginning with the 2001 season, which began April 1. However, because the season has already begun, the relaxation in report requirements will be implemented as of the effective date of this rule.

At three subcommittee meetings prior to the May 3, 2001, committee meetings, discussions on the merits of the exemption were held. The Management Services Committee met on January 18, 2001, and discussed a request from a small handler to review the destination report requirements. It was reported that destination information from small handlers is not always accurate since the reporting handlers do not necessarily know the final destination of their fruit sold at terminal markets. It was also noted that the burden of filing destination reports is often a complaint of small handlers.

The Management Services Committee then directed the committee staff to review the destination report requirements and procedures, and make recommendations based upon their review at the following Management Services Committee meeting.

The Management Services Committee met again on March 6, 2001, and discussed the destination report information provided by the committee staff. The members also discussed changes to the destination report requirements, as well as the effect of the revision on handlers in the industry and on information gathering conducted by the committees.

A review of destination report records by the staff revealed that approximately 160 handlers shipped less than 50,000 containers of all three-tree fruit during the 2000 season. As a percentage of total shipments, these handlers represent approximately 3 percent of all shipments of nectarines, peaches, and plums. The committees' staff spends a portion of their time administering the collection of this relatively small amount of additional information. The committees believe that exempting information from handlers who represent approximately 3 percent of all tree fruit shipments would not have a significant effect on overall destination information, and may actually improve the accuracy of destination information. These handlers are small entities, and such a relaxation will reduce the reporting burden on them. In addition, the committees' administrative costs associated with destination reports may be reduced.

Finally, the Management Services Committee met on April 18, 2001, to review destination report summaries from the 2000 season. Based on all the information considered, the members voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit (including nectarines, peaches, and plums) should be exempted from filing monthly destination reports.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers

of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities, excluding receipts from other sources.

The committees' staff has estimated that there are less than 20 handlers of nectarines and peaches in the industry who could be defined as other than small entities. In the 2000 season, the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 555,556 containers of nectarines and peaches to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the previous season, the committees' staff estimates that small handlers of nectarines and peaches represent approximately 94 percent of the handlers within the industry.

The committees' staff has also estimated that approximately 22 percent of the nectarine and peach producers in the industry could be defined as other than small entities. In the 2000 season, the average producer price received was $5.50 per container or container equivalent for nectarines, and $5.25 per container or container equivalent for peaches. A producer would have to produce at least 90,910 containers of nectarines and 95,239 containers of peaches to have annual receipts of $500,000. Given data maintained by the committees' staff and the average producer price received during the 2000 season, the committees' staff estimates that small producers represent approximately 78 percent of the nectarine and peach producers within the industry.

This rule will revise §§ 916.160 and 917.178 of the orders' administrative rules and regulations to relax the requirement that all handlers file monthly destination reports. Under this rule, handlers who shipped less than 50,000 containers or container equivalents of tree fruit during the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

Handlers who begin operations during or after the 2001 season will also be exempt from filing monthly destination reports during their first season of operation. Such handlers will continue to be exempt in subsequent seasons as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

The NAC and PCC met on May 3, 2001, and unanimously recommended these changes to the reporting requirements for the 2001 season, which began April 1. This action was recommended to the committees by a subcommittee charged with review and discussion of the changes.

The Management Services Committee met on January 18, 2001, to discuss a request from a small handler concerning destination report requirements. At that time, the members reviewed the request and directed the staff to research the destination report requirements and procedures. At the March 6, 2001, meeting, the Management Services Committee reviewed a staff recommendation to relax the destination reporting requirements for small handlers. The members also considered two alternatives to this action at that meeting.

First, the committee considered not establishing any exemption for small handlers. This alternative was rejected because the members felt that small handlers should be provided an exemption from the destination reporting requirements. Second, they considered establishing a filing exemption for handlers who shipped less than 10,000 containers of tree fruit during the 2000 season. The committee estimated that this exemption would affect approximately 100 handlers only and one percent of total shipments. The Management Services Committee rejected that alternative because they believed that more handlers should be exempted from the requirement for filing destination reports. After some discussion, it was determined and recommended by the Management Services Committee that handlers who ship less than 50,000 containers or container equivalents of tree fruit should be exempted from filing monthly destination reports.

At a subsequent Management Services Committee meeting on April 18, 2001, the members reviewed destination report summaries from the 2000 season and voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit be exempted from filing monthly destination reports.

The committees make recommendations regarding all the revisions in reporting requirements after considering all available information, including comments of persons at committee and subcommittee meetings, and comments received in writing or verbally by committee staff. Such subcommittees include the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry, who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited.

This relaxation is expected to have an impact on small handlers by reducing the time and related costs of filing monthly destination reports. The committees estimate that approximately 160 peach and nectarine handlers would be exempt from filing destination reports. Each handler files an average of four reports each season. The time each handler spends preparing the monthly report has been estimated at 45 minutes. Therefore, in terms of reporting burden time, each qualified respondent handler will save an average of three hours each season as a result of this exemption. In total, this exemption could save the qualified industry respondents approximately 480 hours annually each for peach handlers and nectarine handlers.

This rule is also expected to have an impact on the committees by decreasing hours of staff time currently utilized to collect, reconcile, and assimilate destination report data received from small handlers.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. In fact, as noted previously, this rule will reduce reporting and recordkeeping requirements on qualified handlers, as well as on the committees themselves. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies, such as effectuated by this rule.

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

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. The committees routinely schedule meetings bi-annually during the last week of November or first week of December, and the last week of April or first week of May. Like all committee meetings, the May 3, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues.

In addition, the committees have a number of appointed subcommittees to review certain issues and make recommendations to the NAC and PCC. For this action, three subcommittee meetings were held prior to the May 3, 2001, meeting at which these regulations were reviewed and discussed.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on revisions of the handling requirements regarding destination reporting currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The shipping season for California nectarines and peaches is currently underway and handlers should be allowed to utilize this exemption as soon as possible; (2) this rule relaxes reporting requirements for some handlers of nectarines and peaches; (3) the committees unanimously recommended these changes at public meetings and interested persons had an opportunity to provide input; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Paragraph (c) of § 916.160 is revised to read as follows:

§ 916.160 Reporting procedure.

* * * * *

(c) *Destination report.* Each shipper who ships nectarines shall furnish to the manager of the Nectarine Administrative Committee a report of the number of packages of nectarines shipped to each destination, and whether the nectarines were yellow-fleshed or white-fleshed, and whether the nectarines were ''CA Utility'' quality: *Provided*, That handlers who shipped fewer than 50,000 containers or container equivalents of any combination of nectarines, peaches, and plums during the previous season are exempted from these reporting requirements: *Provided further*, That handlers who begin operation during or after the 2001 season shall be exempted from these reporting requirements during their first season of operation. The destination is defined as nectarine shipments to any domestic or international market. Destination information for domestic market shipments shall include city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which nectarine shipments were made.

* * * * *

3. Paragraph (c) of §917.178 is revised to read as follows:

§ 917.178 Peaches.

* * * * *

(c) *Destination report.* Each shipper who ships peaches shall furnish to the manager of the Control Committee a report of the number of packages of peaches shipped to each destination, and whether the peaches shipped were yellow-fleshed or white-fleshed, and whether the peaches were ''CA Utility'' quality: *Provided*, That handlers who shipped fewer than 50,000 containers or container equivalents of any combination of peaches, nectarines, and plums during the previous season are exempted from these reporting requirements: *Provided further*, That handlers who begin operation during or after the 2001 season shall be exempted from these reporting requirements during their first season of operation. The destination is defined as peach shipments to any domestic or international market. Destination information for domestic market shipments shall include the city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth day of each month following the month in which peach shipments were made.

* * * * *

Dated: July 26, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–19096 Filed 7–27–01; 9:11 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–5 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Suspension of Provisions Under the Federal Marketing Order for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends a provision in the Federal tart cherry marketing order (order) to allow handlers to receive diversion credit for exporting juice and juice concentrate to countries other than Canada and Mexico. The provision to be suspended does not allow diversion credit for domestic shipments of tart cherry juice or juice concentrate. The Cherry Industry Administrative Board (Board) unanimously recommended this action to allow handlers of tart cherries to maintain and possibly expand market opportunities for juice and juice concentrate products in export outlets. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Effective August 1, 2001. Comments received by August 30, 2001, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2AO4, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243, Fax: (301) 734–5275 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

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

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

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

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

The order authorizes the use of volume regulation. In years when volume regulation is implemented to stabilize supplies, a certain percentage of the cherry crop is required to be set aside as restricted tonnage, and the balance may be marketed freely as free tonnage. The restricted tonnage is required to be maintained in handler-owned inventory reserve pools. Under § 930.59, Handler diversion privilege, handlers in regulated districts may fulfill any restricted percentage requirements by diverting cherries or cherry products in programs approved by the Board. One form of diversion which the Board may authorize is the use of cherries for exempt purposes under § 930.62. That section states that the Board, with the approval of the Secretary, may exempt from various requirements of the order (such as assessments, and reserve pool obligation) cherries used for certain purposes such as experimental use or new market development. Section 930.162 of the regulations under the order contains various approved forms of exemption and the procedure for applying for, and obtaining, exempt use approval from the Board as well as diversion credit. One of the exempt uses authorized by regulation is the use of cherries or cherry products in the development of export markets (other than Canada and Mexico) provided that such products do not include juice or juice concentrate. When recommending provisions of the order, the industry considered Canada and Mexico to be premium markets for tart cherries, not outlets for which exemptions and diversion certificates should be given. The industry also was concerned about transshipments of lower priced cherries because of their close proximity to the United States and the primary domestic market. Thus, Canada and Mexico are excluded as eligible countries for the development of export markets.

The Board held a meeting on March 20, 2001, and unanimously recommended that the provision prohibiting handlers from receiving diversion credit through use of juice and juice concentrate be suspended from the order. However, the Board recommended that the suspension be only applicable to exports.

During the order promulgation process, producers and handlers from Oregon and Washington (Northwest), expressed concern that juice and/or juice concentrate could be established by the Board as a use eligible for diversion credit. Some handlers in the Northwest processed all or the majority of their cherries into juice/juice concentrate. At that time, this was the Northwest's primary product and handlers in the Northwest would not be subject to volume regulation. Northwest producers and handlers were concerned that the juicing and concentrating of surplus or restricted cherries by handlers in regulated districts (Michigan, New York, and Utah) would oversupply the Northwest's juice market with low-quality, low-priced product. Record testimony indicated that cherries produced in the Northwest have a high brix (sugar content) level desirable for juice/juice concentrate which produces a high quality product. Because of these concerns, the provision preventing the issuance of diversion credit for tart cherry juice and juice concentrate were included in the order in 1996 to protect the juice market for tart cherry

producers and handlers in the Northwest.

However, use of juice and juice concentrate for export was allowed under the exemption provisions for the 1997–1998 season. The 1997–1998 season was the first season of operation for this order and its provisions were new to the industry and complex to administer. Handlers new to the order provision had shipped or contracted to ship tart cherry juice or juice concentrate to eligible countries with the intention of applying for diversion certificates. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the provision against exports of juice and juice concentrate was suspended for the 1997–1998 season.

The Northwest tart cherry industry, specifically in Washington, is changing. Washington handlers are now producing 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar) in addition to packing juice and juice concentrate. According to the industry, the situation facing compliance with volume regulations, if necessary, for the 2001–2002 season is of significant concern for all regulated handlers and Washington handlers in particular. It is quite likely that the primary inventory reserve will be full at the onset of the harvest for the 2001–2002 crop year. The primary inventory reserve has a maximum limit of 50 million pounds of restricted cherries. If this reserve is full, the only reserve option for regulated handlers is a secondary reserve. A secondary reserve is an option for a handler when the primary reserve is above the 50 million pound limit. However, from a practical standpoint, a secondary reserve is not a reasonable option. Handlers establishing secondary reserves are responsible for all costs of that reserve, including inspection costs. This could prove costly for handlers establishing secondary reserves as no cherries can be released from the secondary reserve until all cherries in the primary reserve have been released. Handlers, in order to meet restricted percentage requirements, would have to consider options other than using inventory reserves. Diversion options are available to handlers. In-orchard diversion of cherries takes place when cherries are not harvested and left in the orchard. At-plant diversion of cherries takes place at the handler's facility prior to placing cherries into the processing line. This is to ensure that the cherries diverted were not simply an undesirable or unmarketable product of processing. According to the Board, export diversion would probably be the most preferred of the options. However, this option would not be available to handlers if the current limitation on exports of juice and/or juice concentrate continues. Products that sell in the export markets are mostly hot-pack (canned), dried, IQF (Individually Quick Frozen), juice or concentrate. Five plus one (5 + 1) cherries do not generally sell in export markets. This type of processed product contains sugar and is subject to increased tariffs when exported.

Tart cherry handlers in Washington produce only a few products. As previously mentioned, they produce juice and juice concentrate and 5 + 1 products. Without the ability to export juice and/or juice concentrate for diversion credit, Washington handlers could have difficulty in meeting their restricted percentage requirements. The suspension of the provision in § 930.59 of the order that prevent handlers from receiving diversion credit for juice and juice concentrate will allow Washington handlers as well as other handlers in volume regulated districts to receive diversion credit for such shipments. This will enable handlers to increase sales to new markets and fulfill their restricted reserve obligation for the 2001–2002 crop year.

The Board recommended that the proviso in § 930.59 concerning the exclusion of juice and concentrate products be suspended insofar as it applies to exports. In order to accomplish the intent of the Board's recommendation, the whole proviso needs to be suspended. Diversion credit may be granted for uses which fall under the exemptions in § 930.62 of the order. The regulations in § 930.162 implement the authority in the order concerning exempt uses and contain the terms and conditions under which diversion credit may be approved. Consistent with the Board's recommendation, the regulation will be amended to reflect the intent that exempt use approval, and diversion credit in the case of juice and juice concentrate will only be allowed for exports to countries other than Canada and Mexico.

The Regulatory Flexibility Act and Effects on Small Businesses

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

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

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

Data from the National Agricultural Statistics Service (NASS) states that for 1999, tart cherry utilization for juice, wine, or brined uses was 34.5 million pounds for all districts covered under the order. The total processed amount for 1999 was 252.3 million pounds. Juice, wine, and brined tart cherries represented about 14 percent of the total processed crop, and about 10 percent over the last three seasons (1997 through 1999).

This rule suspends a provision in the order to allow handlers to receive diversion credit for exporting tart cherry juice and juice concentrate to certain eligible countries. The Board met on March 20, 2001, and unanimously recommended that the provision prohibiting handlers from receiving diversion credit through use of juice and juice concentrate be suspended from the order. However, the Board recommended that the suspension be only applicable to exports.

During the order promulgation process, producers and handlers from Oregon and Washington (Northwest), expressed concern that juice and/or juice concentrate could be established

by the Board as a use eligible for diversion credit. Some handlers in the Northwest processed all or the majority of their cherries into juice/juice concentrate. At that time, this was the Northwest's primary product and handlers in the Northwest would not be subject to volume regulation. Northwest producers and handlers were concerned that the juicing and concentrating of surplus or restricted cherries by handlers in regulated districts (Michigan, New York, and Utah) would oversupply the Northwest's juice market with low-quality, low-priced product. Record testimony indicated that cherries produced in the Northwest have a high brix (sugar content) level desirable for juice/juice concentrate which produces a high quality product. Because of these concerns, the provision preventing the issuance of diversion credit for tart cherry juice and juice concentrate were included in the order in 1996 to protect the juice market for tart cherry producers and handlers in the Northwest. In the long run, it is anticipated that all businesses, whether large or small, will benefit from this suspension action because market growth will be increased for tart cherry products, grower returns will be improved, and less fruit will be abandoned in-orchard or at-plant by producers and handlers. Moreover, all regulated handlers will be allowed to participate in export markets and have access to diversion credits.

According to the industry, the situation facing compliance with volume regulations, if necessary, for the 2001–2002 season is of significant concern for all regulated handlers and Washington handlers in particular. It is quite likely that the primary inventory reserve will be full at the onset of the harvest for the 2001–2002 crop year. The primary inventory reserve has a maximum limit of 50 million pounds of restricted cherries. If this reserve is full, the only reserve option for regulated handlers is a secondary reserve. A secondary reserve is an option for a handler when the primary reserve is above the 50 million pound limit. However, from a practical standpoint, a secondary reserve is not a reasonable option. Handlers establishing secondary reserves are responsible for all costs of that reserve, including inspection costs. This could prove costly for handlers establishing secondary reserves as no cherries can be released from the secondary reserve until all cherries in the primary reserve have been released. Handlers, in order to meet restricted percentage requirements, would have to consider options other than using inventory reserves. Diversion options are available to handlers. In-orchard diversion of cherries takes place when cherries are not harvested and left in the orchard. At-plant diversion of cherries takes place at the handler's facility prior to placing cherries into the processing line. This is to ensure that the cherries diverted were not simply an undesirable or unmarketable product of processing. According to the Board, export diversion would probably be the most preferred of the options. However, this option would not be available to handlers if the current limitation on exports of juice and/or juice concentrate continues. The suspension of the order provision that prevents handlers from receiving diversion credit for juice and juice concentrate will allow Washington handlers as well as other handlers in volume regulated districts to receive diversion credit for such shipments. To be consistent with the Board's intent, the regulation would prevent the use of juice or juice concentrate for exempt use or diversion credit in the domestic market. This will enable handlers to increase sales to new markets and fulfill their restricted reserve obligation for the 2001–2002 crop year. Industry estimates are that in Washington State alone, this suspension would affect up to 4,200 tons of juice/juice concentrate products, with an estimated value of $1.5 to $2.5 million dollars.

One alternative to this relaxation would be to continue the status quo. However, this would not be favorable to cherry producers and handlers as they would be forced to either destroy tons of cherries in-orchard or at-plant, or incur costly storage fees for maintaining a secondary reserve.

This action imposes no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by this order have been previously approved by OMB and assigned OMB Number 0581–0177.

The Board's meeting was publicized and all Board members and alternate Board members, representing both large and small entities, were invited to attend the meeting and participate in Board deliberations. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on suspending language in the provisions in the order to allow handlers to receive diversion credit for exporting juice and juice concentrate to countries other than Canada and Mexico. All comments received will be considered in finalizing this interim final rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that the provision suspended does not tend to effectuate the declared policy of the Act, while the additional regulatory amendments are necessary to implement the suspension, and, therefore, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2001–2002 crop year begins July 1, 2001, and this rule needs to be effective as soon as possible in order to allow the industry to take advantage of the export opportunity; (2) the Board unanimously recommended this change at a public meeting and interested persons had an opportunity to provide input; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule. In view of the above, a thirty day comment period is deemed appropriate.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

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

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

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

Authority: 7 U.S.C. 601–674.

§ 930.59 (Suspended in part)

2. In § 930.59, paragraph (b), the words ''*: Provided*, That diversion may not be accomplished by converting cherries into juice or juice concentrate'' are suspended indefinitely.

3. In § 930.162, paragraphs (a), (b)(3), and (c)(3) are revised to read as follows:

§ 930.162 Exemptions.

(a) *General*. Tart cherries which are used for the purpose of new product development, for new market development, for development of export markets, for experimental purposes, for export to countries other than Canada, and Mexico, or which are donated to charitable organizations may be granted an exemption by the Board and will be exempt from §§ 930.41, 930.44, 930.51, 930.53, and §§ 930.55 through 930.57, subject to the following terms and conditions. Tart cherry juice and juice concentrate products are not eligible for exempt use/diversion credit in domestic markets. Only tart cherry juice and juice concentrate products for export can receive exempt use/diversion credit. Any information received of a confidential and/or proprietary nature included in this application will be protected from disclosure pursuant to § 930.73 of the order.

(b) * * *

(3) *Development of export markets*. The sale of cherries or cherry products, including the development of sales for new or different tart cherry products or the expansion of sales for existing tart cherry products, to countries other than Canada, and Mexico.

* * * * *

(c) * * *

(3) When applying to the Board for an exemption for the development of export markets for tart cherries or cherry products (including juice and juice concentrate) in countries other than Canada and Mexico, including the expansion of sales in existing export markets, handlers must detail the nature of their product, specify whether such product differs from current products being sold in export markets, and estimate the anticipated short and long term sales volumes for the requested exemption.

* * * * *

Dated: July 25, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–18953 Filed 7–30–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–267–AD; Amendment 39–12344; AD 2001–15–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2, A300 B4, A310, A319, A320, A321, A330, and A340 Series Airplanes; and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A300 B2, A300 B4, A310, A319, A320, A321, A330, and A340 series airplanes; and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes. That AD currently requires certain repetitive checks, and replacement of the braking dual distribution valve (BDDV) if necessary. This action requires, for certain airplanes, inspecting and/or replacing the BDDV cover. For all other airplanes, this action provides for optional termination of the repetitive checks. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the alternate braking system, which could result in the airplane overrunning the end of the runway during landing.

DATES: Effective September 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) was published in the **Federal Register** on March 19, 2001 (66 FR 15365). The NPRM proposed to supersede AD 98–15–51, amendment 39–10678 (63 FR 40805, July 31, 1998). AD 98–15–51 is applicable to all Airbus Model A300 B2, A300 B4, A310, A319, A320, A321, A330, and A340 series airplanes; and Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes. The NPRM proposed to require, for certain airplanes, inspecting and/or replacing the cover of the braking dual distribution valve (BDDV) with an improved cover. For all other airplanes, that action proposed to provide for optional termination of the repetitive checks. That action also proposed to revise the applicability of the existing AD.

Comments

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

Request To Revise Applicability

One commenter (the manufacturer) requests that the applicability of the proposed AD be revised to remove certain airplanes. The commenter notes that accomplishment of the modification specified by paragraph (d) of the proposed AD would terminate all actions for Model A300, A300–600, A310, A330, and A340 series airplanes. Therefore, the commenter suggests that the proposed AD would not be applicable for those airplanes on which the modification has already been accomplished.

The FAA concurs, for the reasons provided by the commenter. The

applicability of the final rule has been revised accordingly.

Request To Revise Identification of Relevant French Airworthiness Directives

This same commenter requests that Note 6 of the proposed AD be revised to identify all related French airworthiness directives.

The FAA concurs. Some of the references were inadvertently omitted from the proposed AD. The final rule has been revised accordingly.

Conclusion

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

Cost Impact

Approximately 367 airplanes of U.S. registry will be affected by this AD. Of these, approximately 311 are Model A319, A320, and A321 series airplanes.

The repetitive operational checks that are currently required by AD 98–15–51 and retained in this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive checks is estimated to be $60 per airplane, per check.

The new inspection required for certain Model A319, A320, and A321 series airplanes will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection is estimated to be $60 per airplane, per inspection cycle.

The new BDDV cover replacement required by this AD for Model A319, A320, and A321 series airplanes will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact on U.S. operators of the replacement is estimated to be $55,980, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10678 (63 FR 40805, July 31, 1998), and by adding a new airworthiness directive (AD), amendment 39–12344, to read as follows:

2001–15–10 Airbus Industrie: Amendment 39–12344. Docket 2000z–NM–267–AD. Supersedes AD 98–15–51, Amendment 39–10678.

Applicability: The following airplanes, certificated in any category:

TABLE 1.—APPLICABILITY

Model/series—	Except airplanes modified per—	
	Airbus modification	Reference airbus service bulletin
A300 B2 and A300 B4	12012	A300–32–0429
A300 B4–600, A300 B4–600R, and A300 F4–600R, and A300 F4–600R (collectively called A300–600)	12012	A300–32–6075
A310	12012	A310–32–2113
A319, A320, and A321	28301	A320–32–1203
A330	47210	A330–32–3086
A340	47210	A340–32–4122

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 (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the alternate braking system, which could result in the airplane overrunning the end of the runway during landing, accomplish the following:

Repetitive Checks

(a) At the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD: Perform an in-flight operational check of the alternate braking system, in accordance with Airbus All Operator Telex (AOT) 32–19, Revision 04, dated April 29, 1999.

(1) For Model A319, A320, and A321 series airplanes: Perform the check at the earlier of the times specified by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD. Thereafter, repeat the operational checks at intervals not to exceed 7 days.

(i) Within 7 days after the most recent check done per AD 98–15–51, amendment 39–10678.

(ii) Within 7 days after the effective date of this AD.

(2) For all other airplanes: Perform the check at the earlier of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii). Thereafter, repeat the operational checks at intervals not to exceed 500 flight hours.

(i) Within 500 flight hours after the most recent operational check done per AD 98–15–51.

(ii) Within 500 flight hours after the effective date of this AD.

(b) If any discrepancy is found during any operational check required by paragraph (a) of this AD: Prior to further flight, replace the brake dual distribution valve (BDDV) with a serviceable part, in accordance with AOT 32–19, Revision 04, dated April 29, 1999.

Note 2: The AOT refers to the following Flight Operation Telexes (FOT) as additional sources of service information: FOT 999.0062, Revision 01, dated August 20, 1998 (for Model A300 series airplanes); FOT 999.0061, Revision 01, dated August 20, 1998 (for Model A300–600 and A310 series airplanes); FOT 999.0059, Revision 02, dated September 2, 1998 (for Model A319, A320, and A321 series airplanes); and FOT 999.0060, Revision 01, dated August 20, 1998 (for Model A330 and A340 series airplanes).

Note 3: Doing the operational checks and replacing the BDDV per earlier versions of Airbus AOT 32–19 (issued prior to Revision 04) are also acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Repetitive Inspections for Certain Airplanes

(c) For Model A319, A320, and A321 series airplanes modified per Airbus Service Bulletin A320–32–1200 (production Modification 27833): Within 6 months after accomplishment of the modification, or within 3 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect corrosion of the rocker arm mechanism inside the BDDV cover, per Airbus Service Bulletin A320–32–1199, dated January 15, 1999. Repeat the inspection thereafter at least every 6 months until the actions required by paragraph (e) or (f), as applicable, of this AD have been accomplished. If any corrosion is detected during any inspection required by this paragraph: Before further flight, replace the BDDV cover with a new cover per Airbus Service Bulletin A320–32–1199, dated January 15, 1999.

Note 4: 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.''

Optional Terminating Action for Operational Checks

(d) Modification of the BDDV, if accomplished, per the applicable service bulletin listed in Table 2 of this AD cancels the operational checks required by paragraph (a) of this AD. Table 2 follows:

TABLE 2.—SERVICE BULLETINS FOR OPTIONAL TERMINATING ACTION

For model—	Modification of the BDDV per Airbus service bulletin	Cancels
A300 B2 and B4 series airplanes	A300–32–0429	The operational checks required by paragraph (a) and B4 of this AD.
A300–600 series airplanes	A300–32–6075	
A310 series airplanes	A310–32–2113	
A319, A320, and A320 series airplanes	A320–32–1200	
A330 series airplanes	A330–32–3086	
A340 series airplanes	A340–32–4122	

Required Terminating Action for Repetitive Inspections for Certain Airplanes

(e) Except as provided by paragraph (f) of this AD: For Model A319, A320, and A321 series airplanes, within 12 months after the effective date of this AD, replace the BDDV cover with a new, improved cover, per Airbus Service Bulletin A320–32–1203, dated June 4, 1999. This replacement terminates the requirements of this AD for these airplanes.

(f) For Model A319, A320, and A321 series airplanes modified per Airbus Service Bulletin A320–32–1200 within the compliance time specified by paragraph (e) of this AD: Do the replacement required by paragraph (e) of this AD within 15 months after doing the modification specified by Airbus Service Bulletin A320–32–1200, or within 2 months after the effective date of this AD, whichever occurs later. This replacement terminates the requirements of this AD for these airplanes.

Alternative Methods of Compliance

(g)(1) 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, Transport Airplane Directorate, FAA. 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–15–51, amendment 39–10678, are approved as alternative methods of compliance with the applicable requirements of this AD.

Note 5: 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

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

Incorporation by Reference

(i) The actions shall be done in accordance with Airbus All Operators Telex 32–19, Revision 04, dated April 29, 1999; Airbus Service Bulletin A320–32–1199, dated January 15, 1999; and Airbus Service Bulletin A320–32–1203, dated June 4, 1999; as applicable. This incorporation by reference is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the

Office of the Federal Register, 800 North Capitol Street, NW., suite 700, DC.

Note 6: The subject of this AD is addressed in French airworthiness directives 1998–263–255(B) R3, dated December 29, 1999; 2000–258–146(B), dated June 14, 2000; 1998–264–075(B) R4, dated October 6, 1999; and 1998–265–093(B) R4, dated October 6, 1999.

Effective Date

(j) This amendment becomes effective on September 4, 2001.

Issued in Renton, Washington, on July 18, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18434 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–72–AD; Amendment 39–12345; AD 2001–15–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600); A310; A319; A320; A321; A330; and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes, that requires replacement of Labinal actuators in certain powered cockpit seats with new improved actuators. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil aviation authority. The actions specified by this AD are intended to prevent uncommanded horizontal movement of the cockpit seats or loss of ability to lock the seats in place during flight, which could limit the ability of the crew to perform necessary tasks, leading to reduced controllability of the airplane.

DATES: Effective September 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from SOGERMA Z.I. de l'arsenal, BP. 109–17303 Rochefort Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Airbus Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes, was published in the **Federal Register** on May 1, 2001 (66 FR 21697). That action proposed to require replacement of Labinal actuators in certain powered cockpit seats with new improved actuators.

Comments

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

Request To Revise Applicability

One commenter generally concurs with the Notice of Proposed Rulemaking (NPRM) but suggests that the AD be applicable to SOGERMA cockpit seats rather than to the airplane models, because the AD addresses a problem associated with the cockpit seats.

The FAA does not concur and notes that its general policy, when an unsafe condition results from an appliance or other item that is installed on multiple airplane models, is that the AD is issued so that it is applicable to those airplane models, rather than to the item. The reason for this is simple: Making the AD applicable to the airplane models on which the appliance or other item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents ''unknowing non-compliance'' on the part of the operator.

Request To Extend Compliance Time

Another comment was submitted by the Air Transport Association, on behalf of one of its member airlines. That comment states that a compliance period of 6 months will not be adequate to complete the required replacement of actuators in the cockpit seats, that the member airline has had no reported failures of the actuators in the last 7 years, and that the replacement should be accomplished during the regularly scheduled ''C-check.'' The ATA requests that the compliance period be extended to 18 months.

The FAA does not concur with this comment. One reason is that the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued airworthiness directive 2000–524(B), dated December 27, 2000, which specifies a compliance time of 6 months to replace the LABINAL actuators. Another reason is that the airplane manufacturer has reported 2 recent instances of uncommanded movement of the cockpit seats during flight. In consonance with the DGAC and considering the magnitude of the risk involved, the FAA considers 6 months to be an appropriate compliance period. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 548 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided at no cost to the operator. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $131,520, or $240 per airplane.

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

incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–15–11 Airbus Industrie: Amendment 39–12345. Docket 2001–NM–72–AD.

Applicability: Model A300 B2; A300 B4; A300 B4–600, B4–600R, and F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; certificated in any category; equipped with powered cockpit seats manufactured by SOGERMA and having the serial numbers listed in SOGERMA Service Bulletin SB TAAI2–25–402, Revision 1, dated December 21, 2000.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded horizontal movement of the cockpit seats or loss of ability to lock the seats into place during flight, which could limit the ability of the crew to perform necessary tasks, leading to reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD: Remove Labinal actuators having part number (P/N) 4136290003 and replace them with Labinal actuators having P/N 4136290004 or 4136290005, or AVIAC actuators having P/N 6147–6, in accordance with SOGERMA Service Bulletin SB TAAI2–25–402, Revision 1, dated December 21, 2000.

Spares

(b) As of the effective date of this AD, no person shall install a powered cockpit seat that has a Labinal actuator having P/N 4136290003 on any airplane.

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, Transport Airplane Directorate, FAA. 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 2: 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.

Incorporation by Reference

(e) The replacement shall be done in accordance with SOGERMA Service Bulletin SB TAAI2–25–402, Revision 1, dated December 21, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOGERMA Z.I. de l'arsenal, BP. 109–17303 Rochefort Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–524(B), dated December 27, 2000.

Effective Date

(f) This amendment becomes effective on September 4, 2001.

Issued in Renton, Washington, on July 18, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18433 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–226–AD; Amendment 39–12342; AD 2001–15–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 767 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. This amendment requires a further revision of the AFM to specify conditions for minimum fuel weight requirements and procedures for ground transfer of fuel for certain airplanes, repetitive inspections to detect discrepancies of the center tank override or override/jettison fuel pump, as applicable, and replacement of any discrepant pump with a new or serviceable pump. This amendment also requires that any override or override/jettison fuel pump without a diffuser be restored to a configuration that incorporates a diffuser. Additionally, this amendment requires installation of a new configuration center tank override or override/jettison fuel pump with a cast-

in diffuser, which terminates the AFM revisions and repetitive inspections. The actions specified by this AD are intended to prevent ignition of fuel vapors due to the generation of sparks, to prevent a potential ignition source inside the fuel tank caused by steel-to-steel contact during dry fuel pump operation, and to ensure satisfactory fuel pump and fuel system operation.

DATES: Effective September 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2001.

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

FOR FURTHER INFORMATION CONTACT: Dennis Kammers, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2956; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–19–15, amendment 39–10136 (62 FR 48754, September 17, 1997), which is applicable to all Boeing Model 767 series airplanes, was published in the **Federal Register** on August 17, 2000 (65 FR 50166). The action proposed to continue to require revising the Airplane Flight Manual (AFM) to include procedures that will ensure that the center tank fuel pumps are not operated with less than 1,000 pounds of fuel in the center tank. The action proposed to require a further revision of the AFM to specify conditions for minimum fuel weight requirements and procedures for ground transfer of fuel for certain airplanes, repetitive inspections to detect discrepancies of the center tank override/jettison fuel pumps, and replacement of any discrepant pump with a new or serviceable pump. The action also proposed to require that any override/jettison pump that incorporates a configuration without a diffuser be restored to a configuration that incorporates a diffuser. Additionally, the action proposed to require installation of a new configuration center tank fuel pump, which would terminate the AFM revisions regarding fuel system operating procedures and repetitive inspection requirements.

Explanation of New Method of Compliance

Paragraph (i) of the Notice of Proposed Rulemaking (NPRM) proposed to require installation of ''modified center tank override and jettison fuel pumps that are not subject to the unsafe condition,'' in accordance with a method approved by the FAA. Since the issuance of the proposed rule, the FAA has reviewed and approved Boeing Service Bulletins 767–28–0062 and 767–28–0063, both dated December 20, 2000. Boeing Service Bulletin 767–28–0062 provides procedures for accomplishment of the modification of the override and override/jettison fuel pumps. Boeing Service Bulletin 767–28–0063 provides procedures for installing a placard for the wing fueling station to advise that use of JP–4 or Jet B fuel in the center fuel tank is prohibited. The FAA has approved incorporation of these service bulletins as an acceptable means of compliance with paragraph (i) of this AD, and has added a new note, Note 5, to this final rule to acknowledge this means of compliance.

Comments

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

Support for the Proposal

One commenter supports the proposed rule.

Request To Limit Applicability of This AD

One commenter states that the applicability of the proposed rule should be restricted to Model 767–200 and –300 series airplanes with line numbers up to 797, and should not apply to any Model 767–400ER series airplanes. The commenter justifies its request on the fact that Model 767–200 and –300 series airplanes with line numbers 798 and higher are delivered with new override or override/jettison fuel pumps with cast-in diffusers, such as are required to be installed by paragraph (i) of this AD. The commenter states that the pump configuration with a cast-in diffuser is the only approved configuration for Model 767–400ER series airplanes. The commenter requests that the FAA revise the applicability of this AD to apply to airplanes on which an override or override/jettison fuel pump, as applicable, having a specific part number, is installed.

The FAA partially concurs with the commenter's request. The FAA does not concur with the commenter's request to list the applicability of the AD in terms of airplanes equipped with certain part numbers. Also, while the FAA acknowledges that airplanes with line numbers 798 and above were delivered with the new configuration override or override/jettison fuel pump, as applicable, the FAA is concerned that another pump configuration could be removed from an airplane with a line number before 798 and installed during line maintenance on a Model 767–200, –300, or –300F series airplane with a line number of 798 or above. Thus, the FAA finds it necessary to make this AD applicable to all Model 767–200, –300, and –300F series airplanes.

However, the FAA does concur that the only approved pump configuration for Model 767–400ER series airplanes is the new configuration pump with a cast-in diffuser, and the maintenance documentation for these airplanes correctly reflects this configuration without potential for confusion. Thus, the applicability of this AD has been revised to exclude all Model 767–400ER series airplanes.

Requests To Provide Relief for Airplanes With Deactivated Center Fuel Tanks

Two commenters request that the FAA provide relief from the requirement to install a modified override or override/jettison pump per paragraph (i) of the proposed AD for airplanes on which the center fuel tanks are deactivated as described by paragraph (f) of the proposed AD. One commenter points out that airplanes with center fuel tanks that have been deactivated have certain motor winding circuits open for the override or override/jettison fuel pumps, and'with no power available to operate the pumps'there is no chance of sparks being generated within the center fuel tank.

The FAA concurs with the commenters' request. The FAA has revised paragraph (f) of this final rule to specify that, for airplanes equipped with a center tank scavenge system on which the center fuel tank is deactivated, the pump replacement specified by paragraph (i) of this AD is not required.

Requests To Extend Compliance Time for Paragraph (i)

Several commenters request that the compliance time for the installation of new configuration override or override/

jettison fuel pumps be extended beyond the 24 months specified in paragraph (i) of the proposed rule. Several commenters request an increase in the compliance time to 60 months, while one commenter suggests a compliance time of 48 months. The commenters state that replacement of the center tank override or override/jettison fuel pumps within 24 months after the effective date of this AD is not reasonable nor practical. The commenters' reasons include the facts that a sufficient quantity of replacement parts will not be available in the proposed 24-month compliance period, and overhaul facilities will be unable to complete the work on the affected fleet of airplanes within that timeframe. Related to the request to extend the compliance time for the requirements of paragraph (i) of the proposed AD, one additional commenter asks that, if the compliance time for paragraph (i) cannot be extended beyond 24 months, the requirement be removed from this AD and issued as a separate action. An additional commenter simply asks for the supply plan for the modified override or override/jettison fuel pumps, so that it can better understand the availability of the new configuration override or override/jettison fuel pumps.

The FAA partially concurs with the commenters' requests to extend the compliance time. Based on discussions with the airplane manufacturer and the manufacturer of the override and override/jettison fuel pumps, the FAA has determined that a compliance time of 36 months after the effective date of this AD for the replacement of the affected override or override/jettison fuel pumps with new configuration pumps is sufficient for an adequate quantity of new configuration parts to be available and for overhaul facilities to be able to schedule modification of the affected fleet of airplanes. At the same time, the FAA has determined that the combination of inspections and revised flight crew procedures required by this AD will be adequate to ensure an acceptable level of safety for the affected airplanes during the 36-month compliance time. The FAA has revised paragraph (i) of this AD accordingly.

Further, the FAA finds that similar rationale supports an extension of the compliance time for paragraphs (g) and (h) of this AD. A 36-month compliance time for those paragraphs will allow new configuration override or override/jettison fuel pumps to be installed to achieve compliance with these paragraphs. Therefore, the FAA has also revised paragraphs (g) and (h) of this AD accordingly.

With regard to one commenter's request to remove the requirements of paragraph (i) from this AD and issue a separate AD to require the actions in that paragraph, the FAA finds that to further delay implementation of the requirements of paragraph (i) of this AD in that way would be inappropriate. The FAA has determined that 36 months is the maximum interval allowable wherein the affected airplanes can continue to operate without incorporation of the new configuration override or override/jettison fuel pumps. No change is necessary in this regard.

Specifically with regard to one commenter's request to provide a supply plan for the replacement override or override/jettison fuel pumps, the FAA interprets this request as an expression of concern about the compliance time. Based on information received from the manufacturer, the FAA has determined that a sufficient quantity of replacement parts will be available within the 36-month compliance time for paragraph (i) of this final rule. However, if the commenter wants more information on the supply plan, the pump manufacturer may be able to provide this information. No change to the final rule is necessary in this regard.

Requests To Correct Language/ References in Proposed Rule

Several commenters request changes in various technical terms and correction of typographical errors in the proposed rule, as follows:

- One commenter requests that the proposed rule be revised to reference not just override pumps but also override/jettison pumps throughout the AD, where applicable. The commenter notes that the proposed rule pertains to both the override and override/jettison fuel boost pumps on Model 767 series airplanes.
- Two commenters request that the terminology ''metal-to-metal contact'' in the statement of unsafe condition in various places in the proposed AD be changed to ''steel-to-steel contact.'' The commenters state that this change will provide clarification.
- One commenter requests that the statement of what prompted the proposed rule be revised in the summary to refer to other, more likely, failure modes instead of only cracks in the diffuser assembly.
- Two commenters request correction of a typographical error in Note 2 of the proposed rule, so that the note refers to paragraph (e) rather than paragraph (d). The commenters correctly note that paragraph (d) doesn't specify an inspection.
- One commenter requests that the heading that precedes paragraph (i) of the proposed rule be changed from ''Installation of Modified Pumps'' to ''Installation of New Configuration Pumps.''

The FAA concurs with the commenters'' requests as stated above, and has revised the appropriate sections of this final rule accordingly.

One commenter made two additional requests for clarification. The commenter asks the FAA to revise the last line in the ''Explanation of Requirements of Proposed Rule'' section of the proposed rule, to delete the reference to Boeing Service Bulletin 767–28–0052, dated May 20, 1999, as being relevant to inspection and replacement of override and override/jettison fuel pumps with machined diffusers installed. The commenter points out that the instructions in Boeing Service Bulletin 767–28–0052 are only for installing an override or override/jettison pump that did not incorporate a diffuser. The same commenter also asks that the FAA revise the same section to state that the proposed rule proposes elimination of override or override/jettison pumps that do not incorporate diffusers, and that paragraph (i) requires installation of a new override or override/jettison pump that is no longer subject to the unsafe condition.

While the FAA concurs with these comments in principle and acknowledges that a typographical error resulted in a reference to Boeing Service Bulletin 767–28–0052 instead of Boeing Service Bulletin 767–28A0057, this final rule does not restate the section of the proposed rule wherein the commenter has requested changes. Therefore, no change to the final rule has been made in this regard.

Requests for Changes to Cost Impact Section

Two commenters request that the FAA make various changes to the information contained in the cost impact section.

One commenter requests that the FAA update its estimates for the number of airplanes affected by this AD. The commenter states that the total number of affected airplanes in the worldwide fleet is 784, and the total number of these affected airplanes on the U.S. registry is 325. The FAA concurs with the commenter's request and has revised the cost impact section accordingly.

Another commenter makes several requests pertaining to the portion of the Cost Impact section that discusses the

modification of the override or override/jettison fuel pumps. When the proposed rule was issued, the manufacturer had not yet developed a modification of the override or override/jettison fuel pumps, and the Cost Impact section of the proposed rule reflected this fact. The commenter requests that the FAA make various revisions to the Cost Impact information to reflect the manufacturer's issuance of service information that provides information for accomplishing the modification of override or override/jettison pumps.

The FAA concurs with the commenters' requests. As stated previously, incorporation of both Boeing Service Bulletins 767–28–0062 and 767–28–0063 is approved as a method of compliance with paragraph (i) of this AD. The FAA has revised the Cost Impact section of this final rule to include information from those service bulletins.

The second commenter also requests that the FAA revise the cost information for the installation of an override or override/jettison pump with an inlet diffuser as required by this AD, to remove the statement that required parts will be provided at no cost to operators. The commenter states that the cost, terms, and conditions associated with installation of any new parts required by this AD will be addressed separately from this AD. The FAA concurs with the commenter's request, and has revised the Cost Impact section of this final rule accordingly.

Request To Exclude Airplanes With New Override or Override/Jettison Pumps

One commenter requests that, for clarification, the FAA revise the proposed rule to include a statement that certain paragraphs of this AD do not apply to airplanes with new configuration override or override/jettison fuel pumps (i.e., pumps incorporating a cast-in diffuser). The FAA infers that the commenter is referring to paragraphs (g), (h), and (i) of this AD.

The FAA concurs that airplanes with the new configuration override or override/jettison fuel pumps are not subject to these requirements. However, the FAA finds that further clarification can be made. Credit for actions in an AD that have already been accomplished is always provided by means of the statement in the ''Compliance'' section of every AD, ''Required as indicated, unless accomplished previously.'' In this AD, this statement gives credit for Model 767–200, –300, and –300F series airplanes on which a new configuration override or override/jettison fuel pump with a cast-in diffuser has been installed during manufacture or by accomplishment of Boeing Service Bulletins 767–28–0062 and 767–28–0063 (described previously). No change to the final rule is necessary in this regard.

Request To Give Credit for Previous Inspections Per Paragraph (e)

One commenter requests that the FAA allow credit for inspections according to paragraph (e) of the proposed AD that have been accomplished previously.

The FAA concurs with the commenter's request but notes that no change to the final rule is necessary to provide for such credit. Credit is always given for actions accomplished before the effective date of an AD by means of the phrase in the ''Compliance'' statement of the AD: ''Required as indicated, unless accomplished previously.''

Request To Remove Reference to Scavenge System

One commenter requests that the FAA remove the statement ''For airplanes equipped with a center tank scavenge system'' from paragraph (f) of the proposed rule. The commenter states that removing this statement will clarify this requirement because if a fuel tank is deactivated, it doesn't matter if the airplane has a center tank scavenge transfer system with respect to doing the inspections in paragraph (e) of this AD.

The FAA partially concurs with the commenter. The FAA acknowledges that the center tank may only be deactivated if the airplane is equipped with a center tank scavenge system, so the reference in paragraph (f) may seem redundant. However, the FAA finds that there is no technical inaccuracy in paragraph (f), nor is the requirement unclear; thus, no change to the final rule is necessary in this regard.

Request To Revise Compliance Time for Paragraph (a)

One commenter requests that the compliance time for paragraph (a) of the proposed AD be revised from 14 days after October 2, 1997 (the effective date of AD 97–19–15), to 14 days after the effective date of this AD. The commenter states that it is confusing to have a compliance time of 14 days after October 2, 1997, because that date has passed. The commenter notes that this is especially confusing in light of the addition of paragraph (c) to this AD.

The FAA does not concur with the commenter's request. The purpose of carrying over the compliance time for the requirements of AD 97–19–15 is to ensure that the requirement for revising the AFM is continued without interruption. Paragraph (c) of this AD simply adds alternative wording for the AFM revision previously required by paragraph (b) of AD 97–19–15, but paragraph (b) is still acceptable for compliance. Referring to the October 2, 1997, effective date of AD 97–19–15 also ensures that any airplanes already in compliance with that AD do not have to comply again with paragraph (b) or (c) of this AD. No change to the final rule is necessary in this regard.

Requests To Revise Paragraph (c)

One commenter requests that paragraph (c)(1) be revised to read, ''If the center tank fuel pumps are to be used for takeoff, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank prior to initial engine start.'' The commenter suggests that the reference to the poundage of fuel in the center tank ''when the entry doors are closed with the airplane readied for initial taxi'' may cause confusion for the flight crew in any operational scenario involving reopening an entry door after the airplane is readied for initial taxi.

The FAA neither agrees nor disagrees with the commenter. Paragraph (a) of this AD allows accomplishment of either paragraph (b) or (c) of the AD, and paragraph (b) differs from paragraph (c) of this AD in that (b)(1) contains essentially the same wording as suggested by the commenter. However, if the commenter finds it necessary to use words other than those given in paragraph (b) or (c), it may submit a request for approval of an alternative method of compliance (AMOC) under paragraph (n) of this AD. No change to the final rule is necessary in this regard.

In a related issue, another commenter requests that the requirements of paragraphs (b) and (c) of the proposed rule be stated only once. The commenter states that the two paragraphs have identical wording and there is no distinction as to differences in the airplane models to which each paragraph applies.

The FAA does not concur with the commenter's request. The wording of the AFM revisions specified in paragraphs (b)(1) and (c)(1) are slightly different, as discussed above. Paragraph (c)(1) was added in this AD to allow operators an alternative to revising the AFM with the wording in paragraph (b)(1). No change to the final rule is necessary in this regard.

Request To Extend Inspection Compliance Time

One commenter requests that the compliance time for the initial inspection of the override or override/

jettison fuel pumps in paragraph (e) of the proposed rule be extended from 60 days to 120 days after the effective date of this AD. The commenter states that such a compliance time would permit both the initial and repetitive inspections required by paragraph (e) to be performed during regular scheduled maintenance visits, thus allowing operators to avoid operational difficulties associated with unscheduled maintenance visits.

The FAA does not concur with the commenter's request to extend the compliance time for the inspection required by paragraph (e) of this AD. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the identified unsafe condition, but also the manufacturer's recommendation of a 60-day compliance time, and the practical aspects of performing the inspections at intervals that parallel regular scheduled maintenance for the majority of affected operators. The FAA finds that there is no technical justification for an extension of this compliance time; thus no change to the final rule is necessary in this regard.

Request To Extend Repetitive Interval for Inspection

One commenter recommends that the repetitive interval for the proposed inspection in paragraph (e) be extended from 1,000 flight hours to 1,300 flight hours. The commenter bases its request on the fact that it has not found any discrepancies since it started the repetitive inspections two years ago. The commenter states that extension of the repetitive interval to 1,300 flight hours would reduce the amount of down-time for subject airplanes, and will allow the inspection to be done on the override or override/jettison fuel pump on the left side of the airplane at one ''A'' check, and on the pump on the right side of the airplane at the following ''A'' check. The commenter notes that inspecting one side per ''A'' check will reduce the chance for ''dual sided mistakes.'' The commenter also states that extending the repetitive interval will reduce the potential for damage to the fuel pumps, O-rings, and other parts due to being subjected to repetitive inspections.

The FAA does not concur with the commenter's request to extend the interval for the repetitive inspections in paragraph (e) of this AD. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the identified unsafe condition, but also the manufacturer's recommendation for a repetitive interval, and the practical aspects of performing the inspections at intervals that parallel regular scheduled maintenance for the majority of affected operators. In addition, in response to some of the operator's descriptions of its current procedures, the FAA notes that O-rings must be replaced with new parts each time an override or override/jettison pump is installed.

After considering the factors mentioned above, the FAA has determined that 1,000 flight hours is an adequate repetitive interval to ensure the safety of the affected airplanes. Should the operator wish to gain approval for use of an alternate inspection schedule that provides an equivalent level of safety, the operator may submit a request for approval of an AMOC under paragraph (n) of this AD. No change to the final rule is necessary in this regard.

Request To Include Serial Numbers of Pumps With Cracks

One commenter requests that, for clarification, the FAA revise the proposed rule to include the serial numbers of the override or override/jettison fuel pumps on which the inlet diffuser was found cracked. The same commenter asks that the statement in the Summary section of the proposed rule, ''The proposed AD would also require installation of a new configuration center tank fuel pump, which would terminate''' be revised to specifically state that the new configuration center tank override or override/jettison fuel pump incorporates a cast-in diffuser and two-window shutoff sleeve.

The FAA does not concur with the commenter's requests to include these pieces of information in this AD. The FAA does not find any merit in referring to the specific serial numbers of the override or override/jettison pumps that failed and finds no technical justification for supplying this information. In addition, the FAA notes that details are minimized in the summary of AD actions, thus the FAA does not consider it necessary to incorporate this level of detail in the summary of this AD. No change to the final rule is necessary in this regard.

Explanation of Change to Paragraph (d)

Paragraph (d) of the proposed rule applied the actions in that paragraph to certain Model 767–200 and –300 series airplanes. The FAA inadvertently omitted a reference to Model 767–300F series airplanes in that paragraph. Therefore, for clarification, the FAA has revised paragraph (d) of this final rule to state that the paragraph applies to certain Model 767–200, –300, and –300F series airplanes.

Conclusion

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

Cost Impact

There are approximately 784 Model 767–200, –300, and –300F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 325 airplanes of U.S. registry will be affected by this AD.

The AFM revisions that are currently required by AD 97–19–15, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The new AFM revisions will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new AFM revisions required by this AD on U.S. operators is estimated to be $19,500, or $60 per airplane.

The inspection required by this AD will take approximately 3 or 6 work hours per airplane to accomplish (3 hours for airplanes not equipped with override/jettison fuel pumps, 6 hours for airplanes equipped with override/jettison fuel pumps), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection on U.S. operators is estimated to be $180 or $360 per airplane, per inspection cycle.

Should an operator be required to install a center tank override or override/jettison fuel pump equipped with an inlet diffuser (as required by paragraph (g) or (h) of this AD) separately from a new-configuration override or override/jettison fuel pump (as required by paragraph (i) of this AD), it will take approximately 5 work hours per pump to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $11,901 per pump. Based on these figures, the cost impact of this pump installation is estimated to be $12,201 per pump. (There may be up to four pumps per airplane, depending on

whether override/jettison fuel pumps are installed.)

Paragraph (i) of this AD requires installing new configuration center tank override or override/jettison fuel pumps per a method approved by the FAA. As stated previously, since the issuance of the NPRM, the FAA has approved incorporation of Boeing Service Bulletins 767–28–0062 and 767–28–0063 as an acceptable means of accomplishing this action. Based on the information contained in those service bulletins, the installation of a new configuration center tank override or override/jettison fuel pump will take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost between $22,182 and $44,364 per airplane, depending on the number of pumps that are installed on the airplane ($11,091 per pump). Based on these figures, the cost impact of this installation on U.S. operators is estimated to be between $22,662 and $44,844 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10136 (62 FR 48754, September 17, 1997), and by adding a new airworthiness directive (AD), amendment 39–12342, to read as follows:

2001–15–08 Boeing: Amendment 39–12342. Docket 98–NM–226–AD. Supersedes AD 97–19–15, Amendment 39–10136.

Applicability: All Model 767–200, –300, and –300F 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 (n)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition of fuel vapors due to the generation of sparks and a potential ignition source inside the fuel tank caused by steel-to-steel contact during dry fuel pump operation, accomplish the following:

AFM Revisions: Alternatives

(a) Within 14 days after October 2, 1997 (the effective date of AD 97–19–15), accomplish the actions specified by either paragraph (b) or (c) of this AD.

Restatement of Requirements of AD 97–19–15

(b) Accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD.

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

''If the center tank fuel pumps are to be used, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank prior to engine start.

The center fuel pumps must be selected 'OFF' at or greater than 1,000 pounds (453 kilograms) of fuel in the center tank. For airplanes not equipped with a center tank scavenge system, this 1,000 pounds (453 kilograms) of center tank fuel must be considered unusable.

Note: On all Model 767–200ER/300ER series airplanes and some Model 767–200/300 series airplanes, a scavenge system, operating with fuel pressure from the main wing tank pumps, will operate automatically to transfer any fuel remaining in the center tank to the main tanks. Fuel transfer begins when the main tanks are approximately half empty.''

(2) Revise the Limitations Section of the FAA-approved AFM procedure titled ''FUEL SYSTEM, FUEL USAGE II (fuel in center tank),'' to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''Use the center tank fuel for all operations with all operable fuel pumps ''ON'' and the cross feed valve(s) closed until the center tank fuel quantity is 1,000 pounds (453 kilograms) or greater, then use FUEL USAGE I.

Do not operate the center tank fuel pumps with less than 1,000 pounds (453 kilograms) of fuel in the center tank.

Note: The crossfeed valve(s) is open for minimum fuel operation, and may be opened to correct fuel imbalance.''

(3) Revise the Normal Procedures Section of the FAA-approved AFM to include the following procedure. This may be accomplished by inserting a copy of this AD into the AFM.

''USE OF FUEL FROM THE CENTER TANK

When the center tank approaches 'EMPTY' during normal use or fuel transfer, select both center tank fuel pump switches 'OFF' with the first occurrence of any of the following:

- The center tank fuel reaches 1,000 pounds (453 kilograms);
- Either of the center tank fuel pump 'PRESS' lights illuminate; or
- Either the 'CTR L FUEL PUMP' or 'CTR R FUEL PUMP' EICAS message is displayed.''

(4) Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''CENTER TANK FUEL PUMP FAULTS

A center tank fuel pump failure may have occurred if a fuel pump pressure light illuminates when there is ample fuel in the tank. If a fault is suspected, select the affected pump 'OFF' and do not re-select ''ON.'' If the affected circuit breaker is tripped, do not reset. Select fuel crossfeed valve(s) 'OPEN.'

Attempted operation of a faulted center tank pump could ignite fuel tank vapors in an empty or nearly empty tank.''

New Requirements of This AD

(c) Accomplish the actions required by paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD. Following accomplishment of the requirements of these paragraphs, the AFM revisions required by paragraph (b) of this AD may be removed from the AFM.

(1) Revise the Limitations Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

''If the center tank fuel pumps are to be used, there must be at least 5,000 pounds (2,267 kilograms) of fuel in the center tank when the entry doors are closed with the airplane readied for initial taxi.

The center fuel pumps must be selected ''OFF'' at or greater than 1,000 pounds (453 kilograms) of fuel in the center tank. For airplanes not equipped with a center tank scavenge system, this 1,000 pounds (453 kilograms) of center tank fuel must be considered unusable.

Note: On all Model 767–200ER/300ER series airplanes and some Model 767–200/300 series airplanes, a scavenge system, operating with fuel pressure from the main wing tank pumps, will operate automatically to transfer any fuel remaining in the center tank to the main tanks. Fuel transfer begins when the main tanks are approximately half empty.''

(2) Revise the Limitations Section of the FAA-approved AFM procedure titled ''FUEL SYSTEM, FUEL USAGE II (fuel in center tank),'' to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''Use the center tank fuel for all operations with all operable fuel pumps ''ON'' and the cross feed valve(s) closed until the center tank fuel quantity is 1,000 pounds (453 kilograms) or greater, then use FUEL USAGE I.

Do not operate the center tank fuel pumps with less than 1,000 pounds (453 kilograms) of fuel in the center tank.

Note: The crossfeed valve(s) is open for minimum fuel operation, and may be opened to correct fuel imbalance.''

(3) Revise the Normal Procedures Section of the FAA-approved AFM to include the following procedure. This may be accomplished by inserting a copy of this AD into the AFM.

''USE OF FUEL FROM THE CENTER TANK

When the center tank approaches 'EMPTY' during normal use or fuel transfer, select both center tank fuel pump switches ''OFF'' with the first occurrence of any of the following:

- The center tank fuel reaches 1,000 pounds (453 kilograms);
- Either of the center tank fuel pump ''PRESS'' lights illuminate; or
- Either the 'CTR L FUEL PUMP' or 'CTR R FUEL PUMP' EICAS message is displayed.''

(4) Revise the Non-Normal Procedures Section of the FAA-approved AFM to include the following procedures. This may be accomplished by inserting a copy of this AD into the AFM.

''CENTER TANK FUEL PUMP FAULTS

A center tank fuel pump failure may have occurred if a fuel pump pressure light illuminates when there is ample fuel in the tank. If a fault is suspected, select the affected pump 'OFF' and do not re-select 'ON.' If the affected circuit breaker is tripped, do not reset. Select fuel crossfeed valve(s) 'OPEN.'

Attempted operation of a faulted center tank pump could ignite fuel tank vapors in an empty or nearly empty tank.''

Ground Transfer of Fuel

(d) For Model 767–200, –300, and –300F series airplanes that are equipped with any override or override/jettison fuel pump having part number S343T002–5, –8, –12, or –15 (which are configured with machined inlet diffusers) and that are not equipped with a center tank scavenge system: For any period during which ground transfer of fuel is accomplished below 1,000 pounds (453 kilograms), accomplish the ground fuel pressure defueling actions specified by paragraphs (d)(1) and (d)(2), in accordance with the Boeing 767 Maintenance Manual Section 28–26–00, Pressure Defueling Procedures, titled ''For Override Pumps with a Diffuser Installed.''

(1) Only one center tank pump may be operated, and that pump must be selected ''OFF'' at or greater than 400 pounds (200 kilograms), as indicated on the center tank fuel quantity indication system (FQIS), or at the first indication of a pump low pressure light.

(2) The pitch attitude of the airplane must be recorded prior to this procedure to verify that it is between −1 and +2 degrees. This may be accomplished by viewing the pitch inclinometer, located in the left main gear wheel well.

Repetitive Inspections

(e) For airplanes that are equipped with any override or override/jettison fuel pump having part number S343T002–5, –8, –12, or –15 (which are configured with machined inlet diffusers), except as provided by paragraph (f) of this AD: Within 60 days after the effective date of this AD, remove the override fuel pump and override/jettison fuel pump, as applicable, of the center tank, and perform a detailed visual inspection of the pump to detect discrepancies (cracking, screw movement, and diffuser movement), in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997; or Revision 1, dated December 22, 1999. Repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(1) If no discrepancy is detected, prior to further flight, reinstall the pump in accordance with the alert service bulletin.

(2) If any discrepancy is detected, prior to further flight, replace the pump with a new or serviceable pump, in accordance with the alert service bulletin.

Note 2: Boeing Alert Service Bulletin 767–28A0050 refers to Sundstrand Alert Service Bulletin 5006286–28–A8, dated October 10, 1997, as an additional source of service information for accomplishment of the inspection required by paragraph (e) of this AD.

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

(f) For airplanes equipped with a center tank scavenge system: For any period during which the center fuel tank is deactivated in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, or Revision 1, dated December 22, 1999, the actions specified by paragraphs (e) and (i) of this AD are not required. As of 36 months after the effective date of this AD, modified fuel pumps must be installed according to paragraph (i) of this AD before the center fuel tank may be reactivated.

Pump Replacement

(g) For airplanes that are equipped with any override fuel pump having part number S343T002–23, –51, –81, or –121 (which are configured without inlet diffusers): Within 36 months after the effective date of this AD, accomplish the actions specified by either paragraph (g)(1) or (g)(2) of this AD.

(1) Replace the override fuel pump with a fuel pump having a machined inlet diffuser installed, in accordance with Boeing Alert Service Bulletin 767–28A0057, dated November 18, 1999. Or

(2) Replace the override fuel pump with a fuel pump modified in accordance with paragraph (i) of this AD.

(h) For airplanes that are equipped with any override/jettison fuel pump having part number S343T002–23, –51, –81, or –121 (which are configured WITHOUT inlet diffusers): Within 36 months after the effective date of this AD, accomplish the actions specified by either paragraph (h)(1) or (h)(2) of this AD.

(1) Replace the override/jettison fuel pump with a fuel pump having a machined inlet diffuser installed, in accordance with Boeing Service Bulletin 767–28–0059, dated December 22, 1999. Or

(2) Replace the override/jettison fuel pump with a fuel pump modified in accordance with paragraph (i) of this AD.

Installation of New Configuration Pumps

(i) For all airplanes: Within 36 months after the effective date of this AD, install modified center tank override and override/jettison fuel pumps that are not subject to the unsafe condition described in this AD. The installation shall be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 4: Installation of new configuration override or override/jettison fuel pumps, as applicable, in accordance with Boeing Service Bulletin 767–28–0062, dated December 20, 2000; and a fueling station

placard, in accordance with Boeing Service Bulletin 767–28–0063, dated December 20, 2000; or accomplishment of equivalent actions during production; are approved means of compliance with paragraph (i) of this AD.

Terminating Action

(j) Accomplishment of the requirements of paragraph (e) of this AD constitutes terminating action for the requirements of AD 94–11–05, amendment 39–8921 (59 FR 27970, May 31, 1994).

(k) Accomplishment of the requirements of paragraph (i) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), (c), (d), (e), (g), and (h) of this AD, and the requirements of AD 94–11–05, amendment 39–8921.

Spares

(l) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number S343T002–5, –8, –12, or –15, unless that pump has been inspected and corrective actions have been performed in accordance with the requirements of either paragraph (b) or (c), and paragraph (e), of this AD.

(m) As of the effective date of this AD, no person shall install on any airplane a fuel pump having part number S343T002–23, –51, –81, or –121.

Alternative Methods of Compliance

(n)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–19–15, amendment 39–10136, are approved as alternative methods of compliance when performing the requirements of paragraphs (b) and (c) of this AD.

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

Special Flight Permits

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

Incorporation by Reference

(p) Except as provided by paragraphs (a), (b), (c), (d), (f), (g)(2), (h)(2), and (i) of this AD; the actions shall be done in accordance with Boeing Alert Service Bulletin 767–28A0050, dated December 18, 1997, or Boeing Service Bulletin 767–28A0050, Revision 1, dated December 22, 1999; Boeing Alert Service Bulletin 767–28A0057, dated November 18, 1999; or Boeing Service Bulletin 767–28–0059, dated December 22, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(q) This amendment becomes effective on September 4, 2001.

Issued in Renton, Washington, on July 19, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18471 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–421–AD; Amendment 39–12350; AD 2001–15–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires performing a general visual inspection of the outer handle flap mechanisms of the passenger doors for the presence of corrosion inhibitor and for correct operation; cleaning, if necessary; and greasing. The actions specified by this AD are intended to prevent blockage of the outer handle flap in an intermediate pushed-in position, which may prevent a passenger door from opening from the inside of the airplane, thereby delaying an emergency evacuation. This action is intended to address the identified unsafe condition.

DATES: Effective September 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes was published in the **Federal Register** on April 26, 2001 (66 FR 20952). That action proposed to require performing a general visual inspection of the outer handle flap mechanisms of the passenger doors for the presence of corrosion inhibitor and for correct operation; cleaning, if necessary; and greasing.

Comments

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

The commenter generally supports the proposed rule, but requests changing an incorrect reference cited in the proposed AD for the All-Operator Telex (AOT). The FAA concurs with this request and has changed paragraph (a) of this AD to cite AOT A320–52A1106, instead of AOT A320–54A1106.

Conclusion

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

Cost Impact

The FAA estimates that 63 Model A319, A320, and A321 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,780, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–15–16 Airbus Industrie: Amendment 39–12350. Docket 2000–NM–421–AD.

Applicability: Model A319, A320, and A321 series airplanes, up to and including manufacturer's serial number (MSN) 1261, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent blockage of the outer door handle flap in an intermediate pushed-in position, which may prevent a passenger door from opening from the inside of the airplane, thereby delaying an emergency evacuation, accomplish the following:

Inspection and Corrective Action

(a) Within 500 flight hours after the effective date of this AD, perform a one-time general visual inspection of the outer handle flap mechanisms of the passenger doors for the presence of corrosion inhibitor and for correct operation; remove any corrosion inhibitor, grease the doors, and check that the flap comes back correctly, flush with the door skin, when the handle is in the closed position; in accordance with Airbus All Operators Telex (AOT) A320–52A1106, dated September 28, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. 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 other approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Airbus All Operators Telex A320–52A1106, dated September 28, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–519–158(B), dated December 13, 2000.

Effective Date

(e) This amendment becomes effective on September 4, 2001.

Issued in Renton, Washington, on July 19, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18470 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–271–AD; Amendment 39–12349; AD 2001–15–15]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes powered by Pratt & Whitney JT9D–7 series engines, that currently requires detailed visual inspections of the lugs on the bulkhead fitting of the rear engine mount, and corrective action, if necessary. The existing AD also specifies optional

ultrasonic inspections, which, if accomplished, extend the repetitive interval for the required detailed visual inspections. This amendment requires accomplishment of the previously optional ultrasonic inspections and, for certain airplanes, rework of the bulkhead fitting of the rear engine mount. The actions specified by this AD are intended to detect and correct bushing migration, corrosion, or cracking of the lugs on the bulkhead fitting of the rear engine mount, which could result in fracture of the lugs and separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 4, 2001.

The incorporation by reference of Boeing Service Bulletin 747–54A2200, Revision 1, dated February 15, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of September 4, 2001.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 18, 2000 (65 FR 53161, September 1, 2000).

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–18–01, amendment 39–11886 (65 FR 53161, September 1, 2000), which is applicable to certain Boeing Model 747 series airplanes powered by Pratt & Whitney JT9D–7 series engines, was published in the **Federal Register** on March 21, 2001 (66 FR 15814). The action proposed to continue to require detailed visual inspections of the lugs on the bulkhead fitting of the rear engine mount, and corrective action, if necessary. The action also proposed to require ultrasonic inspections (which were provided as an option in the existing AD) and, for certain airplanes, rework of the bulkhead fitting of the rear engine mount.

Comments

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

Clarify Unsafe Condition

One commenter requests that the FAA clarify the unsafe condition as stated in the **SUMMARY** and ''Discussion'' sections of the proposed AD. The commenter requests that the unsafe condition state that bushing migration, corrosion, or cracking of the lugs on the bulkhead fitting of the rear engine mount could result in fracture of the lugs, which could result in separation of the engine from the airplane.

The FAA concurs with the commenter's request and has made this change in the **SUMMARY** section of this final rule. The ''Discussion'' section of the proposed AD is not restated in this final rule, so no change to that section is needed.

Revise Cost Impact

One commenter requests that the FAA revise the cost impact information in the proposed AD to include the time needed for gaining access and closing up for the proposed ultrasonic inspection. The commenter notes that, due to the 9-month compliance time, it may be necessary for operators to do this inspection at a time other than a normal scheduled heavy maintenance visit.

The FAA concurs with the commenter's request. We note that the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. However, we acknowledge that it may or may not be possible to accomplish the ultrasonic inspection required by this AD during a normal scheduled maintenance visit due to the compliance times for the initial and repetitive inspections. Therefore, we have revised the cost impact information for the ultrasonic inspections in this final rule from 4 to 36 work hours to include the work hours necessary for gaining access and closing up.

Refer to Specific Part of Referenced Service Bulletin

One commenter requests that the FAA revise paragraph (d) of the proposed AD to refer to Part 2 of Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; or Revision 1, dated February 15, 2001. The commenter does not state a reason for its request.

The FAA infers that the commenter's request is to make paragraph (d) consistent with other paragraphs of the AD. The FAA concurs and has revised paragraph (d) of this final rule accordingly. Also, the same change has been made to paragraph (a) of this AD.

Give Credit for Inspections Accomplished Previously

One commenter requests that the FAA revise paragraph (c) of the proposed AD to provide a third compliance time option for airplanes inspected per the ultrasonic method provided as an option in AD 2000–18–01. The commenter states that operators who did the ultrasonic inspection per AD 2000–18–01 would be required to repeat this inspection within 9 months after the effective date of this AD. The commenter emphasizes that such a requirement would impose undue economic and scheduling burdens on affected operators.

The FAA does not concur. Credit for inspections accomplished prior to the effective date of the AD is always provided in an AD by means of the statement at the beginning of the ''Compliance'' section of each AD: ''Required as indicated, unless accomplished previously.'' No change to the final rule is necessary in this regard.

Remove Inspections From Paragraph (f)

One commenter requests that the FAA revise paragraph (f) to remove the requirement to perform detailed visual and non-destructive test inspections for damage of the upper engine mount during accomplishment of the rework of the lugs on the bulkhead fitting of the rear engine mount. The commenter states that these inspections should be necessary only if there is insufficient clearance between the migrated end of the outer lug plain bushing and the adjacent lug of the aft upper engine mount.

The FAA does not concur. We infer that the commenter assumes that there will be no damage to the upper engine mount if sufficient clearance is maintained between the migrated end of the outer lug plain bushing and the adjacent lug of the aft upper engine mount. However, we have determined that the bushing may migrate in either

direction. For example, the bushing may have migrated to a position of no positive clearance and caused damage, but then subsequently may have migrated inward to a position where there is sufficient clearance. Thus, we find it necessary to require the inspections during the rework according to the service bulletin. No change to the final rule is necessary in this regard.

Reference Alternative Method of Compliance for AD 2000–18–01

One commenter requests that the FAA revise the proposed AD to reference a specific alternative method of compliance (AMOC) that was approved previously for AD 2000–18–01. The commenter states that the AMOC addresses conditions of no positive clearance, which may be found during the rework according to Part 4 of the service bulletin.

The FAA does not concur with the request. Paragraph (h)(2) of the proposed AD allows the use of previously approved AMOCs for AD 2000–18–01 for compliance with corresponding actions in the proposed AD. Listing references for specific AMOCs would unnecessarily complicate this final rule. No change to the final rule is necessary in this regard.

Make Specific Tooling Optional

One commenter requests that the FAA revise the proposed AD to make the use of specific tooling identified in the service bulletin optional for compliance with the proposed AD. The commenter refers to a specific boring fixture called out in the service bulletin, and states that use of this specific tooling should be optional. The commenter states that other tooling capable of producing the desired dimensions and finishes specified in the service bulletin should be acceptable for compliance. The commenter notes that inspection requirements and dimensional checks contained in the service bulletin are sufficient to ensure that lugs are properly reworked and free of damage.

The FAA does not concur with the commenter's request. We find that the tooling used to bore the lugs may affect the unsafe condition addressed by this AD and, therefore, it is inappropriate not to specify the tooling to be used. However, operators may request approval of an AMOC under paragraph (h)(1) of this AD if they can show that tooling other than that identified in the service bulletin will provide an acceptable level of safety. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 200 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD.

The detailed visual inspections that are currently required by AD 2000–18–01 take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $22,560, or $480 per airplane, per inspection cycle.

The new inspections required by this AD will take approximately 36 work hours per airplane to accomplish (including time for gaining access and closing up), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $101,520, or $2,160 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, for the new inspections required by this AD, the time for gaining access and closing up has been included in the figures above because it may not be possible for operators to accomplish these inspections during normal scheduled maintenance due to the compliance times associated with these inspections.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11886 (65 FR 53161, September 1, 2000), and by adding a new airworthiness directive (AD), amendment 39–12349, to read as follows:

2001–15–15 Boeing: Amendment 39–12349. Docket 2000–NM–271–AD. Supersedes AD 2000–18–01, Amendment 39–11886.

Applicability: Model 747 series airplanes powered by Pratt & Whitney JT9D–7 series engines, as listed in Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; 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 (h)(1) 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 bushing migration, corrosion, or cracking of the lugs on the bulkhead fitting of the rear engine mount, accomplish the following:

Restatement of Requirements of AD 2000–18–01

Repetitive Detailed Visual Inspections

(a) At the later of the times in paragraphs (a)(1) and (a)(2) of this AD, perform a detailed visual inspection for bushing migration, corrosion, or cracking; and a physical measurement inspection using feeler gages for bushing migration; of the lugs on the bulkhead fitting of the rear engine mount, in accordance with Part 2 of Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; or Revision 1, dated February 15, 2001. Thereafter, repeat the inspection at intervals not to exceed 90 days, until the inspections required by paragraphs (c) and (d) of this AD have been accomplished.

(1) Prior to the accumulation of 10,000 total flight cycles, or within 15 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 90 days after September 18, 2000 (the effective date of AD 2000–18–01, amendment 39–11886).

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

Corrective Actions

(b) During any inspection accomplished in accordance with paragraph (a), (c), or (d) of this AD; if bushing migration, corrosion, or cracking is detected, accomplish paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If light corrosion or bushing migration is found: Prior to further flight, do interim rework in accordance with Part 4 of Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; or Revision 1, dated February 15, 2001; EXCEPT where the service bulletin specifies to contact Boeing, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

(2) If moderate to severe corrosion or any cracking is found: Prior to further flight, rework the lugs on the bulkhead fitting of the rear engine mount in accordance with Part 5 of Boeing Service Bulletin 747–54A2200, Revision 1, dated February 15, 2001, except as provided by paragraph (g) of this AD; or in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD. Such rework resets the compliance threshold for the inspections per paragraphs (c) and (d) of this AD to 15 years or 10,000 flight cycles since rework, whichever is earlier.

New Requirements of This AD

Ultrasonic Inspection—Initial and Repetitive Inspections

(c) At the later of the times in paragraphs (c)(1) and (c)(2) of this AD, except as provided by paragraph (f) of this AD, perform an ultrasonic inspection to detect corrosion or cracking of the lugs on the bulkhead fitting of the rear engine mount, per Part 3 of Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; or Revision 1, dated February 15, 2001. Thereafter, repeat the ultrasonic inspection described in this paragraph at intervals not to exceed 1,400 flight cycles or 18 months, whichever occurs first.

(1) Prior to the accumulation of 10,000 total flight cycles, or within 15 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 9 months after the effective date of this AD.

Repetitive Detailed Visual and Physical Measurement Inspections

(d) After initial accomplishment of the inspections required by paragraph (c) of this AD, perform repetitive detailed visual inspections for bushing migration, corrosion, or cracking; and physical measurement inspections using feeler gages for bushing migration; of the lugs on the bulkhead fitting of the rear engine mount; per Part 2 of Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; or Revision 1, dated February 15, 2001. Perform the inspections at the interval stated in paragraph (d)(1) or (d)(2) of this AD, except as provided by paragraph (f) of this AD. Accomplishment of repetitive inspections per this paragraph constitutes terminating action for the inspections required by paragraph (a) of this AD.

(1) If no bushing migration is found during any inspection per this AD, the repetitive interval is not to exceed 1,400 flight cycles or 18 months, whichever occurs first.

(2) If any bushing migration is found during any inspection per this AD, the repetitive interval is not to exceed 180 days, until paragraph (e) of this AD has been done.

On-Condition Rework

(e) If any bushing migration is found during any inspection per this AD, within 30 months after finding the migrated bushing, or within 18 months after the effective date of this AD, whichever occurs later, do rework of the lugs on the bulkhead fitting of the rear engine mount (including a detailed visual inspection of the aft upper engine mount for damage; a Non-Destructive Testing inspection and repair of the aft upper engine mount, as applicable; and rework of the lugs, and installation of new bushings in the lug, on the bulkhead fitting of the rear engine mount) per Part 5 of Boeing Alert Service Bulletin 747–54A2200, Revision 1, dated February 15, 2001. Such rework resets the compliance threshold for the inspections per paragraphs (c) and (d) of this AD to 15 years or 10,000 flight cycles since rework, whichever is earlier.

Optional Rework

(f) Rework of the lugs on the bulkhead fitting of the rear engine mount (including a detailed visual inspection of the aft upper engine mount for damage; a Non-Destructive Testing inspection and repair of the aft upper engine mount, as applicable; and rework of the lugs, and installation of new bushings in the lug, on the bulkhead fitting of the rear engine mount) per Part 5 of Boeing Alert Service Bulletin 747–54A2200, Revision 1, dated February 15, 2001, resets the compliance threshold for the inspections per paragraphs (c) and (d) of this AD to 15 years or 10,000 flight cycles since rework, whichever is earlier.

Exception to Repair Requirement

(g) Where Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; or Revision 1, dated February 15, 2001; says to contact Boeing for repair instructions: Before further flight, repair per a method approved by the Manager, Seattle ACO, or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–18–01, amendment 39–11886, are approved as alternative methods of compliance for corresponding actions in this AD.

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

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the

Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (b) and (g) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000; or Boeing Service Bulletin 747–54A2200, Revision 1, dated February 15, 2001; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 747–54A2200, Revision 1, dated February 15, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–54A2200, dated July 7, 2000, was approved previously by the Director of the Federal Register as of September 18, 2000 (65 FR 53161, September 1, 2000).

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

Effective Date

(k) This amendment becomes effective on September 4, 2001.

Issued in Renton, Washington, on July 19, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18469 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–234–AD; Amendment 39–12347; AD 2001–15–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that requires repetitive inspections of the metallic vapor seals in the center fuel tank to detect holes, tears, or a change in shape; corrective action, if such damage is detected; and follow-up tests for leaks. This amendment is prompted by reports of damaged metallic vapor seals observed during routine maintenance. This action is necessary to detect and correct damage to the metallic vapor seal in the center fuel tank, which could lead to leakage of fuel from the center tank into the air conditioning pack bay located below the center tank, providing a potential for fuel to be in contact with fuel ignition sources. This action is intended to address the identified unsafe condition.

DATES: Effective September 4, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes was published in the **Federal Register** on March 29, 2001 (66 FR 17127). That action proposed to require repetitive inspections of the metallic vapor seals in the center fuel tank to detect holes, tears, or a change in shape; corrective action, if such damage is detected; and follow-up tests for leaks.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from a single commenter.

Add Terminating Action

The commenter requests that the FAA revise the proposed rule to include a terminating action. The commenter notes that Airbus has issued Service Bulletin A310–28–2146, dated March 27, 2001. That service bulletin states that, once the actions therein are accomplished, it cancels the inspection requirements of Airbus Service Bulletin A310–28–2138, dated June 28, 2000. (The proposed rule refers to that service bulletin as the appropriate source of service information.)

The FAA concurs. The Direction Générale de l'Aviation Civile (which is the airworthiness authority for France) has approved, and Airbus has recommended accomplishment of, Service Bulletin A310–28–2146, which describes procedures for replacement of metallic vapor seal panels with new, thicker metallic vapor seal panels. Such replacement raises the current fatigue life limitation on the metallic vapor seals and eliminates the need for the inspections required by this AD. Therefore, the FAA has revised this final rule to add a new paragraph (c) (and reorder subsequent paragraphs accordingly) to give operators the option to do the actions in that service bulletin as terminating action for the repetitive inspections required by this AD. Also, the FAA has added a new paragraph to the Cost Impact section in the preamble of this final rule to provide an estimate of the cost of this terminating action should an operator elect to do it.

Remove Reporting Requirement

The commenter requests that the FAA remove the reporting requirement that is specified in Airbus Service Bulletin A310–28–2138, dated June 28, 2000. The commenter states that the airplane manufacturer should already have adequate sampling data to understand the condition of the fleet, and, therefore, the reporting requirement is an unnecessary burden to the operator.

The FAA concurs with the intent of the commenter's request. However, the reporting requirement to which the commenter refers is not included in this AD, and the FAA cannot revise the referenced service bulletin. No change to the final rule is necessary in this regard.

Extend Repetitive Interval

The commenter requests that the FAA extend the repetitive interval for the repetitive inspections in paragraph (a) of the proposed AD from 600 to 750 flight hours. The commenter notes that its ''B''-check interval is 350 flight hours, and the proposed 600-flight-hour interval would not allow for the proposed inspections to be done at a ''2B''-check. Thus, it would not be able to do the inspections at a normal scheduled maintenance visit, which would negatively affect scheduling and increase the cost of the requirements of the proposed AD for the operator.

The FAA does not concur. The repetitive interval of 600 flight hours is based on in-service experience. Analysis has shown that damage of the vapor seal is related to vibration fatigue, probably caused by ''drum beating'' of the seal during operation of the airplane. A damaged vapor seal may no longer prevent fuels and vapors from coming into contact with hot parts of the air-conditioning packs, which could create a fire hazard. In view of these data, and the fact that the operator provides no technical data to show that a 750-flight-hour repetitive interval provides an acceptable level of safety, the FAA cannot extend the repetitive interval. No change to the final rule is necessary in this regard.

Allow Use of Equivalent Parts and Materials

The commenter requests that the FAA revise the proposed AD to allow operators to use equivalent and alternative parts and materials that are approved by the airplane manufacturer for repairs per this AD. The commenter states that this will eliminate the need for an operator to request an alternative method of compliance (AMOC) each time it needs to use materials other than those identified in the service bulletin.

The FAA does not concur. The referenced service bulletin refers to the Structural Repair Manual (SRM) as an additional source of service information for accomplishing certain requirements of this AD. Any alternative part or material beyond what is allowed by the SRM must be considered on a case-by-case basis; therefore, approval of an AMOC would be appropriate. No change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

The FAA estimates that 47 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish each inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the detailed visual inspections required by this AD on U.S. operators is estimated to be $22,560, or $480 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the replacement of metallic vapor seal panels that is provided as an optional terminating action in this AD, it would take approximately 25 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $7,720 per airplane. Based on these figures, the cost impact of the optional terminating action would be $9,220 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–15–13 Airbus Industrie: Amendment 39–12347. Docket 99–NM–234–AD.

Applicability: All Model A310 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage to the metallic vapor seal on the center fuel tank, which could lead to leakage of fuel from the center tank, providing a potential for fuel to be in contact with fuel ignition sources, accomplish the following:

Initial and Repetitive Inspection

(a) Prior to the accumulation of 16,000 total flight hours, or within 600 flight hours following the effective date of this AD, whichever occurs later: Conduct an initial detailed visual inspection of the metallic vapor seal for damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2138, dated June 28, 2000. Repeat the detailed visual inspection of the metallic vapor seal for damage thereafter at intervals not to exceed 600 flight hours.

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.''

Note 3: Accomplishment of an initial inspection and applicable corrective actions in accordance with Airbus All Operators

Telex (AOT) A310–28A2139, dated April 8, 1999; or AOT A310–28A2139, Revision 01, dated April 26, 1999; is acceptable for compliance with the initial inspection required by paragraph (a) of this AD.

Corrective Action

(b) If damage to the metallic vapor seal is detected during any inspection required by paragraph (a) of this AD: Perform applicable corrective actions (including a temporary repair, a permanent repair, or replacement of a damaged metallic vapor seal) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2138, dated June 28, 2000. Any such corrective action must be performed within the compliance time specified in Figure 1 of the service bulletin. If no compliance time is specified in Figure 1, the applicable corrective action must be performed prior to the next flight.

(1) If a temporary repair is made to a metallic vapor seal: Perform the requirements of both paragraphs (b)(1)(i) and (b)(1)(ii).

(i) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 flight hours.

(ii) Within 15 months after the date of the temporary repair, accomplish a permanent repair with removal of the metallic vapor seal. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 flight hours.

(2) If all parts of a metallic vapor seal are replaced simultaneously with new parts: The inspection required by paragraph (a) of this AD may be deferred during the next 16,000 flight hours. Thereafter, repeat the inspection at intervals not to exceed 600 flight hours.

Optional Terminating Action

(c) Replacement of metallic vapor seal panels with new, improved metallic vapor seal panels according to Airbus Service Bulletin A310–28–2146, dated March 27, 2001, constitutes terminating action for the actions required by this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA. 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 4: 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

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

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A310–28–2138, dated June 28, 2000; and Airbus Service Bulletin A310–28–2146, dated March 27, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 2000–336–311(B), dated July 26, 2000.

Effective Date

(g) This amendment becomes effective on September 4, 2001.

Issued in Renton, Washington, on July 19, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18467 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–22–AD; Amendment 39–12352; AD 2001–15–17]

RIN 2120–AA64

Airworthiness Directives; Rockwell Collins, Inc. CTL–92 Transponder Control Panels

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell Collins, Inc. (Rockwell Collins) CTL–92 transponder control panels that are installed on aircraft. This AD requires you to modify the altitude encoder inputs of the CTL–92 transponder control panels. This AD is the result of reports of noise generation within the CTL–92 transponder control panels that the transponder can interpret and transmit as a random altitude. Air traffic control (ATC) and traffic alert and collision avoidance system (TCAS)-equipped aircraft can then interpret these erroneous random altitudes as valid altitudes. The actions specified by this AD are intended to prevent such erroneous altitude interpretations, which could result in reduced vertical separation or unsafe TCAS resolution advisories.

DATES: This AD becomes effective on August 20, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 20, 2001.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 7, 2001.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–22–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Rockwell Collins Inc., Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–22–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407; e-mail: roger.souter@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received reports of erroneous Mode C and Mode S random transponder transmissions from aircraft equipped with Gillham encoded altitude sources and certain Rockwell Collins CTL–92 transponder control panels. Rockwell Collins introduced new A6 circuit cards for these transponder control panels in September 2000.

These circuit cards exhibit reduced ground integrity in the area of the Gillham input processing. This results in noise generation within the CTL–92 transponder control panels that the transponder can interpret and transmit as a random altitude. Air traffic control (ATC) and traffic alert and collision avoidance system (TCAS)-equipped aircraft can then interpret these erroneous random altitudes as valid altitudes.

The following Rockwell Collins CTL–92 control unit part numbers are affected: 622–6523–204, 622–6523–205,

622–6523-206, 622–6523–207, and 622–6523–208.

These Rockwell Collins CTL–92 transponder control panels could be installed on, but not limited to, the following aircraft:

—Aerospatiale ATR42 and ATR72 series airplanes;

—Saab Aircraft Models 340B and SF340A airplanes;

—Embraer EMB–120 series airplanes;

—deHavilland DHC–8 series airplanes; and

—Raytheon Models C90A, B200, 350, and 1900D airplanes.

What Are the Consequences if the Condition Is Not Corrected?

Such erroneous altitude interpretations could result in reduced vertical separation or unsafe TCAS resolution advisories.

Is There Service Information That Applies to This Subject?

Rockwell Collins has issued Service Bulletin 33 (CTL–92–34–33), dated April 5, 2001. This service bulletin includes:

—Procedures for how to modify the altitude encoder inputs of these transponder control panels; and

—A list of part numbers and serial numbers of the affected CTL–92 transponder control panels.

The FAA's Determination and an Explanation of the Provisions of this AD What Has FAA Decided?

The FAA has 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 type design aircraft that incorporate these Rockwell Collins CTL–92 transponder control panels;

—The actions specified in the previously-referenced service information should be accomplished on the affected Rockwell Collins CTL–92 transponder control panels; and

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

What Does This AD Require?

This AD requires you to modify the altitude encoder inputs of the CTL–92 transponder control panels. Rockwell Collins Service Bulletin 33 (CTL–92–34–33), dated April 5, 2001, specifies the exact part numbers and serial numbers that are affected and includes procedures on how to modify these transponder control panels.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in reduced vertical separation or unsafe TCAS resolution advisories, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, we invite your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

We are reviewing 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 whether the style of this document is clear, 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.plainlanguage.gov.

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. 2001–CE–22–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–15–17 Rockwell Collins, Inc.: Amendment 39–12352; Docket No. 2001–CE–22–AD.

(a) *What airplanes are affected by this AD?* This AD applies to CTL–92 transponder control panel part numbers 622–6523–204, 622–6523–205, 622–6523–206, 622–6523–207, and 622–6523–208 (serial numbers as specified in Rockwell Collins Service Bulletin 33 (CTL–92–34–33), dated April 5, 2001), that are installed in aircraft. These CTL–92 transponder control panels are installed in, but not limited to, the following aircraft that are certificated in any category:

(1) Aerospatiale ATR42 and ATR72 series airplanes;

(2) Saab Aircraft Models 340B and SF340A airplanes;

(3) Embraer EMB–120 series airplanes;

(4) deHavilland DHC–8 series airplanes; and

(5) Raytheon Models C90A, B200, 350, and 1900D airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft equipped with one of the affected CTL–92 transponder control panels must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent erroneous altitude interpretations, which could result in reduced vertical separation or unsafe traffic alert and collision avoidance system (TCAS) resolution advisories.

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

Action	Compliance time	Procedures
(1) Modify the altitude encoder inputs of the CTL–92 transponder control panels.	Within the next 10 hours time-in-service (TIS) after August 20, 2001 (the effective date of this AD).	Modify in accordance with the Accomplishment Instructions section of Rockwell Collins Service Bulletin 33 (CTL–92–34–33), dated April 5, 2001.
(2) Do not install, on any aircraft, an affected CTL–92 transponder control panel that has not been modified as required by paragraph (d)(1) of this AD.	As of August 20, 2001 (the effective date of this AD).	Modify in accordance with the Accomplishment Instructions section of Rockwell Collins Service Bulletin 33 (CTL–92–34–33), dated April 5, 2001.

(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, Wichita Aircraft Certification Office, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: This AD applies to any aircraft with the equipment installed as identified in paragraph (a) of this AD, regardless of whether the aircraft has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft 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 Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407, e-mail: roger.souter@faa.gov.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance Rockwell Collins Service Bulletin 33 (CTL–92–34–33), dated April 5, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Rockwell Collins, Business and Regional Systems, 400 Collins Road Northeast, Cedar Rapids, Iowa 52498. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on August 20, 2001.

Issued in Kansas City, Missouri, on July 19, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–18707 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–71–AD; Amendment 39–12353; AD 2001–15–18]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) JT8D series turbofan engines. This amendment requires removing certain 2nd stage compressor disks, specified by part number (P/N) and serial number (SN), from service. This amendment is prompted by a report from PW of a number of JT8D engine 2nd stage compressor disks that were delivered to the field with potential machining damage to the tie rod, counterweight, and pin holes. The actions specified by this AD are intended to prevent rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date September 4, 2001. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 4, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCabe, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Pratt & Whitney JT8D series turbofan engines was published in the **Federal Register** on December 12, 2000 (65 FR 77530). That action proposed to require removing certain 2nd stage compressor disks, specified by P/N and SN, from service in accordance with PW JT8D Alert Service Bulletin (ASB) JT8D A6336, Revision 1, dated June 29, 1999, that lists the SN's of certain 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, and describes procedures replacing the disk if it is listed by SN in the ASB.

Comments

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

Limit AD Applicability

Two commenters request that the AD be limited to only those later or upper engine models specified by the JT8D Illustrated Parts Catalog, P/N 481675, referenced in the P&W Alert Service Bulletin (ASB) A6336, Revision 1, dated June 29, 1999. The affected 2nd stage compressor disk P/N's 745902, 790832 and 807502 are applicable only to engine models JT8D –9, –9A, –11, –15, –15A, –17A, –17R and –17AR. The FAA agrees and will limit applicability of the amendment to these specific engine models.

Cost Impact Statement

The manufacturer requests that the Cost Impact Statement reflect that PW has provided a support program for the disk replacement, and that the program is identified in the PW ASB A6336, Revision 1, dated June 29, 1999. The FAA agrees. The cost statement reflects the costs of compliance with the AD without considering any original equipment manufacturer (OEM) industry support program. The cost statement also states that the OEM may offset some of those costs.

Two commenters agree with the AD as written.

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

Cost Impact

There are approximately 110 engines of the affected design in the worldwide fleet. The FAA estimates that 60 engines, installed on airplanes of U.S. registry, would be affected by this proposed AD, that it would take approximately 48 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The prorated average cost of the unusable life of a 2nd stage disk is $30,000. Based on these figures, the FAA estimates the total cost impact of the proposed AD on U.S. operators to be $1,972,800. The manufacturer has informed the FAA that it may pay the cost of the disk, which may lower the cost to operators.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended adding a new airworthiness directive to read as follows:

2001–15–18 Pratt & Whitney: Amendment 39–12353. Docket 98–ANE–71–AD.

Applicability

This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT8D–9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines with 2nd stage compressor disks, part number (P/N) 745902, P/N 790832, and P/N 807502, installed. These engines are installed on, but not limited to, Boeing 727 series airplanes, Boeing 737–100 and –200 series airplanes and McDonnell Douglas DC–9 series airplanes.

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

Compliance

Compliance with this AD is required as indicated, unless already done. To prevent a rupture of the 2nd stage compressor disk caused by machining damage, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Removal of Disk

(a) Remove from service 2nd stage compressor disks, P/N 745902, P/N 790832, and P/N 807502, identified by serial number (SN) in the Accomplishment Instructions of PW JT8D Alert Service Bulletin (ASB) JT8D A6336, Revision 1, dated June 29, 1999, prior to accumulating 2,000 cycles since new.

Alternative Methods of Compliance

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(c) 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 aircraft to a location where the requirements of this AD can be accomplished.

Documents That Have Been Incorporated By Reference

(d) The disks identified by SN's must be removed in accordance with Pratt & Whitney ASB JT8D A6336, Revision 1, dated June 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASB may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on September 4, 2001.

Issued in Burlington, Massachusetts on July 20, 2001.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–18760 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–9]

Establishment of Class E2 Airspace; Greenwood, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E2 airspace at Greenwood, MS, for the Greenwood-Leflore Airport. The Greenwood Airport Traffic Control Tower is a part time facility. When the control tower is closed, Memphis Air Route Traffic Control Center (ARTCC) provides approach control service. This requires establishment of Class E2 surface area airspace.

EFFECTIVE DATE: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The Greenwood-Leflore Airport lies within Class D airspace. The Greenwood Airport Traffic Control Tower is a part time facility. When the control tower closes, Memphis ARTCC provides approach control service for the Greenwood-Leflore Airport. Since the Memphis ARTCC provides approach control service and the proper classification of airspace to accommodate aircraft conducting standard instrument approach procedures is not available, flight safety interests may be affected. Accordingly, immediate corrective action is taken herein, in the interest of flight safety, to establish Class E2 airspace in the vicinity of Greenwood-Leflore Airport. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Designations for Class E are published in FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E2 airspace at Greenwood, MS.

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

List Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO MS E2 Greenwood, MS [New]

Greenwood—Leflore Airport, MS
(Lat. 33°29′44″N, long. 90°05′03″W)

Within a 4-mile radius of Greenwood—Leflore Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 19, 2001.

Richard Biscomb,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–19044 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice 3721]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended—Diversity Visas

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim Rule with Request for Comments.

SUMMARY: This document makes certain amendments to the regulations implementing the Diversity Immigrant (DV) Program (the Program). The Department feels the amendments are necessary to further clarify its interpretation of the statute with respect to the Program and to enhance the Department's ability to combat fraudulent practices in the DV Program. The Department is also amending the

Program regulations as they pertain to the use of the ''Dictionary of Occupational Titles'' to determine the required work experience since this document is no longer current. Consular officers will now make determinations regarding work experience based upon the U.S. Department of Labor's O*Net OnLine.

DATES: *Effective date:* This rule takes effect on August 30, 2001.

Comment date: Written comments must be received before August 30, 2001.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Chief, Office of Legislation and Regulations, Visa Office, Department of State, Washington, DC, 20520–0106, by fax at (202) 663–3898, or by e-mail to *heodom@state.gov.*

FOR FURTHER INFORMATION CONTACT: Pam Chavez, Office of Legislation and Regulations, Visa Office, phone (202) 663–1206, or by e-mail at *chavezpr@state.gov.*

SUPPLEMENTARY INFORMATION:

What Changes Are Being Made to the Current Regulations?

Eligibility for Competition

The DV Program is provided for in sections 201(a)(3), 201(e), and 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act (INA), as amended. The Department's regulations are found at 22 CFR 42.33. The Department is amending § 42.33 by revising paragraph (a)(1), revising paragraph (e) redesignating the following paragraphs, and adding a new paragraph (g) to provide further clarification of the statute regarding allocation of visa numbers and validity of the petition. The amendments make clear that under no circumstances may a consular officer issue a visa to an alien after the end of the fiscal year for which the alien was registered, and further that at the end of that fiscal year the petition is automatically revoked.

*O*Net OnLine Replaces ''Dictionary of Occupational Titles''*

For all cases registered for a Diversity Visa Program after the date of this announcement, the Department of Labor's O*Net OnLine will be used to determine qualifying work experience rather than the Dictionary of Occupational Titles (DOT). For those cases registered for a Diversity Visa Program before the date of this announcement, the O*Net OnLine will also be used; however, if the O*Net OnLine-based determination differs from the DOT-based determination, and the applicant would be disadvantaged by the use of the O*Net OnLine determination, then the consular officer may use the DOT to make the determination. The O*Net OnLine can be accessed at *http://online.onetcenter.org.*

Applicant's Signature on Entry

The Department is redesignating paragraphs in paragraph (b) and adding a new paragraph (b)(2) addressing the applicant's signature on the entry. As in the past, applicants registering for the DV–2003 program, must personally sign the entry. However, beginning with registration for the 2003 DV Program, for anti-fraud purposes, the signature must be the applicant's usual and customary signature in his or her native alphabet. An initialed signature or block printing of the applicant's name will not be accepted and will result in the disqualification of the entry. If an applicant signs his or her name in the Roman alphabet, and that is not his or her native alphabet, the applicant must also sign in his or her native alphabet.

Photographs for Applicant and Dependents

A new paragraph (b)(3) is also added to address photographs. Beginning with the DV 2003 registration, the entry must include recent photographs of the applicant, his or her spouse and each child (natural children as well as legally-adopted children and stepchildren). Each family member must have a separate photograph. Group or family photos will not be accepted. Photographs must be submitted even though the spouse or child no longer resides with the applicant and whether or not the dependent will accompany or follow to join the applicant in the United States. The name and date of birth of each family member must be printed on the back of his or her photograph.

Why Are the Regulations Being Modified?

During the processing of the immigrant visa applications of aliens selected to compete for immigrant visas in earlier years, several consular offices encountered cases in which the visa applicant was proven, or strongly suspected, to be an impostor—that is, not the individual who had submitted the petition which had been selected. Thus, in order to provide additional deterrents to such abuses, the Department proposes to amend its regulations.

When Do the New Photograph and Signature Requirements Take Effect?

The new requirements are applicable to petitions which will be submitted early in Calendar Year 2001 by aliens seeking consideration to compete for visa issuance under the Diversity Immigrant Program during Fiscal Year 2003 (October 1, 2002 to September 30, 2003) and will be applicable in all subsequent years.

Interim Rule

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The publication of this rule as an interim rule will allow sufficient time for interested persons to comment on the regulatory changes and allows for timely registration for the DV–2003 scheduled for the end of July or early August of 2001.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State does not consider this rule, to be a ''significant regulatory action'' under Executive

Order 12866, section 3(f), Regulatory Planning and Review. Therefore, in accordance with the letter to the Department of State of February 4, 1994 from the Director of the Office of Management and Budget, it does not require review by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements. The information collection requirement, Form DS–156, (OMB 1405–0018), contained by reference in this rule was previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 42

Aliens, Documentation, Immigrants, Passports, and Visas.

Accordingly, 22 CFR part 42 is amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

2. Amend § 42.33 as follows:

a. By revising paragraphs (a)(1) and (a)(3);

b. By redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(4) and (b)(5;

c. By revising paragraph (b)(1);

d. By adding new paragraphs (b)(2) and (b)(3);

e. By revising paragraph (e);

f. By redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i) and (j);

g. By adding a new paragraph (g).

The revisions and additions to § 42.33 read as follows:

§ 42.33 Diversity immigrants.

(a) *General*—(1) *Eligibility to compete for consideration under section 203(c).* An alien shall be eligible to compete for consideration for visa issuance under INA 203(c) during a fiscal year only if he or she is a native of a low-admission foreign state, as determined by the Attorney General pursuant to INA 203(c)(1)(E)(i), with respect to the fiscal year in question; and if he or she has at least a high school education or its equivalent or, within the five years preceding the date of application for a visa, has two years of work experience in an occupation requiring at least two years training or experience. The eligibility for a visa under INA 203(c) ceases at the end of the fiscal year in question. Under no circumstances may a consular officer issue a visa or other documentation to an alien after the end of the fiscal year during which an alien possesses diversity visa eligibility.

* * * * *

(3) *Determinations of work experience.* For all cases registered for the 2003 Diversity Visa Program, consular officers shall use the Department of Labor's O*Net OnLine to determine qualifying work experience. Consular officers shall use the O*Net OnLine for those cases registered for a Diversity Visa Program for a fiscal year prior to FY 2003, unless the O*Net OnLine-determination differs from the Dictionary of Occupational Titles (DOT)-determination and the applicant would be disadvantaged by the use of the O*Net OnLine.

* * * * *

(b) *Petition for consideration.* (1) *Form of petition.* An alien claiming to be entitled to compete for consideration under INA 203(c) shall file a petition for such consideration. The petition shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet:

(i) The petitioner's name;

(ii) Date and place of birth (including city and county of which the alien claims to be a native, if other than the country of birth;

(iii) Name(s), and date(s) and place(s) of birth of spouse and all child(ren), if any, (including legally-adopted and stepchildren, regardless of whether or not they are living with the petitioner or intend to accompany or follow to join the petitioner); and

(iv) Current mailing address.

(2) *Signatures.* The petitioner shall personally sign his or her signature to the sheet of paper, using his or her usual and customary signature in his or her native alphabet. (Neither an initialed signature nor block printing of the petitioner's name will be accepted and will result in the disqualification of the entry).

(3) *Photograph.* The alien shall also affix to the entry a photograph of himself or herself and photographs of his or her spouse and each child.

(i) The photograph shall be 2 inches (50 mm) square;

(ii) The alien shall print his or her name and date of birth on the back of the photograph.

(iii) The alien must be directly facing the camera;

(iv) The head of the person being photographed shall not be tilted up, down, or to the side, and must cover about 50% of the photo area.

(v) The photograph must be taken with the person in front of a neutral, light-colored background.

(vi) The alien's face must be focused;

(vii) The person in the photograph shall not wear a hat or glasses with a dark lens.

(viii) Photographs may be either color or black and white.

* * * * *

(e) *Validity of approved petitions.* A petition approved pursuant to paragraph (d) of this section shall be valid until Midnight of the last day of the fiscal year for which the petition was submitted. At that time, the petition is automatically revoked pursuant to INA 203(c)(1) and no diversity immigrant visa numbers can be allotted after that date.

* * * * *

(g) *Allocation of visa numbers.* Diversity immigrant visa numbers should be allocated in accordance with INA 203(c)(1) and shall be allotted only during the fiscal year for which a petition to accord diversity immigrant status was submitted and approved. Under no circumstances shall immigrant visa numbers be allotted after Midnight of the last day of the fiscal year for which the petition was submitted and approved.

* * * * *

Dated: June 19, 2001.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8958]

RIN 1545–AX69

Disclosures of Return Information to Officers and Employees of the Department of Agriculture for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document provides a final regulation relating to the disclosure of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities. This regulation permits the IRS to disclose return information to the Department of Agriculture to structure, prepare, and conduct the Census of Agriculture.

DATES: Effective Date: This regulation is effective July 31, 2001.

Applicability Date: For dates of applicability of this regulation, see, § 301.6103(j)(5)–1(d).

FOR FURTHER INFORMATION CONTACT: Stuart Murray, (202) 622–4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2000, a temporary regulation (TD 8854) relating to disclosure of return information to the Department of Agriculture was published in the **Federal Register** (65 FR 215). A notice of proposed rulemaking (REG–116704–99) cross-referencing the temporary regulation was published in the **Federal Register** for the same day (65 FR 215). No public hearing was requested or held. No written or electronic comments responding to the notice of proposed rulemaking were received. Accordingly, the regulation proposed by REG–116704–99 is adopted by this Treasury decision without revision, and the corresponding temporary regulation is removed.

Explanation of Provisions

This regulation allows the IRS to disclose return information to the Department of Agriculture for purposes of the Census of Agriculture.

The disclosure of the specific items of return information identified in this regulation is necessary in order for the Department of Agriculture to accurately identify, locate, and classify, as well as properly process, information from agricultural businesses to be surveyed for the statutorily mandated Census of Agriculture.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

It is hereby certified that this regulation will not have a significant impact on a substantial number of small entities. This certification is based upon the fact that this regulation concerns the disclosure of return information by the IRS to the Department of Agriculture for purposes of the Census of Agriculture and does not require any action by or otherwise affect small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the temporary regulation and the notice of proposed rulemaking preceding this regulation were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of this regulation is Jennifer S. McGinty, formerly of the Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division, IRS. However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by removing the entry for 301.6103(j)(5)–1T and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(j)(5)–1 also issued under 26 U.S.C. 6103(j)(5);* * *

Par. 2. Section 301.6103(j)(5)–1 is added to read as follows:

§ 301.6103(j)(5)–1 Disclosures of return information to officers and employees of the Department of Agriculture for certain statistical purposes and related activities.

(a) *General rule.* Pursuant to the provisions of section 6103(j)(5) of the Internal Revenue Code and subject to the requirements of paragraph (c) of this section, officers or employees of the Internal Revenue Service (IRS) will disclose return information to officers and employees of the Department of Agriculture to the extent, and for such purposes as may be, provided by paragraph (b) of this section.

(b) *Disclosure of return information to officers and employees of the Department of Agriculture.* (1) Officers or employees of the IRS will disclose the following return information for individuals, partnerships, and corporations with agricultural activity, as determined generally by industry code classification or the filing of returns for such activity, to officers and employees of the Department of Agriculture for purposes of, but only to the extent necessary in, structuring, preparing, and conducting, as authorized by chapter 55 of title 7, United States Code, the Census of Agriculture.

(2) From Form 1040/Schedule F—

(i) Taxpayer Identity Information (as defined in section 6103(b)(6) of the Internal Revenue Code);

(ii) Spouse's SSN;

(iii) Annual Accounting Period;

(iv) Principal Business Activity (PBA) Code;

(v) Sales of livestock and produce raised;

(vi) Taxable cooperative distributions;

(vii) Income from custom hire and machine work;

(viii) Gross income;

(ix) Master File Tax (MFT) Code;

(x) Document Locator Number (DLN);

(xi) Cycle Posted;

(xii) Final return indicator; and

(xiii) Part year return indicator.

(3) From Form 943—

(i) Taxpayer Identity Information;

(ii) Annual Accounting Period;

(iii) Total wages subject to Medicare taxes;

(iv) Master File Tax (MFT) Code;

(v) Document Locator Number (DLN);

(vi) Cycle Posted;

(vii) Final return indicator; and

(viii) Part year return indicator.

(4) From Form 1120 series—

(i) Taxpayer Identity Information;

(ii) Annual Accounting Period;

(iii) Gross receipts less returns and allowances;

(iv) PBA Code;

(v) Parent corporation Employer Identification Number, and related Name and PBA Code for entities with agricultural activity;

(vi) Master File Tax (MFT) Code;

(vii) Document Locator Number (DLN);

(viii) Cycle posted;

(ix) Final return indicator;

(x) Part year return indicator; and

(xi) Consolidated return indicator.

(5) From Form 851—

(i) Subsidiary Taxpayer Identity Information;

(ii) Annual Accounting Period;
(iii) Subsidiary PBA Code;
(iv) Parent Taxpayer Identity Information;
(v) Parent PBA Code;
(vi) Master File Tax (MFT) Code;
(vii) Document Locator Number (DLN); and
(viii) Cycle Posted.
(6) From Form 1065 series—
(i) Taxpayer Identity Information;
(ii) Annual Accounting Period;
(iii) PBA Code;
(iv) Gross receipts less returns and allowances;
(v) Net farm profit (loss);
(vi) Master File Tax (MFT) Code;
(vii) Document Locator Number (DLN);
(viii) Cycle Posted;
(ix) Final return indicator; and
(x) Part year return indicator.

(c) *Procedures and restrictions.* (1) Disclosure of return information by officers or employees of the IRS as provided by paragraph (b) of this section shall be made only upon written request designating, by name and title, the officers and employees of the Department of Agriculture to whom such disclosure is authorized, to the Commissioner of Internal Revenue by the Secretary of the Department of Agriculture and describing—
(i) The particular return information to be disclosed;
(ii) The taxable period or date to which such return information relates; and
(iii) The particular purpose for which the return information is to be used.

(2) No such officer or employee to whom return information is disclosed pursuant to the provisions of paragraph (b) of this section shall disclose such return information to any person, other than the taxpayer to whom such return information relates or other officers or employees of the Department of Agriculture whose duties or responsibilities require such disclosure for a purpose described in paragraph (b) of this section, except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the IRS determines that the Department of Agriculture, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Internal Revenue Code or regulations or published procedures thereunder, the IRS may take such actions as are deemed necessary to ensure that such requirements are or shall be satisfied, including suspension of disclosures of return information otherwise authorized by section 6103(j)(5) and paragraph (b) of this section, until the IRS determines that such requirements have been or will be satisfied.

(d) *Effective date.* This section is applicable on July 31, 2001.

§ 301.6103(j)(5)–1T [Removed]

Par. 3. Section 301.6103(j)(5)–1T is removed.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
Approved: July 20, 2001.
Mark Weinberger,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 01–19055 Filed 7–30–01; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

[NA–004–FOR]

Navajo Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Navajo abandoned mine land reclamation (AMLR) plan (hereinafter referred to as the ''Navajo plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Navajo Nation proposed to remove existing rules pertaining to noncoal reclamation after certification and exclusion of certain noncoal sites in view of rules it proposed to add elsewhere in its plan. The Navajo Nation proposed to add rules that will authorize it to: Restore lands and water adversely affected by past mineral mining, providing they reflect certain objectives and priorities; protect, repair, replace, construct, or enhance utilities; construct public facilities in communities impacted by coal and other mineral mining and processing practices; and request funds for activities or construction of specific public facilities related to the coal or minerals industry on Navajo Nation lands impacted by coal or mineral development. The Navajo Nation also proposes to add new provisions that will: Exclude certain noncoal reclamation sites; apply provisions for land acquisition and liens in its plan to its noncoal program; establish limited liability provisions; and require every successful bidder for an AML contract to be eligible to receive a mining permit at the time of contract award. The Navajo Nation intends to revise its plan to be consistent with the corresponding Federal regulations and SMCRA and to authorize it to undertake projects under section 411(f) of the Navajo Abandoned Mine Lands Reclamation Code.

EFFECTIVE DATE: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Willis Gainer, Director, Albuquerque Field Office; telephone (505) 248–5096; e-mail address: *wgainer@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Navajo Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Navajo Plan

On May 16, 1988, the Secretary of the Interior approved the Navajo plan. You can find general background information on the Navajo plan, including the Secretary's findings and the disposition of comments, in the May 16, 1988, **Federal Register** (53 FR 17186). You can also find later actions concerning the Navajo Nation's plan and plan amendments at 30 CFR 756.14.

II. Submission of the Proposed Amendment

By letters dated March 2 and March 8, 2001, the Navajo Nation sent us a proposed amendment to its plan (NA–004–FOR, administrative record numbers NA–255 and NA–256) under SMCRA (30 U.S.C. 1201 *et seq.*). The Navajo Nation sent the amendment at its own initiative.

We announced receipt of the proposed amendment in the March 28, 2001, **Federal Register** (66 FR 16893; administrative record number NA–259). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested either one. The public comment period ended on April 27, 2001.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment.

A. Minor Revisions to the Navajo Nation's Rules in its Plan

The Navajo Nation proposed the following minor editorial and codification change:

The heading ''Subsection P. RESERVED'' is removed and replaced with the heading ''O. NONCOAL RECLAMATION AFTER CERTIFICATION.''

Because the change to this rule is minor, we find that it meets the requirements of the Federal regulations and is consistent with the corresponding provision of SMCRA.

B. Revisions to the Navajo Nation's Rules in its Plan That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and/or SMCRA

The Navajo Nation proposed revisions to the following rules in its plan containing language that is the same as, or similar to, the corresponding sections of the Federal regulations and or SMCRA (which are shown in parentheses):

Section II, subsection O.1: Applies subsection O to reclamation projects that restore lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal and other mineral mining and processing practices (30 CFR 875.15(a));

Section II, subsections O.2 through (2)(c): Establish objectives and priorities for expenditures of money for the projects described in new subsection O.1. These paragraphs replace almost identical existing provisions at former subsection M.2 that the Navajo Nation proposes to remove (subsections 411(c), (c)(1), (c)(2), and (c)(3) of SMCRA and 30 CFR 875.15(b), (b)(1), (b)(2), and (b)(3));

Section II, subsection O.3: Allows enhancement of facilities or utilities (that were adversely affected by past mining and processing) to include upgrading to meet public health and safety requirements, but not to include any service area expansion unless needed to address a specific abandoned mine land problem (30 CFR 875.15(c));

Section II, subsectionsO.5 through (5)(g): Describes the information that must be included in grant applications that request funds for projects proposed under new subsection O.3 (30 CFR 875.15(e) and (e)(1) through (e)(7));

Section II, subsection O.7: Applies existing provisions of the Navajo Reclamation Plan for land acquisition and right of entry to noncoal reclamation authorized under subsection O (30 CFR 875.17);

Section II, subsection O.8: Applies existing provisions of the Navajo Reclamation Plan for liens to noncoal reclamation authorized under subsection O (30 CFR 875.18); and

Section II, subsection O.10: Requires bidders to be eligible to receive a permit to conduct surface coal mining operations as a prerequisite to being awarded an AML contract (30 CFR 874.20).

C. Revisions to the Navajo Nation's Rules in its Plan That Are Not the Same as the Corresponding Provisions of the Federal Regulations and/or SMCRA

1. Subsection O.4, Determination of Need for Public Facilities Projects

The Navajo Nation proposes a new provision as subsection O.4 in section II of its reclamation plan. This provision will authorize it to apply for funding to undertake activities or construction of specific public facilities related to the coal or minerals industry on Navajo Nation lands impacted by coal or mineral development based on a determination of need for such activities or construction made by ''* * * the President of the Navajo Nation, subject to applicable laws * * *.''

The counterpart provision in section 411(f) of SMCRA requires that the determination of need for activities or construction of specific public facilities be made by ''* * * the Governor of a State or the head of a governing body of an Indian tribe * * *.'' Counterpart 30 CFR 875.15(e) requires the determination of need to be made by ''* * * the Governor of a State or the equivalent head of an Indian tribe * * *.'' The qualifying phrase ''subject to applicable laws'' as proposed in the Navajo Nation's rule has no counterpart in SMCRA or the Federal regulations.

Designating the President to determine the need for public facilities projects is consistent with SMCRA and the counterpart Federal regulation. The qualifying phrase ''subject to applicable laws'' requires the Navajo President to abide by Navajo law when determining the need for projects under this provision. We fully expect the Navajo Nation and its President to comply with applicable Navajo and/or other law in making these determinations under the approved Tribal AML program just as we expect a State and its Governor to comply with State and/or other law in the administration of an approved State AML program. Moreover, the proposed rule will protect the Navajo Nation's grant funds by ensuring that projects are selected and funded in accordance with applicable law while retaining the Nation's exclusive authority and responsibility to administer its approved program.

Also, in proposed subsection O.4, the phrase ''* * * determines there is a need for activities or construction of public facilities related to the coal or minerals industry on Navajo Nation lands impacted by coal or mineral development * * *,'' the word ''mineral'' preceding the word ''development'' does not end with an ''s.'' The counterpart term in the corresponding Federal regulation at 30 CFR 875.15(d) is ''minerals.'' We interpret the Navajo Nation's use of the word ''mineral'' and the phrase ''mineral development'' in the context of proposed subsection O.4 to have the same meaning as the word ''minerals'' and the phrase ''mineral development'' in the Federal regulation.

Based on the reasoning described above, we find that the Navajo Nation's proposed rule, considered together with other statutes and rules, compares, all together, with applicable requirements of the Federal regulations and SMCRA sufficient to ensure that the Navajo Nation's plan, as a whole, meets all applicable Federal requirements.

2. Subsection O.6, Exclusion of Certain Noncoal Reclamation Sites

The Navajo Nation proposes to remove its existing, previously approved rule that excludes certain noncoal sites from reclamation at subsection O.1 from its plan and replace it with an identical provision at new subsection O.6.

Proposed subsection O.6 is similar to counterpart 30 CFR 875.16. The primary difference is the Navajo Nation's provision that ''Funds will not be used * * *'' to reclaim sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA; 42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA; 42 U.S.C. 9601 *et seq.*) In comparison, the counterpart Federal regulation says, ''Money from the Fund shall not be used * * *'' for such reclamation. The source of the ''Funds'' referred to in proposed subsection O.6 is not identified in the Navajo Nation's rules. However, the corresponding provision at section 411(d) of the Navajo Abandoned Mine Lands Reclamation Code of 1987

provides that such remedial action ''* * * shall not be eligible for expenditures from the Fund under this section.'' Section 401(a) of the Navajo Code created ''* * * on the books of the Treasury of the Navajo Nation a trust fund known as the Navajo Abandoned Mine Reclamation Fund (hereinafter referred to as the ''fund'') * * *.'' Section 401(c) of the Navajo Code describes how money in the fund may be used, including reclamation of coal and noncoal abandoned mines under subsections 401(c)(1) and (c)(2), respectively.

Federal statutory and regulatory provisions define the term ''fund'' similarly. As defined at 30 CFR 870.5, ''Abandoned Mine Reclamation Fund or Fund means a special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.'' Section 401(a) of SMCRA states that ''There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the ''fund'') * * *.'' It goes on to say at section 401(c) what the money in the fund may be used for, including abandoned coal and noncoal mine reclamation under subsections 401(c)(1) and (3), respectively. Those subsections of SMCRA are the Federal counterparts to subsections 401(c)(1) and (c)(2) of the Navajo Code, respectively.

New subsection O.6 in the Navajo Nation's plan is proposed in the context of subsection O of the plan, which provides for reclamation of noncoal projects after certification. It also is proposed as the Navajo rules' counterpart to section 401(d) of the Navajo Abandoned Mine Lands Reclamation Code and to 30 CFR 875.16. Though proposed subsection O.6 is worded differently than the counterpart provisions in the Navajo Code, SMCRA, and the Federal regulations, we interpret the proposed rule to mean that the Navajo Nation will not use money from the Navajo Abandoned Mine Reclamation Fund to reclaim sites designated for remedial action under UMTRCA or listed for remedial action under CERCLA, as opposed to meaning no money from any source whatsoever may be used to reclaim them. Removal of the existing provision at subsection O.1 is appropriate in view of the proposed rule replacing it at subsection O.6.

Other differences in wording between the proposed Navajo rule and the counterpart Federal regulation are minor. We interpret the word ''will'' in the proposed Navajo rule to have the same meaning as the term ''shall'' in the Federal regulation. Also, we interpret use of the word ''which'' in the proposed Navajo rule to have the same meaning as the corresponding word ''that'' in the Federal regulation.

For these reasons, we find that proposed subsection O.6, considered together with the Navajo Abandoned Mine Land Reclamation Code, compares, all together, with applicable requirements of the Federal regulations and SMCRA sufficient to ensure that the Navajo Nation's plan, as a whole, meets all Federal requirements.

3. Subsection O.9, Limited Liability

The Navajo Nation proposes a limited liability provision at section II, subsection O.9 of its plan for noncoal reclamation after certification. The proposed rule states that the Navajo Nation will not be liable under any provision of Federal, State, or Tribal law for any costs or damages resulting from actions taken or omitted in the course of carrying out its plan, except those resulting from gross negligence or intentional misconduct. It defines gross negligence or intentional misconduct as reckless, willful, or wanton misconduct.

Proposed subsection O.9 reads much like the counterpart Federal provisions. Section 405(l) of SMCRA and 30 CFR 874.15 provide that no State [or Indian tribe, as provided by section 405(k) of SMCRA] shall be liable under ''any provision of Federal law'', except as discussed above. The proposed rule asserts greater immunity than SMCRA and the Federal regulations do, by asserting that the Navajo Nation will not be liable under State and Tribal law, as well as Federal law.

We find that this subsection is consistent with Federal requirements to the extent that it addresses the Navajo Nation's liability under Federal law. However, resolution of Tribal liability issues under State laws or laws of another Tribe is outside the scope of SMCRA. Thus, while we are approving this provision as satisfying the minimum requirements of SMCRA, we do not intend either to limit the Navajo Nation's liability beyond what is provided under SMCRA or to affect the ability of any person to resolve liability issues outside the scope of SMCRA.

Other differences between the wording of the proposed Navajo rule and the counterpart Federal regulation are minor and do not affect whether the proposed rule meets applicable Federal requirements. References to the ''Navajo Nation'' and ''this plan'' in the Tribal amendment are program-specific and are analogous to references to the ''State or Indian Tribe'' and to ''an approved State or Indian tribe abandoned mine reclamation plan'' in the Federal regulation, respectively.

D. Revisions to the Navajo Nation's Rules in its Plan With No Corresponding Provisions in the Federal Regulations or Statute

The Navajo Nation proposes to add a requirement at section II, subsection O.5(h) that its applications for public facility project funding show that the project '' * * * meets the requirements of the procedures/criteria for Public Facility Projects used by Navajo Nation.'' This proposed new rule has no counterpart in SMCRA or the Federal regulations.

Projects funded under subsections O.4 and O.5 of the Navajo plan will compete for grant funding with the Navajo Nation's abandoned mine reclamation projects. SMCRA and the Federal regulations do not suggest how to determine the need for public facilities projects or how to select such projects when more than one is needed. The Navajo Nation will have to choose from among many competing needs, so proposing a rule requiring applications for public facilities projects to show how such projects meet the Nation's process and criteria for funding them is a reasonable approach to making those choices. The fact that SMCRA and the Federal regulations do not require a process for selecting public facilities projects does not preclude the Navajo Nation from developing a process and criteria that will ensure its funding is put to the best use in addressing its greatest needs. This approach is not unlike that involving the objectives and priorities for coal and noncoal reclamation projects in sections 403 and 411 of SMCRA and 30 CFR 874.13 and 875.15. Applying those objectives and priorities to potential AML projects provides States and Tribes with a process by which to fund their most pressing problems first and which problems to consider funding later. The Navajo Nation's proposed rule would do essentially the same thing for public facilities projects.

Based on this reasoning, we find proposed subsection O.5(h) meets all applicable Federal requirements when considered together with SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in the March 28, 2001,

Federal Register (66 FR 16893; administrative record number NA–259). We also asked for comments in letters dated March 12, 2001, that we sent out to a number of interested parties (administrative record NA–257).

The New Mexico State Historic Preservation Officer (NMSHPO) responded to our request for comments in a note dated April 20, 2001 (administrative record number NA–260). NMSHPO thanked us for our invitation to comment but advised us that, under 36 CFR 800.3, we are to consult with the Tribal Historic Preservation Officer in lieu of NMSHPO for undertakings on Tribal land and for effects on Tribal lands. We requested comments from the Navajo Nation's Historic Preservation Officer in a letter dated March 12, 2001 (administrative record number NA–257), but did not receive a response.

We did not receive any other public comments.

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment in letters dated March 12, 2001 (administrative record number NA–257) from various Federal agencies with an actual or potential interest in the Navajo plan.

In a response dated March 15, 2001, the Natural Resources Conservation Service of the U.S. Department of Agriculture said it reviewed the proposed Navajo amendment and had no comments.

We did not receive comments from any other Federal agencies.

V. Director's Decision

Based on the above findings, we approve the amendment the Navajo Nation sent to us on March 2 and 8, 2001.

We approve, as discussed in Finding number III.A: Section II, subsection O, new subsection heading; in Finding number III.B: Section II, subsection O.1, applying subsection O to projects that restore lands and water adversely affected by past mineral mining, that involve protection, repair, replacement, construction, or enhancement of utilities, and that involve the construction of public facilities in communities impacted by coal and other mineral mining and processing practices; section II, subsections O.2 and O.2(c), establishing objectives and priorities for expenditures of money for projects described in new subsection O.1, and the removal of existing provisions at subsection M.2; section II, subsection O.3, allowing enhancement of facilities or utilities to include upgrading to meet public health and safety requirements, but not to include any service area expansion unless needed to address a specific abandoned mine land problem; section II, subsections O.5 through O.5(g), describing information that must be in grant applications that request funds for projects proposed under new subsection O.3; section II, subsection O.7, applying existing provisions of the Navajo Plan for land acquisition and right of entry to noncoal reclamation authorized under subsection O; section II, subsection O.8, applying existing provisions of the Navajo Plan for liens to noncoal reclamation authorized under subsection O; and section II, subsection O.10, requiring bidders to be eligible to receive a permit to conduct surface coal mining operations as a prerequisite to being awarded an AML contract; in Finding III.C.1, section II, subsection O.4, a provision authorizing the Navajo Nation President to make the determination of need for activities or construction of specific public facilities projects, subject to applicable laws; in Finding III.C.2, section II, subsection O.6, prohibiting use of money from the fund to pay for reclamation of certain noncoal sites, and removal of the existing, previously approved rule at former subsection O.1; in Finding III.C.3, section II, subsection O.9, establishing a limited liability provision applicable to the Navajo Nation's noncoal program after certification; and in Finding III.D, section II, subsection O.5(h), requiring the Navajo Nation's grant applications for public facility project funding to show that such projects meet the requirements of the Nation's procedures and criteria for public facility projects.

We approve the rules that the Navajo Nation proposed with the provision that the Navajo Nation fully promulgate them in identical form to the rules it sent to us and that the public and we reviewed.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 756.14, which codify decisions concerning the Navajo plan. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Sections 405(a) of SMCRA required the Secretary of the Interior to promulgate and publish regulations covering the implementation of an abandoned mine reclamation program. Sections 405(d) and (k) requires the Secretary to approve a tribal reclamation plan when it is in compliance with the procedures, guidelines and requirements established under section 405(a). Making this regulation effectively immediately will expedite that process. Further, the amendment submitted by the Navajo Nation is based on regulations issued by the Secretary which were published in the **Federal Register** and which took effect only after a 30 day waiting period. Before any project made eligible under this rulemaking can be undertaken, extensive public outreach is required by our regulations at 30 CFR 875.15(e). An immediate effective date will not violate any principles of fundamental fairness, because no affected persons will require time to prepare for this effective date. For these reasons, therefore, requiring another 30 day waiting period before the effective date of this rule is not seen to be in the public interest.

VI. 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 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that 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 Tribal AMLR plans and plan amendments since each such program is drafted and promulgated by a specific Tribe, not by OSM. Decisions on proposed Tribal AMLR plans and revisions thereof submitted by a Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Subchapter R.

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed Tribal AMLR plans and plan revisions are categorically excluded from compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4332) by the Department of the Interior's NEPA compliance manual at 516 DM 6, appendix 8, paragraph 8.4B(29).

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 Tribal submittal that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. Accordingly, this rule will ensure that the Navajo Nation will implement existing requirements that OSM previously promulgated. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. Does not have an annual effect on the economy of $100 million; b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; 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 Tribal 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

OSM determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 756

Abandoned mine reclamation programs, Indian lands, Surface mining, Underground mining.

Dated: May 21, 2001.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The authority citation for part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. Section 756.14 is amended by adding paragraph (e) to read as follows:

§ 756.14 Approval of amendments to the Navajo Nation's abandoned mine land plan.

* * * * *

(e) Addition or removal of the following rules, as submitted to OSM on March 2 and 8, 2001, is approved effective July 31, 2001:

Section II, subsections M, 2, 2(a), 2(a)(1), 2(a)(2), and 2(a)(3), noncoal reclamation after certification (removed);

Section II, subsection O, 1, Exclusion of Noncoal Reclamation Sites (removed);

Section II, subsection O, subsection heading ''NONCOAL RECLAMATION AFTER CERTIFICATION;''

Section II, subsection O, 1, applicability of subsection O;

Section II, subsections O, 2, 2(a) through 2(c), objectives and priorities;

Section II, subsection O, 3, enhancement of facilities and utilities;

Section II, subsection O, 4, determination of need for activities and construction of specific public facilities and submittal of grant applications;

Section II, subsection O, 5 through 5(h), requirements for grant applications submitted under subsection O.4 to meet;

Section II, subsection O, 6, exclusion of certain noncoal reclamation sites;

Section II, subsection O, 7, land acquisition authority for the noncoal program;

Section II, subsection O, 8, lien requirements;

Section II, subsection O, 9, limited liability;

Section II, subsection O, 10, contractor responsibility; and

Section II, subsection P, subsection heading, ''RESERVED'' (removed).

[FR Doc. 01–19015 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–01–007]

RIN 2115–AE47

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Cape May Canal

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Cape May Canal Railroad Bridge at the New Jersey Intracoastal Waterway (ICW), mile 115.1, across Cape May Canal, in Cape May, New Jersey. The final rule maintains the bridge in the open position, except that it would close for the crossing of trains and the maintenance of the bridge. The final rule will provide for the reasonable needs of navigation.

DATES: This final rule is effective August 30, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–007 and are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 30, 2001, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Cape May Canal'' in the **Federal Register** (66 FR 17377). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Cape May Canal Railroad Bridge is a swing bridge owned by New Jersey Transit Rail Operations (NJTRO). Under an agreement with NJTRO and Cape May Seashore Lines, Inc. (CSML), CSML is responsible for the reactivation of the rail service, maintenance of the accessories of the bridge and its operation of the swing span. From 1983 until June 1999, train service was

deactivated and bridge tender service discontinued. The swing span was placed in the full open position for vessels in accordance with 33 CFR 117.41. Upon reactivation of bridge tender service in 1999, the draw was required to return to opening on signal at all times. This requirement is included in the general operation regulations at 33 CFR 117.5.

CMSL is currently providing passenger rail service on the 27-mile long rail lines between Tuckahoe and Cape May, New Jersey. There is no train service in the winter so the bridge is unmanned and placed in the full open position. Tourist train service is provided on weekends only in the spring and fall and seven days a week from mid-June until Labor Day. Train service starts at 10 a.m. and ends at 7:30 p.m. After train hours, the bridge is unmanned and placed in the full open position. During train service hours, the bridge is kept in the full open position for vessels and closes only when a train is scheduled to cross.

This final rule formalizes the current operation of the bridge. The final rule will have less impact on navigation than the general operating regulations.

Discussion of Comments and Changes

The Coast Guard received no comments on the NPRM. Since no comments were received and we believe the change is warranted to formalize the current operation of the bridge, the final rule is being implemented without change.

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 this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the determination that the final rule will provide for greater flow of vessel traffic than the general requirements for the use and operation of drawbridges. Under the general requirements, the drawbridge is required to open promptly upon signal. This permits the bridge to remain closed and open only after a proper signal. The final rule will require the bridge to remain in the open position, permitting vessels to pass freely. The bridge will close only for the train crossings and bridge maintenance. This final rule will provide for the reasonable needs of navigation, while reducing the burden on the operator.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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. 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.

This final rule would affect the following entities, some of which might be small entities: The owners and operators of vessels that desire to transit the waterway and homeowners associations representing property owners upstream of the drawbridge.

This final rule would not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will provide for the bridge to remain in the open position, allowing the free flow of vessel traffic. The bridge will close only for the passage of trains and maintenance of the bridge. This final rule will provide for the reasonable needs of navigation.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the final rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

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 discretionary regulatory actions. 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 final 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 affect 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 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This final rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102587, 106 Stat. 5039.

2. In (§ 117.733 add a new paragraph (k) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(k) The draw of Cape May Canal Railroad Bridge across Cape May Canal, mile 115.1, at Cape May shall operate as follows:

(1) The draw shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed for a train crossing a bridge tender shall be present to reopen the draw after the train has cleared the bridge. When the draw is closed for maintenance a bridge tender shall be present to open the draw upon signal.

(2) Train service generally operates as follows (please contact Cape May Seashore Lines for current train schedules):

(i) Winter (generally December through March): In general, there is no train service, therefore the bridge is unmanned and placed in the full open position.

(ii) Spring (generally April through May and Fall (generally September through November): Generally weekend service only: Friday through Sunday train service starts at 10 a.m. and ends at 7:30 p.m. Monday through Thursday the bridge generally unmanned and in the open position.

(iii) Summer Service (generally June through August): Daily train service starting at 10 a.m. and ending 7:30 p.m.

(3) When a vessel approaches the drawbridge with the draw in the open position, the vessel shall give the opening signal. If no acknowledgement is received within 30 seconds, the vessel may proceed, with caution, through the open draw. When the draw is open and will be closing promptly, the drawbridge will generally signal using sound signals or radio telephone.

(4) Opening of the draw span may be delayed for ten minutes after a signal to open except as provide in (117.31(b). However, if a train is moving toward the bridge and has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks as soon as possible in order to prevent unnecessary delays in the opening of the draw.

Dated: July 23, 2001.

Thad W. Allen,

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

[FR Doc. 01–19042 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD13–01–021]

RIN 2115–AA97

Safety Zone; Fireworks Display, Columbia River, Astoria, Oregon

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of Columbia River in the vicinity of Astoria, Oregon from 9 p.m. to 11 p.m. (PDT) on August 12, 2001. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into the safety zone, which encompasses all waters of the Columbia River at Astoria, Oregon within a 500 yard radius of the 11th street dock, will be prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective from 9 p.m. to 11 p.m. (PDT) on August 12, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection or copying at the U.S. Coast Guard Group/MSO Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Bob Coster, (503) 240–9324.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the fireworks launching area. Due to uncertainties related to planning, the event sponsor, the Astoria Fireworks Committee, was unable to provide the Coast Guard with notice of the final details until less than 30 days prior to the date of the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest. Although this has not been an annual event, the location of this fireworks display is a locally accepted standard and safety zones have been adopted at this site as recently as July 4, 2001 with no negative public comment.

Background and Purpose

The Coast Guard is promulgating a temporary safety zone regulation to allow a safe fireworks display. The fireworks display is scheduled to start at 10 p.m. (PDT) on August 12, 2001. This event will result in a number of vessels congregating near the fireworks launching area. The safety zone is needed to provide for the safety of spectators and their watercraft from the inherent safety hazards associated with the fireworks display. Without providing for an adequate safety zone, the public could be exposed to falling burning debris or stray within blast range should a catastrophic accident occur on the launching barge. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal agencies and local agencies.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This rule is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation would encompass less than one mile of the Columbia for a period of only two hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' include 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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Columbia River from 9 p.m. to 11 p.m. on August 12, 2001. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 2 hours in the evening when vessel traffic is low. The safety zone will not apply to the entire width of the river, and traffic will be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) 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 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this 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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes a safety zone with a duration of two hours.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. A temporary § 165.T13–011 is added to read as follows:

§ 165.T13–011 Safety Zone; Columbia River Astoria, Oregon.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River at Astoria, Oregon within a 500 yard radius of the 11th street dock, position 46 degrees 11.45 minutes north latitude, 123 degrees 49.88 minutes west longitude [Datum NAD 1983].

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective dates.* This regulation is effective on August 12, 2001 from 9 p.m. to 11 p.m. (PDT).

Dated: July 23, 2001.

James D. Spitzer,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 01–19069 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No. 991105297–1167–04]

RIN 0651–AB01

Revision of Patent Fees for Fiscal Year 2002

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (referred to as ''we'', ''us'', or ''our'' in this notice) is adjusting certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. Our Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business. In addition, we are changing the maintenance fee correspondence address to better serve our customers, and amending a fee to reflect current business practice. These amendments will keep our fees aligned with the CPI and streamline administrative matters. No trademark fee will be adjusted.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at matthew.lee@uspto.gov, or by telephone at (703) 305–8051.

SUPPLEMENTARY INFORMATION: This final rule was proposed in a notice of proposed rulemaking published at 66 FR 23642 on May 9, 2001. This rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106–113). This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)). The proposal to adjust a trademark fee has been withdrawn; trademark fees are not affected by this final rule.

In addition, this final rule changes the maintenance fee correspondence address. The address change for maintenance fee payments benefits our customers by allowing the payments to be processed within 24 hours of receipt, rather than the current time frame of three to five days. Likewise, the funds are deposited more quickly with the United States Treasury. The address change for correspondence related to maintenance fees other than payments of maintenance fees in patents permits us to respond in a timelier manner. Maintenance fee correspondence received at the ''Box M Fee'' address will be forwarded to the appropriate address in § 1.1(d).

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. For fees paid under 35 U.S.C. 41(a) and (b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Subsection 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for library services.

Section 376 of title 35, United States Code, authorizes the Director to set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office.*

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be adjusted on October 1, 2001, to reflect any fluctuations occurring during the previous twelve months in the Consumer Price Index for all urban consumers (CPI–U). In calculating these fluctuations, the Office of Management and Budget (OMB) has determined that we should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we use the Administration's projected CPI–U for the twelve-month period ending September 30, 2001, which is 3.6 percent. Based on this projection, patent statutory fees will be adjusted by 3.6 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees of $100 or more for other than a small entity were rounded to the nearest $10. Fees of less than $100 were rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the fee increase will be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, for filing of Continued

Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Under 37 CFR 1.10(a), any correspondence delivered by the ''Express Mail Post Office to Addressee'' service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the ''date-in'' on the ''Express Mail'' mailing label or other official USPS notation.

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.1 Addresses for Correspondence with the United States Patent and Trademark Office

Section 1.1, paragraphs (a) and (d), are revised to change the maintenance fee correspondence address.

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), (f) through (i), and (k), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, paragraph (o), is revised to reflect current business practice. We no longer use or provide access to the Automated Patent System.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Response to Comments

We received several comments in response to the notice of proposed rulemaking published at 66 FR 23642 on May 9, 2001. The comments and our responses to the comments follow:

Comment: One comment suggested that patentees would likely be unaware of the change of address for mailing maintenance fee payments, which would result in the patent expiring and the patentee incurring a surcharge to reinstate the patent.

Response: The address change for maintenance fee payments will permit the payments to be processed without delay, and the funds to be deposited more quickly. Maintenance fee payments received at the old mailing address (''Box M Fee'') will be forwarded to the new mailing address in § 1.1(d)(1) for processing. Therefore, the patentee will not be adversely affected by the address change.

Comment: One comment recommended that § 1.1(d) be changed so that maintenance fee payments receive the date of actual receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission when sent to the old mailing address (''Box M Fee''). In addition, it was also recommended that the address in § 1.1(d)(2) be clarified.

Response: Maintenance fee payments sent inadvertently to the old mailing address will receive the date of actual receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission when forwarded by the office to the new mailing address in § 1.1(d)(1) for processing. For example, if we receive a paper that does not include a Certificate of Mailing or Transmission on September 28, 2001, in Box M Fee, the paper will be accorded a date of receipt of September 28, 2001. The paper, after we forward it to the new mailing address in § 1.1(d)(1) for processing, will continue to be accorded the September 28, 2001, date of receipt for processing of the maintenance fee. Again, the patentee will not be adversely affected by the address change. Section 1.1(d)(2) has been clarified to indicate that correspondence related to maintenance fees other than payments of maintenance fees in patents must be sent to the Washington, D.C. address.

Comment: Two comments stated that we should not increase fees for fiscal year 2002, since millions of dollars are being diverted to fund other Federal Government operations and are not being used to improve our performance, services, or facilities.

Response: Our budget for fiscal year 2002 is comprised of the expected fiscal year 2002 fee revenue (less a designated carryover amount) added to carryover amounts from prior fiscal years. If fees are not adjusted by CPI, the anticipated fee revenue for fiscal year 2002 would be lower; this in turn would reduce the available funding and have a negative impact on our operations. Therefore, adjusting our fees by CPI is critical to ensure adequate funding is available.

Other Considerations

This final rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The final rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees. We received roughly 92,000 patent applications last year from small entities. Since the average small entity fee will increase by less than $14.00, with a minimum increase of $2.00 and a maximum increase of $55.00, there will not be a significant economic impact on a substantial number of small entities due to this final rule change.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, we are amending title 37 of the Code of Federal Regulations, Part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.1 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

§ 1.1 Addresses for correspondence with the United States Patent and Trademark Office.

(a) Except for paragraphs (a)(3)(i) and (ii), and (d)(1) of this section, all correspondence intended for the United States Patent and Trademark Office must be addressed to either ''Commissioner of Patents and Trademarks, Washington, DC 20231'' or to specific areas within the Office as set out in paragraphs (a)(1), (2) and (3)(iii) of this section. When appropriate, correspondence should also be marked for the attention of a particular office or individual.

* * * * *

(d) Maintenance fee correspondence.

(1) Payments of maintenance fees in patents not submitted electronically over the Internet should be mailed to: United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, PA 15250–1611.

(2) Correspondence related to maintenance fees other than payments of maintenance fees in patents is not to be mailed to P.O. Box 371611, Pittsburgh, PA 15250–1611, but must be mailed to: Box M Correspondence, Commissioner of Patents and Trademarks, Washington, DC 20231.

* * * * *

3. Section 1.16 is amended by revising paragraphs (a), (b), (d), (f) through (i), and (k) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:

By a small entity (§ 1.27(a))—$370.00
By other than a small entity—$740.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))—$42.00
By other than a small entity—$84.00

* * * * *

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))—$140.00
By other than a small entity—$280.00

* * * * *

(f) Basic fee for filing each design application:

By a small entity (§ 1.27(a))—$165.00
By other than a small entity—$330.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.27(a))—$255.00
By other than a small entity—$510.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.27(a))—$370.00
By other than a small entity—$740.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.27(a))—$42.00
By other than a small entity—$84.00

* * * * *

(k) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a))—$80.00
By other than a small entity—$160.00

* * * * *

4. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) * * *

(1) * * *

(2) For reply within second month:

By a small entity (§ 1.27(a))—$200.00
By other than a small entity—$400.00

(3) For reply within third month:

By a small entity (§ 1.27(a))—$460.00
By other than a small entity—$920.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a))—$720.00
By other than a small entity—$1,440.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a))—$980.00
By other than a small entity—$1,960.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.27(a))—$160.00
By other than a small entity—$320.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a))—$160.00
By other than a small entity—$320.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a))—$140.00
By other than a small entity—$280.00

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a))—$370.00
By other than a small entity—$740.00

* * * * *

(m) For filing a petition for revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a))—$640.00
By other than a small entity—$1,280.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a))—$370.00
By other than a small entity—$740.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a))—$370.00
By other than a small entity—$740.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78)—$1,280.00

5. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.27(a))—$640.00
By other than a small entity—$1,280.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a))—$230.00
By other than a small entity—$460.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.27(a))—$310.00
By other than a small entity—$620.00

* * * * *

6. Section 1.20 is amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.27(a))—$440.00
By other than a small entity—$880.00

(f) For maintaining an original or reissue patent, except a design or plant

patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.27(a))—$1,010.00
By other than a small entity—$2,020.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a))—$1,550.00
By other than a small entity—$3,100.00

* * * * *

§ 1.21 [Amended]

7. Section 1.21 is amended by removing and reserving paragraph (o).

8. Section 1.492 is amended by revising paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—$355.00
By other than a small entity—$710.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))—$370.00
By other than a small entity—$740.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—$520.00
By other than a small entity—$1,040.00

(4) * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.27(a))—$445.00
By other than a small entity—$890.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))—$42.00
By other than a small entity—$84.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))—$140.00
By other than a small entity—$280.00

* * * * *

Dated: July 25, 2001.

Nicholas P. Godici,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 01–19021 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Chapter I

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

Office of Inspector General—Health Care

42 CFR Chapter V

Office of the Secretary

45 CFR Subtitle A

Office of Family Assistance (Assistance Programs),

Administration for Children and Families

45 CFR Chapter II

Office of Child Support Enforcement

45 CFR Chapter III

[CMS–9010–FC]

RIN 0938–AL02

Medicare and Medicaid Programs; Change of Agency Name: Technical Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS

ACTION: Final rule with comment period.

SUMMARY: In accordance with the name change of the Health Care Financing Administration to the ''Centers for Medicare & Medicaid Services,'' this technical regulation revises all references to ''Health Care Financing Administration'' and ''HCFA'' in chapters I, IV and V of title 42 and subtitle A and chapters II and III of title 45 of the Code of Federal Regulations. This regulation also makes conforming changes to the general definitions sections.

DATES: Effective date: July 31, 2001.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 1, 2001.

ADDRESSES: In commenting, please refer to file code CMS–9010–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9010–FC, P.O. Box 8015, Baltimore, MD 21244–8015.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Margaret Teeters, (410) 786–4678.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number (410) 786–7197.

I. Background

The Secretary of the Department of Health and Human Services (the Secretary) announced on June 14, 2001, the new name for the Health Care Financing Administration (HCFA): The

Centers for Medicare & Medicaid Services (CMS). We are, therefore, revising the references to ''Health Care Financing Administration'' and ''HCFA'' in chapters I, IV and, V of title 42 and subtitle A and chapters II and III of title 45 of the Code of Federal Regulations (CFR).

II. Provisions of the Final Rule With Comment Period

In 42 CFR chapters I, IV, and V and in 45 CFR subtitle A and chapters II and III, all references to ''Health Care Financing Administration'' are revised to read ''Centers for Medicare & Medicaid Services.'' All references to ''HCFA'' are revised to read ''CMS.'' All references to the possessive ''Health Care Financing Administration's'' are revised to read ''Centers for Medicare & Medicaid Services'.'' All references to the possessive ''HCFA's'' are revised to read ''CMS's.''

In additioin, we are making the following conforming changes in § 400.200 (General definitions): We are revising the definition of ''Administrator,'' removing the definition of ''HCFA,'' and adding the definition of ''CMS.'' In § 1000.10 (General definitions), we are revising the definition of ''Administrator,'' removing the definition of ''HCFA,'' and adding a definition of ''CMS.'' In § 1003.101 (Definitions), we are removing the definition of ''HCFA'' and adding the definition of ''CMS.''

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule such as this take effect. We note that such a notice is not required when applied to rules of agency organization, procedure, or practice. As this rule merely reflects the nomenclature change of the agency, which pertains to the agency organization, no notice is required. We can also waive this procedure if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the rule issued.

We believe it is unnecessary to undertake notice and comment rulemaking as the changes made by this regulation are technical in nature and update certain existing regulations without substantive change. There is also no impact on program costs. Therefore, for good cause, we waive prior notice and comment procedures. As indicated previously, we are, however, providing a 60-day comment period for public comment.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA), Public Law 96–354. Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have reviewed this rule and have determined that it is not a major rule. Therefore, we are not required to perform an assessment of the costs and savings.

The RFA requires agencies to analyze options for regulatory relief of small businesses in issuing a proposed rule and a final rule that has been preceded by a proposed rule. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a proposed rule or a final rule preceded by a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995, Public Law 104–4, also requires that agencies assess anticipated costs and benefits before issuing any proposed rule and a final rule preceded by a proposed rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule with comment period and have determined that it will not have a substantial effect on State or local governments.

We have reviewed this rule and determined that, under the provisions of Public Law 104–121, the Contract with America Act, it is not a major rule.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMOs), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 1000

Fraud, Grant programs-health, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs-

health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties, Social security.

For the reasons set forth in the preamble, the Department of health and Human Services amends 42 CFR chapters I, IV and V and 45 CFR subtitle A and chapters II and III as set forth below:

1. Revise the heading for chapter IV to read as follows:

Chapter IV—Centers for Medicare & Medicaid Services, Department of Health and Human Services

2. In 42 CFR chapters I, IV, and V and in 45 CFR subtitle A and chapters II and III, revise all references to ''Health Care Financing Administration'' to read ''Centers for Medicare & Medicaid Services''; revise all references to ''Health Care Financing Administration's'' to read ''Centers for Medicare & Medicaid Services'''; revise all references to ''HCFA'' to read ''CMS''; and revise all references to ''HCFA's'' to read ''CMS's''.

PART 400—INTRODUCTION; DEFINITIONS

3. The authority citation for part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

4. In § 400.200, revise the definition of ''Administrator'', remove the definition of ''HCFA'', and add a definition of ''CMS'' in alphabetical order to read as follows:

§ 400.200 General definitions.

* * * * *

Administrator means the Administrator, Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA).

* * * * *

CMS stands for Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

* * * * *

PART 1000—INTRODUCTION; GENERAL DEFINITIONS

5. The authority citation for part 1000 continues to read as follows:

Authority: 42 U.S.C. 1320 and 1395hh.

6. In § 1000.10, revise the definition of ''Administrator'', remove the definition of ''HCFA'', and add a definition of ''CMS'' in alphabetical order to read as follows:

§ 1000.10 General definitions.

* * * * *

Administrator means the Administrator, Centers for Medicare & Medicaid Services (CMS), formerly the Health Care Financing Administration (HCFA).

* * * * *

CMS stands for Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

* * * * *

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

7. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395dd(d)(1), 1395mm, 3395nn(g), 1395ss(d), 1396b(m), 11131(c) and 11137(b)(2).

8. In § 1003.101, remove the definition of ''HCFA'', and add a definition of ''CMS'' in alphabetical order to read as follows:

§ 1003.101 Definitions.

* * * * *

CMS stands for Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Approved: July 25, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–18959 Filed 7–25–01; 4:41 pm]

BILLING CODE 4120–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1763, MM Docket No. 00–240, RM–9793]

Digital Television Broadcast Service; Charlottesville, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Commonwealth Public Broadcasting Corporation (formerly Central Virginia Educational Telecommunications Corporation), licensee of noncommercial educational station WHTJ(TV), substitutes DTV channel *46 for DTV channel *14 at Charlottesville, Virginia. *See* 65 FR 71292, November 30, 2000. DTV channel *46 can be allotted to Charlottesville in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (37–58–58 N. and 78–29–00 W.) with a power of 50.0, HAAT of 352 meters and with a DTV service population of 324 thousand.

With this action, this proceeding is terminated.

DATES: Effective September 10, 2001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–240, adopted July 24, 2001, and released July 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia, is amended by removing DTV *14 channel and adding DTV channel *46 at Charlottesville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01–18960 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications, 8 FCC Rcd 4735 (1993).*

DATES: Effective July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted July 11, 2001, and released July 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 286C3 and adding Channel 286C2 at Albertville.[1]

3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 255A and adding Channel 255C1 at Leupp.[2]

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 228C2 and adding Channel 228C3 at Hazlehurst and by removing Channel 229C2 and adding Channel 229C1 at Jeffersonville.

5. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 240A and adding Channel 240C3 at Fife Lake.

6. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 295C and adding Channel 295C0 at Rochester.[3]

7. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 298A and adding Channel 298C3 at Monroe City.

8. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 272C and adding Channel 272A at Wendover.

9. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 288C and adding Channel 288C1 at Grants.

10. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 297A and adding Channel 297C3 at Jasper.

11. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 291B1 and adding Channel 291A at Exmore.

12. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 237C2 and adding Channel 237C1 at Ellensburg and by removing Channel 266A and adding Channel 266C2 at Leavenworth.

[1] On May 25, 2001, the authorization for Channel 286C, Albertville, Alabama, was amended by a one-step application to specify Channel 286C3 in lieu of Channel 286C. *See* 66 FR 30826, June 8, 2001.

[2] On May 25, 2001, the authorization for Channel 255C, Leupp, Arizona, was amended by a one-step application to specify Channel 255A in lieu of Channel 255C. *See* 66 FR 30826, June 8, 2001.

[3] *See* MM Docket No. 98–93 (65 FR 79773, December 20, 2000), 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Creation of New Intermediate C0 Station Class and Class C Height Above Average Terrain Minimum. Petition for Reconsideration pending.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18956 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1733; MM Docket No. 99–14; RM–9442 & RM–9647]

Radio Broadcasting Services; Browning, Columbia Falls & Pablo, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed by Mountain West Broadcasting, we will allot Channel 276C3 at Columbia Falls, Montana. *See* 64 FR 5740, February 2, 1999. The coordinates for Channel 276C3 at Columbia Falls are 48–22–30 and 114–10–54. In response to a counterproposal filed by The Battani Corporation we will allot Channel 234C2 at Browning, Montana and Channel 259C2 at Pablo, Montana. The coordinates for Channel 234C2 at Browning are 48–35–03 and 112–59–42. The coordinates for Channel 259C2 at Pablo are 47–36–01 and 114–07–05. Canadian concurrence is required for the allotments at Browning, Columbia Falls and Pablo. A filing window for the Channels at Browning, Columbia Falls and Pablo will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–14, adopted July 11, 2001, and released July 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Channel 276C3 at Columbia Falls, by adding Browning, Channel 234C2 and by adding Pablo, Channel 259C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18955 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1741; MM Docket No. 98–9, RM–9216 and MM Docket No. 98–13, RM–9212]

FM Broadcasting Services; Pleasanton, KS and Topeka, Iola, and Emporia, KS

AGENCY: Federal Communications Commission

ACTION: Final rule

SUMMARY: The Commission, in response to the rulemaking petition of Shawnee Broadcasting Corporation (RM–9216), upgrades Station KWIC(FM) by substituting Channel 257C3 (99.3 MHz) for Channel 257A at Topeka, Kansas; substituting Channel 268A (101.5 MHz) for Channel 257A at Station KIKS(FM), Iola, Kansas; substituting Channel 241A (96.1 MHz) for Channel 258A (99.5 MHz) at Station WRVW(FM), Emporia, Kansas; and modifying the licenses of the respective stations, accordingly. *See Notice of Proposed Rulemaking,* 63 FR 7361, published February 13, 1998. In response to the rulemaking petition of the City of Pleasanton, Kansas (RM–9212), the Commission also allotted Channel 229C3 (93.7 MHz) to Pleasanton to provide its first local broadcast radio service. *See Notice of Proposed Rulemaking,* 63 FR 6699, published February 10, 1998. *See* Supplemental Information *infra.*

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's consolidated Report and Order, MM Docket Nos. 98–9 and 98–13, adopted July 11, 2001, and released July 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Channel 229C3 can be allotted to Topeka in compliance with the Commission's minimum distance separation requirements at the Shawnee Broadcasting's requested site, located at North Latitude 30°01′12″ and West Longitude 95°41′25″, 3.5 kilometers from Station KWIC(FM)'s current transmitter site. Channel 268A can be allotted to Iola as a substitute for Channel 257A in compliance with the Commission's minimum distance separation requirements at the current transmitter site for Station KIKS(FM) located at North Latitude 37°54′04″ and West Longitude 95°24′04″. Channel 241A can be allotted to Emporia as a substitute for Channel 258A at Station KRWV(FM) in compliance with the Commission's minimum distance separation requirements at the current transmitter site for Station KWRV(FM) located at North Latitude 38°24′21″ and West Longitude 96°14′13″. Channel 229C3 can be allotted to Pleasanton at a site restricted to 22.1 kilometers (13.7 miles) west of Pleasanton at at North Latitude 38°14′39″ and West Longitude 94°57′14″.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, under Kansas, is amended by adding Channel 257C3 at Topeka; adding Channel 268A at Iola; adding Channel 241A at Emporia; and adding Pleasanton, Channel 229C3.

3. Section 73.202(b), the Table of FM Allotments, under Kansas, is amended by removing Channel 257A at Topeka; removing 257A at Iola; and removing Channel 258A at Emporia.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18957 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1735; MM Docket No. 97–178; RM–8329, RM–8739, RM–10099]

Radio Broadcasting Services; West Hurley, Rosendale and Rhinebeck, NY, and North Canaan and Sharon, CT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of the State University of New York, this document allots Channel 273A* to Rhinebeck, New York. This allotment will be reserved for noncommercial educational use. To accommodate Channel 273A* at Rhinebeck, this document also substitutes Channel 255A for vacant Channel 273A at Rosendale, New York. *See* 62 FR 44436, published August 21, 1997. This document denies a competing request for a Channel 277A* allotment at North Canaan, Connecticut. The reference coordinates for the Channel 255A allotment at Rosendale, New York, are 41–54–57 and 73–53–54. The reference coordinates for the Channel 273A* allotment at Rhinebeck, New York, are 41–54–57 and 73–53–54.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 97–178, adopted July 11, 2001, and released July 20, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 273A Rosendale.

3. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 255A at Rosendale.

4. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Rhinebeck, Channel 273A*.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18958 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1737; MM Docket No. 01–91; RM–10096]

Radio Broadcasting Services; Hugo, Colorado

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 222A to Hugo, Colorado, as that community's first local aural transmission service, in response to a petition for rule making filed by Alan Olson. See 66 FR 21727, May 1, 2001. Coordinates used for Channel 222A at Hugo, Colorado, are 39–08–10 NL and 103–28–10 WL.

DATES: Effective September 4, 2001. A filing window for Channel 222A at Hugo, Colorado, will not be opened at this time. Instead, the issue of opening the allotment for auction will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–91, adopted July 11, 2001, and released July 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Hugo, Channel 222A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18987 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1742, MM Docket Nos. 01–59, 01–60; RM–10072, RM–10073]

Radio Broadcasting Services (Salem, Mollalla, Oregon; Avon, Fairport, New York)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants two petitions for rulemaking, issued on a multiple Notice of Proposed Rulemaking. See 66 FR 15065 (03/15/01). The first, filed by Entercom Portland License, LLC., licensee of Station KRSK(FM), Salem, Oregon, requested the reallotment of Channel 286C from Salem to Mollalla, Oregon. Channel 286C is allotted at Mollalla in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at petitioner's existing site at coordinates 45–00–35 NL and 122–20–17 WL. The second, filed by Entercom RochesterLicense, LLC, licensee of Station WBBF–FM, Avon, New York, requested the reallotment of Channel 227A from Avon to Fairport, New York. Channel 227A is allotted at Fairport in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, at a site 9.2 kilometers (5.7 miles) north of the community at coordinates 43–10–37 NL and 77–28–39 WL.

DATES: Effective September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 01–59 and 01–60, adopted July 11, 2001, and released July 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon is amended to remove Salem, Channel 286C and add Mollalla, Channel 286C.

3. Section 73.202(b), the Table of FM Allotments under New York is amended to remove Avon, Channel 227A, and add Fairport, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18989 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1734; MM Docket No. 98–162; RM–9263]

Radio Broadcasting Services; Sugar Hill and Toccoa, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Southern Broadcasting of Pensacola, Inc. this document substitutes Channel 291C1 for Channel 291C at Toccoa, Georgia, reallots Channel 291C1 to Sugar Hill, Georgia, and modifies the license of Station WWNGC to specify operation on Channel 291C1 at Sugar Hill. *See* 63 FR 4968, published September 17, 1998. The reference coordinates for Channel 291C1 at Sugar Hill, Georgia, are 34–22–40 and 83–39–25.

DATES: Effective September 4, 2001.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 98–162, adopted July 11, 2001, and released July 20, 2001. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Toccoa, Channel 291C.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Sugar Hill, Channel 291C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18990 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 90

[PR Docket No. 92–235, FCC 00–439]

Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document is to show rules amended by the Commission when it reconsidered it's *Second Memorandum Opinion and Order* which established revised rules for frequency coordination in the Private Land Mobile Radio Service, shall become effective July 31, 2001. These sections, which contained new information collection requirements, were published in the **Federal Register** February 5, 2001, (OMB No. 3060–0984). This is to let the public know the effective date of the rules that contain new information collection requirements.

EFFECTIVE DATE: The amendments to 47 CFR Part 90, 47 CFR 90.35(b)(2)(iii) and 90.175(b)(1) published at 66 FR 8899 (February 5, 2001) are effective July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jim Shaffer, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: On December 14, 2000, the Commission adopted a *Fifth Memorandum Opinion and Order* (''Fifth MO&O'') (FCC 00–439) to address seven petitions for reconsideration and one comment, all directed to the rules established by the Commission's Second Report and Order (Second R&O) in this proceeding, a summary of the Fifth MO&O was published in the **Federal Register**. See 66 FR 8899 (February 5, 2001). We stated that the Part 90 of the Commission's rules, 47 CFR Part 90, is amended effective March 7, 2001, except for §§ 90.35(b)(2)(iii) and 90.175(b)(1) which contains information collections that are not effective until approved by the Office of Management and Budget. We also stated that the Commission will publish a document in the **Federal Register** announcing the effective date for those sections. This statement requires further action by the Commission to establish the effective date, notwithstanding the preceding statement in the summary that the rule change would become effective upon OMB approval. In order to resolve this matter in a manner that most appropriately provides interested parties with proper notice, the rule changes adopted in the Order shall become effective July 31, 2001. The information collection was approved by OMB on July 13, 2001. See OMB No. 3060–0984.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–19067 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1516

[FRL–7020–5]

Acquisition Regulation: Type of Contracts

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) to provide for the use, in certain circumstances and under certain conditions, of a letter contract known as a Notice to Proceed (NTP), to carry out emergency response actions as authorized under sections 104(a)(1) and (h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986; sections 311(c)(2) and (e)(1)(B) of the Clean Water Act, as amended by the Oil Pollution Act of 1990; and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

DATES: An interim rule was issued and became effective on March 1, 2001. This

final rule will become effective July 31, 2001.

FOR FURTHER INFORMATION CONTACT:

Larry Wyborski, U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, NW., Ariel Rios Building, Washington, DC 20460. Telephone: (202) 564–4369.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** (66 FR 12897–12902) on March 1, 2001, providing for a 60 day comment period. The following is the single comment received and the Agency disposition of the comment:

Comment: Are contractors holding contracts that bar them from providing ERRS work also prohibited from performing work in these circumstances as well?

Response: Section 1516.603–2(d) of this rule requires that ''* * * all actual or potential conflict of interest or other contracting issues are resolved prior to NTP issuance.'' Therefore, the same conflict of interest rules would apply to the circumstances outlined in your comment.

B. Executive Order 12866

This is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs, within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

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

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

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Based on a review of EPA's historical experience, over the last three fiscal years EPA entered into only two letter contracts for the type of work contemplated by this interim rule, each of less than $10,000.00. Consequently, because of the emergency nature of an NTP, and the strict conditions on its use, and based on its limited historical utilization, it is believed that the authority provided by this interim rule will be used on a very limited basis so that it will have little, if any, impact on small businesses. This rule, therefore, will have no adverse and no significant impact on small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This interim rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

G. 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 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 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.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, 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 government ''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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), in its procurement activities. The NTTAA 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 rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the interim rulemaking, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Submission to Congress and the General Accounting Office

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 rules 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).

List of Subjects in 48 CFR Part 1516

Government procurement.

Therefore, under the authority of 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b, the interim rule published on March 1, 2001 (66 FR 12897) is adopted as final without change.

Judy S. Davis,

Acting Director, Office of Acquisition Management.

[FR Doc. 01–18885 Filed 7–30–01; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 66, No. 147
Tuesday, July 31, 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

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV01–905–1 PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (Committee). This rule would limit the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 11 weeks of the 2001–2002 season. This rule would establish the weekly base percentages for each of the 11 weeks beginning in September. This proposal would supply enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

DATES: Comments must be received by August 10, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–8938, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–8938 or E-mail: Jay.Guerber@usda.gov.

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

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

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

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

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

This rule would limit the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 11 weeks of the 2001–2002 season beginning September 17, 2001. This rule would establish the weekly base percentages for these small sizes at 45 percent for the first two weeks, 35 percent for week 3, and 25 percent for weeks 4 through 11. This proposal would supply enough small red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

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

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee

may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule would limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market by setting weekly percentages of 45 percent for the first 2 weeks, 35 percent for week 3, and 25 percent for weeks 4 through 11. The Committee recommended this action by a unanimous vote at a meeting on May 22, 2001. This action is similar to those taken the previous four seasons (1997–98, 1998–99, 1999–2000 and 2000–01.)

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

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

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

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

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

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

The Committee believes the over shipment of smaller sized red seedless grapefruit contributes to poor returns for growers and lower on-tree values. To address this issue, the Committee successfully used the provisions of § 905.153, and recommended weekly percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons. Under regulation, f.o.b. and on-tree prices have increased and movement has stabilized.

Average f.o.b. prices have been higher during regulation than for the three years prior to regulation. The average price for red seedless grapefruit in late October was $8.46 for the last four years compared to $7.22 for the same period for the three years prior to regulation. Prices also remained at a higher level, with a weighted average price of $7.29 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price was also higher, with the past four seasons averaging $7.15 compared to $5.83 for the three prior years.

The on-tree prices per box for red seedless grapefruit for the fresh market have also improved during the past three years of regulation, providing better returns to growers. The on-tree price increased from $3.26 in 1996–97 to $3.42 in 1997–98, to $5.04 in 1998–99, to $5.62 for the 1999–2000 season.

Another benefit of regulation has been in maintaining higher prices for the larger-sized fruit. Larger fruit commands a premium price early in the season. However, the glut of smaller, lower-priced fruit on the early market was driving down the prices for all sizes. During the three years before regulation, the average differential between the f.o.b. carton price for a size 27 and a size 56 was $3.47 at the end of October. However, by mid-December the price for the larger size had dropped to within $1.68 of the price for the smaller-size fruit.

In the four years of regulation, the average differential between the f.o.b. carton price for a size 27 and a size 56 was $5.38 at the end of October and remained at $3.42 in mid-December. In fact, the average f.o.b. prices for each size were higher during the four years with regulation than for the three years prior to regulation. The average prices for size 27, size 32, size 36, and size 40 during the 11-week period for the last four years were $9.41, $8.12, $7.26, and $6.68, respectively. This compares to the average prices for the same sizes during the same period for the three years prior to regulation of $6.48, $5.63, $5.59, and $5.34, respectively.

The percentage size regulation has also helped stabilize the volume of small sizes entering the fresh market early in the season. During the three years prior to regulation, small sizes accounted for over 34 percent of the total shipments of red seedless grapefruit during the 11-week period covered in the rule. This compares to 31 percent for the same period for the last four years of regulation. There has also been a 43 percent reduction in the volume of small sizes entering the fresh market during the 11-week regulatory period from 1995–96 to 2000–01.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit registering modest improvements. The rule shifted the size

distribution toward the higher-priced, larger-sized grapefruit, which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

In making its recommendation, the Committee considered the success of previous regulations and its experiences from the past seasons. Members reviewed shipment data covering the 11-week regulatory period for the last four regulated seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week.

The Committee believes the problems associated with an unregulated volume of small sizes entering the market early in the season would recur without regulation and that establishing weekly percentages during the last four seasons has proven successful. Therefore, the Committee recommended weekly percentages be set at 45 percent for the first two weeks, 35 percent for week 3, and 25 percent for weeks 4 through 11.

In past four seasons, the initial recommendation from the Committee was to set the weekly percentages at 25 percent for each of the 11 weeks. Then, as more information on the crop became available, and as the season progressed, the Committee would meet again and adjust its recommendations for the weekly percentages as needed. In each of the past seasons of regulation the Committee has recommended that the weekly percentages be relaxed from the initial recommendation of 25 percent for each week. Actual weekly percentages established during the 11-week period during the 2000–01 season based on additional information were 45 percent for the first three weeks, 40 percent for the next four weeks, and 35 percent for the last four weeks.

Drawing on this experience, the Committee decided to make its initial recommendation for the first three weeks at levels higher than 25 percent. Based on shipments from the past four seasons, available allotment under a 25 percent restriction would have exceeded actual shipments of sizes 48 and 56 for each of the first three weeks regulated under this rule.

Establishing weekly percentages at 45 percent for the first two weeks and 35 percent for the third week would provide each handler with additional allotment during these three weeks. This would give individual handlers greater flexibility during this period. This would reduce the number of loans and transfers needed to utilize the available allotment. For the remainder of the 11 weeks, the Committee believed that the weekly percentages needed to be set at 25 percent until more information is available.

More information helpful in determining the appropriate weekly percentages will be available after August. At the time of the May meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October. The production area is also suffering through a period of insufficient rainfall. This could affect the sizing of the crop, producing a larger volume of small-sized red seedless grapefruit, further exacerbating the problem with small sizes.

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

Consequently, the Committee believes it is best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant. The Committee recognized that they could meet again in August and in the months following and use the most current information to consider adjustments in the weekly percentage rates as done in past seasons. This would help the industry and the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages proposed by this rule would require additional rulemaking and the approval of the Secretary.

During deliberations in past seasons, the Committee considered how shipments had affected the market. Based on available statistical information, the Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed that if shipments of small sizes could be maintained at around or below 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

Last season, the weekly shipments of sizes 48 and 56 red seedless grapefruit remained below 250,000 cartons for 10 of the 11 regulated weeks. This may have contributed to the success of the regulation.

In setting the weekly percentages at 45 percent for the first two weeks and 35 percent for week 3, the total available allotment would be slightly more than 250,000 cartons in the first three weeks. However, in the last four seasons, shipments of sizes 48 and 56 have never exceeded 250,000 cartons during the first three weeks. Setting the remaining weeks at 25 percent should provide slightly less than 250,000 cartons of available allotment. Initiating the weekly percentages at these levels would allow total shipments of small red seedless grapefruit to approach the 250,000-carton mark during the regulated period without exceeding it.

Therefore, this rule would establish the weekly percentage at 45 percent for the first two weeks, 35 percent for week 3, and 25 percent for weeks 4 through 11 for this season. The Committee plans to meet in August and as needed during the 11-week period to ensure the weekly percentages are at the appropriate levels.

Under 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week would be calculated using the recommended percentage. By taking the weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

The Committee would calculate an average week for each handler. To calculate an average week, the total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May from the previous five seasons are added together, then divided by five to establish an average season. This average season is divided by the 33 weeks to derive the average week. This average week would be the base for each handler for each of the 11 weeks of the regulatory period.

The weekly percentage is multiplied by a handler's average week. The product is that handler's total allotment of sizes 48 and 56 red seedless grapefruit for the given week. Handlers could fill their allotment with size 56, size 48, or a combination of the two

sizes such that the total of these shipments is within the established limits. The Committee staff would perform the specified calculations and provide them to each handler.

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

The regulatory period begins the third Monday in September, September 17, 2001. Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday as the beginning of the work week.

The rules and regulations governing percentage size regulation contain a variety of provisions designed to provide handlers with some marketing flexibility. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These provisions should allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handlers party to the loan. The Committee would inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

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

At the meeting, the Committee also recommended changing the percentage size procedures in § 905.153 to authorize percentages for an additional 11 weeks, or the first 22 weeks of the season. A proposed rule to revise § 905.153 to implement this recommendation will be published in a separate issue of the **Federal Register**. If the authority to establish percentages for the additional 11 weeks is implemented, the Committee would be able to implement, with Department approval, marketing percentages to limit the shipment of small-sized red seedless grapefruit for that additional time period, if warranted.

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

Initial Regulatory Flexibility Analysis

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

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

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

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2000–01 season was approximately $7.20 per 4/5 bushel carton, and total fresh shipments for the 2000–01 season are estimated at 24.7 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 70 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 69 percent of grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

The over shipment of small-sized red seedless grapefruit early in the season has contributed to poor returns for growers and lower on tree values. This proposed rule would limit the volume of sizes 48 and 56 red seedless grapefruit entering the fresh market during the first 11 weeks of the 2001–02 season, beginning September 17, 2001, by setting weekly percentages governing the volume of small sizes that may be shipped. This proposal would set the weekly percentages at 45 percent for the first two weeks, 35 percent for week 3, and 25 percent for weeks 4 through 11. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week would be calculated using the recommended percentage. This rule would use the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order.

While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 11-week period for the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the overshipment is deducted from the following week's shipments. Approximately 120 loans and transfers were utilized last season. Statistics for

2000–01 show that in none of the regulated weeks was the total available allotment used. Therefore, the overall impact of this regulation on total shipments should be minimal.

Handlers and producers have received higher returns under percentage size regulation. In late October, during the four years with regulation, the average f.o.b. price for red seedless grapefruit was $7.99 compared to $7.22 for the three years prior to regulation. F.o.b. prices have also remained higher, with an average price of $7.29 in mid-December during regulation compared to $6.02 for the three years prior to regulation. The average season price has also been higher under regulation averaging $7.14 compared to $5.83 for the three years prior.

On-tree earnings per box of red seedless grapefruit for the fresh market improved under regulation, providing better returns to growers. The on-tree price increased from $3.26 in 1996–97, to $3.42 for 1997–98, to $5.04 for 1998–99, to $5.62 for the 1999–2000 season. These increased returns when coupled with the overall volume of red seedless grapefruit would offset any additional costs associated with this regulation.

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

This action is expected to stabilize the supply of small sizes entering the marketplace. It also is expected to encourage growers to leave the grapefruit on the tree longer, which improves size and maturity. Improved size and maturity provides greater consumer satisfaction and promotes repeat purchases. In addition, this action is not expected to decrease the overall consumption of red seedless grapefruit.

The Committee considered alternatives to taking this action. One alternative was to not recommend using the percentage size rule. However, the Committee believes that the problems created by excessive volumes of small sizes entering the market early in the season would return absent the establishment of a percentage size regulation. Therefore, this option was rejected. Another alternative considered was to establish the weekly percentages at 25 percent for all 11 weeks. The Committee wanted to provide individual handlers more flexibility in the first three weeks of regulation. Therefore, this alternative was also rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

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

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 22, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 10-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping grapefruit in September. Because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time, and the Committee has kept the industry well informed. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. This action is similar to those taken in the previous four seasons, and it was unanimously recommended by the Committee. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

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

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

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

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3 9/16 inches minimum diameter) and size 56 (3 5/16 inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/17/01 through 9/23/01	45
(b) 9/24/01 through 9/30/01	45
(c) 10/1/01 through 10/7/01	35
(d) 10/8/01 through 10/14/01	25
(e) 10/15/01 through 10/21/01	25
(f) 10/22/01 through 10/28/01	25
(g) 10/29/01 through 11/4/01	25
(h) 11/5/01 through 11/11/01	25
(i) 11/12/01 through 11/18/01	25
(j) 11/19/01 through 11/25/01	25
(k) 11/26/01 through 12/2/01	25

Dated: July 27, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–19141 Filed 7–27–01; 12:02 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

[Docket No: 990608154–9154–01]

RIN 0648–A036

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule: Amendments.

SUMMARY: On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations for the assessment of natural resource damages pursuant to section 1006(e)(1) of the Oil Pollution Act of 1990. The final regulations were challenged, pursuant to section 1017(a) of OPA. On November 18, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al.,* v. *Commerce,* 128 F.3d 767 (D.C. Cir. 1997)). This proposed rule addresses the issues remanded to NOAA by that ruling, and includes some clarifying and technical amendments in other parts of the regulation.

DATES: Written comments must be received no later than September 29, 2001.

ADDRESSES: Written comments are to be submitted to: Eli Reinharz, c/o Office of General Counsel/Natural Resources, 1315 East-West Highway, Room #15132, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193; (FAX: 301–713–4387; e-mail: eli.reinharz@noaa.gov) or Linda Burlington, 301–713–1332 (FAX: 301–713–1229; e-mail: Linda.B.Burlington@noaa.gov).

SUPPLEMENTARY INFORMATION: In the event of a discharge or substantial threat of a discharge of oil (incident), the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides that federal, state, Indian tribal, and/or foreign natural resource trustees assess natural resource damages and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the injured natural resources and their services under their trusteeship. Congress directed the National Oceanic and Atmospheric Administration (NOAA) to promulgate regulations for the assessment of natural resource damages resulting from an incident (OPA section 1006(e)(1)). NOAA promulgated final regulations on January 5, 1996 (*see* 61 FR 440), codified at 15 CFR Part 990.

Under these OPA regulations, trustees conduct natural resource damage assessments in the open, with responsible parties and the public involved in the planning process to achieve restoration more quickly, decrease transaction costs, and avoid litigation. These restoration plans form the basis of claims for natural resource damages. Under the natural resource damage assessment regulation, trustees then present a demand comprised of the final restoration plan to responsible parties for funding or implementation.

General Electric and other industry groups challenged the final regulations pursuant to section 1017(a) of OPA. On November 18, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling on the final regulations (*General Electric Co., et al.,* v. *Commerce,* 128 F.3d 767 (D.C. Cir. 1997)). The Court remanded to NOAA for further agency decisionmaking: (1) Authorization for the removal of residual oil; and (2) the scope of authorization for recovery of legal costs. NOAA is also proposing clarifying and technical amendments in other parts of the regulations. NOAA invites comments on the issues or comments in these proposed amendments.

Discussion

I. Court's Mandate to Clarify Removal Language

A. Discussion

In *General Electric, et al.,* v. *Commerce,* the Court asked NOAA to explain the change in language regarding the removal of residual oil between the Final Regulation and its preamble for natural resource damage assessments and the previous Proposed Rule. The Court also raised a series of questions on the relationship and coordination between response and restoration authorities.

The Proposed Rule required trustees to identify and consider a reasonable range of restoration alternatives, including a primary restoration component in each alternative. 60 FR 39832. Concerning the types of primary restoration alternatives that could be considered, § 990.55(b)(2)(i) of the Proposed Rule provided that: ''trustees must consider whether: (i) Conditions exist that would limit the effectiveness of primary restoration actions (e.g., residual sources of contamination); * * *'' Id. The corresponding section (990.53(b)(3)) of the Final Regulation provides that:

(3) Active primary restoration actions. Trustees must consider an alternative comprised of actions to directly restore the natural resources and services to baseline on an accelerated time frame. When identifying such active primary restoration actions, trustees may consider actions that:

(i) Remove conditions that would prevent or limit the effectiveness of any restoration action (e.g., residual sources of contamination) * * *

61 FR 507. The language in the preamble to the Final Regulation was nearly the same as that of the Proposed Rule.

The Court ruled that the Proposed Rule did not authorize trustees to actually ''remove'' oil and that the provision in the Final Regulation, which did authorize such ''removal,'' could not be upheld because NOAA failed to explain this change in language.

NOAA did not intend any substantive change by the edits in language between the proposed and final regulation. NOAA did not intend to propose shared ''removal authority,'' as defined by OPA. Removal authority is exclusively provided to EPA and CG under the Clean Water Act, 33 U.S.C. 1251 (CWA) and National Oil and Hazardous Substances Pollution Contingency Plan 40 CFR Part 300 (1994) (NCP). Removal of oil will be conducted under the authority of the On-Scene Coordinator (OSC). The OSC's authority will be carried out in accordance with the NCP.

However, NOAA has always intended to authorize trustees to eliminate or reduce exposure to oil resulting from an incident, but only if such action is selected in accordance with standards and procedures set forth in the Final Regulation. NOAA acknowledges that the Proposed Rule may not have expressed this intent clearly. As a result, NOAA maintains that trustees must have the authority to eliminate or reduce the impediments to restoration, including residual oil, to bring about effective restoration, rather than be limited to merely considering such impediments, as erroneously suggested by the Proposed Rule (*see,* e.g., 61 FR 452).

The court expressed concern that giving trustees the authority to remove residual oil would be inconsistent with OPA because it would allow trustees to second guess and encroach upon response agencies that have exclusive removal authority. NOAA did not intend to grant shared removal authority between trustee and response agencies. Further, recognizing the trustees' authority to address residual oil through selecting a restoration action would not be granting trustees the authority to second guess response decisions

because selection of a restoration alternative is based upon different information and criteria than are used by the response agency in making removal decisions.

''Removal'' is a term of art under the applicable statutes and regulations. ''Removal'' is defined as:

* * * containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

CWA, 33 U.S.C. 1321(a)(8), OPA section 1001(30) (33 U.S.C. 2701(30), *see also* NCP, 40 CFR Part 300 at 300.5). The term does not encompass all possible actions to remove oil, only those actions necessary to ''minimize or mitigate'' additional harm.

In contrast, natural resource damage assessment and restoration involve an investigation and planning process that is aimed at returning the environment to baseline, i.e., the state it would have been in had the incident not occurred, by implementing restoration approaches provided under OPA.

Although not defined under OPA, the Final Regulation defines restoration to encompass ''any action that returns injured natural resources and services to baseline'' and ''any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.'' 15 CFR 990.30. Restoration actions may only be taken in accordance with the provisions in the Final Regulation governing their identification, evaluation, selection, and documentation. For example, trustees evaluate restoration alternatives using standards provided in the rule including the: cost to carry out the alternative; extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses; likelihood of success of each alternative; extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative; extent to which each alternative benefits more than one natural resource and/or service; and effect of each alternative on public health and safety (15 CFR 990.54(a)). Nothing in the statute or its legislative history suggests that trustees are prohibited from undertaking restoration actions that involve eliminating or reducing exposure to oil.

Another area causing potential confusion with removal actions is the final rule provisions on emergency restoration in § 990.26. Section 990.26 of the final rule currently states that trustees may conduct emergency restoration when: ''(1) The action is needed to minimize continuing or prevent additional injury; (2) the action is feasible and likely to minimize continuing or prevent additional injury; and (3) the costs of the action are not unreasonable.'' Since that language may tend to confuse restoration and removal, NOAA is proposing to amend § 990.26 to clarify that the purpose is not to undertake any additional ''removal'' action, but that the intent of the emergency restoration provisions is to comport with the statutory language of section 1012(j) of OPA, which exempts emergency restoration from public notice and comment when it is needed ''to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action,'' and to mitigate the ultimate natural resource damages that would result from delaying the emergency restoration action resulting from the incident. This provision is consistent both with the language and purposes of OPA and with the tort law concept that persons who are seeking damages for an injury may take reasonable steps to mitigate damages, even before the claim has been asserted or adjudicated, by repairing some or all of the injury. Therefore, § 990.26(a) would read:

(a) Trustees may undertake emergency restoration before completing the process established in this part provided that:

(1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;

(2) The action will not be undertaken by the lead response agency;

(3) The action is feasible and likely to succeed;

(4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and

(5) The costs of the action are not unreasonable.

Section 990.26(b) is also modified to provide that, if response actions are still underway, trustees must coordinate with the OSC before implementing any emergency restoration action. The rule provides that trustees may take such action only if that action will not interfere with or duplicate the ongoing response action. Finally, the rule also provides that emergency restoration addressing residual oil can proceed only if the response action is complete or if the OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response. This coordination shall take place through the procedures laid out in the NCP.

NOAA is specifically seeking comment on this proposed amendment. NOAA is also seeking comment on whether to modify the existing language with the proposed amendment. NOAA seeks comment on whether the proposed rule language adequately recognizes the distinct authorities of both the response agency and Trustees, while allowing sufficient flexibility on the part of the OSC and the Trustees to exercise their respective responsibilities in time-critical situations in a way that ensures coordination and consistency, and maximizes effective and efficient response and restoration. NOAA specifically seeks comment whether it would be appropriate to add an explicit time element to the OSC's determination that residual oil does not merit further response, i.e., to allow an OSC determination that no further response action with respect to the identified oil is merited ''at this time.'' Such language could provide OSCs with greater discretion and flexibility to clear proposed trustee emergency restoration actions addressing residual oil, without the OSC having to make a final determination that no further response actions will ever be merited with respect to that oil. NOAA solicits comment on whether such a modification to the proposed rule language would be appropriate. NOAA also solicits comment on whether there have been actual circumstances involving proposed emergency restoration actions under which the existing rule language has been problematic for OSCs, Trustees, or Responsible Parties, or under which the proposed rule language, with or without an explicit time element, would have been problematic.

Given the fact that the parenthetical language of § 990.53(b)(3) of the Final regulation caused confusion on this issue, NOAA is amending that subsection to delete the parenthetical language (''e.g., residual sources of contamination).'' For the same reason, the term ''remove'' was replaced by the term ''address'' in § 990.53(b)(3). NOAA also seeks comment on the language of the Final Regulation and on any procedural confusion that language might cause.

B. The Court's Specific Questions on the Interrelationship of Response and Restoration Authority Concerning Removal of Oil

Although NOAA is not attempting to confer shared ''removal authority'' with this rulemaking, answers to the questions posed by the court are provided to clarify the relationships between response and restoration.

1. What Is the Interrelationship Between Trustees' Residual Removal Authority and the Primary Removal Authority of EPA and the Coast Guard?

As previously stated, NOAA did not intend to confer upon trustees shared ''residual removal authority'' by this rulemaking. Rather, NOAA and the lead federal response agencies maintain that trustees may implement an action to eliminate or reduce exposure to oil in the environment if that action comprises an appropriate part of a restoration plan developed in accordance with the Final Regulation. Thus, it is inappropriate to characterize the trustees' action as an exercise of ''residual removal authority.''

OPA section 1006(c) directs trustees to assess natural resource damages, and to develop and implement a plan for restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship, after providing for public review and comment on such plans. 33 U.S.C. 2706(c)(1). OPA does not define ''restoration,'' but the Final Regulation describes this authority as encompassing ''any action * * * that returns injured natural resources and services to baseline'' and ''any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.'' 15 CFR 990.30, 61 FR 505.

In contrast, removal as defined under the Clean Water Act, OPA, and the NCP addresses actions taken by the lead response agency necessary to ''minimize or mitigate'' damage to the environment. Not all actions to reduce exposure to or recover oil are covered under the statutory term of ''remove.'' The Final Regulation acknowledges that removal actions may reduce or eliminate the need for subsequent natural resource damage assessment and restoration activities (see, e.g., 61 FR 443, col. 2: Coordination among trustees and response agencies can result in reducing or eliminating natural resource or service injuries residual to the cleanup;'' 61 FR 444, col. 3: ''This rule provides procedures by which trustees may determine appropriate restoration of injured natural resources and services, where such injuries are not fully addressed by response actions;'' 61 FR 461, col. 2: ''NOAA agrees that restoration actions by trustees are intended to supplement the initial response and cleanup activities of response agencies.''). The Final Regulation also acknowledges that response actions are limited in scope and may not alleviate restoration concerns (61 FR 449, col. 1).

Thus, NOAA and the federal response agencies interpret OPA as granting complementary authority to response agencies and trustees. Response and restoration authorities are respectively distinguished primarily by the need for action to minimize or mitigate harm versus action to restore injured natural resources and services to baseline.

2. Under What Circumstances Will Trustees Exercise Their Authority To Remove Oil?

The trustees have no authority to undertake a ''removal'' action *per se*, but may select a restoration alternative that involves reducing or eliminating exposure to residual oil. The Final Regulation authorizes trustees to eliminate or reduce exposure to residual oil when such action has been selected in accordance with the restoration planning process in the OPA regulation. That is, the trustees could eliminate or reduce exposure to residual oil when they have developed a reasonable range of restoration alternatives that might include removal of residual oil, among other options, evaluate those restoration alternatives using the selection criteria in the OPA regulation, and select an alternative that includes removal of residual oil as the most appropriate restoration alternative for the injuries resulting from the incident. In cases where trustees do consider a restoration alternative involving reducing or eliminating exposure to residual oil, the reasonable range of alternatives should include not only a natural recovery alternative, but also an alternative in which the residual oil is left untouched yet there is other human intervention, such as off-site acquisition or enhancement of substitute habitat, to address the injured resources.

3. How Does the Standard Governing the Lead Agency's Removal Authority Differ From the Standard Governing Trustee Removal of Oil?

The lead response agency's removal authority under OPA may include actual removal or containment of oil, or other actions ''necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines and beaches.'' 33 U.S.C. 2701(30). As discussed above, the lead response agency's goals include preventing or reducing harm to the environment that would result from exposure to oil. The objective of the lead response agency is to remove as much oil as is needed to minimize or mitigate additional harm. In contrast, the trustee's authority to eliminate or reduce exposure to residual oil is derived exclusively from restoration authority under OPA. As such, the trustee's authority is limited to those instances where residual oil would prevent or limit the effectiveness of restoration, as stated in § 990.53(b)(3) of the Final Regulation.

4. What Precisely Is a Trustee's Role in Primary Removal, and What Is the Role of EPA and the Coast Guard, if any, With Respect to a Trustee's Residual Authority?

The trustee's role in a removal action is defined in section 1011 of OPA, which provides that: ''The President shall consult with the affected trustees designated under section 2706 of this title on the appropriate removal action to be taken in connection with any discharge of oil.'' 33 U.S.C. 2711. During this consultation, the trustee may advise the lead response agency on removal actions that could be taken to prevent, reduce, or eliminate impacts to natural resources. Removal decisions made by the lead response agency are intended to minimize or mitigate additional harm to the environment. Although these decisions may affect the nature and extent of trustee restoration actions, the decisions are not based upon the trustee goals of restoring the environment to baseline conditions and compensating for loss of natural resources.

Generally, response agencies do not have a role in restoration actions by trustees. However, the Final Regulation does allow ''emergency restoration,'' under § 990.26. Under § 990.26 (a), emergency restoration is allowed where: ''(1) The action is needed to minimize continuing or prevent additional injury; (2) The action is feasible and likely to minimize continuing or prevent additional injury; and (3) The costs of the action are not unreasonable.'' NOAA is proposing to amend the provisions of § 990.26(a) to clarify that the purpose of trustees conducting emergency restoration is to reduce the ultimate damages resulting from the incident as discussed in section I.A. If emergency restoration is considered while response actions are still underway, § 990.26(b) requires that the trustee coordinate with the lead response agency's On Scene Coordinator before taking any

emergency restoration action and demonstrate that the emergency restoration action will not duplicate or interfere with any on-going response actions.

5. May Trustees Remove Residual Oil Even if EPA or the Coast Guard has Considered and Rejected a Trustee's Position During the Consultation Process? What Happens if a Trustee Originally Agrees With the Extent of Primary Removal, but Later Changes its Mind?

NOAA believes that the lead response agency's rejection of a trustee's request for removing oil under the consultation provisions of section 1011 of OPA should neither bar nor precipitate such actions as part of a restoration plan developed in accordance with the Final Regulation. The response agency's refusal of a trustee's request in no way constitutes a conclusion regarding whether such an undertaking is appropriate as natural resource restoration. The response agency may make a determination, based upon available information, that removal is not necessary to prevent further impact to human health, welfare, or the environment. Subsequently the trustees, based upon information and analysis developed during the damage assessment process, may select a restoration alternative that involves elimination or reduction of residual oil. These determinations are not in conflict, and both are proper.

The trustee's concurrence with the response agency's decision to leave oil in the environment during the response phase does not preclude the trustee's consideration of removal of residual oil if such action is deemed appropriate based upon information gained during the damage assessment process to reinstate baseline or compensate for lost services.

6. Do Coast Guard and EPA Agree That Trustees May Conduct Removal of Oil? Do the Lead Response Agencies Concur as to How They Will Coordinate Removal Activities on a Case-by-Case Basis?

The Court indicated that such agreement is most likely needed by a reviewing court.

The Federal response agencies agree that actions to eliminate or reduce exposure to oil need not occur solely under their response authorities, and can legitimately be conducted as a restoration action under OPA, consistent with the Final Regulation. The Federal response agencies also agree that coordination of removal activities in all cases will occur as specified within the NCP.

C. Summary of Comments Received

On February 11, 1998, NOAA published a request for public comments concerning the authorization for the removal of residual oil by trustees as part of a natural resource restoration action. 63 FR 6846. Specifically, NOAA invited commenters to submit information on both case-specific and other consultation experiences with the Coast Guard, EPA, or state response agencies relating to removal actions taken either during or following the response phase of an incident. NOAA also requested reports of any standards, circumstances, and outcomes of incidents where trustees considered additional removal actions beyond those proposed by the lead response agency. Comments received are summarized below. The comments were taken into account in formulating the proposed rule amendments.

Twelve separate parties responded to the call for comments. Five commenters submitted their comments on behalf of industry. Of the remaining seven comments, four were from state trustee representatives, one from U.S. EPA, and two from individual members of the public.

One commenter, a private cleanup contractor, described a ''unique design'' of skimmer used by the company as an environmentally friendly approach to removal of residual oil.

The second individual commenter advocated that trustees not be allowed to ask for more cleanup than that performed by the response agency, in order to avoid needless work and the potential to cause more environmental harm than that avoided by the additional work. The commenter also provided comments on various environmental problems caused by oil spills, the societal dependence on oil consumption, and agreement with the regulation's requirement for incident-specific plans in lieu of monetary damages calculated by models.

One trustee representative relayed experiences from a unique situation involving residual oil, in which oily sand was piled up into ''tar dunes'' in front of vegetated zones of beaches by response personnel. The decision was characterized as a joint decision among response and trustee personnel, based in part on the desire to minimize removal of sand from the beaches, and on uncertainty whether the dunes would cause any additional injury to natural resources. The trustee stated that in hindsight they would always recommend that oily sand be removed from beaches and replaced with clean sand from an appropriate source. In addition, this trustee was of the opinion that they would have the authority to request responsible parties to conduct this type of residual removal as part of a restoration plan.

A second trustee commenter reported on a specific case example involving residual oil. In this instance, trustees were heavily involved in the response planning and decision-making from early on in the spill. The decision to leave residual oil in the environment in this instance was made with the agreement of the trustees, because additional removal would have killed individuals of an endangered species.

A third trustee commenter stated its agreement with NOAA's original conclusion that trustees have legal authority to remove residual oil as part of a restoration plan. The commenter stated that OPA does not contain a bright-line distinction between removal and restoration actions, noting OPA's definition of removal actions as including actions to ''minimize or mitigate damage'' to natural resources such as fish, shellfish, and wildlife. The commenter suggested that Congress obviously intended a degree of overlap between removal and restoration. The commenter stated that removal of residual oil is often necessary and even unavoidable as a restoration action, citing to one case example where oil unaccounted for by response efforts was discovered later in sediments of a protected natural area. This commenter also noted that situations involving slow, continuous discharges of oil—such as discharges from contaminated sediments—can be just as harmful to natural resources as catastrophic discharges, and that response agencies are far less likely to respond to the non-catastrophic circumstances. Finally, this commenter urged NOAA to respond in the revised final regulation to all of the D.C. Circuit's questions posed in remanding this issue.

Another trustee commenter reported on an experience in which removal of residual oil long after an incident was paid for out of restoration funds paid by a responsible party and held by trustees in a trust account.

U.S. EPA commented that they agree that trustees have authority to remove residual oil as part of implementation of a publicly-reviewed restoration plan. EPA also noted, however, that federal response agencies and trustees must consult and coordinate during an incident to ensure protection and restoration of potentially injured natural resources due to an oil spill. Although the final decision as to the scope and

completion of response activities is placed with the federal OSC, EPA stated that trustees may request that lead agencies conduct specific removal actions, including requesting that a removal action be re-opened to address residual oil under certain circumstances. EPA suggested that incidents supporting the need for removal of residual oil should be few if the coordination and consultation process works.

One group of industry representatives stated that trustees should not be authorized to undertake response actions, including removal of residual oil beyond that directed by the lead response agency in consultation with trustees. The commenters characterized NOAA's remanded regulation provision as a unilateral attempt to grant trustees additional power and authority, and stressed the need for NOAA to answer all of the D.C. Circuit's questions concerning the interrelationship of response and restoration authority. These commenters suggested drawing strong and clear distinctions between response and trustee authorities, roles and responsibilities. The commenters stated that tremendous problems arise respecting releases when trustees attempt to ''take over, circumvent, or reopen the analysis and selection of response action alternatives and cleanup criteria required under the [NCP],'' including inefficiency, confusion, delay, and increased costs, among other things. Citing to numerous sections of the NCP and EPA's July 31, 1997 OSWER Directive No. 9200.4–22A, the commenters characterized the proper role of resource restoration as supplemental to, and consistent with, response actions and criteria selected by the lead agency.

A second group of industry commenters also concluded that EPA and the Coast Guard have exclusive authority to determine when removal is complete, and that trustees' interests are protected by, and limited to, consultation with the lead agency pursuant to section 1011 of OPA. These commenters suggested that OPA, the CWA, and the NCP all draw clear lines between ''removal'' and ''restoration,'' citing as support the different liability provisions and different statutes of limitations for removal costs and for natural resource damages in OPA. These commenters also suggested that the remanded regulation provision, because it could be used solely by state or tribal trustees, undermines Congress' intent that removal under OPA always be conducted under the supervision of federal authorities. These commenters urged NOAA to remove § 990.53(b)(3)(i) from the regulation.

A third group of commenters representing industry concerns noted that oil spill cleanup is critically important, in part, because it may also achieve restoration and eliminate the need for further compensation to the public. These commenters stressed that ''too many cooks'' can hamper the effectiveness of response actions in achieving this and other goals, and suggested that this was one reason why Congress limited trustees' role during response to a consultative one. The commenters noted potential problems with recovering response costs from the Oil Spill Liability Trust Fund when these costs exceed the liability limits. The commenters also expressed concern about removal actions taken by trustees and consistency with the NCP. However, these commenters stated that they would support removal of residual oil by trustees in instances where it is necessary to assist natural recovery of injured resources, so long as such action is the most cost-effective restoration action, and that the claim for the costs of such action is developed in accordance with established damage assessment and restoration planning procedures.

A fourth commenter representing an industry association also stated that the regulation should reflect the clear legal distinction drawn by Congress in OPA between removal of oil and restoration of natural resources. This commenter stated that NOAA should not attempt to authorize any removal authority for trustees. Reasons cited for this position included negative public policy, increasing transaction costs to rival the Superfund program, and open-ended removal liability. However, this commenter also recognized that removal of oil can comprise an effective restoration action, and that in reality there is no existence of a time certain at which removal stops and restoration begins. Citing the purpose of OPA's requirement that response agencies consult with trustees, this commenter advocated that natural resource damage assessment activities proceed apace with response in such a fashion that the removal completion decision can take into account the need to remove more oil in order to achieve effective restoration. This commenter also requested that NOAA resolve this remanded issue with formal rulemaking.

The final group of industry commenters also stated that they would support trustee authority to remove residual oil if it is the most cost-effective restoration alternative, in certain circumstances. Specifically, these commenters urged NOAA to revise the regulation such that an injury to a natural resource for which trustees could seek restoration, including by removal of residual oil, be defined as a loss of a service that the resource provided to the public. Appropriate restoration would be limited to reinstatement of these services and could include elimination of oil from the environment if this action achieved reinstatement of services. The commenters argued that OPA's grant of authority to response agencies to abate threats to the environment overlaps with authorities NOAA granted to trustees under the regulation to restore lost ecological functions or services. The commenters suggested that trustee removal of residual oil, when it is not performed to reinstate a public service, represents second-guessing of the lead agency's determination that threats to the environment have been abated, even with oil remaining in the environment. These commenters urged that NOAA revise the regulation to eliminate the potential for any overlap between response and restoration authorities and actions. These commenters also urged that trustees work closely with removal agencies to identify in a timely manner whether additional removal is likely to be proposed as a restoration alternative, so that all removal can be carried out simultaneously.

II. Trustee Legal Costs

The court's decision on recovery of attorneys' costs as assessment costs discussed three issues. First, the court noted that NOAA agrees that attorneys' costs incurred in pursuing litigation of a natural resource damages claim are not recoverable as assessment costs. In response to this point, NOAA proposes to amend the definition of ''Reasonable assessment costs'' in § 990.30 of the Final Regulation to remove the word ''enforcement'' from the definition. (*General Electric et al.* v. *Commerce*, at 776.)

Second, the court noted that the parties in the case agreed that ''trustees may recover assessment costs attributable to tasks that lawyers happen to perform but which others, such as engineers or private investigators, could have performed.'' (*Id.*) No amendment to the Final Regulation is necessary to address this point.

Finally, the court declined to resolve the question of ''whether trustees may recover costs stemming from legal work not directly in furtherance of litigation (*e.g.*, pre-litigation legal opinions, title searches) that only lawyers could have performed.'' (*Id.*) Instead, the court directed NOAA ''to draw the precise

line between recoverable and non-recoverable legal costs.'' (*Id.*) In response to this direction from the court, NOAA proposes to amend § 990.30 of the Final Regulation to add a definition of ''legal costs'' that provides criteria for determining the scope of attorney activities that may be included in a trustee's claim for assessment costs.

The proposed amendment focuses on the explicit actions that trustees are authorized to perform under the Final Regulation or under OPA. When determining whether the costs of actions, performed for the purpose of assessment or developing a restoration plan, that could only be performed by attorneys constitute reasonable assessment costs trustees must consider the following criteria:

- Whether the action comprised all or part of an action specified either in OPA section 1006(c);
- Whether the action was performed prior to, or in the absence of, the filing of litigation by or on behalf of the trustee in question to recover damages; and
- Whether the action was performed by an attorney who was working for or on behalf of the trustee agency, as opposed to a prosecutorial agency.

The first criterion demonstrates that the action was directly in furtherance of natural resource damage assessment and restoration. The second and third criteria demonstrate that the action was not primarily in furtherance of litigation. If all of the above criteria are answered affirmatively, the costs associated with performance of the action by the attorney are assessment costs.

If all of the above criteria are met, the costs associated with attorneys' actions are deemed assessment costs. If the criteria are not met, the trustee must explain why the action is an assessment action rather than an action performed for the primary purpose of furthering litigation. For example, if a responsible party declares bankruptcy at some point before a natural resource damage assessment is completed, a trustee may need to file a proof of claim in a bankruptcy court to preserve the natural resource damage claim. Although the cost of filing the proof of claim in the bankruptcy court may not be recoverable as an assessment cost, any attorneys costs in the continuing assessment itself would still be recoverable.

The proposed amendment is consistent with OPA as there is nothing in the statute or its legislative history to suggest that trustees are required to assess injuries and develop restoration plans without any involvement of attorneys. There are numerous examples of common or routine assessment actions that may be most appropriately performed by trustee attorneys. Within NOAA's natural resource damage assessment and restoration program, and perhaps other trustee agencies, attorneys are responsible for such actions including, but not limited to:

- Providing written and oral advice on the requirements of OPA, these regulations, and other applicable laws;
- Preparing public notices, including the Notice of Intent to Conduct Restoration Planning issued to responsible parties and the Notice of Availability of Draft Restoration Plans;
- Developing and managing administrative records;
- Preparing binding agreements with potentially responsible parties in the context of the assessment, including study agreements, funding agreements, and restoration agreements;
- Preparing co-trustee cooperative agreements;
- Preparing formal trustee determinations required under the Regulation;
- Determining requirements for compliance with other applicable laws; and
- Procuring title searches, title insurance, and/or conservation easements when property agreements are part of restoration packages.

NOAA is proposing to define the types of attorneys' costs that would be included in the recovery of assessment costs under the rule. The court noted that trustees may recover assessment costs attributable to tasks that lawyers happen to perform but which others, such as engineers or private investigators, could have performed. In addition, NOAA is clarifying in the proposal that costs of actions that could only be performed by attorneys also constitute assessment costs. NOAA is seeking comments on this approach.

III. Other Technical Clarifications

NOAA is proposing a series of technical clarifications to incorporate developments in applicable law that occurred subsequent to publication of the Final Regulation, or to adjust language that may be inconsistent with OPA. NOAA is not opening up the entirety of 15 CFR part 990, but only these specific sections or subsections listed below.

A. Unsatisfied Demands for Damages, § 990.64(a).

Section 990.64(a) of the Final Regulation provides that where trustees' demands to implement or pay for restoration were denied by responsible parties, trustees could elect to file a judicial action for damages or seek an appropriation from the Oil Spill Liability Trust Fund. On September 25, 1997, the Office of Legal Counsel for the U.S. Department of Justice determined that OPA does not require trustees to seek appropriations for uncompensated claims for damages. Instead, the U.S. Department of Justice found that damage claims could be presented to and paid by the Trust Fund without further appropriations. Thus, NOAA is proposing an amendment to the Regulation to reflect this legal determination. Therefore, under the proposed rule, trustees have the option to seek recovery from the Trust Fund for uncompensated damages without further appropriations under section 1012(a)(4) of OPA, or seek an appropriation from the Trust Fund under section 1012(a)(2) of OPA.

B. Indirect Costs, § 990.30

Subsequent to publication of the Final Regulation, the D.C. Circuit Court of Appeals upheld provisions in the Department of the Interior's (DOI) regulations for natural resource damage assessments under CERCLA that authorize recovery of indirect costs associated with restoration plans. *Kennecott Utah Copper Corp.* v. *U.S. Dept. of the Interior,* 88 F.3d 1191 (D.C. Dir. 1996). The Court found that DOI's provision met CERCLA's damages causation requirement because indirect costs were limited to those that were ''necessary'' to ''support'' implementation of a selected restoration option. *Kennecott* at 1224. The Court upheld recoverability of indirect costs of restoration in part due to the existence of procedural safeguards in DOI's regulation that help ensure the accuracy of such costs. These safeguards include describing selection of cost estimation methods in a publicly reviewable administrative record and restoration plan, and demonstrating that the method avoids double counting, and is feasible, reliable, cost-effective, and can be conducted at a reasonable cost. Finally, the Court held that requirements provided in DOI's regulation for calculation and application of an indirect cost rate sufficiently restrained trustee discretion, in that the regulation limits use of a rate to situations where the costs of estimating indirect costs outweigh the benefits, and where the assumptions used in calculating the rate have been documented.

The preamble to NOAA's Final Regulation indicated that indirect costs were recoverable assessment costs, but

the Regulation did not include specific guidelines for determining indirect costs for either assessment or restoration costs. Based upon the ruling in *Kennecott,* NOAA proposes technical clarifications to the Regulation to define the scope of indirect costs that are recoverable as ''reasonable assessment costs'' and as ''restoration costs.'' The Rule incorporates the definition of indirect costs provided by the Office of Management and Budget (*see,* ''Managerial Cost Accounting Concepts and Standards for the Federal Government,'' Statement of Federal Financial Accounting Standards No. 4 (SFFAS 4), Executive Office of the President, Office of Management and Budget, July 1, 1995). The Rule contains similar procedural safeguards that apply to selecting a methodology to determine indirect costs as the CERCLA rule. Section 990.27 lists standards for all methods that might be used in an assessment, including methods that might be used to calculate indirect costs, i.e., cost calculation methods must be demonstrated to be reliable, valid, and cost-effective. Also, section 990.45 provides that relevant data on methods used should be included in the administrative record for the assessment. When using an indirect cost rate in lieu of calculating indirect costs on a case-specific bases, the basis of the indirect cost rate also should be documented in the administrative record.

C. Cost Accounting Procedures, § 990.62(f)

Although various sections of the Regulation require selection of reliable and valid methods and require trustees to avoid double counting, NOAA believes that these requirements should be explicitly stated for purposes of cost accounting, providing added assurances that costs are accurate and appropriate. Therefore, NOAA proposes to add a new subsection (f) to § 990.62 of the Regulation to require that, when determining assessment and restoration costs incurred by trustees, trustees must use methods consistent with generally accepted accounting principles and with the requirements of § 990.27 of the Regulation.

D. Cost Estimating Procedures, § 990.62(g)

NOAA is also proposing that trustees must use methods consistent with generally accepted cost estimating practices and the requirements of § 990.27 of this part when estimating costs to implement a restoration plan.

National Environmental Policy Act, Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

The National Oceanic and Atmospheric Administration has determined that this Rule does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) has been prepared. The Assistant General Counsel for Legislation and Regulation, in accordance with the Regulatory Flexibility Act, certifies to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule will not have a significant economic effect on a substantial number of small entities. The Rule is intended to make more specific, and easier to apply, the standards set out in OPA for assessing damages for injury to natural resources as a result of actual or threatened discharges of oil. The Rule is not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. To the extent any are affected by the Rule, it is anticipated that all will benefit by increased ease of application of law in this area.

It has been determined that this document is a significant rule under Executive Order 12866. The Rule provides optional procedures for the assessment of damages to natural resources. It does not directly impose any additional cost.

It has been determined that this Rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 990

Coastal zone, Environmental protection, Natural resources, Oil pollution, Water pollution control, Waterways.

Dated: July 20, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Under the authority of the Oil Pollution Act of 1990, 33 U.S.C. 2706(a), and for the reasons set out in this preamble, title 15 of the Code of Federal Regulations, chapter IX is proposed to be amended as set forth below.

SUBCHAPTER E—OIL POLLUTION ACT REGULATIONS

PART 990—NATURAL RESOURCE DAMAGE ASSESSMENTS

1. The authority citation for part 990 continues to read as follows:

Authority: 33 U.S.C. 2701 *et seq.*

2. In § 990.26, revise paragraphs (a) and (b) to read as follows:

§ 990.26 Emergency restoration.

(a) Trustees may take emergency restoration action before completing the process established under this part, provided that:

(1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;

(2) The action will not be undertaken by the lead response agency;

(3) The action is feasible and likely to succeed;

(4) Delay of the action to complete the restoration planning process established in this part likely would result in increased natural resource damages; and

(5) The costs of the action are not unreasonable.

(b) If response actions are still underway, trustees must coordinate with the On-Scene Coordinator (OSC), consistent with the NCP, to ensure that emergency restoration actions will not interfere with or duplicate ongoing response actions. Emergency restoration may not address residual oil unless:

(1) The OSC's response is complete; or

(2) The OSC has determined that the residual oil identified by the trustee as part of a proposed emergency restoration action does not merit further response.

* * * * *

3. In § 990.30, add new definitions in alphabetical order and revise the definition of ''Reasonable assessment costs'' to read as follows:

§ 990.30 Definitions.

* * * * *

Indirect costs means expenses that are jointly or commonly incurred to produce two or more products or services. In contrast to direct costs, indirect costs are not specifically identifiable with any of the products or services, but are necessary for the organization to function and produce the products or services. An indirect cost rate, developed in accordance with generally accepted accounting principles, may be used to allocate indirect costs to specific assessment and restoration activities. Both direct and

indirect costs contribute to the full cost of the assessment and restoration, as provided in this part.

* * * * *

Legal costs means the costs of attorney actions performed for the purpose of assessment or developing a restoration plan, in accordance with this part.

(1) When making a determination of the nature of attorneys' actions for purposes of this definition, trustees must consider whether:

(i) The action comprised all or part of an action specified either in this part or in OPA section 1006(c);

(ii) The action was performed prior to, or in the absence of, the filing of ligation by or on behalf of the trustee in question to recover damages; and

(iii) The action was performed by an attorney who was working for or on behalf of the trustee agency, as opposed to a prosecutorial agency.

(2) If all of the criteria in paragraph (1) of this definition are met, the costs associated with attorney's actions are deemed assessment costs. If the criteria are not met, the trustee must explain why the action was not performed for the primary purpose of furthering litigation in order to support a characterization of the action as an assessment action.

* * * * *

Reasonable assessment costs means, for assessments conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided they have determined that assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative, legal, and other costs necessary to carry out this part; monitoring and oversight costs; costs associated with public participation; and indirect costs that are necessary to carry out this part.

* * * * *

4. In § 990.53, revise paragraph (b)(3)(i) to read as follows:

§ 990.53 Restoration selection-developing restoration alternatives.

* * * * *

(b) * * *

(3) * * *

(i) Address conditions that would prevent or limit the effectiveness of any restoration action;

* * * * *

5. In § 990.62, revise paragraph (b)(2) and add new paragraphs (f) and (g) to read as follows:

§ 990.62 Presenting a demand.

* * * * *

(b) * * *

(2) Advance to the trustees a specified sum representing all trustee direct and indirect costs of assessment and restoration, discounted as provided in § 990.63(a) of this part.

* * * * *

(f) *Cost accounting procedures.* Trustees must use methods consistent with generally accepted accounting principles and the requirements of § 990.27 of this part in determining past assessment and restoration costs incurred by trustees. When cost accounting for these costs, trustees must compound these costs using the guidance in § 990.63(b) of this part.

(g) *Cost estimating procedures.* Trustees must use methods consistent with generally accepted cost estimating principles and meet the standards of § 990.27 of this part in estimating future costs that will be incurred to implement a restoration plan. Trustees also must apply discounting methodologies in estimating costs using the guidance in § 990.63(a) of this part.

6. In § 990.64, revise paragraph (a) to read as follows:

§ 990.64 Unsatisfied demands.

(a) If the responsible parties do not agree to the demand within ninety (90) calendar days after trustees present the demand, the trustees may either file a judicial action for damages or present the uncompensated claim for damages to the Oil Spill Liability Trust Fund, as provided in section 1012(a)(4) of OPA (33 U.S.C. 2712(a)(4)) or seek an appropriation from the Oil Spill Liability Trust Fund as provided in section 1012(a)(2) of OPA (33 U.S.C. 2712(a)(2)).

* * * * *

[FR Doc. 01–18962 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–JE–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD117–3070; FRL–7021–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; RACT for the Control VOC Emissions from Iron and Steel Production Installations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. The intended effect of this action is to propose approval of this revision, which establishes reasonably available control technology (RACT) for the control of emissions of volatile organic compounds (VOCs) from iron and steel production installations in Maryland. The Maryland Department of the Environment submitted the SIP revision on January 8, 2001. The revision applies to integrated steel mills in Maryland and provides for limits on emissions of VOCs from these facilities. Currently, there is only one integrated steel mill in Maryland, the Bethlehem Steel Corporation located at Sparrows Point in Baltimore County. Volatile organic compounds are a precursor of ground-level ozone, commonly known as smog. EPA is proposing to approve this revision in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 30, 2001.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Programs and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. We recommend that you contact Catherine Magliocchetti, Chemical Engineer, at (215) 814–2174 if you wish to visit the Region III office to review the docket.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, Chemical Engineer, at (215) 814–2174, or by e-mail at magliocchetti.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' are used to refer to the Environmental Protection Agency (EPA). This notice is organized as follows:

I. What is EPA Approving in this Action?
II. Why Did Maryland Submit a Regulation to Require RACT for the Control VOC Emissions from Iron and Steel Production Installations to EPA as a SIP Revision?
III. Who is Affected by Maryland's RACT Regulation to Control VOCs from Iron and Steel Production?
IV. What Does the Maryland Regulation Require as RACT to Control VOCs from Iron and Steel Production Installations?

V. Where is the Maryland RACT Regulation to Control VOCs from Iron and Steel Production Installations Codified?
VI. What Public Review Procedures Did Maryland Conduct?
VII. EPA's Proposed Rulemaking Action.
VIII. Administrative Requirements.

I. What is EPA Approving in this Action?

We are approving Code of Maryland Regulations (COMAR) 26.11.10 Control of Iron and Steel Production Installations, that establishes and imposes RACT to control emissions of VOCs from steel mill sinter plants in Maryland. Our approval will make the Maryland Iron and Steel Production regulation part of the federally enforceable SIP under the Clean Air Act (CAA).

II. Why Did Maryland Submit a Regulation to Require RACT for the Control VOC Emissions from Iron and Steel Production Installations to EPA as a SIP Revision?

Baltimore County is classified under the CAA as a severe nonattainment area for ozone. The CAA requires that RACT be imposed to control VOC emissions from major sources. In a severe ozone nonattainment area, such as Baltimore County, a major source of VOCs is defined as a source with the potential to emit 25 tons per year (TPY) or more. The CAA requires that RACT be implemented by May of 1995. The production of iron and steel emits significant amounts of VOCs from the sintering process, hot and cold rolling operations, the continuous caster process and production furnaces at steel mills. Maryland has identified reductions in emissions from these processes as making an important contribution toward improving air quality and attaining the national ambient ozone air quality standard to protect public health.

III. Who is Affected by Maryland's RACT Regulation to Control VOCs from Iron and Steel Production?

The SIP revision requirements are applicable to a person who owns or operates an installation that has actual VOC emissions of 20 pounds or more per day located at an iron and steel production facility that has the potential to emit total plant wide VOC emissions of 25 tons or more per year. Currently, the only integrated steel mill in Maryland is the Bethlehem Steel Corporation located in Sparrows Point in Baltimore County. This facility is subject to COMAR 26.11.10 Control of Iron and Steel Production Installations.

IV. What does the Maryland Regulation Require as RACT to Control VOCs from Iron and Steel Production Installations?

The Maryland regulation establishes controls on: (A) sinter plant operations, (B) hot and cold rolling operations, (C) continuous casters operations and (D) production furnaces at integrated steel mills as follows:

A. For sinter plant operations, the regulation requires compliance with an emission standard of 0.25 pounds of VOC per ton of sinter produced, calculated on a daily average basis; interim stack testing, and the installation of a continuous emission monitoring system (CEM) system on the sinter plant discharge stacks.

B. For hot and cold rolling operations, the regulation requires use of low volatility oil with a vapor pressure of one millimeter of mercury or less at 25 degrees Celsius.

C. For continuous casters operations, the regulation requires the oil and grease to be skimmed off the cooling water at the waste water treatment facility before being recycled back to the process, to prevent evaporation of the oil.

D. For production furnaces, the regulation requires that ''good management practices'' are followed for the operation of such furnaces at integrated steel mills.

V. Where is the Maryland RACT Regulation to Control VOCs from Iron and Steel Production Installations Codified?

Maryland codified its RACT regulation to control VOC emissions from iron and steel production installations at COMAR 26.11.10. The regulation was adopted on December 5, 2000 and became effective on December 25, 2000. The proposed rule was published in the Maryland Register on October 20, 2000, and the final rule was published on December 15, 2000.

VI. What Public Review Procedures Did Maryland Conduct?

The proposed rule was published for comment in the Maryland Register on October 20, 2000. A public hearing was held on November 21, 2000, and adequate public notice of the hearing was provided in six major newspapers within the State of Maryland. The Maryland Department of the Environment (MDE) received written comments from EPA and from the Bethlehem Steel Corporation. EPA has determined that Maryland adequately responded to these comments prior to adoption of the final regulation.

VII. EPA Rulemaking Action

EPA is proposing to approve the SIP revision submitted by MDE on SIP January 8, 2001, consisting of COMAR 26.11.10 Control of Iron and Steel Production Installations. This regulation establishes RACT to control VOC emissions from iron and steel production installations, including sinter plants, hot and cold rolling operations, continuous casters, and production furnaces. EPA is proposing approval because we concur that the control requirements established and imposed by COMAR 26.11.10 Control of Iron and Steel Production Installations constitute RACT to reduce VOCs. We are soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (See 66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor

will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 20, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 01–19046 Filed 7–30–01; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–9 and 102–192

[FPMR Amendment A–]

RIN 3090–AH13

Mail Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The General Services Administration (GSA) proposed to revise the Federal Property Management Regulations (FPMR) coverage on Federal mail management and move it into the Federal Management Regulation (FMR). A cross-reference will be added to the FPMR to direct readers to the coverage in the FMR. A proposed rule was published in the **Federal Register** on May 29, 2001. GSA is extending the comment period on that proposed rule.

DATES: Your comments must reach us by September 28, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Send written comments to: Michael E. Hopkins, Regulatory Secretariat (MVRS), Federal Acquisition Policy Division, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

Send comments by e-mail to: *RIN.3090–AH13@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Henry Maury, Office of Transportation and Personal Property (MT), 202–208–7928 or *henry.maury@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purposes of this proposed rule are to update, streamline, and clarify FPMR part 101–9, Federal Mail Management, and move that part into the Federal Management Regulation (FMR).

The proposed rule published on May 29, 2001 (66 FR 29067), gave a comment due date of July 30, 2001. Because several agencies have asked for more time, the deadline for submitting comments has been extended. Comments must be received by September 28, 2001.

Dated: July 25, 2001.

John G. Sindelar,

Deputy Associate Administrator, Office of Governmentwide Policy, General Services Administration.

[FR Doc. 01–18965 Filed 7–30–01; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–1736; MM Docket No. 01–159; RM–10164]

Radio Broadcasting Services; Comanche, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford, requesting the allotment of Channel 224A to Comanche, Texas, as that community's second local FM transmission service. This proposal requires a site restriction 6.4 kilometers (4.0 miles) west of the community at coordinates 31–52–55 NL and 98–40–06 WL.

DATES: Comments must be filed on or before September 10, 2001, and reply comments on or before September 25, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Charles Crawford, 4553 Bordeaux Ave., Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 01–1736, adopted July 11, 2001, and released July 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR § 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR §§ 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 224A at Comanche.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–18988 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[I.D. 072301C]

Sea Turtle Conservation; Activities Related to Fishing

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

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS); request for written comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare an EIS to assess the potential impacts on the human environment of sea turtle interactions with fishing activities in the Atlantic and Gulf of Mexico. NMFS is responsible for promoting sea turtle conservation and for ensuring that priority tasks identified in Endangered Species Act (ESA) recovery plans are implemented.

DATES: Written comments on fisheries/sea turtle interactions or other information that NMFS should consider in preparing the EIS are requested and must be received on or before August 30, 2001.

ADDRESSES: Comments on the proposal to prepare an EIS and request for copies of the NMFS Strategy for Sea Turtle Conservation & Recovery in Relation to Atlantic Ocean and Gulf of Mexico Fisheries (Strategy) should be sent to: Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301-713-0376. Comments will not be accepted if submitted via e-mail or the Internet. Notice of public meetings will be announced at a later date through notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara A. Schroeder (ph. 301 –713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (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 populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles--even incidentally--is prohibited, with exceptions identified in 50 CFR 223.206. Reduction of the incidental capture of sea turtles as a result of fishery operations has been identified as a priority task in all (ESA) sea turtle recovery plans for the Atlantic, Gulf of Mexico, and Caribbean.

NMFS has implemented numerous recovery actions under the provisions of the ESA to recover sea turtles but has been criticized for lacking a comprehensive approach and ordered strategy for addressing incidental take in fisheries, which in many cases is not authorized under the ESA. As a more comprehensive step, NMFS developed a Strategy aimed at addressing the incidental capture of turtles in commercial and recreational fisheries (see **ADDRESSES**). The goals of the Strategy are to : (1) conserve and recover sea turtles, (2) authorize fishery takes consistent with ESA mandates, (3) increase effectiveness in management, and (4) prioritize fishery interaction concerns. Steps to achieve the goals include improving stock assessments and bycatch estimations, evaluating the significance of bycatch by gear type; and convening specialist groups to prepare plans for reducing take for gear types with significant take levels. NMFS is proposing to consider the environmental impacts of the Strategy through the National Environmental Policy Act (NEPA) process. Based on comments received through this notification, NMFS intends to schedule scoping meetings by December 2001 that would support preparation of an EIS.

Numerous fisheries have been implicated in the incidental capture of marine turtles along the Atlantic and Gulf of Mexico coasts. Both state and federally managed fisheries are involved as are fisheries operating outside of any state or Federal management plan. Several states have already been addressing incidental take of sea turtles in various fisheries and gear types, including Florida, Georgia, South Carolina, North Carolina, Texas, and Virginia. However, data available on the magnitude of the problem varies by fishery and area. NMFS believes the issue is not so much a specific target fishery problem but a gear problem. Certain types of gear are more prone to incidentally capturing turtles than others, depending on the way the gear is fished and the time and area fished.

NMFS is seeking input from the fishing industry, sea turtle experts, non-governmental organizations (NGOS), academia, state representatives, and the public on a gear-based assessment and management approach for the Atlantic and Gulf of Mexico fisheries and is requesting information on fisheries interactions with sea turtles as well as the identification of missing data and recommendations for further research. The purpose of this notice is to: (1) inform the interested public of the intent to prepare this EIS, and (2) request public participation and comments. Any consideration of gear modifications and/or changes to fishing practices in those fisheries of concern will be done through rulemaking or permitting according to the ESA or Magnuson-Stevens Fishery Conservation and Management Act and the Administrative Procedures Act.

Dated: July 26, 2001.

Wanda Cain,

Acting Deputy Director, Office Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–19060 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 072301D]

Magnuson-Stevens Act Provisions; Essential Fish Habitat; Public Meeting

AGENCY: North Pacific Fishery Management Council (NPFMC) and National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of public meeting.

SUMMARY: The NPFMC will hold an essential fish habitat (EFH) committee meeting to review NMFS draft summary of EFH scoping comments, to identify significant issues and preliminary alternatives, and to determine staffing needs.

DATES: The EFH committee will meet at 12:30 p.m. to 5 p.m. on Monday, August 13, 2001, and at 9 a.m. to 5 p.m. on Tuesday, August 14, 2001.

ADDRESSES: The committee will meet in Sitka, Alaska, at the Northern Southeast Regional Aquaculture Association (NSRAA), 1308 Sawmill Creek Road, in the conference room.

Questions should be addressed to NMFS, Habitat Conservation Division, ATTN: Cindy Hartmann, 709 West 9th , Suite 461, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, NMFS, (907) 586–7585, e-mail: Cindy.Hartmann@noaa.gov; or Cathy Coon, North Pacific Fishery Management Council (NPFMC), (907) 271–2809, e-mail: Cathy.Coon@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The NPFMC EFH committee was formally established by the NPFMC's acting executive director in May 2001. The committee was established in response to the need to prepare a supplemental environmental impact statement (SEIS) for the EFH fishery management plan amendments. For further information about the SEIS, see the notice of intent to prepare an SEIS published in the Proposed Rules section of the Federal Register (66 FR 30396, June 6, 2001).

The function of the committee is to serve as a steering committee in facilitating input to NMFS on the supplemental environmental impact statement (SEIS) for EFH submitted by the industry, conservation community, Council, and general public and the involvement of the NPFMC in the SEIS. More specifically, the Committee will assist in identifying (1) the significant issues used to evaluate proposed alternatives, (2) the alternatives for designating EFH, (3) the alternatives for mitigating fishing gear impacts on habitat, and (4) alternative criteria and approaches that could be used to designate and manage habitat areas of particular concern, and staffing needs for EFH SEIS. The Committee will work to coordinate efforts among the various technical teams, provide input, as appropriate, and submit periodic updates to the Council on the EIS for EFH. The EFH Committee had its first meeting on May 30, 2001, the August meeting will be its second meeting.

Although other issues not contained in this agenda may come before the Committee for discussion, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cindy Hartmann, (907) 586–7235, at least 5 working days prior to the meeting date.

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

Dated: July 26, 2001

Dean Swanson,

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

[FR Doc. 01–19063 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010710171-1171-01; I.D. 051401B]

RIN 0648–AL41

Fisheries off West Coast States and in the Western Pacific; Pelagic Fisheries; Prohibition on Fishing for Pelagic Management Unit Species; Nearshore Area Closures Around American Samoa by Vessels More Than 50 Feet in Length

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule which would prohibit certain vessels from fishing for Pacific pelagic management unit species (PMUS) within nearshore areas approximately 50 nautical miles (nm) around the islands of American Samoa. This prohibition would apply to vessels that measure more than 50 ft (15.2 m) in overall length and that did not land PMUS prior to November 13, 1997. This action is being proposed and is intended to address concerns that the entry of vessels greater than 50 ft (15.2 m) in length into the pelagic fishery around American Samoa could lead to gear conflicts and catch competition with locally based small fishing vessels. Such conflicts and competition could lead to reduced opportunities for sustained participation by residents of American Samoa in the small-scale pelagic fishery.

DATES: Comments on this proposed rule will be accepted through September 14, 2001.

ADDRESSES: Written comments on this proposed rule must be mailed to Dr. Charles Karnella, Administrator Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd. Suite 1101, Honolulu, HI 96822 or sent via facsimile (fax) to 808–973–2941. Comments will not be accepted if submitted via e-mail or the Internet. Copies of the Council's background document on the proposed action and accompanying environmental assessment/initial regulatory flexibility analysis (EA/IRFA) are available from Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council (Council), 1164 Bishop St, Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Contact Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: Fishery participants have expressed concerns that current regulations allow unrestricted fishing in the U.S. exclusive economic zone (EEZ) around American Samoa by U.S. fishing vessels. There are large differences in impacts on fishery resources between the American Samoa small-vessel fishing fleet and large fishing vessels (greater than 50 ft (15.2 m) in overall length) that would be prohibited from fishing for PMUS in the closed areas that would be established by the proposed rule. Large pelagic longline fishing vessels have much greater fishing power, as they use two to three times the number of hooks, have longer longlines, have longer soak times (length of time that the longline is left in the water for fishing purposes), and possess greater hold capacity. There are approximately 60 small vessels (less than 50 ft (15.2 m) in length) in American Samoa that use relatively simple troll and longline fishing gear to target PMUS. The majority of pelagic troll fishing activity occurs within 20 nm of shore; the local small vessel longline fleet ranges out to about 50 nm. Based on historical data, the majority of the fishing effort by the local small-vessel fleet takes place to the south and east of the main island of Tutuila. Large pelagic longline, tuna purse seine, and albacore troll vessels, which comprise much of the domestic tuna fishing fleet, are highly mobile. This mobility enables them to seek new fishing opportunities in the central and western Pacific waters as other domestic fisheries become increasingly restricted. An influx of these large vessels into the nearshore waters surrounding American Samoa could lead to gear conflicts, catch competition, and reduced opportunities for sustained fishery participation by the locally based small boat operators. Local fishermen and associated fishing communities depend on this fishery not only for food, income, and employment, but also for the preservation of the Samoan culture.

The average annual catch of skipjack tuna by a U.S. tuna purse seiner operating in the central and western Pacific between 1990 and 1997 was 3,161 mt (6,970,231 lb,) and a typical 65–foot (19.8 m) Hawaii-based longliner, which sets 1,200 to 1,500 hooks per day, has an average annual catch of 113.4 mt (250,000 lb). In comparison, a typical American Samoa small-scale longline vessel sets 200 to 500 hooks per day and catches an average of 15.9 mt (35,000 lb) of fish per year. In addition to the potential for catch competition, physical gear conflicts between small vessels and large longliners are possible if the large vessels were to set 48.3 km (30 mi) of mainline (the Hawaii average) within 50 nm from the shore of American Samoa.

In response to these concerns, at its June 2000 meeting, the Council recommended a change to the regulations implementing the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagic FMP). Specifically, the Council recommended closing the area approximately 50 nm around American Samoa to large vessels fishing for PMUS. A description of the proposed area closures was circulated to interested parties prior to the Council's decision to make this recommendation. The Council specifically requested that NMFS solicit comments on whether tuna purse seiners should be exempt from the proposed prohibitions and to consider exempting them in the final rule.

Under this proposed rule, U.S. vessels more than 50 ft (15.2 m) in overall length, hereafter referred to as ≥large vessels≥, would be prohibited from fishing for PMUS within areas approximately 50 nm of the islands of American Samoa. The boundaries of the proposed closed areas would be defined by latitude and longitude and would be delineated as straight lines drawn point to point, instead of 50-nm contours, to facilitate enforcement and to clearly demarcate the boundary for the public. The current owner of a longline vessel that was used (i.e., used by any person, not necessarily the current owner) to make at least one landing of PMUS in American Samoa on or before November 13, 1997, would be exempt from the proposed prohibition. Exemptions could be registered for use with other vessels owned by the same person; however, exemptions could not be applied to a replacement vessel that is larger than the vessel for which it was originally issued. If more than one person (e.g., a partnership or corporation) owned a large vessel when it was registered for use with a general longline permit and made at least one landing of a PMUS prior to November 13, 1997, an exemption would be issued to only one person.

At the Council's November 2000 meeting, Council members representing American Samoa requested the Council to consider an additional exemption to the proposed area closures for U.S. tuna purse seine vessels. The Council believes that such an exemption would likely have minimal direct impact on small fishing vessels or provide little benefit to the purse seiners because fishery data indicate that no more than ten tuna purse seine sets were made within American Samoa's EEZ (and probably outside the proposed closed areas) during the past decade. However, the exclusion of U.S. tuna purse seine vessels from the nearshore areas could set a negative precedent and encourage other Pacific island nations, in whose EEZs the U.S. tuna purse seine fleet currently fishes, to similarly constrain fishing opportunities for U.S. domestic tuna purse seine vessels. NMFS specifically requests public comments on this issue.

Classification

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

The Council prepared an IRFA that describes the impact this proposed rule would have on small entities, if adopted. A summary of the IRFA follows:

A description of the reasons why action by the agency is being considered and the objectives of the action are explained in the Summary and Supplemental Information sections of this preamble and are not repeated here. This action does not contain reporting and recordkeeping requirements or any compliance requirements that would impact small entities. It will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

This rule would impact 73 vessels, including 61 small-scale vessels (less than 50 ft) and 12 large vessels (greater than 50 ft). Both large and small longline vessels affected by this proposed rule are considered to be ''small entities'' under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of $3 million dollars.

There may be positive long-term economic impacts to those vessels that are able to fish within 50 nm from shore. These benefits would be based on the ability of small vessels to sustain the fishery, and to develop and utilize technology that would allow them to sell their catch in the fresh albacore market. Fresh albacore can command premium prices (up to $4.75/lb) as compared to the cannery market ($1.06/lb) in which they now participate. However, the ability to sell their catch to the fresh albacore market in American Samoa is not pivotal to the success of the small vessels, which is

mainly driven by the canneries. A more realistic price for fresh albacore landed in the U.S. mainland is $2.25/lb, and at that price, the cost of exporting their catch would likely not generate any greater profit than obtained from the cannery.

According to limited data and anecdotal information, the large vessels comprising the longline fleet are currently fishing in the EEZ at a distance of greater than 50 nm from shore. If this is indeed true, the proposed rule would have no economic impact on those vessels, since the requirement to fish outside 50 nm would not alter their fishing behavior. In addition, if vessel captains and owners exhibit rational economic behavior under these conditions, then it would follow that it is more profitable for these vessels to continue fishing outside, as opposed to inside, the 50 nm line. However, if the limited information is not accurate, there would be added costs to fishing further offshore, e.g., the cost of fuel and food, which may or may not affect vessel profitability. This depends on the relative rates of increase in average revenues versus average costs of fishing further offshore. NMFS staff have spoken to several large vessel fishermen, who attest to the fact that the added costs of fishing offshore beyond the 50 nm boundary are indeed offset by the higher catch rates. Other benefits, including increased safety through elimination of gear conflicts, of establishing closed areas around American Samoa to exclude large pelagic fishing vessels are difficult to quantify, as interactions between pelagic fisheries are difficult to document or model due to limitations of available data, insufficient knowledge of the biology and population dynamics of the resource, and poor understanding of environmental influences. As of June 2001, there were twelve large longliners based in American Samoa, two of which would be exempted from this rule.

The Council, in its desire to mitigate potential adverse impacts from implementation of this framework action, moved to include those large vessels that were historical participants by proposing an exemption which would allow vessels that held permits in the fishery prior to the control date of November 13, 1997, to continue fishing within 50 nm off shore.

The impact of the proposed action on the local tuna canneries in American Samoa is expected to be negligible as a result of excluding a few large longliners, currently based in the islands, from fishing within the closed areas. These vessels would not qualify for exemptions from the area closure. In 1998, the total amount of albacore tuna (636,000 lb or 288 mt), the target pelagic species landed by large U.S. longline vessels at the canneries, represented less than 1 percent of the total tuna delivered to the canneries. Furthermore, most, if not all, of the albacore catches made by the large longliners were from areas beyond 50 nm from the shore of American Samoa.

The Council rejected an alternative that would have closed waters within 100 nm around American Samoa because the Council determined that the potential negative economic impacts on large vessels would outweigh the possible benefits to the local small-vessel fishing fleet of approximately 30 active vessels fishing generally within 50 nm from shore. The potential costs to large longline vessels prohibited from fishing in the closed areas under this alternative would consist of increased fuel costs and travel time to reach available fishing grounds. On the other hand, the small local fishing vessels, even the newer, larger models, have a limited capacity for storing and chilling fish, which discourages fishing beyond 50 nm due to very low efficiency.

The Council rejected a second alternative that would have closed waters within 50 nm of the islands of Tutuila and Manu'a, Rose Atoll, and within 30 nm of Swains Island because the Council determined that this approach would provide unequal and insufficient protection for small vessels that may choose to fish around Swains Island, as well as for those that may decide, in the future, to be home ported there.

The Council also rejected a third alternative that would have excluded large U.S. pelagic fishing vessels from waters around American Samoa in which the Pelagic FMP already prohibits longline fishing by foreign vessels (an area approximately 20 nm around each island) because the Council determined that such small closed areas would provide insufficient protection for the local small-vessel fishing fleet.

On March 29, 2001, NMFS concluded a formal consultation under section 7 of the Endangered Species Act (ESA) with a biological opinion (BO) stating that the continued operation of the pelagic fisheries in the western Pacific region under the Pelagic FMP is likely to jeopardize the continued existence of green turtles, leatherback turtles, and loggerhead turtles. Although the BO indicates that the non-Hawaii pelagic fisheries, such as those in American Samoa, probably have minimal levels of interaction with ESA listed species, they add to the jeopardy situation. The BO includes reasonable and prudent alternatives to avoid the likelihood of jeopardy, such as sea turtle handling and resuscitation techniques and regulations governing the non-Hawaii pelagic fisheries to reduce the likelihood of harmful impacts to sea turtles incidentally taken by longline, troll, and handline fishing gear employed by U.S. domestic fishing vessels. Also, the BO requires NMFS (where feasible) to establish an observer program for the non-Hawaii pelagic fisheries.

In an informal consultation for the proposed rule establishing American Samoa closed areas, NMFS will assess whether this proposed rule would be likely to adversely affect sea turtles in ways not contemplated by the March 29, 2001, BO.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: July 24, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. Section 660.12 is amended by adding the definition of ''Large vessel'' and revising the definition of ''Length overall (LOA) or length of a vessel'' as follows:

§ 660.12 Definitions.

* * * * *

Large vessel means, as used in §§ 660.22, 660.37, and 660.38, any vessel greater than 50 ft (15.2 m) in overall length.

Length overall (LOA) or length of a vessel means, as used in §§ 660.21(i) and 660.22, the horizontal distance, rounded to the nearest foot (with any 0.5 foot or 0.15 meter fraction rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments (see Figure 2 to this part). ''Stem'' is the foremost part of the vessel, consisting of a section of

timber or fiberglass, or cast forged or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end. ''Stern'' is the aftermost part of the vessel.

* * * * *

3. In § 660.22, paragraph (uu) is added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(uu) Use a large vessel to fish for Pacific pelagic management unit species within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 660.38.

4. A new § 660.37, under subpart C, is added to read as follows:

§ 660.37 American Samoa pelagic fishery area management.

(a) *Large vessel prohibited areas.* A large vessel of the United States may not be used to fish for Pacific pelagic management unit species in the American Samoa large vessel prohibited areas as defined in paragraphs (b) and (c) of this section, except as allowed pursuant to an exemption issued under § 660.38.

(b) *Tutuila Island, Manu'a Islands, and Rose Atoll.* The large vessel prohibited area around Tutuila Island, the Manu'a Islands, and Rose Atoll consists of the waters of the EEZ around American Samoa bounded by straight lines connecting the following coordinates in the order listed:

Point	S. lat.	W. long.
A	13° 30′	170° 49′ 42″
B	13° 30′	167° 30′
C	15° 30′	167° 30′
D	15° 30′	171° 51′

and of the EEZ boundary connecting points D and A.

(c) *Swains Island.* The large vessel prohibited area around Swains Island consists of the waters of the EEZ around American Samoa bounded by straight lines connecting the following coordinates in the order listed:

Point	S. lat.	W. long.
A	10° 38′	170° 40′
B	11° 28′	170° 40′
C	11° 28′	171° 30′
D	10° 38′	171° 30′

and of the EEZ boundary connecting points D and A.

4. A new § 660.38, under subpart C, is added to read as follows:

§ 660.38 Exemptions for American Samoa large vessel prohibited areas.

(a) An exemption will be issued to a person who currently owns a large vessel, to use that vessel to fish for Pacific pelagic management unit species in the American Samoa large vessel prohibited management areas, if he or she had been the owner of that vessel when it was registered for use with a longline general permit and made at least one landing of Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997.

(b) A landing of Pacific pelagic management unit species for the purpose of this section must have been properly recorded on a NMFS Western Pacific Federal daily longline form that was submitted to NMFS, as required in § 660.14.

(c) An exemption is valid only for a vessel that was registered for use with a longline general permit and landed Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997, or for a replacement vessel of equal or smaller LOA than the vessel that was initially registered for use with a longline general permit on or prior to November 13, 1997.

(d) An exemption is valid only for the vessel for which it is registered. An exemption not registered for use with a particular vessel may not be used.

(e) An exemption may not be transferred to another person.

(f) If more than one person, e.g., a partnership or corporation, owned a large vessel when it was registered for use with a longline general permit and made at least one landing of Pacific pelagic management unit species in American Samoa on or prior to November 13, 1997, an exemption issued under this section will be issued to only one person.

5. Figure 2 to part 660 is revised to read as follows:

Figure 2 to Part 660 Subpart C – Length of Fishing Vessel

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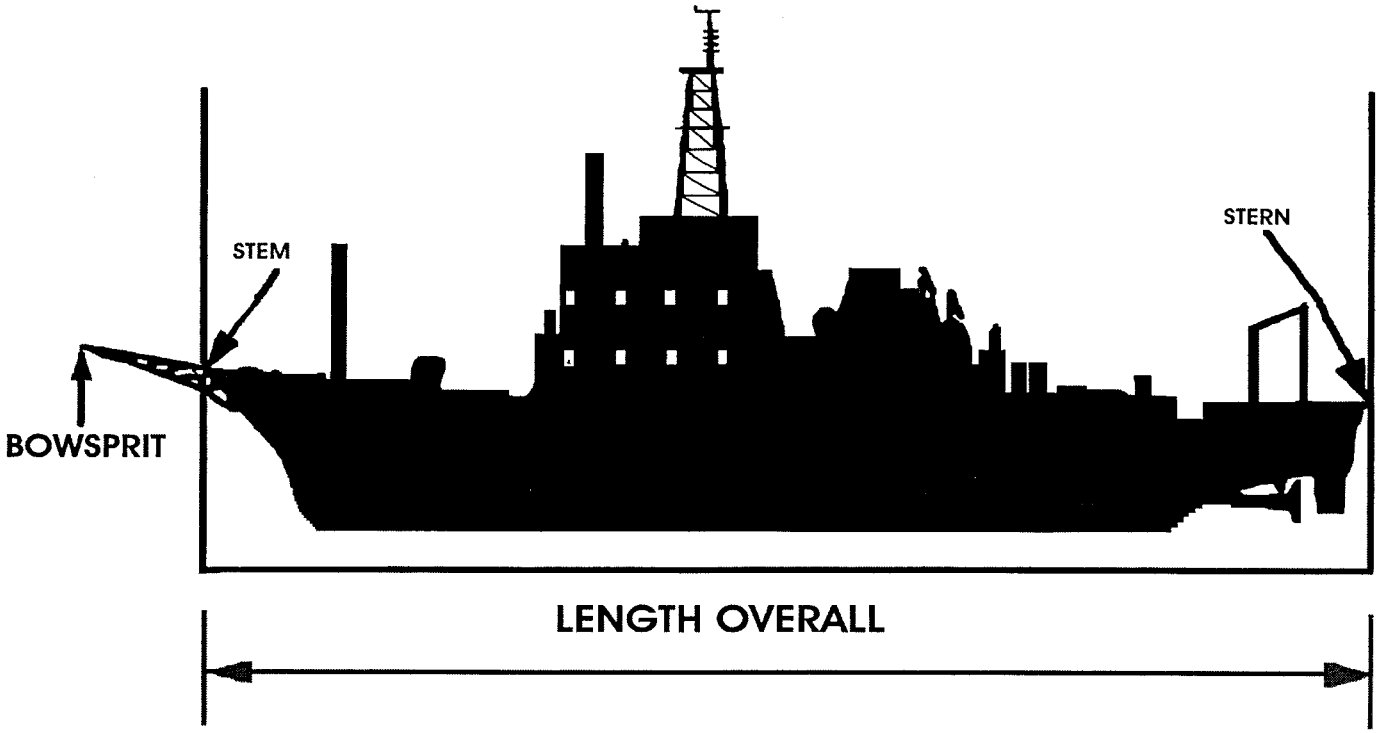

[FR Doc. 01–19061 Filed 7–30–01; 8:45 am]
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Notices

Federal Register

Vol. 66, No. 147

Tuesday, July 31, 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

Submission for OMB Review; Comment Request

July 26, 2001.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (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 collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Feasibility and Accuracy of Record Linkage to Estimate Multiple Program Participation

OMB Control Number: 0536–NEW.

Summary of Collection: The Economic Research Service (ERS) of the U.S. Department of Agriculture (USDA) is responsible for conducting studies and evaluations of the Nation's food assistance programs administered by the Food and Nutrition Service (FNS) of USDA. ERS has entered into a cooperative agreement with Abt Associates Inc. to study the Feasibility and Accuracy of Record Linkage to Estimate Multiple Program Participation. The study has two parts: (1) Survey of nutrition assistance information systems in 26 states and 78 school food authority. (2) Administrative data collection to test the feasibility and accuracy of record linkage and to answer research questions about multiple-program participation.

Need and Use of the Information: Information from the survey of food assistance programs will be used to assess the potential for matching client records across major food assistance programs (Food Stamp Program, Woman Infants and Children, National School Lunch Program) within a state for the purpose of estimating rates of shared clientele. The results from the survey will assist USDA in determining which data from multiple food assistance programs might be linked in the future to support improved program operations and program integrity.

Description of Respondents: Federal Government; State, Local or Tribal Governments.

Number of Respondents: 156.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 117.

Economic Research Service

Title: Emergency Food Assistance System Client Survey.

OMB Control Number: 0536–NEW.

Summary of Collection: USDA, through the Food and Nutrition Service, administers several food assistance programs that help low-income households obtain adequate and nutritious diets. The largest USDA food assistance program, the Food Stamp Program, is designed to provide nutrition assistance through normal channels of trade by providing low-income consumers with purchasing power to buy food at market prices from food retailers authorized to participate in the program. Other programs such as the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and the Temporary Emergency Food Assistance Program (TEFAP) provide nutrition assistance outside regular marketing channels. The TEFAP distribute commodity foods to State and local agencies for distribution to low-income households for home consumption, or to charitable organizations like emergency kitchens that provide meals for needy people. In order to fully assess the role of the Emergency Food Assistance System (EFAS) and its interaction with USDA nutrition assistance programs in meeting clients' nutrition needs, the Economic Research Service (ERS) will conduct an Emergency Food Assistance Study of providers and clients.

Need and Use of the Information: ERS will collect information to: (1) Assess current nutrition assistance programs; (2) plan future programs; (3) characterize EFAS clients; (4) determine the precipitating events that led clients to seek emergency food assistance; (5) determine EFAS clients' participation in federal nutrition assistance and other benefit programs; (6) determine clients' perception of the adequacy of the food baskets and meals received from EFAS providers; (7) assess the food security status of EFAS clients. Not conducting the study would diminish the information available to USDA on why and how frequently low-income population groups utilize EFAS in addition to or instead of the Food Stamp Program and other USDA nutrition assistance programs.

Description of Respondents: Individuals or households; not-for-profit institutions.

Number of Respondents: 4,870.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,212.

Farm Service Agency

Title: Forms for Participation in a 7-Year Production Flexibility Contract.

OMB Control Number: 0560–0092.

Summary of Collection: Eligible owners or producers sign a Production Facility Contract (PFC) to participate in

the program authorized by the Federal Agriculture Improvement and Reform Act of 1996. The 1996 Act provides that farms having a history of participating in government programs could enroll in a PFC and the owners and producers who participate and fully comply with the terms of the PFC and regulations will receive payments.

Need and Use of the Information: The PFC worksheet is provided to the owner or producer to confirm the acreage that will be enrolled for participation, designate each producers share request an advance payment, provide for undesignated shares for any fiscal year where payment shares are unknown and allow producers to adjust the level of participation and projects payments for the contract period. The county Farm Service Agency committee determines whether: (1) Requests are properly completed, (2) payment shares are proper, and (3) program requirements are met for payment approval. Information collected for the PFC program is required for participation and is not available from any other source.

Description of Respondents: Farms; individuals or households.

Number of Respondents: 2,131,523.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 2,664,404.

Farm Service Agency

Title: Highly Erodible Land Conservation and Wetland Conservation (7 CFR part 12).

OMB Control Number: 0560–0185.

Summary of Collection: The Food Security Act of 1985 as amended by the Federal Agriculture Conservation and Trade Act of 1990 and the Federal Agriculture Improvement and Reform Act of 1996 provides that any person who produces an agricultural commodity on a field that is predominately highly erodible, converts wetland, or plants an agricultural commodity on converted wetland after December 23, 1985, shall be ineligible for certain program benefits. These provisions are an attempt to preserve the nation's wetland and to reduce the rate at which the conversion of highly erodible land occurs which contributes to the national erosion problem. The Farm Service Agency (FSA) collects information using several forms from producers with regard to their financial activities on their land that could affect their eligibility for requested USDA benefits.

Need and Use of the Information: Information must be collected from producers to certify that they intend to comply with the conservation requirements on their land to maintain their eligibility. Additional information may be collected if producers request that certain activities be exempt from provisions of the statute in order to evaluate whether the exempted conditions will be met. The collection of information allows the FSA county employees to perform the necessary compliance checks and fulfill USDA's objectives towards preserving wetlands and reducing erosion.

Description of Respondents: Farms; individuals or households

Number of Respondents: 200,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 251,153.

Risk Management Agency

Title: Dairy Options Pilot Program (DOPP), Round III.

OMB Control Number: 0563–0058.

Summary of Collection: Section 191 of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act) authorizes the Secretary of Agriculture to conduct a pilot program for one or more agricultural commodities to determine the feasibility of the use of futures and options as risk management tools to protect producers from fluctuations in prices, yield and income. Section 134 of the Agricultural Risk Protection Act of 2000 amended section 191 Federal Agricultural Improvement and Reform Act (FAIR) of 1996 that resulted in new requirements for the Dairy Options Pilot Program (DOPP). This amendment expanded the eligible pilot counties in an options pilot program to a maximum of 300 with no more than 25 counties in any one state.

The collection of information will take place through the use of three forms. The first form, CCC–320, Diary Options Pilot Program Application is completed by the applicant and will be used to measure the number of options that the producer is eligible to purchase under the DOPP. The second form, CCC 320–1, Broker Agreement of the Diary Option Pilot Program, will ensure that participating brokers certify that their information systems' compliance with Year 2000 requirements. The third form, CCC–321, Authorization for Release of Information Regarding Options Contracts, permits the Government to obtain information on trading activity from the brokers used by DOPP participants.

Need and use of the information: The Risk Management Agency (RMA) will use the information collected to establish producer eligibility, help to verify compliance of participating producers and brokers, and assist in evaluating the effectiveness of put options as a risk management tool for dairy farmers. Without the information provided by the producers through their brokers, RMA will be unable to evaluate the effectiveness of the options contracts as risk management tools to the producer and will only be able to gauge compliance with the contracts' terms by numerous, labor intensive on-site audits of producers and brokers

Description of Respondents: Individuals or households, Farms, Business or other for profit; Federal Government.

Number of Respondents: 9,685.

Frequency of Responses: Recordkeeping; reporting: Semi-annually and as funds permit; third party disclosure.

Total Burden Hours: 38,015.

Rural Housing Service

Title: 7 CFR 1822–G, Rural Housing Loans, Policies, Procedures and Authorizations.

OMB Control Number: 0575–0071.

Summary of Collection: Section 523 and 524 of the Housing Act of 1949 authorizes loans for acquiring and developing housing sites for low and moderate-income housing. Information is necessary to protect the public from projects being built in areas of low need by applicants that are unable to administer and program properly.

Need and Use of the Information: Rural Housing Service (RHS) uses the information collected to verify and ensure program eligibility requirements, appropriate use of loans, and continuing with legislative requirements. If the information were not collected, RHS would be unable to determine if the organization qualifies for loan assistance.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 6.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 36.

Animal and Plant Health Inspection Service

Title: U.S. Origin Health Certificate.

OMB Control Number: 0579–0020.

Summary of Collection: As part of its mission, the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States. Most countries require a certification that our animals are free from specific diseases and show no clinical evidence of disease. The VS

form 17–140, U.S. Origin Health Certificate, is used to meet these requirements.

Need and Use of the Information: The U.S. Origin Health Certificate is used in connection with the exportation of animals to foreign countries and is completed and authorized by APHIS veterinarian. The information collected is used to: (1) Establish that the animals are moved in compliance with USDA regulations, (2) verify that the animals listed for export are listed on health certificate by means of an official identification, (3) verify to the consignor and consignee that the animals are healthy to export, (4) prevent unhealthy animals from being exported and (5) satisfy the import requirements of receiving countries.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 2,800.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 21,009.

Animal and Plant Health Inspection Service

Title: Request for Credit Account Approval for Reimbursable Services.

OMB Control Number: 0579–0055.

Summary of Collection: The Debt Collection Improvement Act of 1996 (P.L. 104–134 Section 31001(x) of 31 U.S.C. 7701, requires that Agencies collect tax identification numbers from all persons doing business with the Government for purposes of collecting delinquent debts. The services of an inspector is to clear imported and exported commodities requiring release by Agency personnel are covered by user fees during regular working hours. The Animal and Plant Health Inspection Service (APHIS) will collect information using APHIS form 192, Application for Credit Account and Request for Service.

Need and Use of the Information: APHIS will collect information to support requests for credit accounts for reimbursable overtime and import/export services and to provide information to prepare billings for such services performed. The information will be used by the Field Servicing Office to conduct a credit check on prospective applicants to ensure credit worthiness prior to extending credit services.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; Federal Government.

Number of Respondents: 360.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 90.

Grain Inspection, Packers & Stockyards Administration

Title: Regulations and Related Reporting and Recordkeeping Requirements—Packers and Stockyards Programs.

OMB Control Number: 0580–0015.

Summary of Collection: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181, *et seq.*) and the regulations under the Act. The Act authorizes the collection of information for the purpose of enforcing the Act and regulations and to conduct studies as requested by Congress. The Act is designed to protect the financial interests of livestock and poultry producers engaged in commerce of livestock and live poultry sold for slaughter. It also protects members of the livestock and poultry marketing, processing, and merchandising industries from unfair competitive practices. GIPSA will collect information using several forms.

Need and Use of the Information: GIPSA will collect information to monitor and examine financial, competitive, and trade practices in the livestock, meat packing, and poultry industries. Also, the information will help assure that the regulated entities do not engage in unfair, unjustly discriminatory, or deceptive trade practices or anti-competitive behavior.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10,950.

Frequency of Responses: Recordkeeping; third party disclosure; reporting: on occasion; semi-annually.

Total Burden Hours: 304,253.

Food and Nutrition Service

Title: Food Coupon Accountability Report.

OMB Control Number: 0584–0009.

Summary of Collection: The Food Stamp Act of 1977, (the Act) authorizes the Food and Nutrition Service (FNS), on behalf of the Secretary of Agriculture, to develop procedures for the delivery of food stamp coupons to issue agents and bulk storage points, and for monitoring the level of coupon inventories. Regulations for the Food Stamp Program require that each issuance and bulk inventory point report monthly issuance and food stamp inventory activity to FNS through the State agency using form FNS–250, Food Coupon Accountability Report.

Need and Use of the Information: The information collected on the FNS–250, Food Coupon Accountability Report, includes beginning and end-of-month coupon inventories, receipt and transfers of coupon shipments, coupons returned to inventory, and credits. The reported data is used by the FNS regional offices to validate the State agency liability billing for food stamp losses.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 475.

Frequency of Responses: Recordkeeping; reporting: Monthly.

Total Burden Hours: 17,100.

Food and Nutrition Service

Title: Food Stamp Forms: Applications, Periodic Reporting Notices.

OMB Control Number: 0584–0064.

Summary of Collection: The Food Stamp Act of 1977 (the Act) establishes a program whereby needy households may apply for and receive food stamp benefits. The Act requires certain reporting and recordkeeping requirements in administering the program. The Act specifies national eligibility standards and imposes certain administrative requirements on State agencies in administering the program. Information must be collected from households to assure that they are eligible for the program and that they receive the correct amount of food stamp benefits. Information collected is limited to that necessary for the administration and enforcement of the Food Stamp Program. The four laws associated with the application and certification of households for the Food Stamp Program are: Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), dated 8/22/96; Public Law 104–208, the Omnibus Consolidated Appropriations Act (OCAA), dated 9/30/96; Public Law 105–33, the Balanced Budget Act (BBA), dated August 5, 1997; and Public Law 105–185, the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA), dated June 23, 1998. The various provisions of these laws are implemented at 7 CFR Part 272, 273, and 274.

Need and Use of the Information: FNS will collect information to determine the eligibility of households for the food stamp program and to determine the correct benefit levels for eligible households. The social security number will be used to check the identity of household members, to prevent duplicate participation, to make mass food stamp changes, and to verify information. If information is not collected to certify households in accordance with the Act or changing the frequency of information or reporting

requirements as they relate to the application, certification, and continued eligibility of households would result in a direct violation of the Act and its implementing regulations. Further, benefits could be over or under issued for a long period of time if the necessary information is not collected or actions are not taken in a timely manner.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 18,131,799.

Frequency of Responses: Recordkeeping; reporting: On occasion; Monthly.

Total Burden Hours: 28,333,895.

Forest Service

Title: Improve Management of the Tongass National Forest and Service to Local.

OMB Control Number: 0596–NEW.

Summary of Collection: The Tongass National Forest encompasses nearly 85 percent of the land in southeast Alaska and forms the basis for the regional economy. Commercial fishing, timber production, mineral extraction, and the quickly growing tourism industry depend on the renewable and non-renewable natural resources of this national forest. The National Forest Management Act of 1976 requires Forest plans; the Alaska National Interest Conservation Act of 1980 requires evaluation of forest plans and other use actions in Alaska that may affect subsistence use of fish and wildlife. The Forest Service (FS) will manage the Tongass National Forest, the nation's largest National Forrest, over the next 10–15 years. Tourism, expected to continue to grow at 10–20% per year in coming years, is beginning to tax both the natural resources and the resident communities of the area. The Tongass Land Management Plan recognized significant changes in public use of the forest and in public values and attitudes and identifies the information needed to collect relevant socioeconomic date.

Need and Use of the Information: FS will collect information to identify needs by providing information on public use of the Tongass National Forest and on public attitudes and values relevant to the forest management issues that are likely to be important in coming years. The information collected will help in making regular management decisions and in developing larger scale plans for the Tongass National Forest. If the information is not collected, FS decision-making lacks essential information.

Description of Respondents: Individuals or households.

Number of Respondents: 1600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 800.

Forest Service

Title: Publication Comment Card.

OMB Control Number: 0596–NEW.

Summary of Collection: Executive Order 12862 issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector, and to establish and implement customer service standards to carry out principles of the National Performance Review. In response to this Executive Order, the Forest Service (FS) Southern Research Station developed a ''Publication Comment'' Card for inclusion when distributing scientific research publications. FS realizes that some changes in their publications may be necessary to achieve their goals and wishes to elicit voluntary feedback from their readers to help determine the changes to make.

Need and Use of the Information: FS will use the comment card to collect information, which will ask the respondents to rate the publication that they received or read. The information will be used to improve the readability and usefulness of FS articles, papers, and books. If the information is not collected FS will forgo any opportunity to learn valuable information from readers that would help them improve their products to better meet their needs.

Description of Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 222,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1833.

Food and Nutrition Service

Title: Food Stamp Program Regulations, Part 275—Quality Control.

OMB Control Number: 0584–0303.

Summary of Collection: The Food and Nutrition Service (FNS), as administrator of the Food Stamp Program, requires each State's agency to implement a quality control system to provide basis for determining each State agency's error rates through review of a sample of Food Stamp cases. Each State agency is responsible for the design and selection of the quality control samples and must submit a quality control sampling plan for approval to FNS. Additionally, State agencies are required to maintain case records for three years to ensure compliance with provisions of the Food Stamp Act of 1977.

Need and Use of the Information: The quality control sampling plan is necessary to FNS to monitor State operations and is essential to the determination of a State agency's error rate and corresponding entitlement to increased Federal share of its administrative costs or liability for sanctions.

Description of Respondents: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; reporting: On occasion; Annually.

Total Burden Hours: 3,830.

Agricultural Marketing Service

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Control Number: 0581–0031.

Summary of Collection: The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers and distributors by prohibiting unfair practices. PACA requires nearly all person who operates as commission merchants, dealers (of which now restaurants are a subset) and brokers buying or selling fruit and or vegetables in interstate or foreign commerce to be licensed.

Need and Use of the Information: AMS will collect information from the applicant to administer licensing provisions under the Act. Because of the volatility of the producer industry, it would impossible to regulate, if this information were collected less frequently.

Description of Respondents: Business or other for-profit; not-for-profit institutions; individuals or households; farms.

Number of Respondents: 15,829.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 155,138.

Agricultural Marketing Service

Title: Reporting Forms Under Milk Marketing Order Programs (From Milk Handlers and Milk Marketing Cooperatives).

OMB Control Number: 0581–0032.

Summary of Collection: Agricultural Marketing Service (AMS) oversees the

administration of the Federal Milk Marketing Orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended. This Act provides the framework for long-run process and marketing stability. The Federal Milk Marketing Order regulations require that milk handlers report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The report of receipts and utilization and the Producer Payroll report are completed by regulated milk handlers and milk marketing cooperative and are the principal reporting forms needed to administer the 11 Federal Milk Marketing Orders.

Need and Use of the Information: The information collected is needed to administer the classified pricing system and related requirements of each Federal Order. Forms are used for reporting purposes and to establish the quantity of milk received by handlers, the pooling status of the handler, and the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk. Without the monthly information, the market administrator would not have the information to compute each monthly price nor know if handlers were paying producers on dates prescribed in the order. Penalties are imposed for order violation, such as the failure to pay producers by the prescribed dates.

Description of Respondents: Business or other for-profit; not-for-profit institutions; individuals or households; farms.

Number of Respondents: 692.

Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly; monthly; annually.

Total Burden Hours: 23,858.

Sondra A. Blakey,

Departmental Information Clearance Officer.

[FR Doc. 01–19017 Filed 7–30–01; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Form FNS–648, WIC Local Agency Directory Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's (FNS) intention to request an extension for a currently approved information collection, the WIC Local Agency Directory Report.

DATES: Comments on this notice must be received by October 1, 2001.

ADDRESSES: 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. Comments may be sent to: Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to: Patricia N. Daniels, (703) 305–2749.

SUPPLEMENTARY INFORMATION:

Title: WIC Local Agency Directory Report.

OMB Number: 0584–0431.

Expiration Date: 11–30–2001.

Type of Request: Extension of a currently approved collection form.

Abstract: FNS administers the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) by awarding cash grants to State agencies (generally State health departments). The State agencies award subgrants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. FNS maintains a WIC Local Agency Directory which lists the names and addresses of all WIC local agencies. WIC State and local agencies and FNS use the directory to refer individuals to the nearest source of WIC Program services and to maintain continuity of program services to migrant and other transient participants. It is also used as a mailing list to provide local agencies with technical assistance manuals and other information. State agencies complete the WIC Local Agency Directory Report Form to inform FNS when a local agency is newly established, closed or changes its address. This data is needed to keep the directory current.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Directors or Administrators of WIC State agencies.

Estimated Number of Respondents: 88 respondents.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 14.96 hours.

Dated: July 11, 2001.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 01–18963 Filed 7–30–01; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Uniform Grant Application Package for Discretionary Grant Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is for a uniform grant application package for FNS discretionary grant programs. All FNS discretionary grant programs will be eligible, but not required, to use this uniform grant application package.

DATES: Comments on this notice must be received by October 1, 2001.

ADDRESSES: Send comments and requests for copies of this proposed information collection to Cato L. Watson, Jr., Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 322, Alexandria, VA 22302.

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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection. All comments will become matter of public record.

FOR FURTHER INFORMATION CONTACT: Cato Watson, (703) 305–2242.

SUPPLEMENTARY INFORMATION: *Title:* Uniform Grant Application Package for FNS Discretionary Grant Programs.

Type of request: New collection of information.

Abstract: FNS has a number of discretionary grant programs. (Consistent with the definition in 7 CFR part 3016, the term ''grant'' as used in this notice includes cooperative agreements.) The authorities for these grants vary and will be cited as part of each grant application solicitation.

The proposed information collection is for a uniform grant application package usable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All FNS discretionary grant programs will be eligible, but not required, to use the uniform grant application package. Before soliciting applications for a discretionary grant program, FNS will decide whether the uniform grant application package will meet the needs for that grant program. If FNS decides to use the uniform grant application package, FNS will note in the grant solicitation that applicants must use the uniform grant application package and that the information collection has already been approved by OMB. If FNS decides not to use the uniform grant application package or determines that it needs grant applicants to provide additional information not contained in the uniform package, then FNS will publish a notice soliciting comments on its proposal to collect different/additional information before making the grant solicitation.

The uniform grant application package will include general information and instructions; a checklist; requirement for the program narrative statement describing how the grant objectives will be reached; the Standard Form (SF) 424 series that requests basic information, budget information and assurances; and certifications. The proposed information collection covered by this notice is that related to the requirements for the program narrative statement. The requirements for the program narrative statement are based on the requirements for program narrative statements described in section 1.c(5) of OMB Circular A–102, and will apply to all types of grantees—State and local governments, non-profit organizations, and for-profit organizations. The information collection burdens related to the SF 424 series and the certifications have been separately approved by OMB.

Respondents: Applicants for FNS discretionary grant programs.

Estimated Number of Respondents: 455.

Estimated Annual Number of Responses per Respondent: 1.

Estimate of Burden: Public reporting burden for this collection of information is estimated to range from 4 hours to 80 hours.

Estimated Total Annual Burden: 23000 hours.

Dated: July 23, 2001.

George A. Bradley,

Acting Administrator, Food and Nutrition Service.

BILLING CODE 3410–30–M

grant/coop agreement description	number of grant/coop agreement applications received	number of grants/coop agreements awarded	estimated number of grant/coop agreement applications in FY 2002	estimated time to complete each application (excluding time fore SF-424, SF-269, etc.)	estimated total time
Annual competitive grants/cooperative agreements					
Team Nutrition grants	38 – FY 2000 36 – FY 2001	18 on average FY 2001 in process	31	40	1240
WIC EBT grants	12 – FY 2001	FY 2001 in process	10	40	400
WIC infrastructure grants	88 (all WIC SA agencies)	?? (grants awarded by FNSROs)	88	20	1760
WIC special project grants	12 – FY 2000 18 -- FY 2001 (full appl'n) 8 -- FY 2001 (concept only)	6 – FY 2000	18 full applications 8 concept papers	80 full applications 20 concept papers	1440 160
Food Stamps – Nutrition Education Outreach grants	110 -- FY 2001	14 -- FY 2001	300	60	18000
TOTALS			**455**	**4-80**	**23000**

[FR Doc. 01–18978 Filed 7–30–01; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Advisory Council on Maternal, Infant, and Fetal Nutrition; Notice of Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., this notice announces a meeting of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

DATE AND TIME: September 5–7, 2001, 9 a.m.–5 p.m.

ADDRESSES: Food and Nutrition Service, 3101 Park Center Drive, Conference Room 204–C, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION: The Council will continue its study of the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP). The agenda items will include a discussion of general program issues.

STATUS: Meetings of the Council are open to the public. Members of the public may participate, as time permits. Members of the public may file written statements with the contact person named below, before or after the meeting.

FOR FURTHER INFROMATION CONTACT: Persons wishing additional information about this meeting should contact Jackie Rodriguez, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. Telephone: (703) 305–2747.

Dated: July 24, 2001.

George A. Braley,

Acting Administrator.

[FR Doc. 01–18979 Filed 7–30–01; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: School Enrollment Report.

Form Number(s): P–4.

Agency Approval Number: 0607–0459.

Type of Request: Extension of a currently approved collection.

Burden: 15 hours.

Number of Respondents: 30.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau requests an extension of the current Office of Management and Budget clearance of the School Enrollment Report. Collection of school enrollment data is necessary to produce annual estimates of the population of states for application to current Federal programs. Each year, in the spring, the Census Bureau sends the School Enrollment Report to 30 state departments of education. The remaining states publish reports early in the year and we obtain those in our Census Bureau library. We request fall public and nonpublic school enrollment by grade for the state and selected counties in 24 of the states. In six states we request year end enrollment. Most of the respondents send back a printout or prepublication copy of their annual report instead of filling out the survey form. Many of the 30 departments of education will eventually publish reports containing enrollment figures, but not in time to use in our estimates.

School enrollment data are used by the Census Bureau to estimate both total state population and state population by age and sex. The Census Bureau's population estimates are regularly used by dozens of Federal agencies for allocating Federal program funds, as bases for rates of occurrence, and as input for Federal surveys. The estimates are also used by state and local governments, businesses, and the public for planning and other informational uses.

Affected Public: State, local, or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 181 and 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 25, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–18986 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–862]

Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Alex Villanueva, Marlene Hewitt, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0193, 482–6412, 482–1385, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (April 2000).

Final Determination

We determine that foundry coke products (''foundry coke'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margin of sales is shown in the ''Final Margin'' section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on March 8, 2001. *See*

Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke from the People's Republic of China, 66 FR 13885 (March 8, 2001) (''Preliminary Determination''). Since the publication of the *Preliminary Determination,* the following events have occurred.

On March 5, 2001, CITIC Trading Company (''CITIC'') requested that the Department correct a ministerial error found in CITIC's margin calculation. On March 13, 2001, the Department determined that the alleged ministerial error by CITIC was less than the five absolute percentage points minimum required by our regulations for a ministerial error to be significant. Accordingly, the error alleged by respondent is not a significant ministerial error within the meaning of 19 CFR 351.224(g)(1) and we did not make the suggested correction. However, as discussed in *Issues and Decision Memorandum for the Less Than Fair Value Investigation of Foundry Coke from the People's Republic of China: January 1, 2000 through June 30, 2000 from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration,* dated July 23, 2001(''*Decision Memorandum*'') we have made the adjustment for these final results.

On March 5, 2001, Shanxi Dajin International (Group) Co. Ltd. (''Dajin''), Sinochem International Company Ltd. (''Sinochem''), CITIC, and Minmetals Townlord Techonology, Ltd. (''Minmetals'') (collectively, ''respondents'') submitted a request to the Department to verify the factors of production for the related coal mines that responded to Section D of the Department's questionnaire.

On March 9, 2000, respondents submitted a request for a public hearing in accordance with 19 CFR 351.310(c). On March 5, 2001, ABC Coke, Erie Coke, Citizen's Coke and Gas Utility, and Tonawanda Coke Corporation, and the United Steelworkers of America, AFL-CIO (collectively, ''petitioners'') submitted a request for a public hearing.

On March 19–20, 2001, the Department conducted a U.S. sales data and completeness verification of CITIC and Sinochem. On March 21–22, 2001, the Department conducted a U.S. sales data and completeness verification of Minmetals. On March 22–23, 2001, the Department conducted a U.S. sales data and completeness verification of Grand Coalchem.

On March 26–27, 2001, the Department conducted a factors of production verification of Taiyuan Gengyang Coking Co., Ltd., a supplier of foundry coke to Minmetals. On March 28–29, 2001, the Department conducted a factors of production verification of Beizhang Xianghe Coking Co., Ltd., a supplier of foundry coke to CITIC and Grand Coalchem. On March 30–31, 2001, the Department conducted a factors of production verification of Shanxi Qing-Xu Yaxin Coking Company, Ltd., a supplier of foundry coke to Grand Coalchem and Sinochem. On April 1, 2001, the Department conducted a factors of production verification of Miaowan Coal Mine, a coking coal supplier to Bezihang Coking Factory Co., Ltd., a foundry coke supplier to CITIC and Grand Coalchem.

On June 12, 2001, petitioners submitted their case brief with respect to the sales and factors of production verification and the Department's *Preliminary Determination.* On June 12, 2001, respondents submitted their case brief with respect to the sales and factors of production verification and the Department's preliminary determination. On June 12, 2001, U-Met of PA Inc. (''U-Met''), an importer of the subject merchandise, submitted a case brief on the Department's preliminary determination. On June 15, 2001, petitioners and respondents submitted rebuttal briefs with respect to the sales and factors of production verification and the Department's Preliminary Determination.

On June 22, 2001, the Department held a public hearing in accordance with 19 CFR 351.310(d)(1). Representatives for respondents, petitioners, and U-Met were present. All parties present were allowed an opportunity to make affirmative presentations only on arguments included in that party's case briefs and were also allowed to make rebuttal presentations only on arguments included in that party's rebuttal brief.

Period of Investigation

The period of investigation is January 1, 2000, through June 30, 2000.

Non-Market Economy

The Department has treated the PRC as a non market economy (NME) country in all its past antidumping investigations. *See Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000) (''*Aspirin*''), and *Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China,* 66 FR 33522 (June 22, 2001) (''*Bars*''). A designation as an NME country remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see the Department's *Preliminary Determination.*

Separate Rates

In our *Preliminary Determination,* we found that the respondents had met the criteria for the application of separate antidumping duty rates. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separates rates determination with respect to the respondents. Therefore, we continue to find that the respondents should be assigned individual dumping margins. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the *Preliminary Determination.*

The PRC-Wide Rate

For the reasons set forth in the *Preliminary Determination,* we continue to believe that use of adverse facts available for the PRC-wide rate is appropriate. *See Preliminary Determination,* 66 FR at 13887–88.

Surrogate Country

For purposes of the final determination, we find that India remains the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see the Department's *Preliminary Determination* and the *Decision Memorandum* at 5.

Use of Facts Available

For a discussion of our application of facts available, see the ''Facts Available'' section of the *Decision Memorandum,* which is on file in B–099 and available on the Web at www.ita.doc.gov/import_admin/records/frn/.

Analysis of Comments Received

All issues raised in the case brief by parties to this investigation are addressed in the *Decision Memorandum,* which is hereby adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the *Decision Memorandum,* is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in

B–099. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. *See Analysis Memorandum for CITIC Trading Company, Shanxi Dajin International (Group) Company, Minmetals Townlord Technology Co., Ltd., and Sinochem International Company, Ltd.)* (collectively, ''*Respondent Analysis Memo''*).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by each respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see *Respondent Analysis Memo.*

Scope of Investigation

For purposes of this investigation, the product covered is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries.

The foundry coke products subject to this investigation were classifiable under subheading 2704.00.00.10 (as of Jan 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of subject merchandise from the PRC, that are entered, or withdrawn from warehouses, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margin is as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Shanxi Dajin International (Group) Co. Ltd	109.85
Sinochem International Co., Ltd	163.73
Minmetals Townlord Techonology Co. Ltd	76.19
CITIC Trading Company, Ltd	78.03
PRC-Wide Rate	214.89

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 23, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Changes From the Preliminary Determination

I. General Issues

Comment 1: Valuation and Surrogate Country Selection
Comment 2: Washed Versus Unwashed Coal
Comment 3: Related Coal Mines
Comment 4: Costs Subsequent to Shipment
Comment 5: Surrogate for Rail Transportation Costs
Comment 6: Surrogate for Grass Paper
Comment 7: Use of Adverse Facts Available to Calculate a PRC-Wide Dumping Margin
Comment 8: Use of Adverse Facts Available—Taiyuan
Comment 9: Use of Adverse Facts Available for Exporters and Suppliers for Failing to Cooperate to the Best of Their Ability
Comment 10: Use of Adverse Facts Available to Calculate Normal Value for Suppliers that Failed to Respond in this Investigation or That Failed Verification.
Comment 11: Department's Alleged Failure to Calculate a Fair Market Value for Foundry Coke

II. Company Specific Issues

Comment 12: Adverse Facts Application to Sinochem Sale (Scope coverage)
Comment 13: Ministerial Error from the Preliminary Determination—CITIC

[FR Doc. 01–19048 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

International Trade Administration

Rutgers University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–012. *Applicant:* Rutgers University, Piscataway, NJ 08854–8019. *Instrument:* Floating-Zone Optical Furnace, Model FZ–T–10000–H–VI–VP. *Manufacturer:* Crystal Systems, Inc., Japan. *Intended Use:* See notice at 66 FR 32601, June 15, 2001.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides a four-mirror image furnace with a homogeneous temperature gradient around the horizontal plane with a simultaneous steeper temperature gradient along the vertical portion for growth of various oxide single crystals. The National Aeronautics and Space Administration advised July 23, 2001 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value

to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–19049 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 01–015. *Applicant:* The Research Foundation of State University of New York, P. O. Box 9, Albany, NY 12201–0009. *Instrument:* XY Shifting Table and Accessories. *Manufacturer:* Luigs & Neumann, Germany. *Intended Use:* The instrument is intended to be used for the study of the electrical activity of single nerve cells in a brain circuit in physiological conditions and in experimental conditions that mimic brain diseases like epilepsy. *Application accepted by Commissioner of Customs:* July 14, 2001.

Docket Number: 01–016. *Applicant:* Yale University, Traffic Department, 155 Whitney Avenue, P.O. Box 208202, New Haven, CT 06520–8202. *Instrument:* (2) High Pressure Presses, Models TRY10ES and Drickamer Cell. *Manufacturer:* Okaya & Co., Ltd., Japan. *Intended Use:* The instrument is intended to be used for studies of minerals and rocks (dense silicate minerals such as olivine, wadsleyite, ringwoodite and akimomoite) in the Earth's interior. Application accepted by Commissioner of Customs: July 19, 2001.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–19050 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics for Calendar Year 2001

July 10, 2001.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of Allocation of Worsted Wool Fabric Tariff Rate Quota

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

The Department of Commerce (Department) has determined the allocation for calendar year 2001 of imports of certain worsted wool fabrics under tariff rate quotas established by Title V of the Trade and Development Act of 2000. The companies that are being provided an allocation are listed below.

Background

Title V of the Trade and Development Act of 2000 (the Act) creates two tariff rate quotas, providing for temporary reductions in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers. For worsted wool fabric with average fiber diameters greater than 18.5 microns (new Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meter equivalents per year. For worsted wool fabric with average fiber diameters of 18.5 microns or less (new HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meter equivalents per year. Both these limitations may be modified by the President, not to exceed 1,000,000 square meter equivalents per year for each tariff rate quota. The Act requires the President to take action to ensure that such fabrics are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year. Presidential Proclamation 7383 of December 1, 2000, authorized the Secretary of Commerce to allocate the quantity of worsted wool fabric imports under the tariff rate quotas. On January 22, 2001, the Department published regulations establishing procedures for applying for, and determining, such allocations. 66 FR 6459, 15 C.F.R. 335.

On March 14, 2001, the Department published a notice soliciting applications for an allocation of the 2001 tariff rate quotas with a closing date of April 13, 2001. The Department received timely applications for the HTS 9902.51.11 tariff rate quota from 12 firms. The Department received timely applications for the HTS 9902.51.12 tariff rate quota from 15 firms. All applicants were determined to be eligible for an allocation. The Department determined the appropriate allocations in accordance with 15 C.F.R. 335.

Most applicants submitted data on a business confidential basis. As allocations to firms were determined on the basis of this data, the Department considers individual firm allocations to be business confidential.

Firms That Received Allocations

1. HTS 9902.51.11, fabrics, of worsted wool, with average fiber diameter greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.20 and 5112.19.90)

Amount Allocated: 2,500,000 square meter equivalents

Companies Receiving Allocation:

American Fashion, Inc.	Chula Vista, CA
Bowdon Manufacturing Company	Bowdon, GA
C.K. Apparel Corporation	New York, NY
Corbin Ltd.	Ashland, KY
Hartmarx Corporation	Chicago, IL
Hartwick Clothes	Cleveland, TN
Hartz & Company	Frederick, MD
Hugo Boss Cleveland, Inc.	Brooklyn, OH
J.A. Apparel Corporation	New York, NY
John H. Daniel Company	Knoxville, TN
Pincus Brothers, Inc.	Philadelphia, PA
The Tom James Company	Franklin, TN

2. HTS 9902.51.12, fabrics, of worsted wool, with average fiber diameters of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (provided for in subheading 5112.11.20 and 5112.19.90)

Amount Allocated: 1,500,000 square meter equivalents

Companies Receiving Allocation:

American Fashion, Inc.	Chula Vista, CA
Brooks Brothers, Inc.	New York, NY
C.K. Apparel Corporation	New York, NY
Corbin Ltd.	Ashland, KY
Dormevil Personal Tailoring	New York, NY
Hartmarx Corporation	Chicago, IL
Hartwick Clothes	Cleveland TN
Hartz & Company	Frederick, MD
Hugo Boss Cleveland, Inc	Brooklyn, OH
J.A. Apparel Corporation	New York, NY
John H. Daniel Company	Knoxville, TN
Martin Greenfield Clothiers	Brooklyn, NY
Pincus Brothers, Inc.	Philadelphia, PA
Saint Laurie, Ltd.	New York, NY
The Tom James Company	Franklin, TN

Dated: July 10, 2001.

Jonathan C. Menes,

Acting Assistant Secretary for Trade Development, Department of Commerce

[FR Doc. 01–18954 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Meeting to Discuss an Opportunity To Join a Cooperative Research and Development Consortium on a NIST MEP eBusiness Demonstration Testbed

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on August 21, 2001 to discuss the possibility of setting up a cooperative research consortium. The objective of this consortium is to address interrelated technical and non-technical problems associated with the adoption of eBusiness practices and technologies by smaller U.S. manufacturing firms.

DATES: The meeting will take place on August 21 at 9 a.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

ADDRESSES: The meeting will take place in Building 101, Lecture Room B, National Institute of Standards and Technology, Gaithersburg, MD 20899–8422.

FOR FURTHER INFORMATION CONTACT: Dr. David C. Cranmer, Supply & Plant (301), Room C143, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. Telepnone: 301–975–5735; FAX: 301–926–3787; e-mail: *david.cranner@nist.gov*.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology's Manufacturing Extension Partnership (NIST MEP) has identified a number of interrelated technical and non-techical problems associated with the adoption of eBusiness practices and technologies by smaller U.S. manufacturing firms. The problems include but are not limited to lack of awareness of the requirements of original equipment manufacturers (OEMs) and others for adoption of some of these methodologies; the benefits, opportunities, and limitations of these practices and technologies; incompatibility and/or poor fit of applications with business processes used by smaller manufacturers; incompatibility of applications with one another with respect to data transfer, which frequently requires data to be reentered in subsequent applications; and authenticity/security of data and information systems. NIST MEP believes that these problems can be solved in part through the creation of an eBusiness demonstration testbed. The purpose of the testbed is to allow MEP Centers and manufacturing companies to experience high impact technologies integral to competing and succeeding in the electronic marketplace using a series of simulations reflective of different types and sophistications of virtual manufacturing companies, and be able

to provide feedback to the testbed participants on these technologies and their use in various environments and conditions. This will provide improved knowledge of the needs of smaller U.S. manufacturers leading to improved tools, products and services, which will in turn enhance their global competitiveness.

NIST MEP has prepared a document of supplemental information about the testbed and its activities, the types of problems and approaches to solutions, selection criteria for inclusion in the testbed, provisions of cooperative research and development or other agreements, and the NIST MEP program. This document is available on the NIST MEP website (*www.mep.nist.gov*), or can be requested from NIST MEP by calling 301.975.5020, by fax at 301.975.6556, or by e-mail to *testbed_manager@mep.nist.gov*.

Dated: July 25, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01–19056 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mystery Oil Spill at Ft. Lauderdale, FL and Vicinity, August 8, 2000: Notice of Intent To Conduct Restoration Planning Pursuant to 15 CFR 990.44

AGENCIES: National Oceanic and Atmospheric Administration of the Department of Commerce (NOAA) and Florida Department of Environmental Protection (FDEP).

ACTION: Notice of intent to conduct restoration planning pursuant to the Oil Pollution Act of 1990 for the impacts of the August 2000 mystery oil spill in the Ft. Lauderdale, Florida area.

SUMMARY: Natural resource trustees (Trustees) are designated pursuant to the Oil Pollution Act of 1990, 33 U.S.C. 2706(e), Executive Order 12777, and the National Contingency Plan, 40 CFR 300.600 and 300.605, with responsibility to conduct natural resource damage assessments on behalf of the public when releases of oil affect natural resources and services. A discharge of oil exposed approximately 20 miles of beaches north and south of Ft. Lauderdale, Florida, on or about August 8, 2000. Trustees for this incident are the U.S. Department of the Interior (DOI), FDEP, and NOAA, though DOI has elected not to participate in the assessment. The Trustees have determined that the incident warrants conducting a natural resource damage assessment (NRDA). This notice serves to inform the public that the Trustees are proceeding with the assessment, including restoration planning, and will subsequently seek public input for planning restoration for the injuries resulting from this oil spill. This assessment will be conducted in accordance with the NRDA regulations for oil spills at 15 CFR part 990.

ADDRESSES: A copy of this Notice of Intent, the Trustee Assessment Strategy, and related information is available for downloading at *http://www.darp.noaa.gov/publicat.htm, http://www.dep.state.fl.us/law/ber,* or *http://www.incidentnews.gov/incidents/incident_4.htm.* Copies of this notice, and further information relating to the assessment and restoration planning may be obtained by contacting: Jim Jeansonne, NOAA Damage Assessment Center, 9721 Executive Center Drive N., St. Petersburg, FL 33702, Phone: 727–570–5391, X–159, email: *Jim.Jeansonne@noaa.gov,* or Cathy Porthouse, FDEP Bureau of Emergency Response, P.O. Box 15425, West Palm Beach, FL 33416, Phone: 561–681–6711, Email: *Catherine.Porthouse@dep.state.fl.us.*

SUPPLEMENTARY INFORMATION: In support of their decision to proceed with the assessment and issue this notice, the Trustees have made several determinations as required by 15 CFR 990.41. First, the Trustees have jurisdiction to pursue restoration pursuant to the Oil Pollution Act. The Trustees have determined that the discharge of 15,000 gallons, or more, of oil which resulted in oil exposure of the marine waters and shorelines of the United States and Florida, was an incident as defined in 15 CFR 990.30. This incident was not permitted under State, Federal or local law. Using information gathered during preassessment, the Trustees have determined that natural resources under their trusteeship have been injured as a result of this incident.

The Trustees have made the further determination required by 15 CFR 990.42(a), that it is appropriate to proceed with restoration planning for this incident. Restoration planning is necessary since injuries have resulted from the incident. The Trustees base this determination upon data that demonstrates natural resources and services have been injured. Natural resources or their services injured as a result of the spill and spill response may include, but are not limited to: Threatened and endangered sea turtles and their habitats, marine surface waters and their biota including fish, birds, other wildlife species, benthic communities, and recreational use of beaches. The spill occurred during the active sea turtle nesting and hatchling emergence season at the exposed beaches. Sea turtles are protected under the Endangered Species Act. Local groups and the response organizations acted quickly to protect sea turtle nests and hatchlings on exposed beaches. However, hatchlings that entered the ocean and began their swim eastward into the Gulf Stream were at risk of oil exposure and injury or death as a result of contact with the oil while transiting the beach and once in the ocean. Other biota in and on the marine waters swept by the oil slick, and in the surf zone of the exposed areas, were likely exposed, and potentially injured or killed as a result of the spilled oil. Public recreational use of several beaches and fishing piers was significantly disrupted. Records of beach recreational use for Ft. Lauderdale, John U. Lloyd State Recreation Area, Dania, and Hollywood beaches indicate there was a significant reduction in attendance for several days until the oil was removed.

Response actions have not adequately addressed, or are not expected to address, the potential injuries from the incident, so restoration planning is required. Response actions were able to remove the majority of the shoreline oil within a few days of oiling. However, response records indicated that deposits of submerged oil were present in sediments just seaward of the most heavily exposed beaches, and that efforts to remove these oil deposits were only partially successful. These response actions did not restore or rehabilitate natural resource injuries that resulted from the discharge of oil. Use of the recreational beaches likely returned to baseline conditions the week following the spill. However, the public has not been compensated for the loss of beach use associated with the incident and response operations.

The Trustees are conducting restoration planning since there are feasible primary and/or compensatory restoration actions available to address the potential injuries. There are many opportunities to restore or compensate for injury to sea turtle and other nearshore marine resources near the affected areas. The Trustees have begun to identify appropriate specific restoration programs and projects for this incident. Multiple opportunities also exist to compensate for lost beach use in the affected area. The Trustees will benefit from restoration planning for similar recreational beach losses

associated with the 1993 Tampa Bay oil spill, which is currently in the restoration implementation stage.

Finally, restoration planning is being undertaken since assessment procedures exist to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services. The Trustees have determined that assessment procedures are available that are appropriate for this incident and that meet the applicable standards for such methods in 15 CFR 990.27. The Trustees have prepared a ''Trustee NRDA Assessment Strategy and Action Plan'' (Strategy) for this incident. As discussed in the Strategy, the Trustees intend to use a computer model-based method to determine and quantify ecological injuries, while potentially augmenting the model with additional injury data obtained during spill response and preassessment, and from available routine sea turtle monitoring data. For lost public recreational beach use, the Trustees intend to quantify the injury as reduction in beach visits, by use of available beach attendance records and interviews with managers for the affected beaches. The value of lost trips will be derived from appropriate studies within the economics literature and a similar valuation conducted for the 1993 Tampa Bay oil spill NRDA.

The Trustees have begun compiling applicable documents into an Administrative Record that explains the assessment and restoration decision-making process for this incident. Information regarding public access to this record may be obtained by contacting: Cheryl Scannell, NOAA Office of General Counsel, Southeast, phone 727–570–5365, fax: 727–570–5376, email: *Cheryl.Scannell@noaa.gov.*

This oil spill incident has no identified responsible party. Legal notices were published by the U.S. Coast Guard in south Florida newspapers advertising the process by which Oil Pollution Act claims resulting from this incident, including natural resource damages claims, may be submitted to the Federal Oil Spill Liability Trust Fund for payment, in the absence of a known responsible party.

FOR FURTHER INFORMATION: For further information relating to this notice contact: Jim Jeansonne, NOAA Damage Assessment Center, St. Petersburg, FL, 727–570–5391, X–159, email: *Jim.Jeansonne@noaa.gov,* or Cathy Porthouse, FDEP Bureau of Emergency Response, West Palm Beach, FL, 561–681–6711, email: *Catherine.Porthouse@dep.state.fl.us.*

Dated: July 18, 2001.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 01–18755 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071801B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) will hold a public meeting.

DATES: The CPSMT will meet Tuesday, August 14, 2001 and Wednesday, August 15, 2001. On Tuesday, the CPSMT will meet from 8 a.m. to 5 p.m. On Wednesday, the CPSMT will meet from 8 a.m. until business for the day is completed.

ADDRESSES: The meeting will be held in the large conference room at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D-203, La Jolla, CA 92038–0271; 858–546–7100.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; 503326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review results from the Market Squid Maximum Sustainable Yield (MSY) Methodology Review Workshop. The CPSMT will consider how to incorporate the workshop panel's recommended management alternatives for specifying market squid MSY (or MSY proxy) into the Coastal Pelagic Species Fishery Management Plan (FMP). The CPSMT will also review preliminary documents associated with Amendment 10 to the FMP.

Although nonemergency issues not contained in the meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal CPSMT action during this meetings. CPSMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–326–6352 at least 5 days prior to the meeting date.

Special Accommodations

Dated: July 25, 2001.

Dean Swanson,

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

[FR Doc. 01–19059 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062901D]

Marine Mammals; Permits

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

ACTION: Receipt of applications No. 42–1642, 555–1638 and 782–1645; and receipt of application to amend Permit No. 376–1520–01.

SUMMARY: Notice is hereby given of the following actions for takes of marine mammal species for the purposes of scientific research:

NMFS has received permit applications from: Mystic Aquarium, 55 Coogan Blvd., Mystic, CT 06355 (Dr. Lisa Mazarro, Principal Investigator) (Application No. 42–1642); James Harvey, Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039 (Application No. 555–1638); and NMFS, National Marine Mammal Laboratory, 7600 Sand Point Way, N.E., BIN C15700, Seattle, WA 98115–0070 (Dr. Robert DeLong, Principal Investigator) (Application No. 782–1645); and NMFS has received an application for a permit amendment from Jim Hain, Associated Scientists at Woods Hole, Box 721, Woods Hole, MA 02543 (Permit No. 376–1520–01).

DATES: Written or telefaxed comments must be received on or before August 30, 2001.

ADDRESSES: The application and related documents are available for review upon written request or by appointment. See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, Tammy Adams, or Amy Sloan, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permits and permit amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*)

Applications for Permits Received

For Application No. 42–1642, the applicant requests permission to study metabolic clearance rates of vitamins A and E using isotope tracers and vitamin analogs in captive Steller sea lions, relation to various life history stages, establish the vitamin A and E status of free-ranging Steller sea lions, determine the metabolic requirements for these vitamins by relating intake to blood levels in captive specimens, and receive or import serum and milk samples from captive marine mammals held in facilities within the United States and abroad to study the disease hemochromatosis (an excessive accumulation of iron in tissues often associated with hepatic lesions) as well as others associated with general marine mammal health.

For Application No. 555–1638, the applicant requests permission to conduct research on 22 cetacean species and 5 pinniped species in the North Pacific Ocean along the coasts of California, Oregon, Washington, and Alaska (below the Aleutian Islands) in order to study the following: distribution and abundance related to environmental factors; prey and foraging behaviors; health and stock structure of individuals; effects of anthropogenic factors (i.e., vessel noise) on acoustic signals; and movements of individuals or pods during migrations or within their home range. This research will be accomplished using aerial and shipboard line-transect survey methods, monitoring of radio-tagged individuals, recording behavior and vocalizations, collecting biopsy samples from cetaceans, and collecting blood and morphometric measurements from small cetaceans and pinnipeds.

For Application No. 782–1645, the applicant requests permission to capture and attach radio-telemetry devices to harbor porpoises (*Phocoena phocoena*) off the coasts of Oregon and Washington to monitor the movements of tagged animals relative to current stock boundaries, and to collect blubber biopsies to determine organochlorine contaminant burdens.

Application to Amend a Permit Received

For Permit No. 376–1520–01, the Permit authorizes the Holder to approach a variety of cetacean species to conduct photo-identification and behavioral observations. The approach distances in the permit are currently limited to : within 100 ft (31 m) by vessel, 200 ft (61 m) directly above and 350 ft (107 m) slant range by aircraft for all species except North Atlantic right whales (*Eubalaena glacialis*), and within 700 ft (213 m) directly above and at slant range in fixed- and rotary-winged aircraft, and 500 ft (152 m) directly above and 350 ft (107 m) slant range using an aerostat (blimp) for right whales. The holder now requests permission to approach North Atlantic right whales within 100 ft (31 m) in a variety of small vessels, including kayaks, for the purpose of photo-identification.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on any of these applications should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

For all permit applications and the application to amend a permit: Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

For Applications No. 42–1642, 555–1638, and 782–1645: Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

For Applications No. 42–1642 and 555–1638: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249;

For Applications No. 42–1642 and 555–1638: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018;

For Application No. 555–1638: Protected Species Coordinator, Pacific Area Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808) 973–2935; fax (808) 973–2941;

For Application No. 42–1642 and Permit No. 376–1520–01: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9200; fax (978) 281–9371;

For Application No. 42–1642 and Permit No. 376–1520–01: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727) 570–5301; fax (727) 570–5320.

Dated: July 24, 2001.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 01–19062 Filed 7–30–01; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice Inviting Applications for Technical and Administrative Support for the National Service-Learning Leader Schools Program

AGENCY: Corporation for National and Community Service.

ACTION: Notice inviting applications to administer program.

SUMMARY: The Corporation for National and Community Service (the Corporation) announces that it expects to have available up to $600,000 assistance to develop and implement

the National Service-Learning Leader Schools program through a cooperative agreement with an organization selected under this notice. The program recognizes middle and high schools providing outstanding service-learning opportunities for students. Under this program, the Corporation intends to work with the selected organization to: (1) Work with experts to identify standards for high quality, broad-based service-learning programs in middle and high schools; (2) offer opportunities for all middle and high schools to address these standards in their Leader School award applications; (3) provide awards to a selected group of Leader Schools; and (4) provide training in leadership and service-learning to Leader Schools.

DATES: Proposals must be received by the Corporation by 5 p.m. Eastern Time on September 14, 2001. Applications may not be submitted by facsimile.

ADDRESSES: Submit proposals to the Corporation for National and Community Service, Department of Service-Learning, 1201 New York Avenue NW., Attention: Bob Bhaerman, Room 8307, Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Bob Bhaerman, (202) 606–5000, ext. 341, TTY (202) 565–2799; e-mail *rbhaerma@cns.gov.* This Notice is available on the Corporation's web site, http://www.nationalservice.org/whatshot/notices/. Upon request, this information will be made available in alternate forms for people with disabilities.

SUPPLEMENTARY INFORMATION:

I. Availability of Funds

The estimated amount of funds available for the award under this competition is based on the history of conducting the program for a one-year period; and the actual level of funding, if any, is contingent on the availability of appropriations.

II. Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in school-, college-, and community-based service. This service addresses the nation's educational, public safety, environmental, and other human needs. The Corporation funds K–12 service-learning programs that provide opportunities for students to become engaged citizens through active participation in thoughtfully organized service that is conducted in and meets the needs of a community and is integrated into academic and/or vocational curriculum.

The purpose of the National Service-Learning Leader Schools program is to encourage the development of service-learning programs at middle and high schools by recognizing high quality, broad-based service-learning programs in schools. The program is national in scope and involves practitioners in schools as well as service-learning personnel in State Education Agencies and other state and national education and service organizations.

The Corporation will enter into a cooperative agreement with the successful applicant who will work with representatives of the Corporation to administer the program, including working with existing Leader Schools, and other experts in education to revise a set of criteria to be used in selecting Leader Schools. These criteria include evidence that the school has (1) integrated community service into the academic and/or vocational curriculum, (2) conducted community service that is coordinated with the community and that meets identified needs of the community, (3) integrated service-learning into the culture and climate of the school, (4) developed activities that foster civic responsibility and student leadership, (5) provided structured time for students and teachers to reflect on the service experience, and (6) assessed the impact on service-learning on student learning, behavior, attendance, teaching methods, and/or the community.

III. Eligibility

Public agencies, non-profit organizations, institutions of higher education, Indian tribes, and for-profit companies are eligible to apply. Pursuant to the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c) (4), that engages in lobbying activities is not eligible to apply.

IV. Conditions

(a) Legal Authority

Pursuant to the National and Community Service Act of 1990, as amended, 42 U.S.C. 12501, *et seq.*, the Corporation may ''support innovative and model programs.'' Under this authority, the Corporation intends to support a National Service-Learning Leader School program.

(b) Cooperative Agreement

The award under this Notice will be in the form of a cooperative agreement. Administration of cooperative agreements is pursuant to Uniform Administrative Requirements in Corporation regulations, 45 CFR Part 2541 (for agreements with state and local government agencies) and 45 CFR Part 2543 (for agreements with institutions of higher education, hospitals, and other non-profit organizations and for-profit companies). The awardee must comply with semi-annual program and fiscal reporting requirements, linking progress to expenditures.

(c) Time Frame

The Corporation expects that the activities funded under the agreement will commence on or about October 1, 2001, following the conclusion of the selection and award process. The Corporation will make an award covering a period not to exceed three years. Applicants must include a proposed budget and proposed activities for three years, with a line-item budget and detailed work plan for the first one-year budget period only. The Corporation expects to have up to $600,000 available for the first year of this agreement, contingent on congressional appropriations for FY 2002. If the Corporation approves an application and enters into a multi-year award agreement, at the outset it will provide funding only for the first year of the award period as funds are made available by Congress. The Corporation has no obligation to provide additional funding in subsequent years. Funding for the second and third years of an award period also is contingent upon satisfactory performance, the availability of funds, and any other criteria established in the award agreement.

(d) Use of Materials

To ensure that materials generated with Corporation funding for the technical and administrative support for this program are available to the public and readily accessible to the field, the Corporation reserves a royalty-free, non-exclusive, and irrevocable right to obtain, use, reproduce, publish, or disseminate publications and materials produced under this agreement, including data, and to authorize others to do so. The provider must agree to make such publications and materials available to the national service field, as identified by the Corporation, at no cost or at the cost of reproduction. All materials developed for the Corporation must be consistent with Corporation editorial and publication guidelines and must be accessible to individuals with disabilities to the extent required by law.

V. Scope of Activities

The Corporation anticipates that it will be substantially involved in carrying out the program with the successful applicant providing administrative and technical support during all phases of the program. Corporation involvement will include approval of the final program design and implementation plan. The Corporation expects that the initial budget period under this award will be October 1, 2001 to September 30, 2002. The following three primary and 18 specific activities will be conducted:

(a) Conduct the Application and Review Process

(1) Prepare applications and disseminate them through national outreach activities.
(2) Coordinate state education agency involvement in the competitive and formula outreach and selection process.
(3) Provide implementation support to the state education agencies.
(4) Manage the national review and selection process.

(b) Provide Support to Leader Schools

(1) Monitor and report the progress of the selected schools. (Leader Schools serve for two years.)
(2) Coordinate communication with and among Leader Schools.
(3) Provide individualized technical assistance and facilitate peer-to-peer assistance.
(4) Plan and conduct an annual technical assistance Leadership Institute.
(5) Support Leader Schools as active service-learning leaders.

(c) Conduct Activities Related to Other Aspects of the Program

(1) Publicize the program through a variety of marketing strategies.
(2) Maintain contacts with the press.
(3) Maintain a web site and listserv for the program.
(4) Convene an advisory group annually.
(5) Plan for the possible expansion of the program to other educational levels.
(6) Revise program criteria and materials.
(7) Link the program with other recognition programs such as the President's Student Service Awards and Scholarships and with Corporation for National Service training activities such as the National Service-Learning Exchange.
(8) Develop and manage the re-certification process for schools to remain Leader Schools after two years.
(9) Report progress on all of the activities to the Corporation, as indicated in the following section.

VI. Reporting Requirements

The awardee is responsible for submitting timely progress and financial reports during and at the Conclusion of the award period to the Corporation as follows:

(a) Semi-annual progress reports.

Progress reports must be submitted semi-annually based on the following schedule:

Reporting periods	Reports due
October 1 to March 31.	April 30.
April 1 to September 30.	October 31.

The provider must develop the capacity to submit this information electronically.

At a minimum, progress reports must provide the following information:

(1) Comparison of accomplishments with the goals and objectives for the reporting period;

(2) Annotated version of the approved budget that compares actual costs with budgeted costs by line item and explains differences. The explanation should include, as appropriate, an analysis of cost overruns and high-cost units and a description of activities not anticipated in the original budget;

(3) Description of the activities, including a list of upcoming activities and events with dates; and

(4) Developments that hinder, or may hinder, compliance with the cooperative agreement.

(b) Financial reports must be submitted semi-annually to include a summary of expenditures during the period. A cumulative report must be submitted on the Financial Status Report (FSR) form SF 269A.

(c) Final reports.

(1) Awardees completing the final year of the agreement must submit, in lieu of the last semi-annual progress report, a final progress report that is cumulative over the entire award period. This final report is due within 90 days after the close of the agreement.

(2) Awardees completing the final year of the award must submit, in lieu of the last semi-annual FSR, a final FSR that is cumulative over the entire award period. This FSR is due within 90 days after the end of the agreement.

(d) Financial reports must be submitted in three (3) copies to the Office of Grants Management. Progress reports must be submitted in three (3) copies to the Corporation's cognizant program officer of the award.

VII. Application Guidelines

(a) Proposal Content and Submission

Applicants must submit one (1) unbound, original proposal and two (2) copies. The program narrative application must not exceed 25 double-spaced, single-sided, typed pages with at least one-inch margins and no smaller than 12-point font. You must complete the Standard Form 424 (SF 424)—Application for Federal Assistance, Standard Form 424A (SF424A)—Budget Forms, and Standard Form 424B (SF424B)— Assurances. These forms are available on the web at: http://www.nationalservice.org/whatshot/notices. Proposals may not be submitted by facsimile. Proposals must include the following:

(1) Cover Page

Include the name, address, phone number, fax number, e-mail address of the contact person and World Wide Web site URL (if available) of the applicant organization, and the total funding amount requested for the first year.

(2) Description of How and When the Three (3) Primary and 18 Specific Activities Will Be Implemented

(3) Description of Organizational Capacity to Provide the Technical and Administrative Support of This Initiative, Including Descriptions of Recent Work Similar to That Being Proposed

(4) Budget [Not Part of the Page Limit]

Include a detailed, line-item budget for the first year with costs organized by activities outlined in the work plan and a projected overall budget for the second and third years. Use Standard Form 424B for the first year budget information. Financial reporting throughout the term of the cooperative agreement must be organized so that all costs are attributed to specific activities. Costs in proposed budgets must consist solely of costs allowable under applicable cost principles found in OMB Circulars A–21, A–122, and/or A–87, as appropriate.

(5) Budget Narrative [Not Part of the Page Limit]

The budget narrative should parallel all items in the line-item budget and explain the cost basis for all cost estimates in the budget. Clearly show how each cost item was derived.

(6) Appendices [Not Part of the Page Limit; No More Than 5 Items]

Items may include referral to the address of an applicant-designed web

site, brochures, other publicity items, and/or staff resumes.

(b) Selection Criteria

The Corporation will initially determine whether the organization is eligible and whether the application contains all of the information required. After the initial screening, the Corporation will assess applications based on the following criteria. Following the review process, the Corporation will notify applicants of their status in writing.

(1) Program Design (60%)

The quality of the applicant's proposed plan, including a description of how and when the applicant plans to meet each of the three (3) primary and 18 specific activities.

(2) Organizational Capacity (25%)

The applicant's organizational experience and capacity to carry out the activities described in this Notice, including the following components:

- Ability to provide sound programmatic and fiscal oversight;
- Experience of key personnel;
- Well-defined staff roles; and
- Well-designed plans evaluation plans.

(3) Budget and Cost Effectiveness (15%)

The extent to which:

- The budget is adequate to support the scope of the activities; and
- The proposed costs are reasonable in relation to the program's activities.

Dated: July 26, 2001.

Jodi Raybuck,

Acting Director, Department of Service-Learning, Corporation for National and Community Service.

[FR Doc. 01–19012 Filed 7–30–01; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 1, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 200 Stovall Street, Alexandria, Virginia 22332–5000, ATTN: MTPP–S (Ben Jozwiak). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance office at (703) 614–0454.

Title, Associated Form, and OMB Number: Tender of Service and Letter of Intent for Personal Property Household Goods and Unaccompanied Baggage Shipments, DD Form 619, OMB Control Number 0702–022.

Needs and Uses: Since household goods (HHG) move at Government expense, data is needed to choose the best service at lowest cost to the Government. The information provided by the carrier serves as a bid for contract to transport HHG, unaccompanied baggage, mobile homes, and boats. This information is collected on a regular basis, but is submitted intermittently throughout the year. Best-service-for-least-cost carrier receives the contract. DD Form 619 certifies that accessorial services were actually performed. The Government would not know which carriers to use for shipping personal property if they could not collect this information.

Affected Public: Business or other for-profit.

Annual Burden Hours: 70,548.

Number of Respondents: 2,636.

Responses per Respondent: 441,677.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Tender of Service is the contractual agreement between DOD and the carrier, under which the carrier agrees to provide service in accordance with the terms and conditions cited in the Tender of Service. In accordance with the provisions of DOD 4500.9–R, the DD Form 619 is used by the household goods carrier industry to itemize packing material and other charges for billing purposes on household goods and unaccompanied baggage shipments.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18980 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proposed 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 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 1, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 200 Stovall Street, Alexandria, Virginia 22332–5000, ATTN: MTPP–S (Ben Jozwiak). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call

Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Tender of Service-Mobile Home/Boats, OMB Control Number 0704–0056.

Needs and Uses: Since mobile homes/boats move at Government expense, data is needed in order to select the best service at the lowest overall cost to the Government. The information provided by the carrier serves as his bid for contract to transport mobile homes/boats. This information is not collected on a regular basis but is submitted intermittently throughout the year. The Government would not know which carriers to use for shipping mobile homes/boats if they could not collect this information.

Affected Public: Business or other for-profit.

Annual Burden Hours: 210.

Number of Respondents: 23.

Responses per Respondent: 9.

Average Burden per Response: 1 hour 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Under provisions of DOD 4500.9R, Tenders of Service and Signature Sheets are prepared and filed with MTMC by carriers. The carrier submits a Tender of Service to HQMTMC (MTPP–HQ) to obtain approval from DOD to participate in award of shipments to move mobile homes/boats. The Tender of Service is the contractual agreement between DOD and the carrier, under which the carrier agrees to provide service in accordance with the terms and conditions cited in the Tender of Service.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18995 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 1, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Military Traffic Management Command, 200 Stovall Street, Alexandria, Virginia 22332–5000, ATTN: (Mark Gerade). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Signature and Tally Records, DD Form 1907, OMB Control Number 0702–0027.

Needs and Uses: Signature and Tally Record (STR) is an integral part of the Defense Transportation System and is used for commercial movements of all sensitive and classified material. The STR provides continuous responsibility for the custody of shipments in transit and requires each person responsible for the proper handling of the cargo to sign their name at the time they assume responsibility for the shipment, from point of origin and at specified stages until delivery at destination.

Affected Public: Business or other for profit.

Annual Burden Hours: 3,750.

Number of Respondents: 130.

Responses per Respondent: 75,000.

Average Burden per Response: 3 minutes.

Frequency: As required.

SUPPLEMENTARY INFORMATION: The destination transportation officer uses the DD Form 1907 to assure that the carriers utilize the STR and provide the transportation service as requested by origin shipper. A copy of the STR, along with other transportation documentation, is forwarded by the carrier to the appropriate finance center for payment. The DD Form 1907 verifies the protected services requested in the Bill of Lading that was provided.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18996 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Available for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Method and Compositions for Treating and Preventing Retinal Damage

AGENCY: U.S. Army Medical Research and Material Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/590,174 entitled ''Method and Compositions for Treating and Preventing Retinal Damage'' filed June 9, 2000. Foreign rights are also available (PCT/US00/15812). This patent has been assigned to the Untied States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Pual Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention relates to the use of dihydrolipoci acid and alpha-lipoic acid to treat and prevent retinal damage arising from physical forces such as laser beams and to compositions containing phenyl nitrones and dihydrolipoic acids or alpha-lipoic acid as neuroprotective agents. The protective effect is believed to be due to the metabolites ability to protect neurons by a direct antioxidant effect, recycling of antioxidant vitamins E and C by redox, enhancement of glutathione, creation of at least 8 species of free radicals, and enhancement of intracellular ATP. Such may be useful in glaucoma, temporal arteritis, macular degeneration, diabetic retinopathy, proliferative retinopathy, retinitis pigmentosa and as an adjunctive

prophylactic therapy prior to or following cataract surgery.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18984 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of Draft Programmatic Environmental Impact Statement for the Nationwide Permit Program

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In the March 22, 1999, issue of the **Federal Register** (64 FR 13782) the Corps of Engineers (Corps) announced that it would prepare a programmatic environmental impact statement (PEIS) for the Corps Nationwide Permit (NWP) program. The overall purpose of the PEIS is to review and evaluate the NWP program as a whole to ensure that the NWP program authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. The draft PEIS was prepared by the Corps' Institute for Water Resources (IWR).

DATES: Comments on the draft PEIS must be received by September 14, 2001.

ADDRESSES: Mail comments to the U.S. Army Corps of Engineers, Institute for Water Resources, CEIWR–PD, 7701 Telegraph Road, Casey Building, Alexandria, Virginia 22315–3868. Submit electronic comments to NWPPEIS@usace.army.mil. See

SUPPLEMENTARY INFORMATION: For file formats and other information about filing electronic comments.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brumbaugh, CEIWR–PD, at 703–428–6370 or access the Institute for Water Resources Home Page at http://www.iwr.usace.army.mil/iwr/Regulatory/regulintro.htm

SUPPLEMENTARY INFORMATION: The draft PEIS can be downloaded from the Institute for Water Resources Home Page at http://www.iwr.usace.army.mil/iwr/Regulatory/regulintro.htm For those interested parties that cannot download documents from the Internet, a limited number of copies of the draft PEIS can be obtained by contacting the Institute for Water Resources at the address or telephone number above.

You may submit comments by sending electronic mail (e-mail) to: NWPPEIS@usace.army.mil

Submit electronic comments as a text file and avoid the use of any special characters and any form of encryption. Comments sent as attachments to electronic mail messages must be in text format to ensure that those attachments can be read by IWR. Comments sent electronically as attachments in word processing program formats will not be accepted.

Dated: 23 July 2001.

Lawrence A. Lang,

Deputy, Operations Division, Directorate of Civil Works.

[FR Doc. 01–18939 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement (DPEIS) for Potential Multi-Objective Projects in the Lower Colorado River Basin and Associated Tributaries for Flood Damage Reduction, Ecosystem Restoration, and Recreation Currently in and Around Austin, TX

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The DPEIS shall investigate alternative solutions, both structural and non-structural, for identified water resource problems, needs, and opportunities within the Lower Colorado River Basin and associated tributaries. Several areas along the Onion Creek Basin, a tributary of the Colorado River, have been identified for which multiobjective flood damage reduction and ecosystem restoration solutions appear feasible. In addition, other flood damage areas have been identified along Shoal Creek, Walnut Creek and the Highland Lake areas, all located in the vicinity of Austin, Texas and along the Colorado River Basin in the vicinity of Wharton, Texas. Onion, Shoal, and Walnut Creeks are located within a designated urban growth corridor for the City of Austin. Continued flood damages would be expected in the absence of flood damage reduction measures. The Highland lakes (Buchanan, Inks, LBJ, Marble Falls, Travis, and Austin) are located on the Colorado River upstream from the City of Austin. Continued urbanization in and around these lakes is expected to increased potential flood damages. Based on preliminary studies, conducted by the Corps of Engineers, there are approximately 25,000 structures located within the 100-year floodplain of the Lower Colorado River Basin.

This action is pursued under the authority of the Flood Control Act of 1936; the Resolution by the Committee on Commerce, United States Senate, adopted in 1936; the Rivers and Harbors Act of 1937; the River and Harbor Act of 1945; and the Resolution by the Committee on Transportation and Infrastructure, United States House of Representatives, adopted in 1998. Onion Creek was previously identified as a candidate stream system/watershed for non-structural flood damage reduction and ecosystem restoration under the Challenge XXI initiative of the Clean Water Action Plan.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to the proposed action and DEIS can be answered by: Mr. Thomas R. Vogt, CESWF–PM–C, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Forth Worth, Texas 76102–0300, (817) 978–2669.

SUPPLEMENTARY INFORMATION: Utilizing previous Corps of Engineers studies, and more recent studies conducted by the City of Austin and the Lower Colorado River Authority, alternatives will be developed and evaluated for the purposes of flood damage reduction, ecosystem restoration, recreation, and allied purposes. Non-structural measures for reducing flood damages, which would likely include acquisition and removal, floodproofing, or raising of existing structures, would create additional opportunities for habitat restoration and recreation. Structural measures to be investigated include: Diversion channels and/or channel modifications of various widths, levees and floodwalls of various heights, upstream detention reservoirs, aquifer recharge enhancements, and/or a combination of these measures. In addition to the structural and non-structural measures mentioned above, ecosystem restoration alternatives will be developed and evaluated. Ecosystem restoration alternatives may include: Riparian corridor restoration, protection, and expansion, greenbelts, and potential wetland construction at abandoned or existing quarries. It is anticipated that these ecosystem restoration measures would aid in improving water quality and aquifer recharge, optimize aquatic and terrestrial habitat along waterways, slow erosion and scouring of the stream

banks, and provide scenic parks and recreation areas for the residents.

The public will be invited to participate in the Scoping process, review of the draft Programmatic Environmental Impact Statement, and public meetings. The location and time of the scoping meetings will be announced in the local news media. Release of the draft DPEIS for public comment and public meetings will also be announced in the local news media, as these dates are established.

Future coordination with other agencies will be conducted accordingly to insure participation and aid in the development of the DPEIS. All affected Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and parties are hereby invited to participate. Future coordination will also be conducted, with the United States Fish and Wildlife Service. The Service will furnish information on threatened and endangered species in accordance with the Endangered Species Act and they will also be requested to provide support with planning aid and to provide a Coordination Act Report. The State Historic Preservation Officer and the Advisory Council on historic preservation will be consulted for information in accordance with Section 106 of the Historic Preservation Act.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–18983 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–20–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Draft Environmental Impact Statement for the Preparation of a Special Area Management Plan and Associated 404 Permit Actions for the San Diego Creek Watershed, Orange County, CA

AGENCY: Department of Defense, Department of the Army, Corps of Engineers, Los Angeles District Regulatory Branch.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS)/Joint EIS/EIR.

SUMMARY: The Corps of Engineers will prepare an EIS on a Special Are Management Plan (SAMP) and associated 404 permit actions in connection with future development, infrastructure maintenance and aquatic restoration in the San Diego Creek watershed in Orange County, California (SAMP study area). The EIS will address impacts of various land development and aquatic resource protection alternatives as set forth below and future identified during the preparation of the SAMP. The Corps of Engineers will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) with the California Department of Fish and Game, which must issue other approvals for development in the watershed that affects watercourses under Sections 1601 and 1603 of the State Fish and Game Code.

The SAMP will provide a comprehensive plan for protecting and enhancing aquatic resources while providing for the permitting of reasonable economic development and public infrastructure in accordance with local land use plans and a regional Habitat Conservation Plan (Natural Community Conservation Plan) for Central/Coastal Orange County. The SAMP will provide a framework for a long-term programmatic permitting process for projects in the watershed subject to the Corps of Engineers' permit authority under Section 404 of the Clean Water Act regulating the discharge of fill or dredged materials into ''waters of the United States.'' In addition, the SAMP will include a comprehensive reserve program for the protection, restoration, and management of aquatic resources within the study area. Information in the EIS will be used to complete the SAMP, and to decide to issue or deny a long-term programmatic 404 permit for specific, identified projects, and criteria for permitting future projects that have not yet been identified.

Public Scoping

The Corps of Engineers invites the participation of affected state, federal, and local agencies and other interested persons in identifying issues of concern that should be addressed in the EIS pursuant to the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act. Written comments on the scope of the EIS must be submitted to the address below by August 31, 2001. A public scoping meeting to receive input on the scope of the EIS will be conducted on Tuesday, August 14, 2001 at 6 pm at the Irvine Ranch Water District, 15600 Sand Canyon Avenue, Irvine, CA 92619. This will be a scoping meeting to address both the EIS for the SAMP and the EIR for the State Master 1600 Streambed Alteration Agreement (MSAA). The public scoping will be conducted in an open house format.

FOR FURTHER INFORMATION CONTACT: Dr. Fari Tabatabai, Regulatory Branch, CESPL–CO–RS, U.S. Army Corps of Engineers, Los Angeles District, 911 Wilshire Boulevard, Los Angeles, California 90017.

SUPPLEMENTARY INFORMATION:

1.0 Proposed Action

The Corps of Engineers and the Environmental Protection Agency developed the concept of a SAMP to assist in long-term planning for regulatory actions under Section 404 that involve-large areas, complex projects, and valuable aquatic resources.

The SAMP study area, San Diego Creek watershed, encompasses 32,000 hectares (122 square miles or 78,000 acres) in central Orange County, California. The watershed drains westerly into Upper Newport Bay. Urban areas within the SAMP study area include portions of Santa Ana, Tustin, Laguna Hills, Costa Mesa, Irvine, and Lake Forest. Large parts of the SAMP study area are currently developed for agriculture, residential and commercial uses. Aquatic resources in the remaining undeveloped portions of the SAMP study area consist of intermittent and ephemeral drainages, riparian wetlands, and small areas of alkali marshes. The major tributaries of San Diego Creek include Peters Canyon Wash, Hicks Canyon Wash, Rattlesnake Canyon Wash, Borrego Canyon Wash, Serrano Creek, Agua Chinon Wash, Bommer Canyon Creek, Shady Canyon Creek, Round Canyon Wash, Bee Canyon Wash, Trabuco Channel, Bonita Canyon Wash, and Sand Canyon Wash.

The SAMP will describe an approach and set of actions to preserve, enhance, and restore aquatic resources, while allowing reasonable economic development and construction and maintenance of public infrastructure facilities within the study area. Key objectives of the SAMP for the San Diego Creek watershed are to: (1) Evaluate the extent and condition of existing aquatic resources; (2) develop a comprehensive reserve program for the protection, restoration and management of aquatic resources; and (3) identify and evaluate alternative land development scenarios in the context of the aquatic resource reserve program.

Based on the SAMP, the Corps of Engineers will identify potential areas and/or evaluate proposed activities suitable for coverage using a programmatic permitting process under Section 404 of the Clean Water Act. These regulated activities would include residential, commercial, industrial, recreational development; public infrastructure such as roads and utilities; and maintenance of public facilities.

2.0 Other Involved Agencies

The Corps will develop the SAMP in close coordination with other agencies, including the U.S. Fish and Wildlife Service, California Department of Fish and Game, and U.S. Environmental Protection Agency, National Marine Fisheries Service, California Regional Water Quality Control Board, and California Coastal Commission, as necessary. The Corps encourages active participation by County and local governments, concerned landowners and the general public. The California Department of Fish and Game will participate in the SAMP process by formulating a MSAA under Section 1601 and 1603 of the California Fish and Game Code for development in the SAMP Study area that affects lakes, rivers, streams and associated riparian habitats subject to the Department's jurisdiction.

The environmental analysis and the SAMP will be a joint state and federal document. The California Department of Fish and Game will prepare a Program Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act for the actions described in the SAMP. A separate Notice of Preparation will be prepared and published by the Department. The Corps of Engineers and the Department of Fish and Game will work cooperatively to prepare a joint EIS/EIR document, and to coordinate the public noticing and hearing processes under state and federal laws.

3.0 EIS Alternatives

The Corps of Engineers has identified the following alternatives to be addressed in the EIS. Other alternatives or variations of alternatives may be studied based on input during public scoping and the results of the EIS studies. The Corps anticipates that these will also be the alternatives in the EIR.

1. *No Action Alternative*—Land development or other activities would be limited to actions that do not require a Section 404 permit or a Section 1601 or 1 603 Agreement and that are consistent with the existing or future applicable local general plan. These non-regulated activities including construction outside of waters of the United States, use of existing urban areas and infrastructure, ongoing agricultural operations and other activities within the SAMP study area would continue indefinitely. The Corps would not prepare a SAMP and there would not be a comprehensive and coordinated approach to address potential impacts to aquatic resources.

2. *No SAMP Alternative*—Land development and other activities would proceed consistent with the existing or future applicable local general plan and programmatic 404 permit(s). In addition to the activities described in Alternative 1, land development and other activities that are consistent with the applicable local general plans would proceed using the existing Section 404, Section 1601 and 1603 regulatory processes. The Corps would not prepare a SAMP and there would not be a comprehensive and coordinated approach to address potential impacts to aquatic resources.

3. *SAMP Alternative*—Preparation of a SAMP with land development and other activities which may require modifications to applicable local land-use general plans and Habitat Conservation Plans that seek to maximize the opportunities to protect, restore and manage aquatic resources. One or more modifications to existing applicable local general land-use plans would be developed that seek to promote additional benefits to aquatic resources while achieving reasonable economic development growth. A watershed-wide aquatic resource reserve program to protect, restore and manage aquatic resources would be developed that is consistent with these modifications. Programmatic Section 404 Permit(s) would be issued for specifically identified activities and permitting criteria would be established for other future activities pursuant to the requirements of Section 404 of the Clean Water Act. The California Department of Fish and Game will formulate a Master Streambed Alteration Agreement under Section 1601 and 1603 of the California Fish and Game Code for development in the SAMP Study area.

The EIS would also address alternative methods and institutional arrangements for aquatic resource reserve management.

4.0 Key Environmental Issues

The EIS will address impacts associated with future land development in the watershed and actions to protect aquatic resources, as identified in the SAMP. The key environmental impacts to be addressed in the EIS are listed below:

- *Aquatic resources*—potential effects of proposed use alternatives on the functional integrity and extent of aquatic resources due to altered biological, hydrological, and water quality conditions in the study area. Indirect impacts of land development and human activities in close proximity resources will also be addressed.
- *Water quality*—potential effects on the quality of surface and ground water due to construction activities in the watershed, and due to urban stormwater runoff associated with future development. To the extent feasible, the SAMP will address water quality issues on a programmatic basis.
- *Threatened and endangered species*—potential adverse effects on listed aquatic-dependent species. The Corps will consult with the Fish and Wildlife Service under Section 7 of the Endangered Species Act concerning potential effects on listed species, such as the least Bell's vireo (*Vireo belli pusilius*) and the southwestern willow flycatcher (Empidonax traillii extimus), and designated critical habitat within the SAMP Study area.
- *Cultural Resources*—potential impacts on archelogical, ethnographic, paleontologic, and historic resources. The Corps of Engineers will comply with comply with the consultation requirements under Section 106 of the National Historic Preservation Act.

5.0 Schedule

A Daft EIS is expected to be issued for public review in Spring 2002.

Dated: June 23 2001.

Richard G. Thompson,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 01–19040 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Grant of Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(b)(1)(i), announcement is made of a prospective exclusive license for all fields of use, in the manufacture, use, and sale of the telescoping Weir covered by U.S. Patent No. 6,213,684 filed October 26, 1998.

DATES: Written objections must be filed not later than October 1, 2001.

ADDRESSES: U.S. Army Engineer Research and Development Center, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, ATTN: CERDC–OC–Z.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Stewart, ATTN: CEERD–OP–Z, (601) 634–4113, FAX (601) 634–4180, Internet *stewarp@erdc.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Telescoping Weir was invented by Jack

Fowler, Ronald G. Vann and Thomas D. Woodward, Jr. Rights to the patent have been assigned to the United States of America as represented by the Secretary of the Army. The United States of America as represented by the Secretary of the Army intends to grant an exclusive license for all fields of use, in the manufacture, use, and sale of the telescoping weir to Oceaneering, Advanced Technologies Group, 501 Prince George Boulevard, Upper Marlboro, Maryland. Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Richard L. Frenette,

Counsel.

[FR Doc. 01–18981 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Grant of Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice; correction.

SUMMARY: The notice published on Friday, June 15, 2001 at 66 FR 32609 announcing a prospective exclusive patent license in European Patent Application Office application number 94926514.4 should be revised by deleting the **SUPPLEMENTARY INFORMATION** and substituting the following **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. Phil Stewart (601) 634–4113. e-mail stewarp@ex1.wes.army.mil.

SUPPLEMENTARY INFORMATION: The Concrete Armor Unit was invented by Jeffrey A. Melby and George F. Turk. Rights to the patent applications identified above have been assigned to the United States of America as represented by the Secretary of the Army. The United States of America as represented by the Secretary of the Army intends to grant an exclusive license for all fields of use, in the manufacture, use, and sale of the concrete armor units in the territories and possessions, including territorial waters, in each of the countries listed above to Sogreah, a corporation with principal offices at Grenoble, France. Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Richard L. Frenette,

Counsel.

[FR Doc. 01–18982 Filed 7–30–01; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 1, 2001.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 25, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Revision of Consolidated Annual Performance and Financial Reports for the Carl D. Perkins Vocational and Technical Education Act.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden

Responses: 54.

Burden Hours: 7,033.

Abstract: The information collected by the Consolidated Annual Performance Report is used to monitor program performance and the uses of funds under the Carl D. Perkins Vocational and Technical Education Act of 1998. Respondents include eligible agencies in 53 States and outlying areas. This revision corrects the omission of two columns that are needed in order to collect information about expenditures for the full twenty-seven month period of the grant award.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila.Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–18966 Filed 7–30–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 30, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 25, 2001.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: New.

Title: GEPA Section 427 Guidance for All Grant Applications.

Frequency: Once, only per application for new awards.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 6,600 Burden Hours: 9,900.

Abstract: In compliance with Section 427 of the General Education Provisions Act, as amended by Public. Law. 103–282, all applicants for grant awards made by the Department of Education are required to describe in their applications the steps they propose to take to ensure equitable access to, and equitable participation in, the proposed grant activities conducted with federal funds. The Department has developed a single document that provides common guidance for all competitive and formula grant applicants on how they can meet this requirement. The language in this common guidance document is nearly identical to language that the Department has previously used in separate guidance documents applicable to discretionary grant applicants and to States that have previously applied for formula grants on the basis of consoldiated plans available under Title XIV of the Elementary and Secondary Education Act.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address *Jackie.Montague@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 01–18967 Filed 7–30–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Management, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Education (Department) publishes this notice of a new system of records entitled ''Individual Development Planning (IDP) System.'' The system will be used by employees and supervisors to identify career development opportunities for employees to ensure that employees receive appropriate training and development to enhance job performance.

The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments on the proposed routine uses for the systems of records included in the notice on or before August 30, 2001. The Department filed a report describing the new system of records covered by this notice with the Chair of the Committee on Governmental Affairs of the Senate, the Chair of the Committee on Government Reform and Oversight of the House, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 26, 2001. This new system will become effective after the 30-day period for OMB review of the system expires on August 25, 2001, unless OMB gives specific notice within the 30 days that the changes are not approved for implementation or requests an additional 10 days for its review. The routine uses become effective August 30, 2001 unless they need to be changed as a result of public comment or OMB review. The Department will publish any changes to the routine uses.

ADDRESSES: Address all comments on the proposed routine uses to Chiquitta Thomas, Privacy Act Officer, Office of the Chief Information Officer, U.S. Department of Education, 400 Maryland Avenue, SW., room 4082, Washington, DC 20202–4580. Telephone: (202) 708–9265. If you prefer to send comments through the Internet, use the following address: Comments@ed.gov.

You must include the term ''IDP'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 6E236, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs

assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Darlene Holly, Training and Development Center (TDC), Office of Management, U.S. Department of Education, room 2W218 FB6, 400 Maryland Avenue, SW., Washington, DC 20202–4614. Telephone: 202–401–4956. If you use a telecommunications device for the deaf (TDD), you may call the FIRS at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) (Privacy Act) requires the Department to publish in the **Federal Register** this notice of a new system of records managed by the Department. The Department's regulations implementing the Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about individuals that contain individually identifiable information and that may be retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record'' and the system is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the Office of Management and Budget (OMB) whenever the agency publishes a new system of records.

The Individual Development Planning (IDP) System will help employees improve their current job performance and achieve future career goals. The system will guide employees through a process of setting short-term goals by identifying areas where performance improvement is needed and provide resources for improving performance. The system will also help employees establish long-term career goals and develop a plan for achieving those goals.

This system employs a computer-aided analysis of the employee's job performance as per the self and group scores obtained from the General Performance Appraisal System (GPAS). The results of the analysis, along with the employee's long-term and short-term goals, yield a set of three GPAS standards, which the employee wishes to improve. A self-designated standard may be substituted for one of the standards.

Once the employee has identified the standards to improve, he/she may then use the IDP system to link 1 or 2 career-building activities for each standard. Activities may be (1) training courses from other Government agencies, (2) Department-sponsored training, (3) outside courses, (4) self-study, or (5) non-traditional activities such as joining a community service organization. These activity types are supported by links to database tables, Department Intranet sites, or Internet sites for other agencies.

Once the career-building plan is complete, the employee may submit an on-line version of his/her Individual Development Plan document—the output of the IDP process. The supervisor then reviews the document, offers suggestions for change, and finally approves it when the employee and supervisor come to an agreement. This agreement outlines steps the employee plans to take to work towards improving specific skills, and encourages support from management with training, access to materials, job rotation, etc.

Once a career-building activity has been completed, the employee updates the system with an evaluative comment as to the usefulness of the activity.

GPAS records are derived from the GPAS system but do not include comments. GPAS standards are presented to facilitate analysis and planning. When the employee initiates contact with his/her supervisor, the employee's supervisor may access the employee's selection of standards and career-building activities. Once the employee and supervisor come to an agreement on the individual development plan, both sign the document.

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 the following site: www.ed.gov/legislation/FedRegister.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Dated: July 26, 2001.

Willie H. Gilmore,

Director, Office of Management.

The Office of Management of the U.S. Department of Education publishes a notice of a new system of records to read as follows:

18–05–14

SYSTEM NAME:

Individual Development Planning System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

U.S. Department of Education, Training and Development Center (TDC), Office of Management, 400 Maryland Avenue, SW., room 2W218, Washington, DC 20202–4614.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The U.S. Department of Education's (Department) Individual Development Planning (IDP) System covers all Department employees. However, it does not cover temporary employees serving on appointments of 120 calendar days or less in a consecutive 12-month period.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each employee of the Department: The name of the employee, employee social security number, organizational entity, supervisor, and hire date. The system also includes information from the General Performance Appraisal System (GPAS), including each employee's self-evaluation scores, and evaluation scores of customers, co-workers and supervisors. This system also may contain a computer-aided analysis of the employee's job performance derived from the scores contained in the employee's GPAS, the employee's long-term and short-term career development goals, the employee's individual development plan, and the employee's evaluative comments as to the usefulness of the career-building activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, United States Code (U.S.C.), Chapter 43, Subchapter I.

PURPOSE(S):

The information contained in this system is used for the purposes of improving employee job performance and helping employees to achieve future career goals. The system will guide employees through a process of setting short-term goals by identifying areas where performance improvement is needed and will provide resources for improving performance. The system also will help employees establish long-term career goals and develop a plan for achieving those goals. This system is also designed to automate the career development process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of Education (the Department) may disclose information contained in a record in the systems of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis, or if the Department has complied with the computer matching requirements of the Act, under a computer matching agreement.

(1) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecution responsibility within the receiving entity's jurisdiction.

(2) *Enforcement Disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosures*

(a) *Introduction.* In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Administrative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the administrative litigation, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Department may disclose those records as a routine use to the party, counsel, representative or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(6) *Labor Organization Disclosure.* A component of the Department may disclose records to a labor organization if a contract between the component and a labor organization recognized under Title V of the United States Code, Chapter 71, provides that the Department will disclose personal records relevant to the organization's mission. The disclosures will be made only as authorized by law.

(7) *Freedom of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the Department of Justice and the Office of Management and Budget if the Department concludes that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA.

(8) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(10) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the

individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hard copy and on a computer database.

RETRIEVABILITY:

The files in this system are retrievable by social security number or name.

SAFEGUARDS:

The database is protected by stringent security mechanisms that include a combination of hardware, operating system, application software, database software, and procedures. This ensures that every employee's Individual Development Planning (IDP) system career planning records are handled with utmost privacy and confidentiality.

Access to the employee's records is controlled through the IDP application by use of a login/password authentication process. The employee is able to change his/her password at will. Status changes of the IDP record set are tracked, and are available in the form of an audit trail.

RETENTION AND DISPOSAL:

An employee's career-planning information for a semi-annual review period remains in the IDP database until four semi-annual cycles have passed. Each cycle is six months in length. The database is purged on a semi-annual basis of any data that is older than two years.

SYSTEM MANAGER(S) AND ADDRESS:

Training and Development Center, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W218, FB6, Washington, DC 20202–4614.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in this system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including proof of identity. You may present your request in person at any of the locations identified for this system of records or address your request to the system manager at the following address: Training and Development Center, Office of Management, U.S. Department of Education, room 2W218, FB–6, 400 Maryland Avenue, SW., Washington, DC 20202.

RECORD ACCESS PROCEDURES:

If you wish to access a record regarding you in this system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.5, including proof of identity. You may present your request in person at any of the locations identified for this system of records or address your request to the system manager at the address listed under Notification Procedures.

CONTESTING OF RECORDS PROCEDURES:

If you wish to contest the contents of records regarding you in this system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations at 34 CFR 5b.7, including proof of identity. You may present your request in person at any of the locations identified for this system of records or address your request to the system manager at the address listed under System Manager and Address.

RECORD SOURCE CATEGORIES:

Information in this system of records is derived from the Department's General Performance Appraisal System (GPAS).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–18985 Filed 7–30–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

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), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, August 15, 20016, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Third part of Board recommendation development and ongoing educational discussion regarding the Radionuclide Soil Action Level Review.
2. Other Board business may be conducted as necessary.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Public Reading Room located at

the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9 a.m. to 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on July 25, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–19005 Filed 7–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 16, 2001; 5:30 p.m.–9 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6:00 p.m.—Call to Order; Approve Minutes
6:10–7:00 p.m.—DDFO's Comments; Board Response; Public Comments
7:00 p.m.—Presentations
8:30 p.m.—Task Force and Subcommittee Reports; Board Response; Public Comments
9:00 p.m.—Administrative Issues
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat J. Halsey at the address or by telephone at 1–800–383–6938, #5. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to Pat J. Halsey, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling her at 1–800–382–6938, #5.

Issued at Washington, DC on July 25, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–19006 Filed 7–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Tuesday, August 28, 2001; 1 p.m.–5 p.m.

ADDRESSES: Amarillo Botanical Gardens, 1400 Streit Drive, Amarillo, TX 79106.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806) 477–5896 or e-mail *jjohnson@pantex.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to the Department of Energy and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

1:00 Agenda Review/Approval of Minutes
1:15 Co-Chair Comments
1:30 Task Force/Subcommittee Reports
2:00 Ex-Officio Reports
2:15 Break
2:30 Updates—Occurrence Reports—DOE
3:00 Presentation (To Be Announced)/ 24 hr. information line: (806) 372–1945
4:00 Questions—Public Questions/ Comments
5:00 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX, phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX, phone (806) 537–3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at

the address or telephone number listed above.

Issued at Washington, DC on July 25, 2001.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 01–19007 Filed 7–30–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1755–000]

Constellation Power Source, Inc; Notice of Issuance of Order

July 25, 2001.

Constellation Power Source, Inc. (CPS) submitted for filing a market-based rate schedule allowing eligible independent power producers (IPPs) to sell energy and/or capacity to CPS at market-based rates for resale. CPS also requested waiver of various Commission regulations for IPPs. In particular, CPS requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by eligible IPPs.

On June 5, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by eligible IPPs should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, eligible IPPs are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the eligible IPPs, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of eligible IPP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions 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 under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–18997 Filed 7–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11891–000]

Symbiotics, LLC.; Notice Granting Late Intervention

July 25, 2001.

On April 20, 2001, the Commission issued a notice of the application for a preliminary permit filed by Symbiotics, LLC., for the Hyrum Reservoir Project, to be located on the Bear River, in Cache County, Utah. The notice established June 19, 2001, as the deadline for filing motions to intervene.

On June 25, 2001, the Bear River Water Users Association (the Association) filed a late motion to intervene in the proceeding. On July 2, 2001, Symbiotics, LLC., filed a response to the motion to intervene, but does not oppose intervention by the Association.

Granting the motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene in this proceeding filed by the Association is granted, subject to the Commission's rules and regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–19000 Filed 7–30–01; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP01–408–000]

Tuscarora Gas Transmission Company; Notice of Request Under Blanket Authorization

July 25, 2001.

Take notice that on July 20, 2001, Tuscarora Gas Transmission Company (Tuscarora), 1575 Delucchi Lane, Suite 225, Reno, Nevada 89520–3057, filed in Docket No. CP01–408–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and transfer by sale to Sierra Pacific Power Company (SPPC), a Nevada corporation, certain natural gas transmission facilities, located in Washoe County, Nevada, under Tuscarora's blanket certificate issued in Docket No. CP93–685–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Tuscarora proposes to abandon by sale to SPCC all of Tuscarora's rights, title, and interest in: (i) 2.52 miles of 16-inch diameter lateral pipeline extending from the outlet side of the Golden Valley Meter Station, located in Washoe County, Nevada to its terminus at SPCC's Lemmon Valley City Gate, located in Washoe County, Nevada; (ii) any easements and other property rights; and (iii) any associated valves and appurtenances. Tuscarora states that collectively, these facilities are referred to as the Lemmon Valley Lateral.

Tuscarora asserts that it does not propose the abandonment of service to any customer as a result of the proposed sale. Tuscarora states that other than SPCC, no customer is currently utilizing the Lemmon Valley Lateral facilities on a firm or interruptible basis.

Any questions regarding the application should be directed to Greg Galbraith, Tuscarora Gas Transmission Company, 1575 Delucchi Lane, Suite 225, P.O. Box 30057, Reno, Nevada 89520–3057, at (775) 834–4292, facsimile: (775) 834–3886.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file

pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–18998 Filed 7–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–035–Oregon]

Portland General Electric Company; Notice of Availability of Environmental Assessment

July 25, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Energy Projects has reviewed the Portland General Electric Company's (Portland General) application for license amendment to install an additional 70-kW turbine/generator unit at the Pelton Round Butte Hydroelectric Project, located on the Deschutes River in Jefferson, Marion, and Wasco Counties, Oregon, and has prepared an Environmental Assessment (EA). The project occupies lands of the Deschutes National Forest; Mt Hood National Forest; Willamette National Forest; Crooked River National Grassland; Bureau of Land Management; and tribal lands of the Confederated Tribes of the Warm Springs Reservation of Oregon.

The EA contains the Commission staff's analysis of the potential environmental impacts of the proposed amendment and concludes that approval of the proposed amendment with Portland General's proposed environmental measures would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is attached to a Commission order issued on July 20, 2001 for the above application. Copies of the EA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

For further information, contact Nan Allen at (202) 219-2938.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–19001 Filed 7–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 24, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* 2197–048.

c. *Date Filed:* July 16, 2001.

d. *Applicant:* Alcoa Power Generating, Inc.

e. *Name of Project:* Yadkin Hydroelectric Project.

f. *Location:* The Yadkin Project is on the Yadkin/Pee Dee River in Montgomery, Stanley, Davidson, Rowan, and Davie Counties, North Carolina. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows, and Falls. The project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h: *Applicant Contact:* Mr. Gene Ellis, Alcoa Power Generating Inc., P.O. Box 576, Badin, NC 28009–0576; (704) 422–5606.

i. *FERC Contact:* Questions about this notice can be answered by Steve Hocking at (202) 219–2656 or e-mail address: *steve.hocking@ferc.fed.us.* The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Deadline for filing comments, terms and conditions, motions to intervene, and protests:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, terms and conditions, motions to intervene, 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 (http://www.ferc.gov) under the ''e-Filing'' link.

k. *Description of the Application:* Alcoa Power Generating Inc. (Alcoa), licensee for the Yadkin Project, filed a non-project use of project lands application. In its application, Alcoa proposes to grant a permit to the Badin Shores Resort Owners' Association and the Badin Shores Marina Boat Slips Owners' Association for the use and operation of the following existing facilities on High Rock Reservoir: the Badin Shores Resort Marina which has eight boat docks accommodating up to 173 boats, a boat ramp, two fuel pumps, a restaurant and convenience store and a separate fishing pier, swimming area, and boardwalk. All of the above facilities are existing; no new facilities are proposed. All of the above facilities except for 155 of the 173 boat slips would be open to the public.

l. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link—select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR

385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (P–2197–048) of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01–18999 Filed 7–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

July 25, 2001.

The Commission will hold a meeting with the licensee and the North Carolina State Historic Preservation Officer for the Idols Hydroelectric Project, FERC No. 2585.

a. *Date and Time of Meeting:* August 14, 2001, 9:30 am.

b. *Place:* Clemmons, North Carolina.

c. *FERC Contact:* For directions contact James T. Griffin, (202) 219–2799; *james.griffin@ferc.fed.us* or Chuck Ahlrichs, Northbrook Carolina Hydro, (425) 557–3680.

d. *Purpose of the Meeting:* To discuss, with the licensee and the North Carolina State Historic Preservation Officer, compliance with Section 106 of the National Historic Preservation Act in the matter of the surrender of license of the Idols Hydroelectric Project, FERC No. 2585, a property eligible for inclusion in the National Register of Historic Places.

e. *Proposed agenda:* (1) Introductions, (2) Section 106 requirements, (3) The Idols Hydroelectric Project Historic District and its contributing elements, (4) Effects of License Surrender, (5) Preservation of the Historic District, (6) What shall we then do?

f. All local, state, and Federal agencies, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–19002 Filed 7–30–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for a New License

July 25, 2001.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2204.

c. *Date filed:* July 3, 2001.

d. *Submitted By:* Denver Board of Water Commissioners.

e. *Name of Project:* Williams Fork Reservoir Hydroelectric Project.

f. *Location:* State of Colorado, Grand County, on the Williams Fork River.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at Central Records, Denver Water, 1600 W. 12th Ave., Denver, Colorado 80204.

i. *FERC Contact:* Dianne Rodman, 202 219–2830, *Dianne.Rodman@FERC.FED.US*

j. *Expiration Date of Current License:* December 31, 2006.

k. William Fork reservoir and power plant, appurtenant facilities, other structures, fixtures, and equipment useful in the maintenance of the project and located in the project area.

l. The licensee states its unequivocal intent to submit an application for a new license or exemption from license for Project No. 2204. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2004.

m. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Comments, protests and interventions 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 under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–19003 Filed 7–30–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7021–7]

Announcement of Public Comment Period for Draft National Beach Guidance and Performance Criteria for Recreation Waters

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability; Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) has developed and is requesting public comments on the draft National Beach Guidance and Performance Criteria for Recreation Waters. This document provides proposed performance criteria for monitoring and assessment of coastal recreation waters adjacent to beaches, and prompt public notification of any exceedance or likelihood of exceedance of applicable water quality standards for pathogens and pathogen indicators for coastal recreation waters. This document also outlines the eligibility requirements for grants to implement monitoring and notification programs under section 406(b) of the Beaches Environmental Assessment and Coastal Health Act. This document is intended to be used by potential grant recipients to implement effective programs for monitoring and assessing coastal recreation waters. The document will also provide guidance for Federal agencies to implement beach monitoring and notification programs when States do not implement a program consistent with the performance criteria. The

information submitted in response to this notice will be considered by EPA in the completion of the final document.

DATES: EPA will consider all comments received on or before 11:59 p.m. EDT October 1, 2001. Comments received after this time may be reviewed at EPA's discretion.

ADDRESSES: Interested persons may obtain a copy of the draft requirements from the Office of Science and Technology's website at *http://www.epa.gov/ost/beaches/meetings/links.html* or by contacting the Office of Water Resources Center at 202–260–7786 (e-mail: *center.water-resource@epa.gov*); mailing address is: Office of Water Resources Center, U.S. Environmental Protection Agency, RC–4100, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Please request the draft National Beach Guidance and Grant Performance Criteria for Recreation Waters (EPA–823–R–01–005) July 2001.

Please send electronically mailed comments to *ow-docket@epa.gov.* Please send mailed comments to: W–01–08 Comment Clerk, Water Docket (MC 4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW; Washington, DC 20460. Overnight delivery or hand delivery should be delivered to EPA's Water Docket at 401 M Street, SW; Room EB57; Washington, DC, 20460. Please see **SUPPLEMENTARY INFORMATION** for other information about comments.

FOR FURTHER INFORMATION CONTACT: Charles Kovatch by phone at (202) 260-3754 or e-mail at *Kovatch.Charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Does the BEACH Act Require?

The Beaches Environmental Assessment and Coastal Health Act (BEACH Act) was passed on October 10, 2000. It amended the Clean Water Act (CWA) in part by adding section 406, which authorizes EPA to award grants to States for the purpose of developing and implementing a program to monitor, for pathogens and pathogen indicators, coastal recreation water adjacent to beaches that are used by the public and to notify the public if water quality standards for pathogens and pathogen indicators are exceeded. Section 406(a) requires EPA to establish performance criteria for monitoring and assessment of coastal recreation waters and the prompt notification of any actual or potential exceedance of applicable water quality standards. EPA must publish the performance criteria after providing public notice and the opportunity for comment. EPA may award grants for implementation of a monitoring and notification program only if the program is consistent with the performance criteria. A complete copy of the BEACH Act can be found at http://www.epa.gov/OST/beaches/technical.html

How Did EPA Draft the Document?

The BEACH Act requires EPA to publish the performance criteria after providing public notice and the opportunity for comment. EPA developed this draft of the performance criteria, based in part on a series of consultations with representatives of state water pollution agencies, coastal protection agencies, public health agencies, and other interested parties.

What Is the Purpose of the Document?

The performance criteria and guidance document has three functions. First, it establishes performance criteria for (a) monitoring and assessment of coastal recreation waters adjacent to beaches (or similar points of access that are used by the public) for attainment of applicable water quality standards for pathogens and pathogen indicators; and (b) the prompt public notification of any exceedance or likelihood of exceedance of applicable water quality standards for pathogens and pathogen indicators for coastal recreation waters.

Second, this document summarizes the requirements for grants. It explains whether the requirements apply to development grants, implementation grants, or both. This document is intended to be used by potential grant recipients to implement effective programs for monitoring and assessing coastal recreation waters.

Third, this document is intended to promote consistency among States and localities by recommending standard approaches for recreational water quality programs. The document will assist local health departments, water quality managers, beach managers, and other local, State, and Tribal agencies to (a) improve microbial water quality monitoring programs for more consistent protection of coastal recreation waters, (b) assess, manage, and communicate health risks from waterborne microbial contamination, (c) notify the public of beach advisories and implement closings to help prevent public exposure to potentially harmful pathogens.

The document can also serve as a reference guide for how and when to conduct beach assessments because it includes protocols for water sample collection, sample handling, and laboratory analysis. It provides information about the use of predictive models to estimate indicator levels and includes procedures for public notification about beach advisories, closings, and openings.

What Does the Draft Document Address?

The draft document has five chapters. Chapter 1 discusses human pathogens and health concerns, describes how recreational water quality standards have been established, discusses relevant statutes and programs, and addresses other relevant issues. Chapter 2 briefly summarizes the performance criteria and the requirements that an applicant must meet to receive a program implementation grant. The chapter identifies relevant sections of the BEACH Act, briefly describes the corresponding performance criteria that EPA has developed, and provides additional grant-related information. Chapter 3 describes the risk-based evaluation process that EPA recommends for States to classify and prioritize their recreational beaches for monitoring and public notification. This step-by-step approach allows States to assess the relative human health risks and usage of their beaches and assign an appropriate management priority to each of them. Chapter 4 describes the performance criteria related to monitoring and assessment and provides detailed technical guidance. Chapter 5 describes the performance criteria and technical guidance related to the public notification and risk communication portions of a beach program.

What Are the Performance Criteria?

The performance criteria are the following:

1. Risk-based Beach Evaluation and Classification—Describe the factors used in beach evaluation and classification process and how beaches are ranked as a result of the process. For example history of contamination, pollution sources, duration of swimming season, and number swimmers are a few factors which could be used to evaluate beaches.

2. Sampling Design and Monitoring Implementation Plan—Develop a sampling design and implementation plan to address periods of recreation use of waters, nature and extent of use during those periods, proximity of waters to known point and non-point sources of pollution and effects of storm events on the waters.

3. Monitoring Report Submission and Delegations—Develop a mechanism to collect relevant information and submit timely reports to EPA and document any delegations of monitoring

responsibilities to local governments. Reports will include sampling data and duration of water quality exceedance.

4. Methods and Assessment Procedures—Develop detailed methods and assessment procedures to detect levels of pathogens and pathogen indicators that are harmful to human health. The assessment procedures shall identify short-term increases in pathogens and pathogen indicators.

5. Public Notification and Risk Communication Plan—Develop an overall public notification and risk communication plan to describe notification efforts and measures to inform the public of potential risks associated with water contact in polluted waters.

6. Measures to Notify EPA and Local Government—Identify measures for prompt communication of the occurrence, nature, location, pollutants, and extent of or likelihood of exceeding applicable water quality standards for pathogens and pathogen indicators.

7. Measures to Notify the Public—Address the posting of signs or functional equivalent at beaches or similar points of access to give notice to the public which coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators and on the risks of swimming in those waters.

8. Notification Report Submission and Delegations—Develop a mechanism to collect relevant information and submit timely reports to EPA and document any delegations of public notification responsibilities to local governments. Reports will include actions to take when water quality standards are exceeded.

9. Public Review of Program—Identify measures to provide an opportunity for the public to review the program through a process that provides for public notice and an opportunity for comment.

What Is the Purpose of This Notice?

EPA solicits comments on all aspects of the draft performance criteria and guidance. In particular, EPA requests comments and information on whether:

(1) EPA should define the scope of the program to provide a range of requirements and flexibility that would allow BEACH Act funding to support monitoring and notification at a greater number of beaches, or to establish very strict standards which would limit BEACH Act funding to a small number of priority beaches. The current draft would allow a greater number of beaches to be funded;

(2) A State should use it's current water quality standards for pathogens and pathogen indicators as the basis for deciding to issue an advisory or close a beach, or should use EPA's new ambient water quality criteria as the threshold prior to their adoption into a State's water quality standards;

(3) The risk-based evaluation and beach classification approach provides sufficient guidance and flexibility for a State to administer a BEACH Act monitoring and notification program;

(4) EPA should provide more specificity on the definition of a beach;

(5) EPA should provide more specificity on the required elements of a monitoring plan, and in particular the sampling location, frequency, and depth;

(6) Only EPA's analytical promulgated methods should be used (once promulgated) to monitor pathogens at beaches, or should other scientifically valid methods be allowed. EPA has promulgated analytical methods for fecal and total coliform bacteria, and is considering to promulgate methods for enterococci and E. coli;

(7) Predictive methods (*e.g.,* water quality or empirical models) can be used to issue or remove advisories or closures;

(8) EPA should provide more specificity on the required elements of a notification plan, and in particular posting signs or functional equivalents, measures to report water quality exceedances to EPA, State agencies, beach managers, and the public; and

(9) A State should require an advisory or closure for any exceedance of a water quality standard, or may it allow for immediate re-sampling to verify the initial sample.

Is There Other Related Information?

EPA will host five outreach sessions to explain the document and answer questions about it. These sessions are in Wilmington, DE on July 31, San Diego, CA on August 3, Jacksonville, FL on August 21, New Orleans, LA on August 23, Chicago, IL on August 23. These meetings were announced in the **Federal Register** on July 20, 2001 and on EPA's website at *http://www.epa.gov/ost/beaches/meetings/*.

How Can You Submit Comments?

You may submit comments by mail, e-mail, or delivered by hand to the addresses shown in the **ADDRESSES** section of this notice. EPA will not accept facsimiles (faxes). If you mail or hand deliver comments, please send an original and three copies of your comments and enclosures (including references). If you want receipt of your comments acknowledged, you must include a self-addressed, stamped envelope. You may also submit your comments by sending an e-mail to *ow-docket@epa.gov* or by disk. If you do, you must submit electronic comments as an ASCII file, or a WordPerfect 5.1, WordPerfect 6.1, or WordPerfect 8 file avoiding the use of special characters and any form on encryption, and identify these comments by the docket number W–01–08 on the subject line. You may file electronic comments on this notice at many Federal Depository Libraries. You should not send confidential business information by e-mail. The information received in response to this notice will be filed under docket number W–01-08, and include referenced documents as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB57, U.S. Environmental Protection Agency Headquarters, 401 M St., Washington, DC. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Dated: July 26, 2001.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 01–19150 Filed 7–30–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 24, 2001.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

(b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 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 Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0971.

Title: Numbering Resource Optimization, Second R&O, Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200, and Second FNPRM in CC Docket No. 99–200 (Second R&O).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal governments.

Number of Respondents: 2,050.

Estimated Time per Response: 0.25 to 3 hrs.

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 14,000 hrs.

Total Annual Costs: None.

Needs and Uses: The Second Report and Order in CC Docket Nos. 99–200 and 96–98, released December 29, 2000 requires that carriers, which report forecast and utilization data semi-annually to the North American Numbering Plan Administrator (NANPA) or the Pooling Administrator, duplicate the data for state commissions upon request, and that to request a ''for cause'' audit of a carrier, the NANPA, the Pooling Administrator, or a state commission must draft a request to the auditor stating the reason for the request, *i.e.,* as misleading or inaccurate data, and attach supporting documentation. The FCC, state commissions, the NANPA, and the Pooling Administrator use this information to verify the validity and accuracy of the data and to assist state commissions in carrying out their numbering responsibilities, *i.e.,* as area code relief.

OMB Control Number: 3060–0960.

Title: Application of Network Non-duplication Protection, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmissions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 1,407.

Estimated Time per Response: 30 mins. to 1 hr.

Frequency of Response: On occasion reporting requirements; third party disclosure.

Total Annual Burden: 63,992 hours.

Total Annual Costs: None.

Needs and Uses: The Commission adopted a Report and Order (R&O), FCC 00–388, on October 27, 2000 to implement the SHVIA regulations that apply to network non-duplication, syndicated exclusivity, and sports blackout requirements to satellite carriers. This R&O protects the exclusive contract rights negotiated between broadcasters, distributors, and rights holders for the retransmission of network, syndicated, and sports programming in the broadcasters' recognized market areas. The R&O carries out Congress' intent in enacting SHVIA—to keep the competitive marketplace in balance by protecting the broadcasters' private contractual arrangements and ensuring that satellite carriers have regulatory obligations that are as similar as possible to cable operators.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–19064 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 24, 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(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 30, 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 Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0715.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents: 6,832.

Estimated Time Per Response: .25—78 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 613,616 hours.

Total Annual Cost: $229,520.

Needs and Uses: The requirements implement the statutory obligations of section 222 of the Telecommunications Act of 1996. Among other things, carriers are permitted to use CPNI,

without customer approval, under certain conditions. All telecommunications carriers must provide subscriber list information gathered in their capacity as providers of telephone exchange service to any person upon request for the purpose of publishing directories. A slight reduction in public burden is attributed tot he Commission's decision not to solicit renewal of the proposed collections suggested by the Federal Bureau of Investigation (FBI). The Commission has not acted on the proposals to date.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–19065 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 01–1567]

Fourth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on August 28, 2001, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: August 28, 2001; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Julie Garcia, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0763.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fourth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the fourth meeting is as follows:

Agenda

Fourth Meeting of the WRC–03 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554: August 28, 2001; 10 a.m.–12 Noon

1. Opening Remarks.
2. Approval of Agenda.
3. Approval of the Minutes of the Third Meeting.
4. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers.
   b. Draft Proposals.
5. Future Meetings.
6. Other Business.

Federal Communications Commission.

Donald Abelson,

Chief, International Bureau.

[FR Doc. 01–19066 Filed 7–30–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Synovus Financial Corp., Columbus, Georgia; to merge with FABP Bancshares, Inc., Pensacola, Florida, and thereby indirectly acquire voting shares of First American Bank of Pensacola, Pensacola, Florida,

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Grant County State Bancshares, Inc., Employees Stock Ownership Plan, Swayzee, Indiana; to acquire 31.99 percent of the voting shares of Grant County State Bancshares, Inc., Swayzee, Indiana, and thereby indirectly acquire voting shares of Grant County State Bank, Swayzee, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire 19.99 percent of the voting shares of Allegiant Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Allegiant Bank, St. Louis, Missouri; South Side National Bank in St. Louis, St. Louis, Missouri; Bank of Ste. Genevieve, Sainte Genevieve, Missouri; Bank of St. Charles County, St. Charles, Missouri; and State Bank of Jefferson County, De Soto, Missouri.

Board of Governors of the Federal Reserve System, July 25, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–18952 Filed 7–30–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, August 6, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551, Status:

Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 27, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–19215 Filed 7–27–01; 2:54 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality, Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to grant a ''Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Healthcare Research and Quality.'' In accordance with the Paperwork Reduction Act as amended (see in particular 44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection request to allow AHRQ to conduct these customer satisfaction surveys.

This proposed information collection was previously published in the **Federal Register** on May 16, 2001 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by August 30, 2001.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

Voluntary Customer Satisfaction Survey Generic Clearance for the Agency for Healthcare Research and Quality.

In response to Executive Order 12862, the Agency for Healthcare Research and Quality (AHRQ) plans to conduct voluntary customer satisfaction surveys to assess strengths and weaknesses in program services. Customer satisfaction surveys to be conducted by AHRQ may include readership surveys from individuals using AHRQ automated and electronic technology data bases to determine satisfaction with the information provided or surveys to assess effects of the grants streamlining efforts. Results of these surveys will be used in future program planning initiatives and to redirect resources and efforts, as needed, to improve AHRQ program services. The current clearance will expire December 31, 2001. A generic approval will be requested from OMB to conduct customer satisfaction surveys over the next three years.

Method of Collection

The data will be collected using a combination of preferred methodologies appropriate to each survey. These methodologies are:

- Evaluation forms;
- Mail surveys;
- Focus groups;
- Automated and electronic technology (e.g., instant fax, on-line, feedback forms for AHRQ Clearinghouse Publications); and
- Telephone surveys.

The estimated annual hour burden is as follows:

Type of survey	Number of respondents	Average burden response (hours per respondent)	Total hours of burden
Mail/Telephone Surveys	51,200	.15	7,693
Automated/Web-based	52,000	.164	8501
Focus Groups	200	1.0	200
Totals	103,400	.159	16,394

Request for Comments

Comments are invited on: (a) The necessity of the proposed collections; (b) the accuracy of the Agency's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Copies of these proposed collection plans and instruments can be obtained from the AHRQ Reports Clearance Officer (see above).

Dated: July 24, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–19054 Filed 7–30–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Anticipated Availability of Funds for Family Planning Services Grants

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice; correction.

SUMMARY: The Office of Population Affairs, OPHS, HHS published a notice in the **Federal Register** of June 8, 2001 announcing the anticipated availability of funds for family planning services grants. This notice contains three errors: (1) One of the eligible Populations/areas to be served (South Carolina) was omitted; (2) Addition of this eligible area increases the total amount of funds available; and (3) The telephone number for one of the contacts for Program Requirements was incorrect. In addition, after publication of the **Federal Register** notice, an agency decision was made to extend the due date for those applications due, as published, on 09–01–01 until 10–01–01. This document corrects these four items.

DATES: July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen Woodall, 301–594–0190; e-mail: *kwoodall@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The Office of Population Affairs published a notice in the **Federal Register** of June 8, 2001 announcing the anticipated availability of funds for family planning services grnats. Table I of this notice requires two changes. Inadvertently, the State of South Carolina was not included in the list of Populations/areas to be served. In addition, an agency decision was made to extend the due date for those applications due, as published, on 09–01–01 until 10–01–01. As a result of the addition of South Carolina as an eligible area, the total amount of funds available is increased to approximately $16.5 million. This requires that the anticipated total amount of funds announced be changed to reflect the actual total. In addition, the telephone number of Christy Crosser, one of the persons to contact for further information on Program Requirements in PHS Region VIII, was incorrect. This document corrects these four items.

Correction

In the **Federal Register** of June 8, 2001, in FR Doc. 01–14457 make the following corrections: On page 30929, in the second column under Program Requirements, Region VIII (Colorado, Montano, North Dakota, South Dakota, Utah, Wyoming) change the telephone number for Christy Crosser to read 303–844–7849.

Also on on page 30929, in third column, correct the last line on the page to read ''approximately $16.5 million will be.''

On page 30930 correct Table I to read:

TABLE I

Populations/Areas to be served	Approximate funding available	Application due date	Approx. grant funding date
Region I:			
New Hampshire	$1,100,000	10–01–01	01–01–02
Rhode Island	710,000	10–01–01	01–01–02
Massachusetts	4,300,000	10–01–01	01–01–02
Region II: No competitive grants available in FY 2002.			
Region III: Washington, D.C	930,000	10–01–01	01–01–02
Region IV: South Carolina	4,750,000	03–01–02	07–01–02
Region V: No competitive grants available in FY 2002.			
Region VI: No competitive grants available in FY 2002.			
Region VII: No competitive grants available in FY 2002.			
Region VIII:			
Wyoming	594,000	10–01–01	01–01–02
South Dakota	650,000	03–01–02	07–01–02
Migrant workers in the Greely, CO area	150,000	06–01–02	09–30–02
Region IX: Gila River Indian Community	239,000	03–01–02	07–01–02
Region X:			
Oregon	2,300,000	03–01–02	07–01–02
Alaska-Anchorage and surrounding suburbs; Homer; Sitka; Soldotna; Mat-Su Burrow	425,000	03–01–02	07–01–02

Dated: July 25, 2001.

John Jarman,

Acting Deputy Director, Office of Population Affairs.

[FR Doc. 01–19016 Filed 7–30–01; 8:45 am]

BILLING CODE 4150–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Applied Research on Antimicrobial Resistance, PA #01066.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Applied Research on Antimicrobial Resistance, PA #01066.

Times and Dates: 8:30 a.m.–9 a.m., August 16, 2001. (Open) 9 a.m.–5:30 p.m., August 16, 2001. (Closed)

Place: Hilton Atlanta Airport, 1031 Virginia Avenue, Atlanta, Georgia 30354.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Deputy Director for Program

Management, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement: PA #01066

Contact Person for More Information: Marsha Jones, Health Scientist, Centers for Disease Control and Prevention, National Center for Infectious Diseases, 1600 Clifton Road, m/s C19, Atlanta, GA., 30333. Telephone (404)639–2603, email: *maj4@cdc.gov.*

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 25, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–18970 Filed 7–30–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Project 1099.

OMB No.: 0970–0183.

Description: A voluntary program which provides States' Child Support Enforcement agencies, upon their request, access to the earned and unearned income information reported to IRS by employers and financial institutions. The IRS 1099 information is used to locate noncustodial parents and to verify income and employment.

Respondents: State IV–D programs.

TABLE OF BURDEN ESTIMATES FOR INFORMING PARENTS OF THEIR RIGHTS AND RESPONSIBILITIES AND FOR PROVIDING TRAINING

Reporting	Number of respondents	Number of responses per respondent per year	Average burden hours per response	Total burden hours
States	12	12	2	288

Estimated Total Annual Burden Hours: 288.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 24, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01–18950 Filed 7–30–01; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 01D–0294 and 01D–0295]

Draft Guidances for Industry on Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format: General Considerations and for Food Additive and Color Additive Petitions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft guidances for industry entitled ''Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format—General Considerations'' and ''Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions.'' These documents are the first in a series of guidance documents intended to provide guidance for industry regarding the preparation of regulatory submissions in electronic format to the Office of Food Additive Safety (OFAS), Center for Food Safety and Applied Nutrition (CFSAN). OFAS is providing these draft guidances as part of its implementation of 21 CFR part 11 and the Food Additives Regulatory Management (FARM) Project.

DATES: Submit written or electronic comments concerning these draft guidances by October 1, 2001, to ensure adequate consideration in the preparation of revised guidances, if warranted. However, you may submit written or electronic comments at any time. Submit written comments concerning the collection of information by October 1, 2001.

ADDRESSES: Submit written comments concerning these draft guidances and the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. All comments should be identified with the corresponding docket number found in brackets in the heading of this document. Submit written requests for single copies of the draft guidances for industry entitled ''Providing Regulatory Submissions to

Office of Food Additive Safety in Electronic Format—General Considerations'' and ''Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions,'' to the Office of Food Additive Safety (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. Alternatively, you may request a copy of the draft guidances by calling 202–418–3100, or you may fax your request to 202–418–3131. All requests should identify the draft guidances by the titles listed above. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these draft guidances.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3116.

SUPPLEMENTARY INFORMATION:

I. Background

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe unless: (1) It and its use or intended use are in conformity with a regulation prescribing the condition(s) under which such additive may safely be used; (2) it and its use or intended use conform to the terms of a regulatory exemption for investigational use; or (3) for a food contact substance, the substance and the use of such substance are in conformity with a regulation prescribing the conditions under which such additive may be safely used or a food contact notification submitted under section 409(h) of the act is effective. Section 409(b) of the act specifies the information that must be submitted by a petitioner in order to establish the conditions under which a food additive may be safely used.

To implement the provisions of section 409 of the act, FDA has issued regulations under part 171 (21 CFR part 171). These procedural regulations are designed to delineate and specify the information that must be submitted to meet the statutory requirements. The regulations provide a standard format for submission, which assists in the processing of the petition.

Section 721(a) of the act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless: (1) The additive and its use are in conformity with a regulation listing such additive for such use, including any provision that describes the condition(s) under which the additive may safely be used and is either batch certified for such use or exempted from the certification requirements; or (2) the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Section 721(b) of the act specifies the information that must be submitted by a petitioner in order to establish that a color additive is safe and suitable for its proposed use.

To implement the provisions of section 721 of the act, FDA has issued regulations for submission of color additive petitions under part 71 (21 CFR part 71). These procedural regulations are designed to delineate and to specify the information that must be submitted to meet the statutory requirements. The regulations provide a standard format for submission, which assists in the processing of the petition.

In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published the final rule on Electronic Records; Electronic Signatures (21 CFR part 11). That final rule applies to all FDA program areas and to any paper records and handwritten signatures executed on paper that are required by statute or agency regulations. On January 28, 1999 (64 FR 4433), the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) announced the availability of guidance for industry on ''Providing Regulatory Submission in Electronic Format—General Considerations.'' Prior to publication of this guidance, OFAS participated in a number of the discussions and meetings with CDER, CBER, and other centers within the agency with respect to guidelines for electronic submissions.

FDA is now announcing the availability of two draft guidance documents for industry entitled ''Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format—General Considerations'' and ''Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions.'' Attached as appendices to the latter draft guidance are Form No. 3503, entitled ''Food Additive Petition Submission Application,'' Form No. 3504, entitled ''Color Additive Petition Submission Application,'' and accompanying instructions for both of these forms. The draft guidance on general considerations for electronic submissions addressed in this notice is similar in many respects, though not identical, to the guidance published by CDER and CBER (64 FR 4433). However, because OFAS only proposes to accept food and color additive petitions in electronic format at this time, the only present, practical application of this draft guidance on general considerations is to food and color additive petitions. The draft guidance for the submission of food additive and color additive petitions reflects a further refinement of the guidance on general considerations with respect to food additive and color additive petitions submitted to OFAS. (See §§ 71.1 and 171.1.) Attached as appendices to the draft guidance on food and color additive petitions are Form No. 3503, entitled ''Food Additive Petition Submission Application,'' Form No. 3504, entitled ''Color Additive Petition Submission Application,'' and accompanying instructions for both of these forms.

OFAS intends to update guidance documents on electronic regulatory submissions regularly to reflect the evolving nature of the technology involved and the experience of those using this technology. Although the guidance for one center with respect to electronic submissions may differ from that for another center, in some cases, due to differences in procedures and computer infrastructures, OFAS will work to minimize these differences wherever possible.

The draft guidances announced in this notice are also part of OFAS's efforts under the FARM project. FDA initiated the FARM project in June 1995 as part of a comprehensive plan, in which FDA made a commitment to Congress to provide resources to improve the efficiency and functioning of the food additive and color additive review program. In implementing the FARM project, OFAS and CFSAN have developed an electronic data management system used for the storage and retrieval of information and data necessary for the review of food additive and color additive petitions. This electronic data management system is designed to expedite the petition review process and subsequent agency safety decisions and also to help FDA perform associated activities better, such as responding to Freedom of Information Act requests and managing correspondence. The submission of food additive and color additive petitions in a consistent format will facilitate the use of the electronic data management system developed under the FARM project.

The information to be collected by way of electronically submitted food additive and color additive petitions is

the same information that is currently collected in petitions submitted as paper records. FDA believes that these forms will facilitate both the preparation and review of food and color additive petitions because these forms will serve to organize information necessary to support the safety of the use of food and color additives and, therefore, to decrease the overall paperwork burden. The burden of filling out the appropriate form and preparing the electronic media is not expected to increase the reporting and paperwork burden estimates for food and color additives petitions.

II. Significance of Guidance

The two draft guidance documents represent OFAS's current thinking on the format for the data and information in an electronically submitted petition for the use of a food or color additive. These draft guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. These two draft guidance documents are level 1 guidances and are being distributed for comment in accordance with FDA's good guidance practices regulation (21 CFR 10115; 65 FR 56468, September 19, 2000).

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

Because OFAS proposes to collect food and color additive petitions in electronic format, in addition to a paper copy, at the present time, the following analysis contemplates only the paperwork burden stemming from the submission of food and color additive petitions in electronic format. In the event that OFAS proposes to accept other forms of regulatory submissions in electronic format, we will analyze the paperwork burden for such submissions at that time.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Providing Regulatory Submissions in Electronic Format for Food Additive and Color Additive Petitions

Section 409(a) of the act provides that a food additive shall be deemed to be unsafe unless: (1) It and its use or intended use are in conformity with a regulation prescribing the condition(s) under which such additive may safely be used; (2) it and its use or intended use conform to the terms of a regulatory exemption for investigational use; or (3) for a food contact substance, the substance and the use of such substance are in conformity with a regulation prescribing the conditions under which such additive may be safely used or a food contact notification submitted under section 409(h) of the act is effective. Individuals or companies submit food additive petitions to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe for its proposed use. This regulation implements section 409(b)(2) of the act.

Section 721(a) of the act provides that a color additive shall be deemed to be unsafe unless: (1) The additive and its use are in conformity with a regulation listing such additive for such use, including any provision that describes the condition(s) under which the additive may safely be used and is either batch certified for such use or exempted from the certification requirements; or (2) the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. Individuals or companies submit color additive petitions to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 specifies the information that a petitioner must submit in order to establish that a color additive is safe and suitable for its proposed use.

Respondents to this collection of information are businesses engaged in the manufacture or sale of food, food ingredients, substances used in materials that come into contact with food or engaged in the manufacture or sale of foods, drugs, devices, or cosmetics containing color additives.

The agency estimates that up to 30 percent of the petitioners for both food and color additives will take advantage of the electronic submission process during the first year. By using the guidelines, including the forms that FDA is providing, the petitioner will be able to organize the petition to focus on the information needed to expedite review of the petition. Therefore, we estimate that petitioners will only need to spend approximately 1 hour completing the electronic submission application form (FDA Form 3503 or 3504, as appropriate) because they will have already organized the information needed for the submission into the appropriate categories.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Part/FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating and Maintenance Costs
Food additive petitions[2]—electronic submissions						
FDA Form 3503	3	1	3	1	3	0

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section/Part/FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating and Maintenance Costs
171.1—electronic submissions	3	1	3	4,799	14,397	0
172—electronic submissions	3	1	3	0	0	0
173—electronic submissions	3	1	3	0	0	0
175 through 178—electronic submissions	3	1	3	0	0	0
180—electronic submissions	3	1	3	0	0	0
Subtotal					14,400	0
Color additive petitions[2]—electronic submissions						
FDA Form 3504	1	1	1	1	1	0
70.25—electronic submissions	0	0	0	0	0	0
71.1 category A[3]—electronic submissions	1	1	1	608	608	2,600
71.1 category B[4]—electronic submissions	1	1	1	2,394	2,394	3,000
71.1 category C[5]—electronic submissions	0	0	0	0	0	0
Subtotal					3,003	$5,600
Total					17,403	$5,600

[1] There are no capital costs associated with this collection of information.
[2] The electronic submissions (e-submissions) contain the same petition information required for paper submissions; only the submission format will contain both electronic and paper.
[3] Category A—A color additive petition with minimal testing requirements, such as is typical for medical device color additive petitions (toxicity studies, collection of identity information, analytical information, and administrative details).
[4] Category B—An average color additive petition consisting of analytical work, 90-day feeding study, and the administrative details, which include the drafting of the regulations.
[5] Category C—A petition for a completely new food, drug, or cosmetic color.

Under parts 71 and 171, the agency requires that the petitioner submit the petitions in triplicate. The draft guidance for industry entitled ''Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions'' provides that petitioner should include one copy of the petition in electronic format (''electronic copy'') and one copy in paper format (''paper copy''). The submission of an electronic copy, however, is not expected to significantly increase the burden of preparing the submission because it merely serves as a substitute for paper copies. Further, the agency also plans to hold consultations with the petitioners during the time of preparation to ensure that the information that the petitioners submit meets the current requirements in parts 71 and 171 and that it is in the recommended format.

The estimate of burden for electronically submitted food additive petitions is based on the number of new food additive petitions received in fiscal year (FY) 1999 and the total hours expended by petitioners to prepare the petitions. We estimate that during the first year, the electronic submission process will reduce the total time of preparation for food additive petitions by approximately 10 percent of the burden previously estimated for paper petitions (see 65 FR 64222, October 26, 2000). Although the burden varies with the type of petition submitted, an average food additive petition involves review of appropriate scientific studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

The estimate of burden for electronically submitted color additive petitions is based on an average of five new color additive petitions received each year in FY 1998 and 1999. We estimate that during the first year, the electronic submission process will reduce the total time of preparation for color additive petitions by approximately 10 percent of the burden previously estimated for paper petitions (see 64 FR 51128, September 21, 1999). Although the burden varies with the type of petition submitted, an average color additive petition involves analytical work and appropriate toxicology studies, as well as the work of drafting the petition itself.

If an average of five color additive petitions (all submissions) are expected per calendar year, and only one submission per category for categories A and B is an electronic submission, the estimated annual burden for this start-up cost would be approximately $5,600. Based on the assumption that companies will use the same equipment for generating both paper and electronic records after this initial start-up cost, i.e., software and storage media for preparing both paper and electronic submissions, the burden of maintaining electronic equipment and of maintaining electronic records should not increase the burden of preparing such petitions. In fact, the cost of shipping electronic media should be less than shipping paper copies of petitions.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on each of the two draft guidances by October 1, 2001, to ensure adequate consideration of the comments in the preparation of revised guidances, if warranted. However, interested persons may submit written or electronic comments at any time. Two copies of any comments are to be submitted pertaining to each guidance document, as applicable, 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. Submit written comments concerning this collection of information to the Dockets Management Branch by October 1, 2001. The draft

guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidances at http://www.cfsan.fda.gov/@dms/opa-toc.html.

Dated: July 19, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–18948 Filed 7–30–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4652–N–14]

Announcement of OMB Approval Number for Public Housing Development Evidentiary Materials and Other Documents—24 CFR 941.610

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of OMB Approval Number.

SUMMARY: The purpose of this notice is to announce the OMB approval number for the collection of information pertaining to requirement for submission of evidentiary materials and other documents in the development of public housing.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0614, extension 4128. This is not toll-free number.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as Amended), this notice advises that OMB has responded to the Department's request for approval of the information collection pertaining to requirements for submission of evidentiary materials and other documents for public housing development. The approval number for this information collection is 2577–0033, which expire 6/30/2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Dated: July 24, 2001.

Karen A. Newton,

Deputy Assistant Secretary for Troubled Agency Recovery.

[FR Doc. 01–18961 Filed 7–30–01; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–043210

Applicant: Dr. David M. Leslie, Jr., Stillwater, Oklahoma. Applicant requests a permit for recovery purposes to conduct surveys for the Ozark big-eared bat (*Corynorhinus townsendii ingens*) within Oklahoma.

Permit No. TE–044783

Applicant: Philip W. Hedrick, Tempe, Arizona.

Applicant requests a permit for recovery purposes to conduct surveys for the Gila topminnow (*Poecilipopsts occidentalis occidentalis*) within Arizona.

Permit No. TE–020844

Applicant: Engineering and Environmental Consultants, Tucson, Arizona.

Applicant requests a permit for recovery purposes to conduct surveys for the Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*) within Arizona.

Permit No. TE–045236

Applicant: SWCA, Inc.,Environmental Consultants, Albuquerque, New Mexico.

Applicant requests a permit for recovery purposes to conduct surveys for the following species: Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) within Texas, New Mexico, and Arizona; Mexican long-nosed bat (*Leptonycteris nivalis*) within New Mexico and Arizona; Gila topminnow (*Poecilipopsts occidentalis occidentalis*) within New Mexico and Arizona; Gila trout (*Oncorhynchus gilae*) within New Mexico and Arizona; Rio Grande silvery minnow (*Hybognathus amarus*) within New Mexico; Pecos gambusia (*Gambusia nobilis*) within New Mexico; Southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico, Arizona, and Texas.

DATES: Written comments on these permit applications must be received on ore before August 30, 2001.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, Albuquerque, New Mexico, at the above address. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Steven M. Chambers,

Acting Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 01–18971 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No. 036890

Applicant: Virginia S. Moran, Julian, California

The applicant requests an amendment to the existing permit to take (remove or reduce to possession) Munz's onion (*Allium munzii*) in conjunction with survey activities, including removal for voucher specimens for discovery of new populations, on Cleveland National Forest lands, San Diego County, California, for the purpose of enhancing its survival.

Permit No. TE–005956

Applicant: USGS, Biological Resources Division, Western Fisheries Research Center

The applicant requests a permit to take (capture, measure, weigh, mark, release, and sacrifice) the cui-ui (*Chasmistes jujus*) and Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*); take (capture, release, and sacrifice) the Moapa dace (*Moapa coriacea*); take (capture, mark, and release) the Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*), White River springfish (*Crenichthys baileyi baileyi*), Hiko White River springfish (*Crenichthys baileyi grandis*), Independence Valley speckled dace (*Rhinichthys osulus lethoporus*); take (capture, release, and harass by observation) the White River spinedace (*Lepidomeda albivalis*); and take (harass by observation) the Pahranagat roundtail chub (*Gila robusta jordani*) and Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*) in Nevada and Idaho for the purpose of scientific research to enhance the survival of the species. This permit was previously issued as subpermit NBSWFRC.

Permit No. TE–827500

Applicant: Sean Barry, Dixon, California

The applicant requests permit amendment to take (harass by survey, capture) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with presence/absence surveys during pre-construction activities throughout the species' range in California, for the purpose of enhancing its survival.

Permit No. 044854

Applicant: Michael Parker, Ashland, Oregon

The applicant requests a permit to take (remove from the wild) Devils Hole pupfish (*Cyprinodon diabolis*) in conjunction with scientific research in Nye County, Nevada, for the purpose of enhancing its survival.

Permit No. 044846

Applicants: Channel Islands National Park and USGS-BRD, Western Ecological Research Center, Ventura, California

The applicants request a permit to take (remove for voucher specimens, seed and fruit collection, and propagation materials) Hoffman's rock-cress (*Arabis hoffmannii* ssp. *tenuiflora*), Santa Rosa Island manzanita (*Arctostaphylos confertiflora*), island barbarry (*Berberis pinnata* ssp. *insularia*), soft-leaved paintbrush (*Castilleja mollis*), Santa Barbara Island live-forever (*Dudleya traskiae*), island bedstraw (*Galium buxifolium*), Hoffman's slender flowered gilia (*Gilia tenuiflora* ssp. *hoffmanii*), Santa Cruz Island bushmallow (*Malacothamnus fasciculatus* var. *nesioticus*), Santa Cruz Island malacothrix (*Malacothrix indecora*), island malacothrix (*Malacothrix squalida*), island phacelia (*Phacelia insluaris* ssp. *insularis*), and Santa Cruz Island fringepod (*Thysanocarpus conchuliferus*) in conjunction with surveys and scientific research in Santa Barbara and Ventura Counties for the purpose of enhancing their survival.

Permit No. TE–039111

Applicant: Gary Burchett, Fallbrook, California

The applicant requests a permit to take the southwestern willow flycatcher (*Empidonax trailii extimus*) in conjunction with presence/absence surveys in Riverside, San Bernardino, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. TE–807303

Applicant: Rudi Mattoni, Los Angeles, California

The applicant requests a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) and Laguna Mountains skipper (*Pyrgus ruralis lagunae*) in conjunction with presence/absence surveys in southern California, for the purpose of enhancing their survival.

Permit No. TE–044572

Applicant: Chris Pyke, Santa Barbara, California

The applicant requests a permit to take (collect cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool fairy shrimp (*Branchinecta lynchi*) in conjunction with ecological research in San Joaquin, Santa Barbara, Ventura, Tulare, Merced, Butte, Yuma, and Sutter Counties, California for the purpose of enhancing their survival.

Permit No. TE–045153

Applicant: Dustin Janeke, Mangilao, Guam

The applicant has requested a permit to take (capture, mark, radio-track, collect tissue samples, and release) the Mariana fruit bat (*Pteropus mariannus mariannus*) in conjunction with scientific research in Guam, for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before August 30, 2001.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: July 18, 2001.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 01–18975 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit; Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Language Research Center, Georgia State University, Decatur, GA, PRT–037138.

The applicant requests a permit to export 0.1 dead bonobo (*Pan paniscus*) to the Primate Research Institute of Kyoto University, Japan, for the purpose of scientific research.

Applicant: Gregory W. Mills, Pearland, TX, PRT–043849.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

Dated: July 20, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–19051 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Proposed Monitoring Plan for American Peregrine Falcons in the United States for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Endangered Species Act requires that the Service implement a system, in cooperation with the States, to monitor effectively for at least 5 years, the status of all species that have been recovered and no longer need protection of the ESA. The American peregrine falcon (*Falco peregrinus anatum*) was removed from the List on August 25, 1999, due to recovery. We, the U.S. Fish and Wildlife Service (Service), are requesting public comments on the proposed monitoring plan for the American peregrine falcon in the United States.

DATES: Comments from all interested parties on the proposed American peregrine falcon monitoring plan must be received on or before August 30, 2001.

ADDRESSES: Comments and other information concerning the proposed American peregrine falcon monitoring plan should be sent to Robert Mesta, Sonoran Joint Venture Coordinator, Office of Migratory Birds, U.S. Fish and Wildlife Service, 12661 E. Broadway Blvd. Tucson, Arizona 85748 (facsimile (520) 258–7238, phone (520) 258–7227). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. A copy of the draft plan is available upon request from Robert Mesta at (520) 258–7227, or Chief, Division of Consultation, Habitat Conservation Plans, Recovery, and State Grants at (703) 358–2061. The draft plan is also available through the internet at *http://endangered.fws.gov/recovery/docs/peregrine_monitoring.pdf.*

SUPPLEMENTARY INFORMATION:

Background

Section 4(g)(1) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), requires that we implement a plan, in cooperation with the States, to effectively monitor for not less than 5 years, the status of all species that have been recovered and delisted. In order to meet the ESA's monitoring requirement, and to facilitate the efficient collection of data, a sampling method capable of assessing the population status of the American peregrine falcon (*Falco peregrinus anatum*) will be implemented.

The proposed American peregrine falcon monitoring plan was developed in cooperation with State resource agencies, recovery team members, and interested scientists, and will be carried out in collaboration with Federal, State, and private cooperators. The proposed American peregrine falcon monitoring plan will start in the spring of 2002. Surveys will be conducted every 3 years for a total of five surveys. Monitoring will include the collection of information on the population trends and nesting success. At the end of each triennial monitoring we will review all available information to determine the state of the falcon.

The final delisting rule was published on August 25, 1999 (64 FR 46542). The final delisting rule also removed designated critical habitat for the American peregrine falcon, and the designation of endangered due to similarity of appearance for any free-flying peregrine falcons within the 48 conterminous United States. Available data indicated that this species had recovered following Environmental Protection Agency restrictions on organochlorine pesticides in the United States and Canada, and also due to implementation of successful management activities.

Public Comments Solicited

We request comments on the proposed American peregrine falcon monitoring plan. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

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

Dated: July 13, 2001.

Rowan W. Gould,

Acting Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 01–18964 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Dos Pueblos Golf Links, Santa Barbara County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: CPH Dos Pueblos Associates, L.L.C., and ARCO Environmental Remediation, L.L.C., (Applicants) have applied to the Fish and Wildlife Service (Service) for Incidental Take Permits (Permits) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed Permits would authorize take of the California red-legged frog (*Rana aurora draytonii*) and the tidewater goby (*Eucyclogobius newberryi*) incidental to otherwise lawful activities west of Goleta, Santa Barbara County, California. The proposed permit duration is 25 years for CPH Dos Pueblos Associates and 10 years for ARCO Environmental Remediation.

The application includes: (1) The proposed Habitat Conservation Plan (Plan), which fully describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate anticipated take of the California red-legged frog and tidewater goby, as required in section 10(a)(2)(B) of the Act; and (2) the proposed Implementing Agreement. The Service also announces the availability of an Environmental Assessment for the permit application.

This notice is provided to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). The Plan, Implementing Agreement, and the Environmental Assessment are available for review and comment by other agencies and the public. All comments received, including names and addresses, will become part of the public record and will be available for review pursuant to section 10(c) of the Act.

DATES: Written comments must be received no later than October 1, 2001.

ADDRESSES: Written comments should be addressed to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003. Comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Bridget Fahey, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of these documents by contacting the Ventura Fish and Wildlife Office at the above address and telephone number. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively.

The Applicants have proposed to construct a golf course on a 208-acre parcel. The project site is located 5 miles west of Goleta, south of State Highway 101 between Dos Pueblos Canyon and Eagle Canyon in Santa Barbara County, California. Typical land uses in the area surrounding the project site include several residential developments, one commercial center, and undeveloped coastal sage scrub areas. The Pacific Ocean is south of the project site. The applicant proposes to construct, operate, and maintain an 18-hole links style golf course, a 9-hole par-three golf course, driving range, putting green, turf farm, clubhouse, and other appurtenant facilities after removing contaminated soils from the site.

Biologist surveyed the project site for special-status plants and wildlife in 1999 and 2000. Based on these surveys, the Service concluded that the project may result in the take of two federally listed species, the threatened California red-legged frog and the endangered tidewater goby.

Activities covered by the requested Permits and addressed by the proposed Plan include the construction, operation, and maintenance of an 18-hole links style golf course, a 9-hole par-three golf course, driving range, putting green, turf farm, clubhouse, and other appurtenant facilities on a 208-acre site along the Pacific Coast in Santa Barbara County, California. This project would permanently alter 115 acres of upland dispersal habitat for the California red-legged frog and could indirectly affect the 0.5 acres aquatic habitat for the California red-legged frog and tidewater goby.

The Applicants propose to implement 60 measures to minimize and mitigate take of the California red-legged frog and tidewater goby, including: (1) Water quality monitoring in natural drainages and the one vernal pool on site to ensure that water quality is not being degraded; (2) conducting environmental training for construction and maintenance personnel to educate them concerning federal listed species; (3) placing restrictions pertaining to pets and using signs to educate the public and encourage protection of the adjacent biological resources; (4) seasonally closing public access to the beach at the mouth of Eagle Canyon from February 1 to May 31 to protect sensitive life stages (*i.e.,* eggs and tadpoles) of California red-legged frogs; (5) implementing best management practices for erosion and sediment control during construction; requiring Service-approved biologists to monitor and relocate dispersing California red-legged frogs found within construction areas; (6) implementing a bullfrog monitoring and removal program for the life of the project; and (7) mitigating the take of California red-legged frogs and tidewater gobies by creating 1.15 acres of southern willow scrub and permanently protecting 7.53 acres of California red-legged frog breeding and dispersal habitat, and 0.5 acres of tidewater goby habitat under a conservation easement. The Applicants would endow the management of the off-site mitigation area at either a cost of $2,500/acre or an amount determined by the easement holder, whichever is greater.

The Environmental Assessment considers the environmental consequences of five alternatives in addition to the Proposed Project Alternative. The Proposed Project Alternative consists of the issuance of Permits and implementation of the Plan and its Implementing Agreement, which include measures to minimize and mitigate impacts of the project to the California red-legged frog and tidewater goby.

Under the Reduced Project Alternative, the par-three golf course adjacent to Eagle Canyon would be eliminated, but coastal access would still be developed. This alternative would have similar impacts to listed species as the proposed action, although the potential for deleterious effects to water quality in Eagle Canyon Creek would be reduced.

Under the Alternative Sites Project Alternative, the golf course would be constructed at one of two other sites, the Naples Site or the Patterson Site. As the Naples Site could also contain habitat for the California red-legged frog and tidewater goby, effects to listed species would be similar to the effects of the proposed action. Effects to listed species would be reduced if the Patterson Site were chosen; however, due to restrictions on the conversion of the Patterson site from agriculture, this site is not a viable alternative.

The No Eastern Vertical Access Alternative would allow for the construction and operation of the golf course, but no vertical access into Eagle Canyon Creek would be built. Without managed access, continued foot traffic through the drainage from trespassers could result in grater effects to listed species than the proposed project alternative.

The Eastern Vertical Access within Eagle Canyon Alternative would allow the construction of a foot path directly into Eagle Canyon, as was originally proposed by the Applicants, rather than down the cliff face to the mouth. This

alternative would result in increased effects to listed species, by effectively bringing people in direct contact with listed species habitat.

Under the No Action Alternative, the Service4 would not issue a permit and the project area would continue to remain in its present condition. As illegal trespass would likely continue within Eagle Canyon Creek, effects to California red-legged frogs and tidewater gobies would be likely.

This notice is provided pursuant to section 10(a) of the Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued to the Applicants for the incidental take of the California red-legged frog and tidewater goby. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: July 25, 2001.

John Engbring,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 01–18973 Filed 7–30dash;01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Denial of Permit for Marine Mammals

On April 26, 2001, a notice was published in the **Federal Register**, Vol. 66, No. 81, Page 21007, that an application had been filed with the Fish and Wildlife Service by the Baltimore Zoo, Baltimore, Maryland, for a permit (PRT–040039) to import a live captive held polar bear (*Ursus maritimus*) from Jardin de Quebec Zoologique, Quebec, Canada, for public display purposes. Notice is hereby given that on June 11, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service denied the requested permit.

Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203, phone (703) 358–2104 or Fax (703) 358–2281.

Dated: June 18, 2001.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–19052 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Acquire Additional Habitat for Hobe Sound National Wildlife Refuge in St. Lucie and Martin Counties, FL

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent to acquire additional habitat for Hobe Sound National Wildlife Refuge.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has prepared a Decision Report that proposes to acquire approximately 149 acres of additional wildlife habitat for Hobe Sound National Wildlife Refuge in St. Lucie and Martin Counties, along the southeastern Atlantic coast in Florida. The purpose of the project is to protect and manage additional beachfront and upland sand pine-scrub habitats for the benefit of many species of wildlife, including federally listed threatened species such as the wood stork, Florida scrub jay, piping plover, loggerhead sea turtle, eastern indigo snake, and four-petal pawpaw, as well as federally listed endangered species including the leatherback and green sea turtles and Lakela's mint. Other species of wildlife native to the south Florida area would also benefit from the proposed refuge additions.

A Decision Report was prepared for this project because it is categorically excluded from the requirement of preparing an environmental assessment or environmental impact statement in accordance with the provisions of the National Environmental Policy Act (NEPA). This categorical exclusion is based on the small size of the proposed refuge additions (149 acres), the general public support of the project, and the willingness of the affected landowners to sell or transfer their lands to the Service for inclusion as part of Hobe Sound National Wildlife Refuge.

DATES: The Decision Report was approved by the Director of the Fish and Wildlife Service on July 4, 2001.

ADDRESSES: The Decision Report is available for public inspection at the U.S. Fish and Wildlife Service, Southeast Regional Office, Land Acquisition Planning Branch, 1875 Century Boulevard, Atlanta, Georgia 30345. Written requests for copies of the Decision Report should be sent to Mr. Charles Danner, Team Leader, at the same address. Mr. Danner can also be contacted by telephone at 1–800–419–9582.

SUPPLEMENTARY INFORMATION: The proposal refuge additions are located in St. Lucie and Martin Counties, Florida, and consist of four separate areas near the refuge. Area 1 (4 acres) and Area 2 (65 acres) are adjacent to the refuge. Area 3 (70 acres) is located on Hutchinson Island about 20 miles north of the refuge. Area 4 (10 acres) is located about 45 miles north of the refuge near Vero Beach. These four areas total approximately 149 acres. The Service is proposing to acquire these lands through a combination of fee title purchases from willing sellers and leases, conservation easements, or cooperative agreements from willing landowners.

The primary objective of acquiring the project lands is to protect and maintain some of the most productive nesting habitats of the endangered leatherback and green sea turtles and threatened loggerhead sea turtle, as well as habitat for a number of other endangered and threatened species including the wood stork, Florida scrub jay, piping plover, eastern indigo snake, four-petal pawpaw, and Lakela's mint.

Dated: July 4, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01–19053 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–24 1A]

Reinstatement of Approved Information Collection, OMB Approval Number 1004–0068

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to reinstate an existing approval to collect information that authorizes and documents the cooperative construction of range

improvement projects on public lands. BLM will use form 4120–67 (Cooperative Range Improvement Agreement) under the authority of Sections 2, 4, and 9 of the Taylor Grazing Act, Section 5 of the Public Rangelands Improvement Act and implementing regulations found at 43 CFR 4110.2–3(a)(2), 4120, and 4140.1(b)(8).

DATES: You must submit your comments to BLM at the address below on or before October 1, 2001. BLM will not necessarily consider any comments after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, Mailstop 401LS, 1849 C Street, NW., Washington, DC 20240.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0068'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Ken Visser on (202) 452–7743 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Visser.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM administers the livestock grazing program consistent with land-use plans, multiple-use objectives, sustained yield, environmental values, economic considerations, and other factors. To do so, BLM may enter into a cooperative range improvement agreement with a person, organization, or other government entity to install, use, maintain and/or modify permanent range improvements or rangeland developments to achieve management or resource condition objectives.

BLM will use Form 4120–6 to document cooperative project development agreements between BLM and grazing permittees/lessees for projects intended to enhance the livestock management infrastructure on public lands. Also, BLM will use Form 4120–6 to document agreements between BLM and others such as State wildlife agencies, conservation organizations or entities wishing to contribute resources to cooperatively develop and/or maintain a project on public lands intended to further other land-use plan goals. Form 4120–6 requests the information to identify the cooperator(s), the range improvement project, and the expenditures by the cooperator(s) and the BLM to construct the proposed project.

Based upon BLM experience and recent tabulations of activity, we process approximately 588 Cooperative Range Improvement Agreements each year. The public reporting information collection burden takes 20 minutes. Depending on the size and complexity of the range project, some responses may take up to 60 minutes to complete. The estimated number of responses per year is 588. The estimated total annual burden is 196 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: June 20, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–19037 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1020–PB–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0041

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from grazing operators who request changes to their BLM approved grazing permits or leases. BLM uses Form 4130–3a (Automated Grazing Application, formerly Grazing Preference Statement) to show the grazing operator the terms and conditions of the grazing use schedules their permit or lease authorizes and to provide the operator an opportunity to apply for changes for the upcoming grazing season.

DATES: You must submit your comments to BLM at the address below on or before October 1, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, Mailstop 401LS, 1849 C Street, NW., Washington, DC 20240.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0041'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Ken Visser on (202) 452–7743 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Visser.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM administers the livestock grazing program consistent with land-use plans, multiple-use objectives, sustained yield, environmental values, economic considerations, and other factors. When BLM authorizes livestock use on public lands it is an important and integral part of program administration. The implementing regulations (43 CFR 4130.1) provide for the timely filing of applications for grazing permits or leases, free-use grazing permits, and other authorized grazing uses with the appropriate BLM office.

BLM will continue to use Form 4130–3a to document applications for livestock grazing use on public lands and to annually amend authorized grazing levels within the terms and conditions of existing permits or leases. The BLM requests information that the applicant either confirms or changes to reflect their desired grazing use, include the name and number of the grazing allotment to verify the authorized location, the number of livestock and periods of use for billing purposes, the recorded brands to verify ownership, and if requested, reasons for any nonuse. Without this information, BLM would not be able to properly administer uses of the public lands as required by law and resulting in unauthorized use, improper billings, and nonpayment of fees due the Federal Government.

Based upon BLM experience and recent tabulations of activity, we process approximately 7,665 applications each year. The public reporting information collection burden takes 14 minutes. Depending on the complexity of the applications, some responses vary from 5 minutes to 30 minutes to complete. We estimate 7,665 responses per year and a total annual burden of 1,794 hours.

BLM will summarize all response to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: July 16, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–19038 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004–0184

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from lessees, operators, record title holders, operating rights owners, and the general public on oil and gas leasing and operations on Federal lands. The revised implementing regulations will be found at 43 CFR part 3100 to authorize BLM to collect the new required nonform information.

DATES: You must submit your comments to BLM at the address below on or before October 1, 2001. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Regulatory Affairs Group (630), Bureau of Land Management, Mailstop 401LS, 1840 C Street, NW., Washington, DC 20240.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0184'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The BLM is revising its Federal oil and gas leasing and operations regulations (43 CFR Part 3100). The implementing regulations will improve procedures and clarify requirements. The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the various Indian leasing acts; the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (Pub. L. 100–203, 101 Stat. 1330–256); the Federal Oil and Gas Royalty Management Act; and the various requirements in 43 CFR 3100, authorize BLM to maintain records and provide information pertaining to data submitted by the lessees, operators, record title holders, operating rights owners, and the general public.

Based upon our experience managing oil and gas activities, we estimated the new public reporting information collection burden in a **Federal Register** notice (63 FR 66840). We estimated 22,945 responses per year and an estimated total annual burden of 4,102 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: July 16, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01–19039 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–8104–2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: Notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Ahtna, Inc., for 130.45 acres, located in the vicinity of Copper Center and Chistochina, Alaska, in the following townships: Tps. 1 S., Rs. 1 and 3 E., and T. 11 N., R. 5 E., Copper River Meridian. Notice of the decision will also be published four times in the Copper Valley Weekly.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 30, 2001 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Nora A. Benson (907) 271–3323.

(Authority: 43 CFR 2650.7(d)).

Nora A. Benson,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 01–19034 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1220–EA; Special Recreation Permit #NV–023–01–12]

Public Land Closures; Prohibition of Certain Activities; Nevada

AGENCY: Bureau of Land Management, Winnemucca Field Office, Nevada.

ACTION: Notice to the public of public lands closure, and prohibition of certain activities on public lands administered by the Bureau of Land Management, Winnemucca Field Office, Nevada.

SUMMARY: Notice is hereby given that certain lands would be temporarily closed or restricted, and certain activities would be temporarily prohibited, in and around the Burning Man Festival event site, Pershing and Washoe counties, Nevada, for camping, vehicle use, fire use, and aircraft landing from 6 a.m., August 27, 2001, to 12:00 pm, September 3, 2001. Certain lands would be temporarily closed or restricted, and certain activities would be temporarily prohibited, in the Winnemucca District, Pershing and Washoe Counties, Nevada, for fireworks use and firearms use from 6 a.m., August 10, 2001, to 12:00 pm, September 10, 2001. These closures, restrictions and prohibitions are being made in the interest of public safety at and around the public lands location of an event known as the Burning Man Festival. This event is expected to attract at approximately 30,000 participants this year. The lands involved are located in the Mount Diablo Meridian and located northeast of Gerlach, Nevada.

Public Camping Is Prohibited in the Following Areas: T33N, R24E, Sec. 1: W½ ; Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11; Sec. 12: W½ ; Sec. 15: N½ of the NW ¼; Sec. 16: N½; T33½N, R24E, Sec. 33; Sec. 34; Sec. 35; Sec. 36: W½ . These areas are closed during the event period, August 27, 2000 to September 3, 2001, with the exception of defined camping areas designated and provided by the Black Rock City LLC, an authorized ''pilot camp'' and BLM-authorized event management-related camps.

Operation of Motorized Vehicles Is Prohibited on the Following Public Lands: T33N, R24E, Sec. 2, Sec. 3, Sec. 4, Sec. 9, Sec. 10, Sec. 11. T33½N, R24E, Sec. 33; Sec. 34; Sec. 35. These areas within the event boundary are closed during the Burning Man event period, August 27, 2001 to September 3, 2001, with the following exceptions: participant arrival at the event and departure following event completion on designated routes, art vehicles registered with Burning Man; Black Rock City LLC staff and support, BLM, medical, law enforcement, and firefighting vehicles. ''Art Cars'' must register with Burning Man/Black Rock City LLC and must provide evidence of registration at all times.

The following Public Lands are Closed: T33N, R24E, Sec. 4: NW¼; Sec. 4: S½; Sec. 5: SE¼; Sec 8: NE¼; Sec 8: S½ ; Sec. 9; Sec. 10: W½; Sec. 15: N½ of the NW¼; Sec 16: N½ . T33½N, R24E, Sec. 33: NE¼; Sec. 34: NW¼. For event safety during entry, exit and airstrip operations, Playa areas southwest, west and northwest of the event are closed during the Burning Man event period, August 27, 2001 to September 3, 2001, with the exception of BLM personnel, law enforcement, emergency medical services, Burning Man staff as designated by the BLM authorized officer, entrance road and the airstrip.

Fire Restriction Orders are in effect pursuant to 43 CFR 9212.2, 36 CFR 261.50(a)(b) for all lands managed by the BLM, Winnemucca Field Office. Black Rock City LLC/Burning Man will abide by fire restriction orders, except for the following as officially approved by Black Rock City LLC in coordination with BLM: Official art burns, authorized event fireworks, and other authorized fires only in Black Rock City LLC/ Burning Man-supplied fire pans and fire barrels.

The use, sale or possession of personal fireworks within the Burning Man Event/Black Rock City boundary fence is prohibited on the following public lands from August 10, 2001, through September 10, 2001: T33N, R24E, Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11; T33½N, R24E, Sec. 33; Sec. 34; Sec. 35, with the exception of those fireworks that have been approved by Black Rock City LLC as part of an official Burning Man art burn event.

Possession of Firearms Is Prohibited on the Following Public Lands from August 10, 2001, through September 10, 2001: T33N, R24E, Sec. 2; Sec. 3; Sec. 4; Sec. 9; Sec. 10; Sec. 11; T33½N, R24E, Sec. 33; Sec. 34; Sec. 35. This closure is in effect inside the Burning Man event/Black Rock City boundary fence, with the exception of county, state and federal certified law enforcement personnel under the color of law. ''Firearm'' means any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion (NRS 202.253).

Discharge of Firearms Is Prohibited on the Following Public Lands from August 10, 2001, through September 10, 2001: T33N, R24E, Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5; Sec 6: E½; Sec 8; Sec. 9; Sec. 10; Sec. 11; Sec. 12; Sec. 13: N½ ; Sec. 13: SW¼; Sec. 14; Sec. 15; Sec. 16; Sec. 17: E½; Sec. 17: NW¼; Sec. 21: NE¼; Sec. 22: N½, Sec. 23: NW¼; T33N, R25E, Sec. 4; Sec. 9: W½ ; Sec. 9: NW¼ of the NE¼; T33½N, R24E, Sec. 25; Sec. 26; Sec. 27 Sec. 28; Sec. 29; Sec. 32; Sec. 33; Sec. 34; Sec. 35; Sec. 36; T34N, R24E, Sec. 33: NE¼; Sec. 33: S½; Sec. 34; Sec. 35; Sec. 36: S½; T34N, R25E, Sec. 33. This closure applies for two miles in all directions from the event boundary, with the exception of law enforcement officers under color of law.

Aircraft are prohibited from landing, taking off, and taxiing on the following public lands from August 27, 2001, through September 3, 2001: T33N, R23E, Sec. 25: E½; T33N, R24E, Sec. 1; Sec. 2; Sec. 3; Sec. 4; Sec. 5: SE¼; Sec.

8: NE¼; Sec. 8: S½; Sec. 9; Sec. 10; Sec. 11; Sec.12; Sec. 13: W½;. Sec. 14; Sec. 15; Sec. 16; Sec. 17; Sec. 18: NE¼; Sec. 18: S½; Sec 19; Sec. 20; Sec. 21; Sec. 22: N½; Sec. 28: NW¼; Sec. 29; Sec. 30: NE¼; T33N, R25E, Sec. 2: N½; Sec. 3: N½; Sec. 4; T33½N, R24E, Sec. 25; Sec. 26; Sec. 27; Sec. 28; Sec. 33; Sec. 34; Sec. 35; Sec. 36; T34N, R24E, Sec. 23: NE¼; Sec. 23: S½; Sec. 24; Sec. 25; Sec. 26; Sec. 27: SE¼; Sec. 33: E½; Sec. 34; Sec. 35: Sec. 36; T34N, R25E, Sec.16; Sec. 21; Sec. 22: S½; Sec 26: SW¼; Sec 27; Sec.28; Sec.33; Sec. 34; Sec. 35. This closure applies to the Playa for five miles in all directions from the event boundary during the event, with the exception of an authorized Burning Man landing strip for Burning Man staff and participants, law enforcement and emergency medical services. This airstrip is the only location Burning Man-related aircraft may land, with the exception of emergency aircraft such as Care Flight, Sheriff's or MAST helicopters.

A map showing these temporary closure, restrictions and prohibitions is available from the following BLM office: BLM-Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

The map may also be viewed on the Winnemucca Field Office website at: www.nv.blm.gov/winnemucca.

DATES: August 1, 2001 to September 20, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Bilbo, Outdoor Recreation Planner, at the Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445, (775) 623–1500.

Authority: 43 CFR 8364.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 USC 3571, or both.

Dated: June 29, 2001.

Les Boni,

Acting Field Manager, Winnemucca Field Office.

[FR Doc. 01–19035 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–086–6332–AA; GP01–0221]

Notice of Temporary Closure of Access to Public Lands; Tillamook County, OR

AGENCY: Bureau of Land Management, Salem District, Tillamook Field Office.

ACTION: A temporary closure for public entry to certain roads and lands administered by the Bureau of Land Management (BLM), Tillamook Field Office, Salem District, Oregon.

SUMMARY: The BLM is temporarily closing a portion of the Nestucca Access Road and the Alder Glen Campground in Tillamook County to public entry.

EFFECTIVE DATE: This closure is in effect July 31, 2001, until further notice to allow for completion of road maintenance and bridge replacement.

FOR FURTHER INFORMATION CONTACT: Dana R. Shuford, Field Manager, Bureau of Land Management, Tillamook Resource Area, 4610 Third Street, Tillamook, OR 97141. (503) 815–1100.

SUPPLEMENTARY INFORMATION: The Public Lands affected by this closure are the Alder Glen Campground and a portion of the Nestucca Access Road. The Nestucca Access Road (3–6–13) from the west end of the Alder Glen bridge to the east end of Elk Creek bridge will be closed to the public. The following roads which access the closed portion of the Nestucca Access Road will be closed at their intersection with the Nestucca Access Road: Bear Ridge Road (3–7–32.1), Bear Creek Road (3–7–32) and Hoag Pass Road (3–7–28). The purpose for this closure is for public safety and construction site security.

Closure Order

The following described lands are closed to the public: Alder Glen Campground and the Nestucca Access Road (3–6–13) from the west end of the Alder Glen bridge to the east end of Elk Creek bridge.

1. Prohibited Act: Under 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule within the closure area described above:

You must not enter the closed area.

2. Exemptions: Persons who are exempt from these rules include any Federal, State, or local officer or employee in the scope of his or her duties, members of any organized rescue or fire-fighting force in performance of an official duty, contractors and their employees while engaged in official duty, and others authorized in writing by the Bureau of Land Management.

3. Penalties: Authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who fails to comply with a restriction order may be tried before a United States Magistrate and fined not more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the higher fines provided for by 18 U.S.C. 3571.

Dana R. Shuford,

Field Manager.

[FR Doc. 01–19028 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–990–5101–NH–FL07]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Renewal of the Federal Agreement and Grant of Right-of-Way for the Trans-Alaska Pipeline System (TAPS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS) for renewal of the federal agreement and grant of right-of-way for the Trans-Alaska Pipeline System (TAPS) and notice of scoping meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), as amended; the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), as amended; the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508); and the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended, including Title II—the Trans-Alaska Pipeline Authorization Act (TAPAA; 43 U.S.C. 1651), the Bureau of Land Management (BLM), through its office in the Joint Pipeline Office (JPO), will prepare an Environmental Impact Statement (EIS) on renewing the right-of-way for the Trans-Alaska Pipeline System (TAPS). Assisting the BLM in preparation of the EIS will be Argonne National Laboratory, Argonne, Illinois.

The BLM will hold public scoping meetings to obtain comments for the EIS at the following locations on the dates specified (specific meeting times and places will be announced through local media and project web sites):

Barrow, Alaska: Wednesday, September 12, 2001

Fairbanks, Alaska: Thursday, September 13, 2001
Copper Center/Glennallen, Alaska: Monday, September 17, 2001
Valdez, Alaska: Tuesday, September 18, 2001
Delta Junction, Alaska: Wednesday, September 19, 2001
Anchorage, Alaska: Thursday, September 20, 2001

DATES: The BLM will also accept written comments on the EIS scope postmarked by September 29, 2001; and electronic, faxed, and voice comments received by September 29, 2001. Written comments may also be hand-delivered to the Joint Pipeline Office in Anchorage, Alaska, by 4 p.m. (Alaska Standard Time) on September 28, 2001.

ADDRESSES: Written comments should be mailed to BLM TAPS Renewal Scoping, Argonne National Laboratory EAD/900, 9700 S. Cass Avenue, Argonne, IL 60439. As an alternative, written comments can be hand-delivered to BLM TAPS Renewal Scoping, 411 W. 4th Avenue, Suite 2, Anchorage, AK. [Do not mail comments to this address.] Comments also can be e-mailed to tapseis@anl.gov, submitted through the ''Public Comment Form'' feature on the TAPS Renewal EIS Web site at *tapseis.anl.gov*, by fax toll free to 866–386–7350, or by voice message toll free at 886–386–7331.

FOR FURTHER INFORMATION, CONTACT: Rob McWhorter, 907–271–3664, Joint Pipeline Office, 411 W 4th Avenue, Suite 2, Anchorage, AK 99501, rmcwhort@jpo.doi.gov, or visit the TAPS Right-of-Way Renewal Web site at *tapsrenewal.jpo.doi.gov* or the TAPS Renewal EIS Web site at *tapseis.anl.gov*.

Withholding of Personal Information: It is the BLM's practice to make comments, including names and addresses of commenters, available for public review during regular business hours. Individual commenters may request that we withhold their home address from the scoping record, and we will honor such requests to the extent allowable by law. Circumstances may also arise in which we would withhold from the scoping record a commenter'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.

SUPPLEMENTARY INFORMATION: On January 23, 1974, the Federal Agreement and Grant of Right-of-Way (Federal Grant) for the Trans-Alaska Pipeline was authorized and issued pursuant to Section 28 of the Mineral Leasing Act, as amended by the Trans-Alaska Pipeline Authorization Act of 1973 (43 U.S.C. 1651). That agreement and grant will expire in 2004. Under Section 28(n) of the Mineral Leasing Act (30 U.S.C. 185(n)), the BLM shall renew a right-of-way upon request of an applicant in accordance with this section of the Act. Section 7(C) of the Federal Grant states that the ''the Right-of-Way shall be renewed, subject to and in accordance with the provision of the Trans-Alaska Pipeline Authorization Act.'' On May 2, 2001, the owner companies of the Trans-Alaska Pipeline System (TAPS) [Amerada Hess Pipeline Corporation; BP Pipelines (Alaska), Inc.; ExxonMobil Pipeline Company; Phillips Transportation Alaska, Inc.; Unocal Pipeline Company; and Williams Alaska Pipeline Company, LLC] submitted an application to renew the Federal Grant for the TAPS for 30 years. The BLM has determined that this renewal would be a major federal action as defined by the NEPA, and, thus, the BLM will prepare an EIS according to the requirements of the CEQ's implementing regulations. This NOI provides public notice of preparation of the EIS and announces the opportunity for the public to provide comments relating to the preparation, scope, and content of the EIS.

The proposed action to be addressed in the EIS is the renewal for 30 years of the Federal Grant that governs the right-of-way for the TAPS. The Federal Grant expires on January 22, 2004. At the same time the EIS is being prepared, the State of Alaska will consider an action to renew the State Right-of-Way Lease (State Lease), which expires on May 2, 2004. The scope of the EIS will address the operation of the TAPS along its entire right-of-way from Pump Station #1 at Prudhoe Bay to the Marine Terminal at the Port of Valdez. The proposal to be addressed in the EIS does not extend to authorizing new Federal or State oil and gas leasing, management of lands adjacent to the Federal or State right-of-way, or regulation of State of Alaska highways paralleling the pipeline. In addition to evaluating the applicants' proposal, the EIS will address the no-action alternative of not renewing the Federal Grant. Other alternatives may be developed as a result of scoping.

The TAPS begins on Alaska's North Slope in the Prudhoe Bay oil field. It extends southward over the Brooks Range via Atigun Pass, crosses the Yukon River 30 miles downstream from Stevens Village, passes to the east of Fairbanks, and generally parallels the Richardson Highway south, passing over the Alaska Range via Thompson Pass, to Valdez on Prince William Sound. Maps depicting the route of the TAPS and adjacent land status are available at the TAPS Right-of-Way Renewal Web site at tapsrenewal.jpo.doi.gov, or the TAPS Renewal EIS Web site at *tapseis.anl.gov*.

The BLM anticipates that the preparation of the TAPS EIS and Record of Decision will require 17 months to complete and will include public and agency scoping; coordination and consultation with Federal, State, and local agencies and Native governments; publication of a draft EIS; public review and public hearings on the draft EIS, and publication of a final EIS and Record of Decision. As currently envisioned, the EIS will address impacts for the following topical areas:

1. Physical environment
   a. Air quality
   b. Soils and permafrost
   c. Geology
   i. Mineral resources
   ii. Paleontological resources
   d. Water resources and quality
2. Biological environment
   a. Terrestrial habitats
   i. Vegetation
   ii. Animals
   b. Freshwater habitats
   i. Resident fish
   ii. Anadromous fish
   c. Marine habitats
   i. Fish and shellfish
   ii. Mammals
   d. Threatened and endangered species
   e. Floodplains and wetlands
   f. Invasive species
3. Human/social environment
   a. Land use
   i. Ownership
   ii. Wilderness
   iii. Parks
   iv. Planning
   v. Coastal management
   b. Transportation
   c. Visual environment
   d. Noise
   e. Recreation
   f. Subsistence
   g. Socio-cultural systems
   h. Cultural resources
   i. Archaeological resources
   ii. Historical resources
   i. Economy
   i. Income
   ii. Employment
   iii. Taxes and revenues
   iv. Community services
   j. Human health and safety

i. Occupational
ii. Public
k. Environmental justice.
4. Cumulative impacts
a. Other hydrocarbon-based development and transportation
b. Other non-hydrocarbon-based development and transportation
5. Other
a. Irreversible and irretrievable commitment of resources
b. Short-term use versus long-term impacts
c. Unavoidable adverse impacts

The EIS will describe the TAPS design features, mechanisms of impact, emissions and effluents, pollution prevention and waste management, monitoring (including surveillance and maintenance programs), spill prevention and response, and mitigation measures. The EIS will also address the indirect and cumulative impacts associated with oil and gas production, including future development on Alaska's North Slope, and shipment of those products to market. The EIS will include a statement of the purpose and need for the proposed action, including the contribution that the continued use of the TAPS to support North Slope oil production makes to the nation's oil supply, economy, balance of payments, and energy security. Applicable Federal, State, and local statutes and regulations, with international agreements, and required Federal and State permits, consultations, and notifications will be presented.

The public is encouraged to contact the BLM with information and comments on specific issues they believe should be addressed in the EIS. The agency requests information and comments on wildlife, subsistence, and other resources along the pipeline route and in areas indirectly impacted by the pipeline both on the North Slope and along marine transport routes associated with oil and gas development on Alaska's North Slope. The BLM seeks information and comments on the current and past operation of the TAPS and ideas for enhanced operation and maintenance.

Comments are also sought on potential conflicts with approved coastal management plans (CMPs) and other land use plans that may result from the BLM's decision on the renewal of the TAPS right-of-way. These comments should identify specific policies of concern as listed in CMPs or other plans, the nature of the conflicts foreseen, and steps that the BLM could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to specific areas of concern.

Dated: July 18, 2001.

Jerry Brossia,

Authorized Officer, Joint Pipeline Office.

[FR Doc. 01–19197 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1430–00–2Z; AZA–019168]

Notice of Realty Action Direct (Non-Competitive) Sale of Public Lands in Mohave County, AZ

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Realty Action, Direct (Non-Competitive) Sale.

SUMMARY: The following public lands have been found suitable for a direct (non-competitive) sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the estimated fair market value. The land will not be offered for sale for at least 60 days after the date of this notice. The parcel is described as follows:

Gila and Salt River Meridian, Arizona

T. 23 N., R. 13 W.,
Sec. 22, W½NW¼SW¼.

Consisting of 20 acres, including both surface and mineral estate.

SUPPLEMENTARY INFORMATION: The above described land is being offered as a direct (non-competitive sale) in accordance with 43 CFR 2711.3–3 (5) ''A need to resolve inadvertent unauthorized use or occupancy of the lands''. The parcel will be sold to the Hualapai Tribe which has been using this area as a cemetery for over 100 years.

The lands described above is hereby segregated from appropriation under the public land laws including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. The conveyance document, when issued, will contain certain reservations to the United States and will be subject to any existing rights-of-way and any other valid existing rights. In accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910, the described land are hereby classified for disposal by sale.

For a period of 60 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona 86401. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Janna Paronto, Realty Specialist, at (520) 692–4449.

Dated: June 8, 2001.

Brenda H. Smith,

Acting Field Manager, Kingman Field Office.

[FR Doc. 01–19029 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–74103]

Notice of Realty Action; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada has been examined and identified as suitable for disposal by direct sale, including the mineral estate of no more than nominal value, excluding oil and gas and geothermal resources, under section 203 and section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 42 N., R. 60 E., Sec. 19, NW¼NW¼NE¼, E½NE¼NE¼NW¼.
Comprising 15.00 acres, more or less.

The above described land is being offered as a direct sale to Lana J. and William H. Gibbs. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada.

SUPPLEMENTARY INFORMATION: Disposal of the land is in conformance with the Wells Resource Management Plan. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The land is prospectively valuable for oil and gas and geothermal resources. Therefore, the mineral estate, excluding oil and gas and geothermal resources, will be conveyed simultaneously with the sale of the surface estate. Acceptance of the sale offer will constitute an application

to purchase the mineral estate having no more than nominal value, excluding oil and gas and geothermal resources. A non-refundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the non-refundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

2. Oil and gas and geothermal resources. A more detailed description of this reservation, which will be included in the patent document, is available for review at the Elko Field Office.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties my submit comments to the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada 89801. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: June 25, 2001.

Helen Hankins

Elko Field Manager.

[FR Doc. 01–19036 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–09–1420–00]

Arizona State Office; Notice of Filing of Plats of Survey

July 11, 2001.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 29, 30 and 32, the metes-and-bounds surveys of tracts 37 and 38 and a metes-and-bounds survey in section 32, Township 11 North, Range 12 East, of the Gila and Salt River Meridian, Arizona, accepted May 29, 2001 and officially filed June 1, 2001.

This plat was prepared at the request of the United States Forest Service.

A plat representing the survey of the Sixth Guide Meridian East, (west boundary), the east boundary, and the subdivisional lines, Township 36 North, Range 25 East, of the Gila and Salt River Meridian, Arizona, accepted June 11, 2001 and officially filed June 21, 2001.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A plat representing the survey of the east boundary and the subdivisional lines, Township 36 North, Range 26 East, of the Gila and Salt River Meridian, Arizona, accepted June 11, 2001 and officially filed June 21, 2001.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

2. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 01–19033 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[58% to CO–956–1420–BJ–0000–241A; 30% to CO–956–9820–BJ–CO03–241A; and 12% to CO–956–1910–BJ–4667–241A]

Colorado: Filing of Plats of Survey

June 29, 2001.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 29, 2001. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey of a portion of the south boundary and the subdivision lines of section 35, a partial subdivision of section 35 and the metes-and-bounds survey of Parcels A, B (Yucca House National Monument) and C, in section 35, T 35 N., R. 17 W., New Mexico Principal Meridian, Group 1252, Colorado, was accepted May 17, 2001.

This survey was requested by the National Park Service for administrative purposes.

The plat representing the dependent resurvey of portions of the east, west boundaries, subdivisional lines, and the subdivision of certain sections, T. 32 N., R. 5 W., New Mexico Principal Meridian, Group 1282, Colorado, was accepted May 3, 2001.

The plat representing the dependent resurvey of a portion of the Eight Standard Parallel North (N. Bdy.), the subdivisional lines, and the subdivision of section 1, T. 32 N., R. 6 W., New Mexico Principal Meridian, Group 1293, Colorado, was accepted May 17, 2001.

These surveys were requested by the Bureau of Indian Affairs for administrative purposes.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision survey of sections 27 and 28, and a metes-and-bounds in sections 27 and 28, Fractional T. 8 S., R. 83 W., Sixth Principal Meridian, Group 1301, Colorado, was accepted April 16, 2001.

The plat representing the dependent resurvey of a portion of the subdivision of section 3, and a metes-and-bounds survey in section 3, T. 5 S., R. 82 W., Sixth Principal Meridian, Group 1301, Colorado, was accepted April 23, 2001.

The plat representing the dependent resurvey of portions of the west boundary and the subdivisional lines, the subdivision of sections 17 and 18, and a metes-and-bounds survey in sections 17 and 18, T. 5 S., R. 81 W., Sixth Principal Meridian, Group 1301, Colorado, was accepted April 23, 2001.

The plat representing the dependent resurvey of the east half mile between sections 13 and 24, Mineral Survey No. 18271, and a metes-and-bounds survey in section 24, T. 1 S., R. 73 W., Sixth Principal Meridian, Group 1304, Colorado, was accepted May 1, 2001.

The plat representing the dependent resurvey of a portion Mineral Survey No. 16875, Bear Creek, Black Horse, Blue Bell, Polar Star, Golden Sun, Blue Bird, Atlas, and North Star lodes, R. 4 S., R. 73 W., Sixth Principal Meridian, Group 1222, Colorado, was accepted May 17, 2001.

The plat representing the dependent resurvey of portions of the First

Standard Parallel South (S. Bdy., T. 5 S., R. 71 W.), the west boundary, the subdivisional lines, and the subdivision of certain sections, T. 5 S., R. 71 W., Sixth Principal Meridian, Group 1276, Colorado, was accepted June 13, 2001.

The plat representing the dependent resurvey of a portion of the subdivisional line, and the subdivision of section 22, T. 5 S., R. 72 W., Sixth Principal Meridian, Group 1285, Colorado, was accepted June 13, 2001.

The supplemental plat creating new lots 5, 6, 7, and 8, from old lots 2 and 3 in section 30, T. 49 N., R. 14 W., New Mexico Principal Meridian, Colorado, was accepted April 23, 2001. This plat is based upon the General Land Office survey plat approved November 6, 1895. The acreages and parenthetical distance were derived from data obtained from the plat created by William R. Day, P.L.S. No. 24660, dated July 28, 1988 and filed on September 5, 1989 with the Montrose County Clerk and Recorder, Book 1, Page 36, Reception No. 36.

These surveys and supplemental plat were requested by the Forest Service for administrative purposes.

The plat (in two sheets) representing the dependent resurvey of portions of certain mineral claims, T. 43 N., R. 5 W., New Mexico Principal Meridian, Group 1238, Colorado, was accepted April 12, 2001.

The plat (in three sheets) representing the dependent resurvey of portions of certain mineral claims, suspended T. 43 N., R. 6 W., New Mexico Principal Meridian, Group 1238, Colorado, was accepted April 12, 2001.

The amended field notes for the description of the W1/16 section corner between sections 33 and 4, on the south boundary of T. 7 S., R. 72 W., Sixth Principal Meridian, Group 1200, Colorado, was accepted April 19, 2001.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 11 and 13, T. 41 N., R. 6 E., New Mexico, Group 891, Colorado, was accepted May 8, 2001.

The plat representing the corrective dependent resurvey and dependent resurvey of a portion of the subdivisional lines, a portion being identical with the west boundary of Bent's Old Fort National Historical Site, T. 23 S., R. 54 W., Sixth Principal Meridian, Group 1227, Colorado, was accepted May 10, 2001.

The plat representing the dependent resurvey of certain mineral claims, T. 42 N., R. 7 W., New Mexico Principal Meridian, Group 1239, Colorado, was accepted May 23, 2001.

The plat representing the dependent resurvey of portions of the south boundary and the subdivisional lines, and the subdivision of section 33, T. 6 N., R. 97 W., Sixth Principal Meridian, Group 1273, Colorado, was accepted May 30, 2001.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines and the subdivision of sections 22, 23, and 24, T. 12 N., R. 99 W., Sixth Principal Meridian, Group 1279, Colorado, was accepted May 31, 2001.

The plat representing the dependent resurvey of portions the subdivisional lines and certain claim lines, T. 7 N., R. 97 W., Sixth Principal Meridian, Group 1272, Colorado, was accepted June 4, 2001.

The plat representing the dependent resurvey of portion of the subdivisional lines and the subdivision of sections 21, 22, and 28, T. 9 N., R. 89 W., Sixth principal Meridian, Group 1295, Colorado, was accepted June 4, 2001.

The plat representing the dependent resurvey of portions of the west boundary, and the subdivisional lines, and the subdivision of section 7, T. 10 N., R. 90 W., Sixth Principal Meridian, Group 1305, Colorado, was accepted June 5, 2001.

The plat representing the corrective dependent resurvey of a portion of the subdivisional lines, T. 5 N., R. 70 W., Sixth Principal Meridian, Group 632, Colorado, was accepted June 25, 2001.

The plat representing the corrective dependent resurvey of portions of the south boundary, the subdivision of sections 31 and 32, and the dependent resurvey of a portion of the south and west boundaries and the subdivisional lines, T. 6 N., R. 70 W., Sixth Principal Meridian, Group 632, Colorado, was accepted June 25, 2001.

The supplemental plat creating new lots 108, 109, and 110, in the SW¼ of section 20, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted April 16, 2001. This plat is based upon the dependent resurvey plats approved August 28, 1991 and February 3, 1997, and the Supplemental Plat approved March 13, 1963, and the official records of the following mineral claims; M.S.473, White Pine, approved June 29, 1882, M.S. 507, Shields (Cancelled), approved October 23, 1882, M.S. 591, Coercion, approved February 7, 1883, and M.S. 12827, Little May, approved November 3, 1898.

The supplemental plat creating new lot 4 from M.S. 20194 Blue Bell, cancelled February 21, 2001, was accepted May 15, 2001. This plat is base upon the plat approved April 21, 1969.

These surveys and supplemental plats were requested by the Bureau of Land Management for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 01–19032 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1020–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the date specified:

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of section 25, the survey of a portion of the 2000 meanders of the left bank of the North Fork of the Payette River in section 25, and the survey of certain islands (designated as lots 13 and 15) in the North Fork of the Payette River in section 25, T. 14 N., R. 3 E., Boise Meridian, Idaho, was accepted July 6, 2001. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: July 6, 2001.

Duane E. Olsen,

Chief, Cadastral Surveyor of Idaho.

[FR Doc. 01–19030 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–01–1420–BJ]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagram accepted June 7, 2001, of the following described lands are scheduled to be officially filed in the

Montana State Office, Billings Montana, thirty (30) days from the date of this publication.

Tps. 17, 18, 19, and 20 N., Rs. 15, 16, 17, 18, and 19 W.

The plat, representing the Amended Protraction Diagram 28 Index of unsurveyed Townships 17, 18, 19, and 20 North, Ranges 15, 16, 17, 18, and 19 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 17 N., R. 17 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 17 North, Range 17 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 17 N., R. 18 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 17 North, Range 18 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 18 N., R. 17 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 18 North, Range 17 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 18 N., R. 18 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 18 North, Range 18 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 18 N., R. 19 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 18 North, Range 19 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 19 N., R. 15 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 19 North, Range 15 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 19 N., R. 16 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 19 North, Range 16 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 19 N., R. 18 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 19 North, Range 18 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 19 N., R. 19 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 19 North, Range 19 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 20 N., R. 18 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 20 North, Range 18 West, Principal Meridian, Montana, was accepted June 7, 2001.

T. 20 N., R. 19 W.

The plat, representing Amended Protraction Diagram 28 of unsurveyed Township 20 North, Range 19 West, Principal Meridian, Montana, was accepted June 7, 2001.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams accepted June 7, 2001, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted June 7, 2001, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: June 20, 2001.

Steven G. Schey,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 01–19031 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP01–0231]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 38 S., R. 4 W., accepted May 29, 2001
T. 40 S., R. 3 E., accepted May 29, 2001
T. 5 N., R. 27 E., accepted June 4, 2001
T. 21 S., R. 26 E., accepted June 11, 2001
T. 28 S., R. 9 W., accepted June 11, 2001
T. 17 S., R. 9 W., accepted June 11, 2001
T. 7 S., R. 8 W., accepted June 11, 2001

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plats(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 SW 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: July 2, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 01–19027 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Wellton-Mohawk Title Transfer

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the proposed Wellton-Mohawk title transfer.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare an environmental impact statement (EIS) to evaluate the potential effects of the proposed title transfer of property in Yuma County, Arizona, to

the Wellton-Mohawk Irrigation and Drainage District (District). This information will be used in the decision-making process pursuant to the Wellton-Mohawk Transfer Act of June 20, 2000 (Pub. L. 106–221), whereby the Secretary of Interior was authorized to convey certain works, facilities, and lands of the Gila Project (61 Stat. 628), including the conveyance of designated acquired, public, and withdrawn lands within or adjacent to the Gila Project, to the District. The District shall be a cooperating agency with Reclamation in the NEPA review of this proposed project. At present it is not clear whether the scope of the action will require the preparation of an EIS or an environmental assessment (EA). However, to ensure a timely and appropriate level of NEPA compliance and to limit future delays in completing the environmental analysis for the proposed title transfer, Reclamation is at this time proceeding as if the project will require the preparation of an EIS. Reclamation will reevaluate the need for an EIS after receiving public comment on the proposed action and initiating the environmental analysis for the title transfer. Reclamation will publish a notice of cancellation if, as the result of additional information and analysis, a decision is made to prepare an EA rather than an EIS.

DATES: Public meetings are planned for the purpose of defining the scope of the EIS, identifying reasonably foreseeable alternatives to the proposed action, and noting specific issues that need to be addressed. Meeting dates, times, and locations are as follows:

- Wednesday, August 15, 7 p.m. at Antelope Union High School, 9168 South Avenue 36E, Wellton, Arizona; and
- Thursday, August 16, 7 p.m. at Bureau of Reclamation, Yuma Area Office, 7301 Calle Agua Salada, Yuma, Arizona.

Persons with disabilities or language barriers are requested to contact Rhoda Thomas, telephone (602) 258–0234, Fax. (602) 258–2352, to arrange specific accommodations for either of these meetings.

Written comments will be received by Reclamation regarding the proposed project and the scope of the environmental impacts analysis to be conducted as part of the NEPA review process. The comment period shall extend for 30 days from the date of publication of this notice through August 30, 2001. Comments may be sent to Mr. Richard Strahan at the address provided below.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, 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. 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 disclosure in their entirety.

FOR FURTHER INFORMATION: To request additional information about the proposed project and public meetings and to provide written comments on the scope of the EIS, contact Mr. Richard Strahan, Project Manager, Yuma Area Office, U.S. Bureau of Reclamation, 7301 Calle Agua Salada, Yuma, AZ 85364–9763; telephone (928) 343–8277; email *rstrahan@lc.usbr.gov.*

SUPPLEMENTARY INFORMATION: The United States holds title to works and facilities in the Wellton-Mohawk Division of the Gila Project, which was authorized by the Gila Project Reauthorization Act of July 30, 1947 (61 Stat. 628), and lands within and adjacent to the District. The Wellton-Mohawk Transfer Act (Public Law 106–221) of June 20, 2000, authorized the Secretary of Interior to transfer title to these works, facilities, and lands.

Pursuant to a Memorandum of Agreement (No. 8–AA–34–WA014, dated July 10, 1998), the District and Reclamation shall jointly identify lands within and adjacent to the District to be purchased or exchanged or otherwise transferred by and between the District and Reclamation. Acquired Lands, Public Lands, and Withdrawn Lands shall be appraised in accordance with practices approved by the Secretary to ensure that the United States receives fair market value for the lands purchased or exchanged.

The District, whose jurisdiction covers approximately 63,000 acres of arable land along the Gila River in an area east of Yuma, Arizona, receives irrigation water through canals and related works and facilities constructed by Reclamation as part of the Wellton-Mohawk Division of the Federal Gila Project. Over the years, the District has repaid the costs of their construction, and it operates and maintains the works and facilities and administers the distribution of water and collection of revenues from water users. Reclamation, as the owner of the Federal facilities and associated rights-of-way, monitors the use and maintenance of the facilities and administers the legal aspects of the landownership.

Jointly, Reclamation and the District will evaluate the environmental aspects associated with the proposed transfer of title to the works and facilities and to certain lands currently vested in the United States. The works and facilities include canals, canal structures, pumping plants, pumps, motors, transformers, laterals, drains, roads, buildings, and works, including Gila River flood protection and control works rights-of-way and easements for facilities and other interests in lands. The District has also expressed an interest in purchasing, at fair market value, various tracts of Reclamation land associated with the Wellton-Mohawk Division of the Gila Project that were not included in the construction cost repayment schedule.

Responsibility for ownership of Reclamation works and facilities and associated land would be assumed by the District as part of its established irrigation, drainage, and flood control operation program and in the interest of maintaining a viable agricultural economy in Yuma County.

The proposed title transfer would eliminate duplication of administrative costs and divided responsibilities that exist because of Federal ownership of works and facilities that are operated and maintained by the District. These include Reclamation's oversight of the District's operation and maintenance of facilities as well as distribution and use of irrigation water, and the reporting required of the District by Reclamation. The proposed change in title would not change the purpose, operation, or use of the facilities and works, nor actions and relationships outside of District operations, such as allocation of Colorado River water, conveyance of agricultural return flows from the District, Federal programs related to Colorado River water quality, and power contracts involving the District.

Preferred Alternative

The preferred alternative would involve the proposed transfer to the District of Reclamation-owned irrigation and drainage water conveyance and distribution works and facilities beginning at the Gila Gravity Main Canal, the Gila River flood channel and protective dikes, and the Federal rights-of-way and easements on which these facilities are located. In addition, the preferred alternative includes the District's purchase, at fair market value, of other lands in the District that

Reclamation has withdrawn from the public domain for project purposes or has acquired in connection with the Colorado River Salinity Control Project, and lands that are still in the public domain which would complement the operational integrity of the Wellton-Mohawk Division.

Anyone interested in more information concerning the proposed title transfer should contact Mr. Strahan as provided above.

Dated: July 16, 2001.

J.F. Williams,

Deputy Area Manager, Yuma Area Office.

[FR Doc. 01–18977 Filed 7–30–01; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–395]

Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Decision To Deny Complainant Atmel's Petition for Reconsideration of the Commission's Final Determination of No Violation of Section 337 of the Tariff Act of 1930 by Respondent Macronix

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny complainant Atmel's petition for reconsideration of the Commission's final determination of no violation of section 337 of the Tariff Act of 1930 by respondent Macronix in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 18, 1997, based upon a complaint filed by Atmel Corporation (''Atmel'') alleging that Sanyo Electric Co., Ltd. (''Sanyo''), Winbond Electronics Corporation of Taiwan and Winbond Electronics North America Corporation of California (collectively ''Winbond''), and Macronix International Co., Ltd. and Macronix America, Inc. (collectively ''Macronix'') had violated section 337 in the sale for importation, the importation, and the sale within the United States after importation of certain erasable programmable read only memory (''EPROM ''), electrically erasable programmable read only memory (''EEPROM''), flash memory, and flash microcontroller semiconductor devices thereof, by reason of infringement of one or more claims of U.S. Letters Patent 4,511,811 (''the '811 patent''), U.S. Letters Patent 4,673,829 (''the '829 patent''), and U.S. Letters Patent 4,451,903 (''the '903 patent'') assigned to Atmel. 62 Fed. Reg. 13706 (March 21, 1997). Silicon Storage Technology, Inc. (''SST'') intervened in the investigation.

On October 27, 2000, the Commission determined that there was a violation of section 337. The Commission found that the claims in issue of the '903 patent are valid, enforceable, and infringed by the imports of respondents Sanyo and Winbond (but not respondent Macronix), and found a violation of section 337 with regard to the '903 patent as to Sanyo and Winbond. As to the '811 and '829 patents, the Commission found that the claims in issue of those patents are valid and enforceable, but not infringed by the imports of respondents Sanyo, Winbond, or Macronix, and found no violation of section 337 with regard to the '811 and '829 patents.

The Commission determined that the appropriate form of relief was a limited exclusion order prohibiting the importation of EPROMs, EEPROMs, flash memories, and flash microcontroller semiconductor devices, and circuit boards containing those semiconductor memory devices, that infringe claims 1 or 9 of the '903 patent and that are manufactured and/or imported by or on behalf of Sanyo and Winbond. The Commission also determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the limited exclusion order and that the bond during the Presidential review period should be set at $0.78 per device.

Winbond appealed these findings to the U.S. Court of Appeals for the Federal Circuit regarding the '903 patent, as well as the Commission's claim construction and infringement findings, *Winbond Electronics Corp.* v. *U.S. International Trade Commission,* Case Nos. 01–1031–1032–1034 (the Winbond appeal). Atmel appealed to the Federal Circuit the Commission's finding that respondent Macronix did not infringe the asserted claims of the '903 patent and the Commission's findings of no violation with respect to the '811 and '829 patents, *Atmel Corp.* v. *U.S. International Trade Commission,* Case No. 01–1128 (the Atmel appeal). Atmel also appealed the temporal scope of the Commission's order finding that Atmel had waived its attorney client privilege and work product protections.

On January 30, 2001, the Federal Circuit issued an order on all issues raised in the Winbond appeal and on two issues raised in the Atmel appeal. The Court also issued an unpublished opinion on the issues of claim construction and infringement of the '903 patent.

In the Atmel appeal, the Court disagreed with some of the Commission's claim construction, and vacated the Commission's finding that Macronix does not infringe the asserted claims of the '903 patent. The Court remanded the case to the Commission to determine whether Macronix infringes under the claim construction found by the Court to be correct. On March 23, 2001, the Federal Circuit issued its mandate formally remanding this matter to the Commission for further fact finding and a determination on whether the Macronix devices infringe the '903 patent under the Federal Circuit's claim construction.

On June 1, 2001, the Commission determined that under the Federal Circuit's claim construction the accused Macronix devices do not infringe the claims at issue of the '903 patent, and terminated the remand investigation with a finding of no violation of section 337 by Macronix.

On June 18, 2001, Atmel filed a petition pursuant to rule 210.47 for reconsideration of the Commission's June 1, 2001, determination of no violation by Macronix. On June 25, 2001, Macronix filed a response to Atmel's petition for reconsideration. No other responses were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and rule 210.47 of the Commission's Rules of Practice and Procedure, 19 CFR 210.47.

Copies of the Commission Order and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be

viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: July 26, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–19013 Filed 7–30–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review; Tribal resources grant program application.

The Department of Justice Office of Community Oriented Policing Services (COPS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 1, 2001.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gretchen DePasquale, 202–305–7780, Office of Community Oriented Policing Services, U.S. Department of Justice, 1100 Vermont NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the 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:* Tribal Resources Grant Program Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Governments.

Other: None. The information collected will be used by the COPS Office to determine whether Federally recognized Tribal Governments are eligible for three year grants specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 200 respondents at 8 hours per response. The information will be collected annually from each respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 1800 annual burden hours associated with this information collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 20, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 01–19058 Filed 7–30–01; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Revision of a currently approved collection; Deaths in custody, 2001.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 7, 2001, Volume 66, page 23045 allowing for a 60-day public comment period on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for ''thirty days'' until August 30, 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, Attn.: Mr. Nathan Knuffman, 202–395–6466, Department of Justice Desk Officer, Room 10235, Office of Management and Budget, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

If you have additional comments, suggestions, or additional information, please send them to Lawrence A. Greenfield, Acting Director, Bureau of Justice Statistics, 810 Seventh St. NW, Washington, DC 20531. If you need a copy of the collection instrument with instructions, or have additional information, please contact Christopher J. Mumola at 202–307–5995, or via facsimile at 202–514–1757.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Expansion of existing data collection.

(2) *The title of the form/collection:* Deaths In Custody 2000; Quarterly Summary of Inmate Deaths in State Prison; State Prison Inmate Death Report Quarterly Summary of Deaths in State Juvenile Residential Facilities; State Juvenile Residential Death Report Quarterly Report on Inmates Under Jail Jurisdiction;

Annual Summary on Inmates Under Jail Jurisdiction; Quarterly Report on Inmates in Private and Multi-Jurisdiction Jails; Annual Summary on Inmates in Private and Multi-Jurisdiction Jails.

(3) *The agency form numbers and the applicable component of the Department sponsoring the collection:* Forms: NPS–4, NPS–4A, NPS–5, NPS–5A, CJ–9, CJ–9A, CJ–10 and CJ–10A. Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:*

Primary: Local jail administrators, (one reporter from each of the 3,083 local jail jurisdictions in the United States), State prison administrators (one reporter from each of the 50 States and the District of Columbia) and State juvenile correctional administrators (one reporter from each of the 50 States and the District of Columbia) responsible for keeping records on inmates will be asked to provide information for the following categories:

(a) During each reporting quarter, the number of deaths of persons in their custody; and

(b) As of January 1 and December 31 of each reporting year, the number of male and female inmates in their custody (local jails only); and

(c) Between January 1 and December 31 of each reporting year, the number of male and female inmates admitted to their custody (local jails only); and

(d) The name, date of birth, gender, race/ethnic origin, and date of death for each inmate who died in their custody during each reporting quarter; and

(e) The admission date, legal status, and current offense for each inmate who dies in their custody during the reporting quarter; and

(f) Whether or not an autopsy was conducted by a medical examiner or coroner to determine the cause of each inmate death that took place in their custody during the reporting quarter; and

(g) The location and cause of each inmate death took place in their custody during the reporting quarter; and

(h) In cases where the cause of death was illness/natural causes (including AIDS), whether or not the cause of each inmate death was the result of a pre-existing medical condition, and whether or not the inmate had been receiving treatment for that medical condition; and

(i) In cases where the cause of death was accidental injury, suicide, or homicide, when and where the incident causing the inmates's death took place.

As part of the conference agreement for FY 2000 appropriations, the Bureau of Justice Statistics was directed by the U.S. Congress ''to implement a voluntary annual reporting system of all deaths occurring in law enforcement custody.'' BJS received OMB approval to conduct such an annual collection (OMB No. 1121–0249). In the time since submitting that collection for OMB approval, the President signed The Deaths in Custody Act of 2000 into law (Pub. L. 106–297). To comply with Public Law 106–297's new requirement for a quarterly collection of inmate death data from local jails, State prisons, juvenile facilities and police custody, BJS is now submitting for clearance the following series of forms: NPS–4, NPS–4A, NPS–5, NPS–5A, CJ–9, CJ–9A, CJ–10, and CJ–10A. This collection will supplement the annual data on prison inmate deaths which the Bureau of Justice Statistics already collects as part of the National Prisoners Statistics program and the National Corrections Reporting Program. The Bureau of Justice Statistics will use this new information to publish an annual report on deaths in custody. The report will be made available to the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics and data.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is broken down as follows:*

Local jails/quarterly—3,083 respondents (average response time = 5 minutes + 30 minutes per reported death)

Local jails/annual—3,083 respondents (average response time = 15 minutes)

State prisons/quarterly—51 respondents (average response time = 5 minutes)

State prisons addendum/quarterly—51 respondents (average response time = 30 minutes per reported death)

State juvenile corrections/quarterly—51 respondents (average response time = 5 minutes)

State juvenile corrections addendum/quarterly—51 respondents (average response time = 30 minutes per reported death)

(6) *An estimate of the total public burden (in hours) associated with the collection:*

There are 3,802.42 annual burden hours associated with this information collection.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 20, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 01–19057 Filed 7–30–01; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Extension of Existing Collection: The Survey of Inmates in Local Jails.

The Department of Justice, Office of Justice Programs, 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 collection was previously published in the **Federal Register** on May 31, 2001 Volume 66, page 29590, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 30, 2001. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement with changes of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* The National Survey of Inmates in Local Jails.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms: SIJ–43(X) CAPI instrument; and SIJ–50(X) Sampling Questionnaire. Corrections Statistics, 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:* Individuals and households. Others: State and local governments. The national survey will include an estimated 7,500 personal interviews with inmates held in local facilities. The national survey will include a CAPI questionnaire, automated data control systems, and sample selection instruments. This is a national survey that will profile jail inmates nationwide to determinate trends in inmate composition, criminal history, drug abuse, mental and medical status, gun use and crime, and to report on victims of crime. This national survey will allow us to identify problems and to make improvements prior to the national survey to ensure an accurate data set. The data from the national survey will be used by the Bureau of Justice Statistics in published reports and the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics. No other collection series provides these data.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond.* An estimated 8,420 respondents—7,500, taking an average 1.0 hours to respond; 460 at ¼ an hour; and 460 at ¼ an hour to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 7,730 burden hours associated with this information collection.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instruction, or additional information, please contact Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 26, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 01–19070 Filed 7–30–01; 8:45 am]

BILLING CODE 4410–18–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Cancellation of Sunshine Act Meeting

July 25, 2001.

TIME AND DATE: 10:30 a.m., Thursday, July 26, 2001.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW., Washington, DC.

STATUS: Open.

CHANGES IN THE MEETING: The Commission meeting to consider the act upon Georges Colliers, Inc., Docket Nos. CENT 2000–65, etc., has been canceled. No earlier announcement of the cancellation was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 01–19142 Filed 7–27–01; 11:59 am]

BILLING CODE 6735–07–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company; Maine Yankee Atomic Power Station; Exemption

1.0 Background

Maine Yankee Atomic Power Company (MYAPC or the licensee) is the holder of Facility Operating License No. DPR–36, which authorizes possession of Maine Yankee Atomic Power Station (MYAPS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility is a pressurized-water reactor (PWR) located on the licensee's site in Lincoln County, Maine.

On August 7, 1997, the licensee submitted written certifications to the Commission that it had decided to permanently cease operations at MYAPS and that all fuel had been permanently removed from the reactor. In accordance with 10 CFR 50.82(a)(2), ''Termination of license,'' upon docketing of the certifications contained in the letter of August 7, 1997, the facility operating license no longer authorizes MYAPC to operate the reactor or to place fuel in the reactor vessel. The MYAPS spent nuclear fuel is currently being stored in the spent fuel pool, which is protected by a physical protection system meeting the requirements of 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' with exemptions as previously issued by the NRC. To complete the plant site decommissioning process, the spent fuel will be removed from the spent fuel pool and transferred to an onsite independent spent fuel storage installation (ISFSI) for interim storage.

Pursuant to 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste,'' an ISFSI may be licensed either under a general or a specific license. Under a general license, a licensee can construct and operate an ISFSI in accordance with the requirements of 10 CFR 72.212, ''Conditions of general license issued under § 72.210[,''General license issued''],'' without staff approval. Pursuant to 10 CFR 72.212(b)(5), a licensee must protect the spent fuel at the ISFSI against the design basis threat (DBT) of radiological sabotage in accordance with the same

provisions and requirements as are set forth in the licensee's 10 CFR 73.55 physical security plan, with additional conditions and exceptions.

Alternatively, an ISFSI can be constructed under a 10 CFR part 72-specific license, which requires a licensee to develop a detailed security plan in accordance with 10 CFR 73.51, ''Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste.'' The design objective of 10 CFR 73.51 is to protect against a loss of control of the facility that could be sufficient to cause radiation exposure exceeding the dose as described in 10 CFR 72.106, ''Controlled area of an ISFSI or MRS [monitored retrievable storage].''

In an August 21, 2000, **Federal Register** notice (FRN) (65 FR 50606), the Commission clarified portions of 10 CFR Part 72, stating that the requirements of 10 CFR 72.106 apply to ISFSIs with either general or specific licenses. The offsite dose limits of 10 CFR 72.106 are defined such that any individual on or beyond the nearest boundary of the controlled area may not receive from any design basis accident the more limiting of a total effective dose equivalent of 0.05 Sv (5 rem) or the sum of the deep-dose equivalent and the committed dose equivalent to any individual organ or tissue of 0.5 Sv (50 rem).

2.0 Request

Pursuant to 10 CFR 72.212(b)(5), licensees who store their spent fuel under the provisions of 10 CFR part 72, Subpart K, ''General License for Storage of Spent Fuel at Power Reactor Sites,'' as MYAPC proposes to do, are required to ''Protect the spent fuel against the design basis threat of radiological sabotage in accordance with the same provisions and requirements as are set forth * * *'' in 10 CFR 73.55.

By letter dated January 4, 2001, as supplemented by letters dated March 12 and April 4, 2001, the licensee requested an exemption from the requirements of 10 CFR 72.212(b)(5) to ''Protect the spent fuel [in the MYAPS ISFSI currently under construction] against the design basis threat of radiological sabotage, in accordance with the same provisions and requirements as are set forth * * *'' in 10 CFR 73.55. MYAPC proposed alternative approaches to meet the provisions of portions of 10 CFR 73.55(b) through (h) related to the security organization, physical barriers, access requirements, detection aids, communications, and response requirements. By this same correspondence, the licensee also requested a license amendment that would revise its license to reference the revisions of the Physical Security Plan, Guard Training and Qualification Plan, and Safeguards Contingency Plan, provided in its supplemental letter dated March 12, 2001, and made available a copy of the MYAPC plans to assist the staff in its review of the exemption and amendment requests.

3.0 Discussion

Pursuant to 10 CFR 72.7, ''Specific exemptions,'' and 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. Pursuant to 10 CFR 73.55(a), the Commission may authorize a licensee to provide measures for protection against radiological sabotage other than those specified in the regulations if the licensee demonstrates that the measures have the same high assurance objective as specified in 10 CFR 73.55(a) and that the overall level of system performance provides protection against radiological sabotage equivalent to that which could be provided by paragraphs (b) through (h) of 10 CFR 73.55.

In its submittal, MYAPC requested an exemption from the provisions of 10 CFR 72.212(b)(5) for protecting the spent fuel against the DBT of radiological sabotage. The staff concluded that MYAPC has not justified an exemption from the requirements of 10 CFR 72.212(b)(5), that licensees with general licenses protect the spent fuel against the DBT of radiological sabotage. The staff has reviewed the proposed MYAPC ISFSI and Fuel in Transit (FIT) Physical Protection Programs against the requirements of each section of 10 CFR 73.55 that 10 CFR 72.212(b)(5) references to determine whether the alternative measures that MYAPC proposed should be authorized pursuant to 10 CFR 73.55(a), or whether specific exemptions should be granted from the requirements of these regulations. As part of its review, the staff evaluated the offsite dose that would result from unimpeded access by the DBT of radiological sabotage without protracted loss of control of the facility. On the basis of MYAPC's plan in the ISFSI Physical Protection Program to maintain the boundary of its controlled area at a minimum of 300 meters from the dry cask storage installation and provisions in the ISFSI Physical Protection Program that provide the capability to summon off-site local law-enforcement agency response forces to preclude a protracted loss of control of the facility, the staff concluded that the DBT of radiological sabotage would result in an offsite dose well below the 10 CFR 72.106(b) limits. The staff therefore concluded that the alternative measures proposed by MYAPC are authorized pursuant to 10 CFR 73.55(a), with one exception. With regard to the requirements of 10 CFR 73.55(d)(5), the staff concluded that the measures proposed by MYAPC did not meet the criteria of 10 CFR 73.55(a) to be authorized as alternative measures. However, the staff concluded that pursuant to 10 CFR 72.7 and 10 CFR 73.5, the proposed alternatives to the requirements of 10 CFR 73.55(d)(5) that MYAPC requested could be granted as an exemption. A detailed discussion of the staff's evaluation is contained in the safety evaluation supporting these findings dated July 25, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 72.7 and 10 CFR 73.5, exemption from the requirements of 10 CFR 73.55(d)(5) related to access requirements is authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 51.32, ''Finding of no significant impact,'' the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 31699, dated June 12, 2001).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 25th day of July 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–19024 Filed 7–30–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of An Expiring Information Collection: Standard Form 2808

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of an expiring information collection. SF 2808, Designation of Beneficiary: Civil Service Retirement System (CSRS), is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Approximately 2,000 SF 2808 forms will be completed annually. We estimate it takes approximately 15 minutes to complete the form. The annual burden is estimated at 500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, FAX (202) 418–3251 or E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before August 30, 2001.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415 and Joseph Lackey, OPM Desk Officer, Officer of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–19009 Filed 7–30–01; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44584; File No. SR–MSRB–2001–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Thereto by the Municipal Securities Rulemaking Board Relating to Municipal Fund Securities and Qualification of Municipal Securities Principals, Operative on August 6, 2001

July 23, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4 thereunder,[1] notice is hereby given that on July 5, 2001, the Municipal Securities Rulemaking Board (the ''MSRB'') filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change (File No. SR–MSRB–2001–05) (the ''proposed rule change''). The MSRB subsequently filed an amendment to the proposed rule change with the Commission on July 11, 2001 (together with the proposed rule change, the ''Proposed Rule Change''). The Proposed Rule Change is described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB has filed with the Commission a Proposed Rule Change consisting of an amendment to rule G–3, on professional qualifications. The Proposed Rule Change will become operative on August 6, 2001. The text of the Proposed Rule Change is set forth below. Additions are italicized.

Rule G–3—Classification of Principals and Representatives; Numerical Requirements; Testing; Continuing Education Requirements

(a) No change.

(b) Municipal Securities Principal.

(i)–(iii) No change.

(iv) Temporary Provisions for Municipal Fund Securities Limited Principal. Until July 31, 2002, the following provisions shall apply to any broker, dealer or municipal securities dealer whose municipal securities activities are limited exclusively to municipal fund securities:

(A) notwithstanding the provisions of paragraph (b)(ii), the broker, dealer or municipal securities dealer may designate any person who has taken and passed the General Securities Principal Qualification Examination or Investment Company and Annuity Principal Qualification Examination as a municipal fund securities limited principal.

(B) any municipal fund securities limited principal designated as provided in subparagraph (b)(iv)(A) may undertake all actions required or permitted under any Board rule to be taken by a municipal securities principal.

(C) the broker, dealer or municipal securities dealer may count one municipal fund securities limited principal toward the numerical requirement for municipal securities principal set forth in paragraph (b)(iii); provided that, if such broker, dealer or municipal securities dealer is only required to have one municipal securities principal, such broker, dealer, or municipal securities dealer may count one municipal fund securities limited principal toward the numerical requirement only if the broker, dealer or municipal securities dealer is described in subparagraph (b)(iii)(B).

(c)–(h) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 texts of these statements may be examined at the places specified in Item IV below. The MSRB 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

(a) Since 1998, the MSRB has been reviewing the application of its rules to transactions in municipal fund securities by brokers, dealers and municipal securities dealers (''dealers''). A municipal fund security is defined in rule D–12 as a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940 (the ''Investment Company Act''), would constitute an investment company within the meaning of the Investment Company

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

Act.[2] In view of the unique characteristics of municipal fund securities, the MSRB adopted a series of amendments to its existing rules and issued an interpretive notice regarding the sale of municipal fund securities in the primary market. These amendments and notice became effective on January 18, 2001.

In the course of its review of market practices in so-called Section 529 college savings plans,[3] the MSRB has learned that, in some cases, a dealer that has been engaged by an issuer of municipal fund securities to serve as its primary distributor has in turn entered into relationships with one or more other dealers to provide further channels for distribution (''selling dealers''). A significant number of the selling dealers that have or are seeking to become involved in these multi-tiered distribution systems may be new to the municipal securities market, having previously limited their activities to sales of investment company and annuity products.[4] Further, many of these dealers are quite small, having a limited number of associated persons who may be qualified solely as investment company/variable contracts limited representatives and investment company/variable contracts limited principals.[5]

Rule G–3, on professional qualification, permits an investment company/variable contracts limited representatives to qualify as a municipal securities representatives, but only in connection with transactions in municipal fund securities.[6] In addition, a dealer must have at least one municipal securities principal (and in some cases two municipal securities principals), even if the dealer's only municipal securities transactions are sales of municipal fund securities. The MSRB has received a number of inquiries from small dealers that wish to begin selling municipal fund securities but that have previously limited their practice to the sales of investment company securities or variable annuities. These small dealers generally do not have personnel who are qualified as municipal securities principals under rule G–3 and therefore face a significant barrier to entry in this sector precisely at a time when many municipal fund securities programs are structuring their distribution channels.

A dealer that does not currently have a municipal securities principal associated with it may hire a municipal securities principal or may have one of its existing municipal securities representatives, general securities representative or general securities principals become qualified as a municipal securities principal by taking and passing the Municipal Securities Principal Qualification Examination.[7] The MSRB is concerned that the burden to undertake either course of action may be higher for smaller firms than for larger firms. Of course, this differential also exits for firms seeking to enter the traditional debt sector or the municipal securities market. However, the repercussions of this higher burden on small firms may be considerably greater in the context of a market, such as the Section 529 college savings plan market, that is still in its formative stages and where long-term market advantages may accrue to firms that are able to enter the market more quickly.

The Proposed Rule Change provides a temporary alternative method for qualification of municipal securities principals in connection with municipal fund securities. Under the rule change, until July 31, 2002, if a dealer's municipal securities activities are limited exclusively to municipal fund securities and the dealer has fewer than 11 associated persons engaged in such municipal fund securities activities, it may fulfill its obligation to have a municipal securities principal by designating a general securities principal or investment company/variable contracts limited principal to act as a municipal fund securities limited principal.[8] During this temporary period, any person designated as a municipal fund securities limited principal will have all of the powers and responsibilities of a municipal securities principal under MSRB rules with respect to transactions in municipal fund securities. If at any time during this temporary period the dealer effects any transactions in municipal securities other than municipal fund securities, the dealer will be required to have a fully qualified municipal securities principal (i.e., a municipal securities principal not qualified solely by reason of being a general securities principal or investment company/variable contracts limited principal). On and after August 1, 2002, dealers effecting transactions in municipal fund securities will be required to comply with the same municipal securities principal requirements applicable to all other dealers effecting transactions in municipal securities.

The MSRB believes that the proposed Rule Change is consistent with Section 15B(b)(2)(C) of the Exchange Act, which requires that the MSRB's rules:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the Proposed Rule Change is consistent with the Exchange Act in that it removes an impediment to smaller dealers seeking to effect transactions in municipal fund securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the Proposed Rule Change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Exchange Act since it

[2] Section 2(b) exempts states and political subdivisions, and agencies, authorities, and instrumentalities thereof, from application of the Investment Company Act.

[3] Section 529 college savings plans are higher education savings plan trusts established by states under section 529(b) of the Internal Revenue Code as ''qualified state tuition programs'' through which individuals make investments for the purpose of accumulating savings for qualifying higher education costs of beneficiaries.

[4] Others may have been formed specifically for the purpose of effecting transactions in municipal fund securities, including effecting transactions through such non-traditional methods as applying rebates earned on consumer purchases of goods and services from participating vendors to the purchase of municipal fund securities.

[5] Some firms also use general securities principals to supervise their investment company and annuity product activities.

[6] Thus, an associated person who sells both municipal fund securities and other types of municipal securities must qualify as a municipal securities representative by taking and passing either the Municipal Securities Representative Qualification Examination or the General Securities Registered Representative Examination.

[7] Under rule G–3(b)(ii)(D), any such associated person may act as a municipal securities principal for a period of up to 90 days prior to passing the Municipal Securities Principal Qualification Examination.

[8] Dealers that have 11 or more associated persons engaged in municipal fund securities activities may also designate a general securities principal or investment company/variable contracts limited principal to act as a municipal fund securities limited principal. If any such dealer is required to have two municipal securities principals under rule G–3(b)(iii), then the dealer may count one municipal fund securities limited principal toward this numerical requirement but must still have one municipal securities principal qualified other than by reason of being a general securities principal or investment company/variable contracts limited principal. If any dealer having 11 or more associated persons engaged in municipal fund securities activities is permitted to have only one municipal securities principal by virtue of subparagraph (A) of rule G–3(b)(iii), the numerical requirement may *not* be satisfied by designation of a municipal fund securities limited principal.

would relieve small dealers from a regulatory requirement that would inhibit their ability to effect transactions in municipal fund securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because of the foregoing Proposed Rule Change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does impose any significant burden on competition; and (iii) the MSRB provided the Commission with written notice of its intent to file the proposed rule change and it amendment at least five business days prior to the filing date, the proposed rule change, as amended, is effective pursuant to Section 19(b)(3)(A) of the Exchange Act [9] and Rule 19b–4(f)(6) thereunder.[10] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to the 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[12] The MSRB has requested that the Commission designate such shorter time period and accelerate the operative date of the proposal to August 6, 2001, less than 30 days from the date of filing of the amendment. The Commission, consistent with the protection of investors and the public interest,[13] determined to grant the MSRB's request and make this rule change and its amendment operative on August 6, 2001.

For the reasons set forth above, the Commission finds that it is consistent with the protection of investors and the public interest for the rule proposal and its amendment to become operative on August 6, 2001. At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate this rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act. In particular, the MSRB believes the Proposed Rule Change qualifies as a ''non-controversial filing'' in that the Proposed Rule Change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including where the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2001–05 and should submitted by August 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19018 Filed 7–30–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See Id.*

[12] *Id.*

[13] For the purpose only of accelerating the operative date of this proposal, the Commission has considered the proposals's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3733]

Systems and Integration Office, Applications Programming Division; Information Collection Under Emergency Review: Electronic Telephone Directory (e*Phone)

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: IRM/SIO/APD/CSB.

Title of Information Collection: Electronic Telephone Directory (e*Phone).

Frequency: On occasion.

Form Number: Not applicable.

Respondents: Department of State Contractor Staff.

Estimated Number of Respondents: 8,000.

Average Hours Per Response: 1/12 hour (5 minutes).

Total Estimated Burden: 333 hours per year; 4,000 annual responses.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by June 30, 2001. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date of publication of this notice in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Jerry Blasenstein, U.S. Department of State, IRM/SIO/APD/CSB, Room 3202/SA15, 2201 C St., NW., Washington, DC 20520.

Dated: June 22, 2001.

Patricia A. Popovich,

Deputy Chief Information Officer, Bureau of IRM, Executive Office, Department of State.

[FR Doc. 01–19026 Filed 7–30–01; 8:45 am]

BILLING CODE 4710–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–9433]

Information Collection Under Review by the Office of Management and Budget (OMB): 2115–0619

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR) abstracted below to OMB for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OMB ensure that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 30, 2001.

ADDRESSES: Please send comments to (1) the Docket Management System (DMS), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001; and (2) the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the USCG.

Copies of complete ICRs are available for inspection and copying in public dockets. A copy of this complete ICR is available in docket USCG 2001–9433 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Regulatory History

This request constitutes the 30-day notice required by OMB. The Coast Guard has already published [66 FR 20704 (April 24, 2001)] the 60-day notice required by OMB. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of the collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2001–9433. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Inflatable Personal Flotation Devices (PFDs) for Recreational Vessels

OMB Control Number: 2115–0619.

Type of Request: Extension of a currently approved collection.

Forms: This collection of information does not require the public to fill out Coast Guard forms, but does require manufacturers of PFDs to place labels on these devices.

Abstract: The information collected under 46 CFR subpart 160.076 mainly concerns the labeling and preparation of manuals for inflatable PFDs. 33 CFR 175.15 requires that every person using a recreational vessel carry enough PFDs for each person on board. In keeping with this requirement, the Coast Guard has established a system for approval of PFDs for use on such vessels. To facilitate approval and inspection, the Coast Guard requires that manufacturers place labels on their devices and publish manuals to help the users. The labels serve two purposes. First, they indicate the chest size of each PFD and also display printed and pictographic instructions for proper use and care of it. Second, because they include specific product numbers and manufacturers' names, they are central to the Coast Guard's mission of identifying faulty equipment and then notifying the responsible producer. Like the labels, the manuals serve two purposes. First, they give the users information they will need to properly use and maintain the PFDs. Second, they keep the Coast Guard current on the specifications and design of new PFDs.

Affected Public: Manufacturers of PFDs.

Annual Estimated Burden Hours: The estimated burden is 1,406 hours a year.

Dated: July 25, 2001.

V.S. Crea,

Director of Information and Technology.

[FR Doc. 01–19041 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD05–01–005]

Notice of Public Meeting; letter of recommendation, LNG Facility, Cove Point, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The U.S. Coast Guard Captain of the Port, Baltimore (COTP) is preparing a letter of recommendation as to the suitability of the Chesapeake Bay waterway for liquefied hazardous gas (LHG) or liquefied natural gas (LNG) marine traffic in response to a letter of intent to operate the LNG facility at Cove Point, Maryland. In preparation for issuance of the letter of recommendation, the COTP will sponsor a public meeting to receive comments regarding the suitability of the Chesapeake Bay waterway for LHG or LNG vessel traffic.

DATES: The meeting will be held Thursday, August 23, 2001, 3:30 p.m. to 7 p.m. Those who plan to speak at the meeting should provide their name by August 21, 2001. The comment period associated with the public meeting will remain open for seven days following the meeting. Written comments and related material must reach the Coast Guard on or before August 30, 2001.

ADDRESSES: The meeting location is: The Holiday Inn, 155 Holiday Drive, Solomon's Island, Maryland. You may submit written comments to the Coast Guard at the meeting or you may mail comments and related material to Commander, U.S. Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland

21226–1791. U.S. Coast Guard Activities Baltimore maintains a file for this notice. Comments and material received from the public during the comment period will become part of this file and will be available for inspection or copying at the U.S. Coast Guard Activities Baltimore office, room 205, between the hours of 7 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gordon Loebl at U.S. Coast Guard Activities Baltimore (410) 576–2526.

SUPPLEMENTARY INFORMATION:

Background Information

In accordance with the requirements in 33 CFR 127.009, the U.S. Coast Guard Captain of the Port, Baltimore (COTP) is preparing a letter of recommendation as to the suitability of the Chesapeake Bay waterway for liquefied hazardous gas (LHG) or liquefied natural gas (LNG) marine traffic. On April 13, 2001, the Coast Guard published a Notice and request for comments entitled Notice and Request for Comments; letter of recommendation, LHG or LNG Facility Cove Point, MD in the **Federal Register** (66 FR 19283). In the Notice and request for comments, the Coast Guard indicated that we did not then plan to hold a public meeting; however, the Coast Guard would consider requests for public meetings. The Coast Guard received several requests for public meetings during the comment period. Therefore, the Captain of the Port has decided that a public meeting would benefit the recommendation process and will hold a public meeting at the time and place described above in **DATES** and **ADDRESSES.**

Public Meeting

Attendance is open to the public. Discussion will be facilitated through the establishment of several staffed stations on various facets of the proposed operation, including the transit of vessels, the shoreside transfer of cargo, and other navigational and environmental issues. With advance notice, members of the public may provide oral statements regarding the suitability of the Chesapeake Bay waterway for LHG or LNG vessel traffic. Oral statements will be limited to five minutes. Persons wishing to make oral statements should notify Lieutenant Commander Gordon Loebl at the number in **FOR FURTHER INFORMATION CONTACT** no later than two days before the meeting. Written comments may be submitted at the meeting or to the Docket up to August 30, 2001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, contact Lieutenant Commander Gordon Loebl listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: July 20, 2001.

T.W. Allen,

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

[FR Doc. 01–19068 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9119]

Notice of Public Meeting; Commercial Launch Industry

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting

SUMMARY: The FAA announces an on-line public forum on the Internet seeking comments and information from the public regarding the government's role in supporting the U.S. commercial launch industry. In particular, the FAA is asking whether and why the government should continue to share the risk of liability for commercial launches in the unlikely event of an accident, or consider changes to existing laws. Public views obtained from the on-line forum will be included in a report to Congress on the appropriateness and need to continue current risk-sharing arrangements or modify laws governing liability risk-sharing for commercial launches and reentries beyond December 31, 2004.

DATES: A two-week on-line public forum will begin on September 4, 2001, at 9 a.m. EST and end on September 14, 2001, at 4:30 p.m. EST. Written comments may also be submitted to the docket through September 14, 2001. Comments submitted to the docket after September 14th will be considered and included in the report to the extent practicable; however, the FAA encourages timely submission of comments to facilitate preparation of the report.

ADDRESSES: The on-line public forum can be reached by clicking the ''On-Line Public Forum'' hyperlink on the Associate Administrator for Commercial Space Transportation's (AST) Internet home page, *http://ast.faa.gov.* Persons unable to participate in the on-line public forum may mail or deliver views to the U.S. Department of Transportation Dockets, Docket No. FAA–2001–9119, 400 Seventh Street, SW., Washington, DC 20590. The FAA requests two copies of any written comments. Comments may also be submitted to the docket electronically by sending them to the Documents Management Systems (DMS) at the following Internet address: *http://dms.dot.gov/.* Comments to the docket should be submitted by September 14, 2001. Comments submitted to the docket may be examined in Room PL 401 at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, between 10 a.m. and 5 p.m. weekdays except Federal holidays, and may be viewed by accessing the DMS using the Internet cite noted above.

FOR FURTHER INFORMATION CONTACT: Ms. Esta M. Rosenberg, Senior Attorney-Advisory, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation (202) 366–9320, or Mr. Ronald K. Gress, Manager, Licensing and Safety Division, Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, U.S. Department of Transportation (202) 267–7985.

SUPPLEMENTARY INFORMATION:

Background

For decades, U.S. national launch capability was attributable exclusively to government managed programs. By the 1980's, commercial opportunities in space prompted development of a private sector launch industry that would operate as a commercial business by selling launch services to customers. Customers included manufacturers or owners and operators of telecommunications and Earth observations satellites, as well as research scientists, among others. Government policies were developed to facilitate growth of a robust commercial launch industry.

In the mid-1980's, Congress enacted the Commercial Space Launch Act (CSLA) to create the legal framework for a commercial launch industry and to sustain the momentum towards an increasingly privatized launch capability in the United States. In enacting the CSLA, Congress cited the critical importance of demonstrating legislative commitment to the emerging launch industry in order to encourage private sector investment in developing commercial launch ventures. Under the statutory framework established by the CSLA, launch authorization would be

granted through a licensing program administered by the U.S. Department of Transportation (DOT). Through licensing, the Federal government would exercise safety oversight and regulatory control over private sector launches.

Progress in commercializing space access was slow, however, largely because the Shuttle was available to launch satellites as secondary payloads on advantageous terms. The Challenger disaster of 1986, and the stand-down of Shuttle service for the two years that followed, spurred development of private sector launch capability, but still at a slow rate. By 1988, no commercial launches had yet taken place. Among the reasons cited for delayed development of a commercial launch industry was the difficulty of managing the potentially catastrophic liability risk associated with a commercial launch. Insurance to financially protect an operator against the risk of potentially vast liability was not readily available. To the extent it was available, insurance was costly and market capacity extremely limited. Launch companies stated that they were unwilling to ''bet the company'' on each launch and without insurance could not responsibly manage the potentially catastrophic and open-ended liability that might result in the event of a launch accident affecting a populated area. Previously, liability had been the responsibility of the Federal government. It became clear that a viable commercial launch industry would not develop in the United States without an adequate means of managing liability risk.

To address industry concerns, and facilitate development of commercial launch capability and associated insurance capacity, Congress instituted a comprehensive liability risk-sharing program through the CSLA limiting the amount of insurance a launch operator would be required to buy and placing responsibility on the government for covering excess liability, up to a set limit. The payment of excess claims provisions of the CSLA became popularly known as indemnification although the term is a misnomer. Unlike an absolute guarantee of indemnification, the CSLA provides procedures for Congress to vote to appropriate funds covering excess liability, up to a statutory ceiling of $1.5 billion above required insurance, with an adjustment for inflation occurring after 1988 (the year the program was enacted).

Initially, the liability risk-sharing provisions of the CSLA were limited to a five year term and were due to sunset at the end of 1993. The first launch license was issued and the first licensed launch took place in 1989. By the end of 1993, 37 licensed launches had taken place and two entities held operator licenses. The concept of an operator license was developed by DOT to facilitate and streamline approvals for the conduct of launches by an operator that had demonstrated a sound safety record and launch capability. An operator license grants broader authorization than that conveyed in a single launch license by authorizing an unlimited number of launches of a class of launch vehicle by the operator from a federal launch range.

By 1993, commercial launches were occurring at the rate of one every two months, on average, and were still relatively infrequent events. That year, Congress extended the statutory liability risk-sharing program, including the indemnification provisions, for an additional six year term, through December 1999. Launch rates increased during the period of 1995 to 1999. Consideration of another extension in 1999 proved controversial and a one-year continuation was granted, allowing time for further deliberation in Congress of an additional extension. That deliberation resulted in passage of the Commercial Space Transportation Competitiveness Act of 2000, which extended the existing risk-sharing regime through 2004 and directed DOT to submit a comprehensive report on the need for maintaining the liability risk-sharing status quo. Information received in response to this notice of an on-line pubic forum will be used in preparing the report.

Launches conducted from U.S. facilities have an impressive safety track record, as measured by the absence of damage or loss to uninvolved persons. In fact, for licensed commercial launches, a claim for third-party damage or loss has never been made against a licensee's launch liability insurance coverage. Nevertheless, as in any business, and particularly one involving high risk explosives, the possibility of a launch accident makes insurance or other form of financial responsibility necessary to compensate potential victims and also to protect the corporate assets of launch participants. Moreover, by treaty, the United States accepts absolute liability for damage that occurs in other countries when a launch takes place from U.S. territory or facilities.

To ensure that funds will be available to compensate injured but uninvolved persons, as well as government personnel supporting a commercial launch and to ensure that U.S. launch services providers are financially able to operate in the face of potentially open-ended liability, the CSLA divides potential liability into three layers and assigns responsibility for each layer as follows. The first layer is that which has the most probability of occurrence, although in fact no claims have ever arisen out of a commercial launch from the United States. A launch operator holding a license is required to obtain liability insurance (or otherwise prove that it can financially cover claims) in an amount calculated by the FAA based upon a risk assessment that measures, in a dollar amount, the greatest potential losses for bodily injury and property damage that can reasonably be expected to occur as a result of a licensed launch. Insurance requirements are set such that there is about a one in ten million chance that liability for third-party claims will exceed the amount of insurance the agency requires as a condition of a launch license. All participants in a licensed launch, including the payload customer and the contractors of the launch operator and the customer, as well as the U.S. Government and its contractors, are protected by the licensee's insurance coverage. Regardless of which entity involved in the launch is at fault for an accident, the legal liability of that party and the other launch participants is covered by the insurance. The injured victim will be compensated without protracted arguments over which party actually caused the injury. By law, the amount of insurance the FAA can require is limited to $500 million but actual insurance requirements have never exceeded $215 million for a launch.

Above the amount of required insurance set by the FAA, the CSLA places responsibility for covering claims on the government, up to a ceiling of $1.5 billion as adjusted for inflation occurring after 1988, the year the program was enacted. As noted above, the CSLA contains procedures whereby Congress may vote to appropriate funds to cover the liability, but it is not absolute. Above the combined amount of required insurance plus the amount paid by the government, responsibility for covering third-party claims rests with the licensee or legally liable party. Under the statutory risk allocation program just described, the government's liability exposure for the most probable claims is covered by the launch licensee's insurance at no cost to the government or U.S. taxpayer. This coverage is particularly important because the government is liable under treaties for damage or injury that occurs on the ground outside the United States, regardless of the CSLA, when launches

take place from the United States. In return for industry-provided insurance, the government accepts responsibility for covering liability of involved entities and compensating injured third parties in the unlikely event of catastrophic liability in excess of required insurance. Congress has never been requested to appropriate funds to fulfill its statutory commitment.

Commercialization of U.S. launch capability has been a qualified success. Arianespace, a European launch consortium and the principal competitor of the US commercial launch industry, continues to attract a large share of the internationally competed launch market and launches of commercial satellites by Russia's Proton launch vehicle are increasing. More and more countries have developed space-faring capability and are developing national laws to address operator liability for commercially operated launch vehicles and to fulfill treaty obligations assumed by governments under the Outer Space Treaties. The U.S. risk-sharing regime has been used as model for other nations in developing risk-sharing programs under their domestic laws.

Against this competitive climate, Congress extended the existing liability risk-sharing regime for an additional five year term, calculated from the 1999 sunset date. Congress will need to consider whether to extend the regime beyond the current sunset date of December 2004, and if it declines to act the indemnification provisions will end under the terms of the existing law. In granting the extension, Congress directed the Department of Transportation to study the need for continuing the status quo with respect to liability risk allocation, and to consider whether modifications may be appropriate. In doing so, it would appear that, for Congress, questions remain unanswered as to the continuing need for the liability risk-sharing regime. In the Commercial Space Transportation Competitiveness Act of 2000, Congress has detailed specific issues associated with launch liability and risk allocation that must be addressed by the comprehensive report, and they can be viewed at the AST Internet home page, *http://ast.faa.gov.*

A portion of the report will be dedicated to presenting the views of the interested public. The interested public includes the launch services industry and its satellite customers and suppliers, as well as associations and interest groups dedicated to space-related issues. But the public is not limited to entities directly involved in launch services or the space industry. A robust U.S. commercial launch industry enables many industries and services for consumers. Today, commercialized utilization of and access to space is credited with enabling associated consumer services such as telecommunications, mobile data, direct-to-home television, remote sensing and related processing, as well as distribution industries. According to an AST report issued February 2001, ''The Economic Impact of Commercial Space Transportation on the U.S. Economy,'' U.S. economic activity in 1999 linked to the commercial space industry totaled over $61.3 billion.

Because the benefits of space are widespread, and because so many people are interested in space travel and exploration, both as taxpayers and as future adventure travelers, the FAA seeks views from any and all interested persons, including consumer groups, persons and commercial entities. The FAA also seeks the views of persons who may have more particularized interest in understanding how launch liability is managed, such as those persons living in the vicinity of launch sites. Population growth in the communities surrounding the most active U.S. launch sites, such as Cape Canaveral Air Force Station in Florida and Vandenberg Air Force Base in California, demonstrates confidence in Air Force range safety management in particular, and launch safety technology in general.

This is the second opportunity provided by the FAA for the interested public to provide its perspective, using the Internet, on the appropriate role of government in risk management for commercial space transportation and associated issues concerning U.S. policies in support of a robust commercial launch industry. A docket also remains available for filing written comments, either by mail or electronically, following the instructions listed above under the heading, **ADDRESSES.**

The on-line public forum will allow electronic discussion of the issues identified for analysis by the Commercial Space Transportation Competitiveness Act of 2000. Through the Internet, a large cross-section of the interested public will be able to share views and information with each other and the FAA, and assist the FAA in compiling the range of perspectives concerning an appropriate risk-sharing regime for commercial space transportation.

There are two sets of questions. The first set of questions asks, in a general way, for public views concerning government support of the commercial space launch industry. The second set of questions repeats the questions posed in an on-line public forum held April 27–May 11, and addresses the specific elements Congress has required the FAA to study in preparing the report. At the end of the questions, the FAA provides a more ''free-style'' opportunity for submission of views on matters related to launch liability, risk management and government policies in support of the U.S. commercial space launch industry.

If you would like to participate in the on-line forum, you are not required to answer all of the questions and you are not required to respond to all parts. You may answer as few or as many of the questions as you like, in either or both parts, as well as in the ''free-style'' section. You may choose to respond only in the ''free-style'' section and skip over the two sets of questions in Parts I and II entirely. If you choose to respond to a question, please be specific in your answer so that it is clear to the FAA and others who may view the on-line public meeting. To the extent you can, please provide supporting information and the rationale for your answer.

Part I

There are eight questions listed in this part. You may answer none, some or all of them, and then proceed to Part II.

1. Before reading this Notice, were you aware that a commercial launch industry exists in the United States, in addition to government launch capability (e.g., military space programs operated by the Department of Defense and civil space programs administered by NASA), and that private companies offer launch services as a commercial business?

2. Is it important to you that the United States have a successful and internationally competitive commercial launch industry with a significant, if not majority, share of the international launch market, and if so, why? Do you believe there is a benefit to our nation from having a robust commercial launch industry and from being a well-established world leader in space?

3. Before reading this Notice, were you aware that the FAA licenses and regulates commercial launches in the United States?

4. Before reading this Notice, were you aware that launch operators licensed by the FAA are required, by law, to maintain a prescribed amount of liability insurance?

5. Before reading this Notice, were you aware of the government's involvement in providing coverage, that is, ''indemnification,'' for excess liability over and above that which is

covered by the liability insurance a launch operator is required to purchase when conducting a licensed launch in the United States?

6. A government-industry risk sharing arrangement, such as that reflected in the CSLA and described in this Notice, may be unusual for a commercial industry, but it is not unique. For example, indemnification of excess liability is credited with enabling commercial development of the nuclear power industry. Do you think it is important and appropriate for the government to continue to support the U.S. commercial launch industry by having some type of liability risk-sharing program, such as the one described in this Notice, and can you state why?

7. Other governments financially support their launch industry through indemnification commitments. For example, the French Government is responsible for paying damages awarded to victims of Arianespace launches in excess of the insurance obtained by Arianespace. Do you believe that the U.S. Government should continue to have policies and laws, such as the CSLA risk-sharing program described in this Notice, so that U.S. companies can compete on similar terms against their international competitors?

8. If you answered ''yes'' to Question 7, above, under what circumstances do you believe the U.S. Government should or could stop supporting the U.S. commercial launch industry through risk sharing? What criteria (e.g., market share, technological success, other considerations) would you use in deciding that a risk-sharing arrangement between government and industry is no longer necessary or appropriate?

Part II

Reprinted below are the questions presented in the first Internet public meeting, conducted April 27–May 11. You may answer none, some or all of them, and then proceed to Part III.

1. Could the U.S. commercial space transportation industry compete effectively against non-U.S. launch providers without the existing liability risk-sharing regime?

2. Are the liability risk-sharing regimes of other space-faring countries relevant to the competitiveness of the U.S. space transportation industry? Are there specific elements of particular foreign regimes that you believe provide advantages or benefits to entities that fall under those regimes and the ability of non-U.S. launch providers to compete internationally?

3. Does holding a launch operator strictly liable for the damage or injury that results from its launch hinder the commercialization of space launch capability?

4. By treaty, the U.S. Government accepts absolute liability for damage on the ground or to aircraft in flight outside of the United States when a launch takes place from U.S. territory or facilities. Given the Government's obligations in this regard, does the existing liability risk-sharing regime provide adequate coverage and financial protection for the commercial space transportation industry as well as the Government?

5. U.S. and foreign air carriers operating in the United States are required to maintain insurance coverage in certain minimum amounts covering liability to passengers and persons and property on the ground. For aircraft with more than 60 seats or more than 18,000 pounds of capacity, carriers must maintain third-party accident liability coverage in the minimum amount of $300,000 for any one person other than a passenger and a total of $20 million per involved aircraft for each occurrence. There is no government indemnification in the event claims exceed that amount, nor does the U.S. Government accept treaty-based liability in the event of such damage. At what stage of development and under what circumstances should the airline liability regime become a model for commercial reusable launch vehicles (RLVs) that will routinely take-off and land?

6. The Federal Government's current indemnification policy does not cover risks associated with commercial spaceport operations that do not involve launch vehicles. Do commercial spaceports require a liability risk-sharing regime comparable to that utilized for licensed launches and reentries, even when there is no vehicle-related activity taking place at the spaceport?

7. What factors should the U.S. Congress consider in determining whether to continue as-is, or modify, existing laws in terms of liability risk-sharing for commercial space launch and reentry activities?

8. What suggestions do you have for modifying the existing liability risk-sharing laws applicable to commercial launch and reentry activities?

Part III

This part provides an opportunity for you to express your views and concerns on matters related to launch liability, risk management and government policies in support of the U.S. commercial space launch industry. You are welcome to use this opportunity to inform the FAA of your views regarding U.S. commercial space transportation in general, and the government's role in facilitating and supporting commercial access to space and regulating launch safety.

Issued in Washington, DC, on July 25, 2001.

Joseph A. Hawkins,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 01–19043 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9800]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent to issue exemptions and request for comments.

SUMMARY: This notice announces the FMCSA's proposal to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs), from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The FMCSA requests comments on its proposed exemption program, but we are not accepting applications for exemptions at this time. If a decision to proceed with the exemption program is made, the exemptions would be granted only to those applicants who meet the specific conditions and comply with all the requirements of the exemption. Exemptions would be issued for a period of two years. After the two years, those holding exemptions would need to reapply for another two-year exemption.

DATES: Comments must be received on or before October 1, 2001.

ADDRESSES: You can mail, hand deliver, fax, or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590; FAX (202) 493–2251, online at *http://dmses.dot.gov/submit.* Please include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays at the docket facility. You can also examine the docket on the Internet at http://dms.dot.gov. If you want us to

notify you of receipt of your comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed diabetes exemption program in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The motor carrier regulatory functions of the Federal Highway Administration (FHWA) were transferred to the recently created Federal Motor Carrier Safety Administration (FMCSA). The history and delegation of authority to the FMCSA was published in the **Federal Register** on January 4, 2000 (65 FR 220). The agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of accident involvement than the general population. The diabetes requirement provides:

A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control. 49 CFR 391.41(b)(3).

Since 1970, the agency engaged in several activities to address the issue of diabetes and CMV operation. On March 28, 1977, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit comments on the diabetes standard (42 FR 16452). The agency terminated this rulemaking in November 1977 without amending the standard, after determining that the more substantive comments and the literature cited in the ANPRM supported the prohibition against the operation of CMVs by insulin-using diabetics because of highway safety concerns. On November 25, 1987, the agency published a new ANPRM (52 FR 45204) requesting comments on petitions from two individuals and the American Diabetes Association to eliminate the blanket prohibition against insulin-using diabetics and grant waivers on a case-by-case basis. In September 1987, a Conference on Diabetic Disorders and Commercial Drivers was held to review the diabetes standard in light of advances in the care of diabetics. Conference participants (physicians, scientists, federal officials and representatives from the motor carrier industry) recommended that some drivers with diabetes could be certified to drive depending upon insulin use and under certain conditions (absence of recurrent hypoglycemia, safe driving record, etc.) (Federal Highway Administration, Conference on Diabetic Disorders and Commercial Drivers; Final Report, 1988). Following this, the agency published a Notice of Proposed Rulemaking (55 FR 41208) requesting comments on a proposal to revise the diabetes standard to allow insulin-using diabetics to operate CMVs and sponsored a 1990 risk assessment that estimated various levels of accidents among diabetic drivers depending upon the severity of hypoglycemia (Federal Highway Administration, Insulin-using Commercial Motor Vehicle Drivers, 1992). The estimated level of accidents was deemed acceptable and a Notice of Intent to Issue Waivers was published in 1992. This led to a 1993 waiver program, based on a three-year safe driving record while using insulin and medical examinations by the required specialists.

The diabetes waiver program, originally part of a research study, was terminated in 1996. The D.C. Circuit Court of Appeals had found that the initial determination that the agency's vision waiver program would not adversely affect the safe operation of CMVs was ''devoid of empirical support in the record'' and, therefore, contrary to law (*Advocates for Highway and Auto Safety* v. *Federal Highway Administration,* 28 F. 3d 1288 (D.C. Circuit 1994)). Although the decision initially affected only the vision waiver program, it had a direct effect on the diabetes program because of the similar approach used to prequalify drivers. Those drivers holding waivers at the program's termination were allowed to continue to operate CMVs in interstate commerce under grandfather provisions at 49 CFR 391.64.

Feasibility Study To Qualify Insulin-Treated Diabetics To Operate CMVs

On June 9, 1998, the President signed the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107). Section 4018 of the TEA–21 directed the Secretary of Transportation (the Secretary) to determine if it is feasible to develop a safe and practicable program for allowing individuals with insulin-treated diabetes mellitus (ITDM) to operate CMVs in interstate commerce. In making the determination, the Secretary was directed to evaluate research and other relevant information on the effects of ITDM on driving performance. TEA–21 stated that, to accomplish this, the Secretary shall consult the states with regard to their programs for CMV operation by ITDM drivers, evaluate the Department of Transportation's (DOT) policies in other modes of transportation, analyze pertinent risk data, consult with interested groups knowledgeable about diabetes and related issues, and assess the possible legal consequences of permitting ITDM individuals to operate CMVs in interstate commerce. TEA–21 also directed the Secretary to report the findings to Congress and, if a program is feasible, describe the elements of a protocol to permit individuals with ITDM to operate CMVs. The report was submitted to Congress on August 23, 2000, and concludes that a safe and practicable protocol to allow some ITDM individuals to operate CMVs is feasible. A copy of the report is included in the docket. The FMCSA's feasibility assessment included a review of background research on the risk of driving with diabetes. Although the relationship between diabetes and automobile crashes had been assessed since 1965, the epidemiological evidence from 1965 to 1991 produced conflicting results. The lack of consistent results was in many cases caused by flawed methodology. Further, none of the studies addressed the operation of CMVs. With the termination of the waiver program and its research component, the agency lacked clear risk assessment information.

A literature review was conducted on the treatment and management of ITDM. The research results showed positive findings. Six studies have been reported in the literature. The two largest and most reported studies (The Diabetes Control and Complications Trial and the United Kingdom Prospective Diabetes Study Group) represented the most extensive investigations of insulin therapy and had similar findings. Both showed that patients experienced reductions in blood glucose levels and significantly fewer microvascular complications with intensive treatment. However, the studies also showed significant adverse effects from insulin use, notably, a significantly higher rate of hypoglycemia.

Investigation of the policies of other DOT modal administrations regarding ITDM showed that only the Federal Aviation Administration (FAA) has a well-developed program. In 1994, the

FAA determined that selected ITDM individuals can be considered for special issuance of a third-class Airman Medical Certificate under a screening, glucose management, and monitoring protocol. The program evolved through a series of steps in which the agency capitalized on its experience, reviewed relevant research, consulted medical experts, and considered comments from the public and interested organizations.

As a part of its feasibility determination, the FMCSA examined how the states treated drivers with ITDM. Although the states have the option to apply the FMCSRs to the medical qualifications for intrastate CMV operators, they also have the flexibility to deviate from the FMCSRs. A few states have chosen to adopt the federal standards and not allow ITDM individuals to operate CMVs. Some states have granted grandfather rights to drivers who were already driving intrastate, while allowing no new drivers after a specific date. Other states have programs whereby drivers can apply for the opportunity to operate in intrastate commerce. Based on several surveys of the states and contact with individual states, the programs of four states (Utah, Michigan, Kentucky and Delaware) are presented in the report as examples of more extensive approaches. These states have screening, operating and monitoring protocols of varying degrees of intensity and coverage, but do not monitor results.

The report presents four recent risk assessment studies (1995 to 1997) that specifically address diabetes and the operation of CMVs. Two of the studies were performed in Canada, while the other two were conducted by the Office of Motor Carrier Safety (now the FMCSA). The first study analyzed insurance data for 1,307 truck drivers and found that diabetics operating smaller trucks had significantly higher accident rates (diabetics operating large combination trucks did not have higher rates) (Dionne, G., Desjardin, D., LaBerge-Nadeau, C. and Moag, U., ''Medical Conditions, Risk Exposure, and Truck Driver's Accidents: An Analysis with Count Data Regression Models,'' Accident Analysis and Prevention, 27(3), p. 295–305; 1995). Insulin use was not considered. The second Canadian study used the same database and concluded that diabetic drivers did not have accidents that were significantly more severe than those without the condition (severity was defined by injuries and fatalities). The third study used data from the FHWA waiver program (Federal Highway Administration, Final Descriptive Report: ''Qualifications of Drivers-Vision, Diabetes, Hearing and Epilepsy,'' 1997). The analysis of these data showed that the accident rate of the diabetes waiver program drivers was lower than the national rate. The last study looked at 723 ITDM drivers of large trucks and a comparison group of 1,297 drivers with commercial driver's licenses (Federal Highway Administration, ''A Preliminary Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus,'' 1999). After adjustment for confounding, the results showed no significant differences between the two groups in accident rate or severity. The ITDM drivers in this study had at least 3 years experience operating a commercial vehicle with the condition. All of the recent studies specifically concerned with diabetes and CMV operation show that drivers with that condition have a level of safety that is the same or better than a comparison group or the national accident rate.

The FMCSA also assembled a panel of physicians expert in the treatment of diabetes. The panel was asked to address the screening and monitoring issues that would be associated with a process to allow ITDM individuals to operate CMVs. Responding with written reports and through discussion at a meeting in Washington, DC, the panel expressed the opinion that advances in the treatment of diabetes make it possible both to control the disease and to permit the identification of those individuals capable of doing so. The panel identified methods to avoid acute complications, including hypoglycemia, and endorsed a protocol for monitoring glucose before and during the operation of a CMV. The panel concluded that from a medical standpoint a process was feasible for permitting some individuals with ITDM to operate CMVs.

The report concludes that a safe and practicable protocol to allow some ITDM individuals to operate CMVs is feasible. The research on the treatment and management of ITDM, combined with the determinations of the medical panel, indicate that the disease and its adverse effects can be successfully controlled and monitored. Moreover, recent risk assessments provide evidence that diabetic CMV operators can perform in an acceptably safe manner. Finally, the program operated by the FAA and the analysis of the agency's diabetes waiver study program demonstrate that it is possible to screen and monitor ITDM individuals so that safe performance is feasible.

The report further concludes that a viable program protocol for allowing individuals with ITDM to operate CMVs would require three components. The first is a screening component to identify qualified applicants. This process would examine the applicant's experience and safety in operating CMVs, the applicant's history of hypoglycemia, and the results of examinations by the required medical specialists (endocrinologists and ophthalmologists). The second component would provide guidelines for managing ITDM, including supplies to be used and the protocol for monitoring and maintaining appropriate blood glucose levels. The last component would specify the process to be used for monitoring ITDM commercial drivers. It would address the required medical examinations and the schedule for their submission. It also would indicate how glucose measures should be taken and reviewed, and specify how episodes of severe hypoglycemia and accidents should be reported. These components are based largely on the structure of the FAA and FHWA/FMCSA waiver programs. They are presented in detail in the report.

Finally, the report addresses the legal consequences of permitting ITDM individuals to drive CMVs in interstate commerce. It was determined that the legal consequences of a rule (including a regulation, policy or standard adopted pursuant to the Administrative Procedure Act (APA)) fall into two categories: (1) An APA challenge to the validity of the rule and (2) tort liability for damages sustained in an accident involving an ITDM driver. The assessment concluded that these consequences are no different from those associated with any other rule involving driver standards and qualifications. For employers that hire ITDM drivers, the rule might expose them to new standards of responsibility for monitoring the health of drivers who meet federal guidelines.

Based on the research presented in the Report to Congress, the FMCSA has decided that evidence and precedence indicate the appropriate form for implementing a process would be an exemption program. Evidence indicates that diabetes is a chronic disease which requires constant control, especially ITDM, and needs, therefore, ongoing monitoring to ensure that the disease is under control. The evidence also strongly suggests that the process which guarantees an acceptable level of safety is one that thoroughly screens ITDM drivers who wish to operate CMVs and periodically monitors the disease-controlling behavior of those successfully screened. Experience indicates, through the FAA and FHWA/

FMCSA programs, such a process is best implemented as an exemption program, and that type of program is currently defined and authorized in Section 4007 of TEA–21.

Authority—Waivers and Exemptions

On June 9, 1998, the agency's waiver authority changed with enactment of the Transportation Equity Act for the 21st Century (TEA–21), Public Law No. 105–178, 112 Stat. 107. Section 4007 of TEA–21 amended the waiver provisions of 49 U.S.C. 31315 and 31136(e) to change the standard for evaluating waiver requests, to distinguish between a waiver and an exemption, and to establish term limits for both. Under revised sections 31315 and 31136(e), the FMCSA may grant a waiver for a period of up to 3 months or an exemption for a renewable 2-year period.

The amendments to 49 U.S.C. 31315 and 31136(e) also changed the criteria for exempting a person from application of a regulation. Previously an exemption was appropriate if it was consistent with the public interest and the safe operation of CMVs. Now the FMCSA may grant an exemption if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The new standard provides the FMCSA greater flexibility and discretion to deal with exemptions than the previous standard. (See H.R. Conf. Rep. No. 105–550, at 489 (1998).)

The TEA–21 requires the FMCSA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

In addition, the agency is required to monitor the implementation of each exemption to ensure compliance with its terms and conditions. If the FMCSA denies a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person who was denied the exemption and the reasons for the denial.

Generally, the duration of exemptions issued under the authority of section 4007 is limited to two years from the date of approval, but may be renewed. The FMCSA is required to immediately revoke an exemption if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety that was maintained before the exemption was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of the regulations issued under the authority of 49 U.S.C. 31315 and 31136(e).

Process for Applying for an Exemption

The procedures for applying for an exemption are at 49 CFR 381.300. The person applying for an exemption is required to send a written request (which could be a typed or handwritten letter (printed)) to the Federal Motor Carrier Safety Administrator. The written request must include basic information such as the identity of the person who would be covered by the exemption, the name of the motor carrier or other entity that would be responsible for the use or operation of CMVs during the exemption period, and the principal place of business of the motor carrier or other entity. Under section 381.310, the application must include a written statement that: (1) Describes the event or CMV operation for which the exemption would be used; (2) identifies the regulation from which the applicant is requesting relief; (3) estimates the total number of drivers and CMVs that would be operating under the terms and conditions of the exemption; and (4) explains how the recipient of the exemption would ensure that they achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

FMCSA Procedures for the Review of Exemption Applications

Section 381.315 requires the FMCSA to review an application for an exemption and prepare, for the Administrator's signature, a Federal Register notice requesting public comment. After a review of the comments received, a recommendation will be made to the Administrator. Notice of the Administrator's final decision will be published in the **Federal Register**. The FMCSA would attempt to issue a final decision within 180 days of the date it receives an individual's completed application. However, if the applicant should omit important details or other information necessary for the agency to conduct a comprehensive evaluation, the FMCSA would attempt to issue a final decision within 180 days of the date the additional information is received (49 CFR 381.315 and 381.320). The FMCSA recognizes that this potential six-month waiting period may seem burdensome. However, the agency must carefully evaluate each and every application for regulatory relief from the diabetes standard, to assess the potential safety performance of each applicant. In addition, the agency must prepare and submit the candidate's application for public notice and comment in the **Federal Register** and then evaluate comments received before making a final decision. The FMCSA's overriding concern is to ensure the safety of interstate commercial operations. The agency would notify all applicants in writing once a final decision is made.

Application Information

In considering exemptions, the FMCSA must ensure that the issuance of diabetes exemptions would not be contrary to the public interest and that the exemption achieves an acceptable level of safety. Exemptions, therefore, would only be granted to ITDM individuals who meet certain conditions. These conditions, which are based on the research literature, relevant DOT and State exemption programs and with substantial input from a panel of endocrinologists, are set forth below. Applicants for an exemption from the ITDM prohibition would be required to submit their applications in a letter (there would be no application form), include all supporting documentation, and use the following format:

Vital Statistics
Name (First Name, Middle Initial, Last Name):
Address (House Number and Street Name, City, State, and Zip Code):
Telephone Number (Area Code and Number):
Sex (Male or Female):
Date of Birth (Month, Day, Year):
Age:
Social Security Number:
State Driver's License Number (List all licenses held to operate a commercial motor vehicle (CMV) during the 3-year period immediately preceding the date of application.):
Driver's License Expiration Date:
Driver's License Classification Code (If not a commercial driver's license (CDL) classification code, specify what vehicles may be operated under such code):
Driver's License Date of Issuance (Month, Day, Year):

Experience
Number of years driving straight trucks:
Approximate number of miles *per year* driving straight trucks:
Number of years driving tractor-trailer combinations:
Approximate number of miles *per year* driving tractor-trailer combinations:
Number of years driving buses:
Approximate number of miles *per year* driving buses:
Present Employment
Employer's Name (If Applicable):
Employer's Address:
Employer's Telephone Number:
Type of Vehicle Operated and GVWR (Straight Truck, Tractor-Trailer Combination, Bus):
Commodities Transported (e.g., General Freight, Liquids in Bulk (in cargo tanks), Steel, Dry-Bulk, Large Heavy Machinery, Refrigerated Products):
Estimated number of miles driven per *week:*
Estimated number of daylight driving hours per *week:*
Estimated number of nighttime driving hours per *week:*
States in which you will drive if issued an exemption:

In addition, the applications must include supporting documentation showing that the applicant:

(1) Possesses a valid intrastate CDL or a license (non-CDL) to operate a CMV,

(2) Has operated a CMV, with a diabetic condition controlled by the use of insulin, for the three-year period immediately preceding application,

(3) Has a driving record for that three-year period that:

Contains no suspensions or revocations of the applicant's driver's license for the operation of any motor vehicle (including their personal vehicle);

Contains no involvement in an accident for which the applicant received a citation for a moving traffic violation while operating a CMV;

Contains no involvement in an accident for which the applicant contributed to the cause of the accident; and

Contains no convictions for a disqualifying offense or more than one serious traffic violation, as defined in 49 CFR 383.5, while operating a CMV,

(4) Has no other disqualifying conditions including diabetes-related complications,

(5) Has had no recurrent (two or more) hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(6) Has had no recurrent hypoglycemic reactions requiring the assistance of another person within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(7) Has had no recurrent hypoglycemic reactions resulting in impaired cognitive function which occurred without warning symptoms within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(8) Has provided a board-certified or board-eligible endocrinologist, who is knowledgeable about diabetes, with a complete medical history including:

The date insulin use began;
Diabetes diagnosis and disease history;
All hospitalization records;
Consultation notes for diagnostic examinations;
Special studies pertaining to the diabetes;
Follow-up reports; and
Reports of any hypoglycemic insulin reactions within the last five years,

(9) Has been examined by a board-certified or board-eligible endocrinologist who has conducted a complete medical examination. The complete medical examination must consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

Two measures of glycosylated hemoglobin, the first 90 days prior to the last and current measure;
Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken; and
Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities,

(10) Submits a signed statement prepared by the examining endocrinologist indicating the following medical determinations:

The endocrinologist is familiar with the applicant's medical history for the past five years either through actual treatment over that time or through consultation with a physician who has treated the applicant during that time;
The applicant has been using insulin to control his/her diabetes from the date of the application back to the date the three years of driving experience began;
The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes and what procedures should be followed if complications arise; and
The applicant has the ability and has demonstrated willingness to properly monitor and manage his/her diabetes,

(11) Submits a separate signed statement from an examining ophthalmologist that the applicant has been examined and that the applicant does not have clinically significant disease including unstable proliferative diabetic retinopathy (i.e., unstable advancing disease of blood vessels in the retina) and meets the vision standard at 49 CFR 391.41(b)(10).

Requirements for ITDM Individuals Who Have Been Issued an Exemption To Operate CMV'S

There are special conditions attached to the issuance of any exemption for ITDM. The following requirements would be imposed:

(1) Individuals with ITDM shall maintain appropriate medical supplies for glucose management while preparing for the operation of a CMV and during its operation. The supplies should include the following:

An acceptable glucose monitor with memory;

Supplies needed to obtain adequate blood samples and to measure blood glucose;

Insulin to be used as necessary; and

An amount of rapidly absorbable glucose to be used as necessary,

(2) Prior to and while driving, the individual with ITDM shall adhere to the following protocol for monitoring and maintaining appropriate blood glucose levels:

Check glucose before starting to drive and take corrective action if necessary. If glucose is <100 mg/dl, take glucose or food and recheck in 30 minutes. Do not drive if glucose is <100 mg/dl. Repeat the process until glucose is >100 mg/dl;

While driving check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;

Have food available at all times when driving. If glucose is <100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is >100 mg/dl; and

If glucose is >400 mg/dl, stop driving until glucose returns to the 100–400 mg/dl range. If more than two hours after last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Don't resume driving until glucose is <400 mg/dl.

Monitoring for ITDM Individuals Who Have Been Issued an Exemption to Operate CMV'S

In addition to the requirements for controlling ITDM, exemption recipients will be monitored during the period that

the exemption is valid. Monitoring will be conducted by requiring the exemption recipients to submit the following information to the FMCSA:

(1) Submit to a comprehensive medical evaluation by an endocrinologist on an annual basis. The evaluation will include a general physical examination and a report of glycosylated hemoglobin concentration. The evaluation will also involve an assessment of the individual's willingness and ability to monitor and manage the diabetic condition;

(2) Provide records of all daily glucose measurements taken with an acceptable device (with memory). These measurements will be reviewed by a specialist on a quarterly basis;

(3) Provide on an annual basis confirmation by an ophthalmologist that there is no proliferative diabetic retinopathy and no clinically significant disease that prevents the individual from meeting the current vision standards at 49 CFR 391.41(b)(10);

(4) Annual documentation by an endocrinologist of ongoing education in management of diabetes and hypoglycemia awareness;

(5) Report, upon determination of an endocrinologist or other physician, any episode of severe hypoglycemia, significant complications or inability to manage diabetes; and

(6) Report any involvement in an accident or any other adverse event and whether or not they are related to an episode of hypoglycemia.

Request for Comments

The FMCSA is requesting public comment from all interested persons on its intent to issue exemptions to certain insulin-using diabetic drivers of CMVs, from the diabetes requirement in 49 CFR 391.41(b)(3), and relevant issues discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. However, the FMCSA may issue a final notice of intent to establish a process for considering exemptions from the diabetes requirement in accordance with 49 U.S.C. 311315 and 31136(e), and publish in the **Federal Register** that decision at any time after the close of the comment period. The FMCSA will also continue to file in the docket relevant information which becomes available. Interested persons should continue to examine the docket for new material.

Paper Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this notice of intent contains collection of information requirements for the purposes of the PRA. The proposed exemption program, when made final, will impact the currently-approved information collection, ''Medical Qualification Requirements.'' This approval is covered by OMB Approval No. 2126–0006 and is due to expire on October 31, 2003. The FMCSA estimates that approximately 200 applications for exemption could be filed annually and that it would take an average of 90 minutes to complete an application.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: July 25, 2001.

Brian M. McLaughlin,

Acting Deputy Administrator.

[FR Doc. 01–19045 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 8, 2001 (66 FR 1369–1371).

DATES: Comments must be submitted on or before August 30, 2001.

FOR FURTHER INFORMATION CONTACT: Henrietta Spinner at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–20), 202–366–4802. 400 Seventh Street, SW., Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 537—Automotive Fuel Economy Reports.

OMB Number: 2127–0019.

Type of Request: Extension of a currently approved collection.

Abstract: NHTSA ensures that automobile manufacturers comply with 49 CFR part 537—Automotive Fuel Economy Reports. Part 537 requires that automobile manufacturers submit reports to NHTSA regarding their efforts to improve automotive fuel economy. This information assists NHTSA in evaluating automobile manufacturers' plans for complying with average fuel economy standards and in preparing an annual review of the average fuel economy standards.

Affected Public: Business or other for profit organizations.

Estimated Total Annual Burden: 3,474.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 25, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–18991 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 8 , 2001 [66 FR 1369–1371].

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SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 583–Motor Vehicle Content Labeling.

OMB Number: 2127—0573.

Type of Request: Extension of a currently approved collection.

Abstract: NHTSA ensures that automobile manufacturers comply with 49 CFR Part 583–Automobile Parts Content Labeling. Part 583 establishes requirements for the disclosure of information relating to the countries of origin of the equipment of new passenger motor vehicles.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 47,918.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 25, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–18992 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–01–8906; Notice 02]

RIN 2127–AI06

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 1999 passenger motor vehicles that occurred in calendar year (CY) 1999. The final 1999 theft data indicate an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1998. The final theft rate for MY 1999 passenger vehicles stolen in calendar year 1999 (2.89 thefts per thousand vehicles produced) increased by 14.2 percent from the theft rate for CY/MY 1998 vehicles (2.53 thefts per thousand vehicles produced). Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the final theft data for CY 1999, the most recent calendar year for which data are available.

In calculating the 1999 theft rates, NHTSA followed the same procedures it used in calculating the MY 1998 theft rates. (For 1998 theft data calculations, see 65 FR 40721, June 30, 2000.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1999 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1999 vehicles of that line stolen during calendar year 1999 by the total number of vehicles in that line manufactured for MY 1999, as reported to the Environmental Protection Agency (EPA).

The final 1999 theft data show an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1998. The final theft rate for MY 1999 passenger vehicles stolen in CY 1999 increased to 2.89 thefts per thousand vehicles produced, an increase of 14.2 percent from the rate of 2.53 thefts per thousand vehicles experienced by MY 1998 vehicles in CY 1998. For MY 1999 vehicles, out of a total of 201 vehicle lines, 54 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994.) Of the 54 vehicle lines with a theft rate higher than 3.5826, 50 are passenger car lines, four are multipurpose passenger vehicle lines, and none are light-duty truck lines.

On Wednesday, March 14, 2001, NHTSA published the preliminary theft rates for CY 1999 passenger motor vehicles in the **Federal Register** (66 FR 14979). The agency tentatively ranked each of the MY 1999 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency received written comments from Volkswagen of America, Inc. (VW). The agency used VW's written comments to make the necessary adjustments to its data. As a

result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the March 2001 notice.

In its comments, VW informed the agency that the production volume for the VW Cabrio vehicle line was incorrect. In response to this comment, the production volume for the VW Cabrio has been corrected and the final theft list has been revised accordingly. As a result of the correction, the VW Cabrio previously ranked No. 111 with a theft rate of 1.8398, is now ranked No. 159 with a theft rate of 1.0181.

Additionally, VW informed the agency that the production volumes for the Rolls Royce Silver Spur and the Rolls Royce Silver Spur Park Ward were interchanged. In response to this comment, the production volumes for the Rolls Royce Silver Spur and the Rolls Royce Silver Spur Park Ward have been corrected and the final theft list has been revised accordingly. As a result of the correction, the Rolls Royce Silver Spur with a production volume of two has been revised to reflect a production volume of 51, and the Rolls Royce Silver Spur Park Ward with a production volume of 51 has been revised to reflect a production volume of two.

The following list represents NHTSA's final calculation of theft rates for all 1999 passenger motor vehicle lines. This list is intended to inform the public of calendar year 1999 motor vehicle thefts of model year 1999 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

THEFT RATES OF MODEL YEAR 1999 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1999

No.	Manufacturer	Make/model (line)	Thefts 1999	Production (Mfr's) 1999	1999 theft rate (per 1,000 vehicles produced)
1	HONDA	ACURA INTEGRA	496	25,790	19.2323
2	DAIMLERCHRYSLER	INTREPID [1]	9	480	18.7500
3	MITSUBISHI	MIRAGE	564	53,884	10.4669
4	DAIMLERCHRYSLER	PLYMOUTH NEON	350	38,944	8.9873
5	DAIMLERCHRYSLER	NEON[1]	2	226	8.8496
6	MITSUBISHI	MONTERO SPORT/NATIVA[2]	368	42,268	8.7063
7	DAIMLERCHRYSLER	DODGE STRATUS	715	84,128	8.4990
8	DAIMLERCHRYSLER	DODGE INTREPID	1,104	139,847	7.8943
9	DAIMLERCHRYSLER	DODGE NEON	448	56,850	7.8804
10	BMW	Z3	18	2,547	7.0671
11	MITSUBISHI	ECLIPSE	349	50,070	6.9702
12	DAIMLERCHRYSLER	SEBRING CONVERTIBLE	319	46,758	6.8224
13	GENERAL MOTORS	OLDSMOBILE ALERO	799	121,343	6.5846
14	DAIMLERCHRYSLER	PLYMOUTH BREEZE	367	56,048	6.5480
15	MITSUBISHI	DIAMANTE	54	8,347	6.4694
16	MITSUBISHI	GALANT	390	62,488	6.2412
17	DAIMLERCHRYSLER	STRATUS [1]	3	482	6.2241
18	BMW	M3	41	7,415	5.5293
19	KIA MOTORS	SEPHIA	315	57,099	5.5167
20	DAEWOO	LEGANZA	74	14,217	5.2050
21	GENERAL MOTORS	PONTIAC SUNFIRE	383	74,944	5.1105
22	NISSAN	SENTRA/200SX	399	79,115	5.0433
23	GENERAL MOTORS	PONTIAC GRAND AM	1,510	299,775	5.0371
24	TOYOTA	TERCEL	59	12,122	4.8672
25	SUZUKI	ESTEEM	69	14,255	4.8404
26	MERCEDES BENZ	140 (CL–CLASS & S–CLASS)	63	13,532	4.6556
27	FORD MOTOR CO	MUSTANG	579	125,973	4.5962
28	FORD MOTOR CO	MERCURY TRACER	117	25,972	4.5049
29	GENERAL MOTORS	PONTIAC BONNEVILLE	231	53,371	4.3282
30	GENERAL MOTORS	OLDSMOBILE CUTLASS	186	43,584	4.2676
31	NISSAN	ALTIMA	739	174,349	4.2386
32	FORD MOTOR CO	LINCOLN TOWN CAR	379	89,564	4.2316
33	GENERAL MOTORS	CHEVROLET CAVALIER	986	233,756	4.2181
34	DAIMLERCHRYSLER	CIRRUS	138	32,903	4.1941
35	MITSUBISHI	MONTERO	31	7,399	4.1898
36	GENERAL MOTORS	OLDSMOBILE INTRIGUE	359	86,481	4.1512
37	DAIMLERCHRYSLER	LHS	149	36,369	4.0969
38	HONDA	PRELUDE	46	11,366	4.0472
39	JAGUAR	XJ8	29	7,235	4.0083
40	DAIMLERCHRYSLER	JEEP CHEROKEE	610	154,377	3.9514
41	GENERAL MOTORS	BUICK REGAL	286	73,309	3.9013
42	NISSAN	INFINITI Q45	28	7,208	3.8846
43	HONDA	CIVIC	1,039	269,109	3.8609
44	GENERAL MOTORS	CADILLAC DEVILLE	411	106,554	3.8572
45	GENERAL MOTORS	CHEVROLET MALIBU	822	213,692	3.8467
46	GENERAL MOTORS	CHEVROLET BLAZER	762	199,042	3.8283
47	TOYOTA	LEXUS GS	116	30,513	3.8017
48	FORD MOTOR CO	CONTOUR	524	139,339	3.7606
49	DAEWOO	LANOS	31	8,312	3.7295
50	MITSUBISHI	3000GT	12	3,244	3.6991
51	GENERAL MOTORS	CHEVROLET METRO	95	25,749	3.6895

THEFT RATES OF MODEL YEAR 1999 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1999—Continued

No.	Manufacturer	Make/model (line)	Thefts 1999	Production (Mfr's) 1999	1999 theft rate (per 1,000 vehicles produced)
52	TOYOTA	COROLLA	940	255,693	3.6763
53	MERCEDES BENZ	208 (CLK–CLASS)	65	17,795	3.6527
54	DAIMLERCHRYSLER	DODGE AVENGER	61	16,883	3.6131
55	KIA MOTORS	SPORTAGE	135	38,232	3.5311
56	SUZUKI	VITARA/GRAND VITARA	124	35,651	3.4782
57	DAEWOO	NUBIRA	33	9,553	3.4544
58	GENERAL MOTORS	PONTIAC FIREBIRD/TRANS AM/FORMULA.	119	35,115	3.3889
59	HYUNDAI	SONATA	82	24,539	3.3416
60	FORD MOTOR CO	MERCURY MYSTIQUE	134	40,939	3.2732
61	FORD MOTOR CO	ESCORT	933	287,150	3.2492
62	HYUNDAI	TIBURON	23	7,215	3.1878
63	ISUZU	RODEO	230	72,544	3.1705
64	HYUNDAI	ACCENT	120	37,950	3.1621
65	GENERAL MOTORS	CHEVROLET CAMARO	123	39,041	3.1505
66	GENERAL MOTORS	PONTIAC GRAND PRIX	437	142,546	3.0657
67	GENERAL MOTORS	CHEVROLET CORVETTE	90	29,904	3.0096
68	JAGUAR	XK8	17	5,747	2.9581
69	NISSAN	PATHFINDER	181	61,310	2.9522
70	DAIMLERCHRYSLER	SEBRING COUPE	81	27,519	2.9434
71	MAZDA	PROTEGE	208	70,802	2.9378
72	MERCEDES BENZ	129 (SL–CLASS)	28	9,633	2.9067
73	ROLLS–ROYCE	BENTLEY ARNAGE	1	348	2.8736
74	GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	561	197,430	2.8415
75	FORD MOTOR CO	EXPLORER	1,099	386,943	2.8402
76	MAZDA	626	244	88,473	2.7579
77	FORD MOTOR CO	TAURUS	1,163	423,308	2.7474
78	BMW	7	23	8,391	2.7410
79	DAIMLERCHRYSLER	CONCORDE	175	64,234	2.7244
80	GENERAL MOTORS	CHEVROLET PRIZM	136	49,999	2.7201
81	DAIMLERCHRYSLER	300 M	206	76,130	2.7059
82	HYUNDAI	ELANTRA	158	60,317	2.6195
83	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	729	284,429	2.5630
84	DAIMLERCHRYSLER	PLYMOUTH VOYAGER/GRAND	377	150,111	2.5115
85	NISSAN	INFINITI QX4	59	23,505	2.5101
86	SUZUKI	SWIFT	5	1,998	2.5025
87	NISSAN	MAXIMA	239	95,789	2.4951
88	TOYOTA	TACOMA PICKUP TRUCK	412	167,637	2.4577
89	FORD MOTOR CO	MERCURY SABLE	295	120,113	2.4560
90	MAZDA	MILLENIA	47	19,249	2.4417
91	GENERAL MOTORS	CADILLAC SEVILLE	86	35,624	2.4141
92	FORD MOTOR CO	MERCURY COUGAR	212	88,258	2.4020
93	FORD MOTOR CO	MERCURY MOUNTAINEER	105	43,743	2.4004
94	HONDA	ACURA RL	31	12,961	2.3918
95	VOLVO	C70	12	5,087	2.3590
96	DAIMLERCHRYSLER	JEEP WRANGLER	197	84,990	2.3179
97	TOYOTA	4–RUNNER	292	126,929	2.3005
98	HONDA	ACURA SLX	2	870	2.2989
99	NISSAN	FRONTIER PICKUP TRUCK	104	45,256	2.2980
100	GENERAL MOTORS	OLDSMOBILE BRAVADA	57	25,782	2.2108
101	GENERAL MOTORS	BUICK CENTURY	329	150,061	2.1924
102	GENERAL MOTORS	CADILLAC ELDORADO	35	15,982	2.1900
103	GENERAL MOTORS	GMC JIMMY S–15	137	63,541	2.1561
104	TOYOTA	CAMRY/CAMRY SOLARA	1,040	490,959	2.1183
105	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	595	297,350	2.0010
106	ISUZU	TROOPER	46	23,094	1.9919
107	VOLKSWAGEN	GOLF/GTI	28	14,204	1.9713
108	FORD MOTOR CO	RANGER PICKUP TRUCK	692	356,716	1.9399
109	ISUZU	HOMBRE PICKUP TRUCK	5	2,595	1.9268
110	GENERAL MOTORS	CHEVROLET ASTRO VAN	146	76,071	1.9193
111	TOYOTA	RAV4	109	60,776	1.7935
112	TOYOTA	LEXUS SC	5	2,822	1.7718
113	MERCEDES BENZ	163 (ML–CLASS)	91	51,970	1.7510
114	MERCEDES BENZ	210 (E–CLASS)	97	55,719	1.7409
115	VOLKSWAGEN	JETTA	191	109,769	1.7400
116	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP TRUCK	233	134,058	1.7381
117	BMW	3	97	56,197	1.7261
118	BMW	5	52	30,490	1.7055

THEFT RATES OF MODEL YEAR 1999 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1999—Continued

No.	Manufacturer	Make/model (line)	Thefts 1999	Production (Mfr's) 1999	1999 theft rate (per 1,000 vehicles produced)
119	HONDA	ACCORD	607	356,993	1.7003
120	PONTIAC	MONTANA VAN	97	58,081	1.6701
121	NISSAN	INFINITI G20	38	22,842	1.6636
122	GENERAL MOTORS	CHEVROLET S–10 PICKUP TRUCK	296	179,498	1.6490
123	TOYOTA	CELICA	8	4,868	1.6434
124	GENERAL MOTORS	SATURN SL	311	190,414	1.6333
125	MERCEDES BENZ	170 (SLK–CLASS)	22	13,875	1.5856
126	FORD MOTOR CO	F–150 PICKUP TRUCK	276	174,285	1.5836
127	GENERAL MOTORS	OLDSMOBILE 88/REGENCY	61	39,921	1.5280
128	GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	66	43,355	1.5223
129	SAAB	9–5	37	24,666	1.5000
130	VOLVO	S80	37	24,976	1.4814
131	FERRARI	F355	1	694	1.4409
132	GENERAL MOTORS	GMC SAFARI VAN	34	23,613	1.4399
133	TOYOTA	AVALON	89	61,819	1.4397
134	MAZDA	B SERIES PICKUP TRUCK	62	44,452	1.3948
135	FORD MOTOR CO	LINCOLN CONTINENTAL	37	27,054	1.3676
136	DAIMLERCHRYSLER	TOWN & COUNTRY MPV	104	76,795	1.3543
137	VOLVO	S70/V70	80	59,367	1.3475
138	SAAB	9–3	46	34,580	1.3302
139	HONDA	PASSPORT	36	27,499	1.3091
140	GENERAL MOTORS	BUICK PARK AVENUE	78	59,904	1.3021
141	TOYOTA	LEXUS RX	118	91,102	1.2953
142	TOYOTA	LEXUS ES	58	46,162	1.2564
143	NISSAN	QUEST	50	40,506	1.2344
144	GENERAL MOTORS	OLDSMOBILE AURORA	23	18,729	1.2280
145	GENERAL MOTORS	CADILLAC LIMOUSINE	1	821	1.2180
146	FORD MOTOR CO	MERCURY GRAND MARQUIS	146	122,586	1.1910
147	GENERAL MOTORS	CHEVROLET TRACKER	41	34,839	1.1768
148	GENERAL MOTORS	BUICK LESABRE	117	100,354	1.1659
149	GENERAL MOTORS	CADILLAC CATERA	16	13,801	1.1593
150	NISSAN	INFINITI I30	28	24,215	1.1563
151	FORD MOTOR CO	MERCURY VILLAGER MPV	59	51,066	1.1554
152	FORD MOTOR CO	WINDSTAR VAN	233	203,936	1.1425
153	GENERAL MOTORS	SATURN SC	54	47,578	1.1350
154	AUDI	A6	28	24,809	1.1286
155	MAZDA	MX–5 MIATA	38	33,723	1.1268
156	BMW	M	3	2,731	1.0985
157	HONDA	ACURA CL	27	24,960	1.0817
158	GENERAL MOTORS	CHEVROLET VENTURE VAN	93	88,071	1.0560
159	VOLKSWAGEN	CABRIO	15	14,734	1.0181
160	ISUZU	VEHICROSS	2	2,005	0.9975
161	DAIMLERCHRYSLER	DODGE VIPER	1	1,033	0.9681
162	GENERAL MOTORS	BUICK RIVIERA	2	2,091	0.9565
163	VOLKSWAGEN	PASSAT	75	79,396	0.9446
164	TOYOTA	LEXUS LS	16	17,291	0.9253
165	VOLKSWAGEN	NEW BEETLE	60	66,867	0.8973
166	AUDI	A8	2	2,244	0.8913
167	FORD MOTOR CO	CROWN VICTORIA	104	118,849	0.8751
168	SUBARU	LEGACY	78	90,840	0.8587
169	PORSCHE	911	11	12,887	0.8536
170	SUBARU	IMPREZA	17	20,208	0.8413
171	AUDI	A4	26	31,892	0.8153
172	HONDA	ACURA TL	45	55,646	0.8087
173	VOLKSWAGEN	EUROVAN	2	2,555	0.7828
174	MERCEDES BENZ	202 (C–CLASS)	28	37,472	0.7472
175	ISUZU	AMIGO	8	11,359	0.7043
176	SUBARU	FORESTER	32	46,668	0.6857
177	JAGUAR	VANDEN PLAS	3	4,435	0.6764
178	HONDA	CR–V	72	110,945	0.6490
179	TOYOTA	SIENNA VAN	43	69,531	0.6184
180	GENERAL MOTORS	SATURN SW	10	16,420	0.6090
181	JAGUAR	XJR	1	1,778	0.5624
182	PORSCHE	BOXSTER CONVERTIBLE	7	13,234	0.5289
183	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	20	38,130	0.5245
184	HONDA	ODYSSEY VAN	6	50,425	0.1190
185	DAIMLERCHRYSLER	PLYMOUTH PROWLER	0	3,655	0.0000
186	FERRARI	360	0	445	0.0000

THEFT RATES OF MODEL YEAR 1999 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1999—Continued

No.	Manufacturer	Make/model (line)	Thefts 1999	Production (Mfr's) 1999	1999 theft rate (per 1,000 vehicles produced)
187	FERRARI	456	0	119	0.0000
188	FERRARI	550	0	259	0.0000
189	GENERAL MOTORS	BUICK FUNERAL COACH	0	993	0.0000
190	HONDA	ACURA NSX	0	243	0.0000
191	ISUZU	OASIS VAN	0	702	0.0000
192	LAMBORGHINI	DB132/DIABLO	0	162	0.0000
193	LOTUS	ESPRIT	0	121	0.0000
194	ROLLS-ROYCE	BENTLEY AZURE	0	70	0.0000
195	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	6	0.0000
196	ROLLS-ROYCE	BENTLEY CONTINENTAL SC	0	23	0.0000
197	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	5	0.0000
198	ROLLS-ROYCE	BENTLEY TURBO R	0	2	0.0000
199	ROLLS-ROYCE	SILVER SERAPH	0	299	0.0000
200	ROLLS-ROYCE	SILVER SPUR	0	51	0.0000
201	ROLLS-ROYCE	SILVER SPUR PARK WARD	0	2	0.0000

[1] These vehicles were manufactured for sale in the U.S. territories under the Chrysler name plate.
[2] Nativa is the name applied to Montero Sport vehicles that are manufactured for sale only in Puerto Rico.

Issued on: July 20, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–18585 Filed 7–30–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub-No. 5)]

Railroad Revenue Adequacy—2000 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On July 31, 2001, the Board served a decision announcing the 2000 revenue adequacy determinations for the Nation's Class I railroads. No carrier is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective July 31, 2001.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2000, determined to be 11.0% in *Railroad Cost of Capital—2000,* STB Ex Parte No. 558 (Sub-No. 4) (STB served July 2, 2001). This revenue adequacy standard was applied to each Class I railroad, and no carrier was found to be revenue adequate for 2000.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Da 2 Da Legal, Room 405, 1925 K Street, NW., Washington, DC 20423. Telephone: 202 293–7776, Fax 202 293–0770. Assistance for the hearing impaired is available through TDD services 1–800–877–8339. The decision is also available on the Board's internet site, *www.stb.dot.gov.*

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: July 25, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–19019 Filed 7–30–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 17, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 30, 2001 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0082.

Form Number: PD F 5237.

Type of Review: Extension.

Title: Subscription for Purchase of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

Description: PD F 5237 is used to collect information from State and Local Government entities wishing to purchase Treasury Securities.

Respondents: State, Local, or Tribal Government.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 39 hours.

OMB Number: 1535–0083.
Form Number: PD F 5238.
Type of Review: Extension.
Title: Request for Redemption of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.
Description: PD F 5238 is used to collect information from State and Local Government entities to process redemptions of U.S. Treasury Securities.
Respondents: State, Local, or Tribal Government.
Estimated Number of Respondents: 300.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 15 hours.

OMB Number: 1535–0097.
Form Number: PD Fs 4087, 4087–1, 4087–3, and 5380.
Type of Review: Extension.
Title: Bond of Indemnity and Detached Coupon Statement.
Description: The information is requested to support claims for relief on account of lost, stolen, or destroyed securities or coupons.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, State, Local, or Tribal Government.
Estimated Number of Respondents: 5,500.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 1,333 hours.

OMB Number: 1535–0112.
Form Number: PD F 5395.
Type of Review: Extension.
Title: Treasury Securities Commercial Tender Form.
Description: The information is requested to process the tenders and to ensure compliance with regulations.
Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 1,500.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 375 hours.

OMB Number: 1535–0117.
Form Number: PD F 1010.
Type of Review: Extension.
Title: Resolution by Governing Body of an Organization Authorizing Assignment and Disposition of Specified Securities Owned in its Own Right or in a Fiduciary Capacity.
Description: PD F 1010 is completed by an official of an organization that is designated to act on behalf of the organization.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 4 hours.

OMB Number: 1535–0128.
Form Number: PD F 5396.
Type of Review: Extension.
Title: Direct Deposit Sign Up Form.
Description: PD F 5396 is used to process payment data to the financial institution.
Respondents: Individuals or households.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 3,400 hours.
Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.
[FR Doc. 01–19010 Filed 7–30–01; 8:45 am]
BILLING CODE 4810–40–P

DEPARTMENT OF VETERANS AFFAIRS

VA Advisory Council on Homelessness Among Veterans

As required by Section 8(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1), VA hereby gives notice of the establishment of the Advisory Committee on Homelessness Among Veterans (ACHAV). VA has determined that establishing this Committee is in the public interest.

The purview of the ACHAV includes the policies and programs of the Department of Veterans Affairs' Health Administration Veterans Benefits Administration and interagency actions needed to carry out its Congressionally-mandated programs and services for homeless veterans. ACHAV will provide advice and make recommendations to the Secretary of Veterans Affairs, Director, Homeless Veterans Program Office (DHVPO), Under Secretary for Health and the Under Secretary for Benefits, on the nature and scope of programs, services, collaborative efforts and interagency activities that would promote program improvements to the Veterans Health Administration (VHA), Veterans Benefits Administration (VBA) of the Department of Veterans Affairs.

The Council will consist of 15 members including a Chairperson. Selection criteria will be based on knowledge and expertise in the following areas: (i) Healthcare needs and services; (ii) benefits assistance and outreach; (iii) education and training services; (iv) cooperative services and agreements; (v) mental illness treatment; (vi) permanent and transitional housing with supportive services; (vii) substance abuse; (vii) vocational rehabilitation services; (ix) program monitoring, evaluation and research; and (x) transportation.

Close attention will be given to equitable geographic distribution and to ethnic and gender representation. In addition, ACHAV will include at least one veteran who has actively participated in a comprehensive homeless services program in order to assure that important perspective of veterans. Because the ACHAV performs an ongoing service, its functions will be needed for at least six years.

The Designated Federal Official for the ACHAV is Peter H. Dougherty, Director Homeless Veterans Program Office, phone number: 202–273–5764.

Dated: July 23, 2001.

By Direction of the Secretary.

Nora E. Egan,
Committee Management Officer.
[FR Doc. 01–18949 Filed 7–30–01; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 66, No. 147

Tuesday, July 31, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

Correction

In notice document 01–17770 beginning on page 37216 in the issue of Tuesday, July 17, 2001, make the following correction:

On page 37217, in the first column, in the **DATES** section, in the second and third lines, ''August 16, 2000.'' should read ''August 16, 2001.''.

[FR Doc. C1–17770 Filed 7–30–01; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–3

[FPMR Amendment A–57]

RIN 3090–AG49

Federal Advisory Committee Management

Correction

In rule document 01–17350 beginning on page 37728 in the issue of Thursday, July 19, 2001, make the following correction:

On page 37729, in the third column, the the third full paragraph, in the second and third lines, ''*Washington Legal Foundation* v. *U. . Sentencing Commission,*'' should read ''*Washington Legal Foundation* v. *U.S. Sentencing Commission,*''.

[FR Doc. C1–17350 Filed 7–30–01; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0027]

Submission for OMB Review; Comment Request Entitled GSAM, Part 542, Contract Administration, and Part 546, Quality Assurance

Correction

In notice document 01–17754, appearing on page 37232, in the issue of Tuesday, July 17, 2001, make the following corrections:

1. On page 37232, in the third column, under the heading ''**A. Purpose**'', in the 10th line, ''inspection. GSA's'' should read ''inspection, GSA's''.

2. On the same page, in the same column, under the heading ''**Obtaining Copies of Proposals**'', in the 10th line, ''456'' should read ''546''.

[FR Doc. C1–17754 Filed 7–30–01; 8:45 am]

BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-0118]

Submission for OMB Review; Comment Request Entitled Standard Form 94, Statement of Witness

Correction

In notice document 01–17756, appearing on page 37233, in the issue of Tuesday, July 17, 2001, make the following corrections:

1. On page 37233, in the second column, in the **ADDRESSES** section, in the 11th line, ''2040'' should read ''20405''

2. On the same page, in the same column, under the heading ''**B. Annual Reporting Burden**'', in the first line, ''Respondetns'' should read ''Respondents''.

[FR Doc. C1–17756 Filed 7–30–01; 8:45 am]

BILLING CODE 1505–01–D

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2001–3 Order No. 1319]

Rules of Practice and Procedure

Correction

In proposed rule document 01–18454 beginning on page 38602, in the issue of Wednesday, July 25, 2001, make the following correction:

On page 38603, in the third column, under the heading **REQUEST FOR COMMENTS**, in paragraph 1. in the second line ''April 21, 2001'' should read ''August 21, 2001''.

[FR Doc. C1–18454 Filed 7–30–01; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–17]

Revision of Class E Airspace, Roosevelt, UT

Correction

In rule document 01–16966 beginning on page 35540, in the issue of Friday, July 6, 2001, make the following corrections:

§71.1 [Corrected]

1.On page 35541, in the first column, §71.1, in the eighth line from the bottom, ''fee'' should read ''feet''.

2. On the same page, in the same column, in the same section, in the seventh line from the bottom, ''about'' should read ''above''.

3. On page 35541, in the same column, in the same section, in the fifth line from the bottom, ''milies'' should read ''miles''.

4. On page 35541, in the second column, in the eighth line from the top, ''109°44′52″W. '' should read ''110°44′52″ W. ''.

[FR Doc. C1–16966 Filed 7–30–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 31, 2001

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 410, et al.

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities-Update; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 413, 424, and 489

[CMS–1163–F]

RIN 0938–AK47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities-Update; Final Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs) for fiscal year (FY) 2002, as required by statute. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs. As part of this annual update, we are rebasing and revising the routine SNF market basket to reflect 1997 total cost data (the latest available complete data on the structure of SNF costs), and modifying certain variables for some of the cost categories. Finally, we are implementing the transition of swing-bed facilities to the SNF PPS, effective with cost reporting periods beginning on and after July 1, 2002.

EFFECTIVE DATE: These regulations are effective on October 1, 2001 for payment rates, and, for cost reporting periods beginning on or after July 1, 2002, for transition of swing-bed facilities to the SNF PPS.

FOR FURTHER INFORMATION CONTACT:
Dana Burley, (410) 786–4547 or Sheila Lambowitz, (410) 786–7605 (for information related to the case-mix classification methodology).
John Davis, (410) 786–0008 (for information related to the Wage Index).
Bill Ullman, (410) 786–5667 (for information related to consolidated billing and payment).
Sheila Lambowitz, (410) 786–7605 (for information related to swing-bed providers).
Bill Ullman, (410) 786–5667 (for general information).

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. The cost for each copy is $9. Please specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll free at 1–888–293–6498) or by faxing to (202) 512–2250. You can also view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. The web site address is http://www.access.gpo.gov/nara/index.html.

To assist readers in referencing sections contained in this document, we are providing the following table of contents.

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In addition, because of the many terms to which we refer by abbreviation in this final rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL Activity of Daily Living
AHE Average Hourly Earnings
ARD Assessment Reference Date
BBA Balanced Budget Act of 1997, Pub. L. 105–33
BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BEA (U.S.) Bureau of Economic Analysis
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
BES (U.S.) Business Expenditures Survey
BLS (U.S.) Bureau of Labor Statistics
CAH Critical Access Hospital
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
CPI Consumer Price Index
CPI–U Consumer Price Index-All Urban Consumers
CPT (Physicians') Current Procedural Terminology
DRG Diagnosis Related Group
ECI Employment Cost Index
FI Fiscal Intermediary
FR **Federal Register**
FY Fiscal Year
GAO General Accounting Office
HCPCS Healthcare Common Procedure Coding System
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification

IFC Interim Final Rule with Comment Period
MDS Minimum Data Set
MEDPAR Medicare Provider Analysis and Review File
MIP Medicare Integrity Program
MSA Metropolitan Statistical Area
NECMA New England County Metropolitan Area
OIG Office of the Inspector General
OMRA Other Medicare Required Assessment
PCE Personal Care Expenditures
PPI Producer Price Index
PPS Prospective Payment System
PRM Provider Reimbursement Manual
RAI Resident Assessment Instrument
RAP Resident Assessment Protocol
RAVEN Resident Assessment Validation Entry
RUG-III Resource Utilization Groups, Version III
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
STM Staff Time Measure

I. Background

On May 10, 2001, we published in the **Federal Register** (66 FR 23984), a proposed rule that set forth proposed updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2002. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to the Medicare prospective payment system and consolidated billing for SNFs.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. We are updating the per diem payment rates for SNFs, for FY 2002. Major elements of the SNF PPS include:

- *Rates.* Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates are adjusted annually using a SNF market basket index. Rates are case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The rates are also adjusted by the hospital wage index to account for geographic variation in wages. Additionally, as noted in the July 31, 2000 final rule (65 FR 46770), section 101 of BBRA also affects the payment rate. Finally, sections 311, 312, and 314 of the BIPA affect the Part A PPS payment rates for SNFs. These new provisions are discussed in detail in section I.D of this preamble.
- *Transition.* The SNF PPS included an initial 3-year, phased transition that blended a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrated to the new system, the facility-specific portion of the blend decreased and the Federal portion increased in 25 percentage point increments. For facilities that received payment under the transition, the facility-specific rate was based on allowable costs from FY 1995; however, since the last year of the transition is FY 2001, all facilities will be paid at the full Federal rate by the coming fiscal year (FY 2002), for which we have now finalized rates. Therefore, unlike previous years, this final rule does not include adjustment factors related to facility-specific rates for the coming fiscal year.
- *Coverage.* Medicare's fundamental requirements for SNF coverage were not changed by BBA; however, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities, as discussed in section III.F of this preamble.
- *Consolidated Billing.* The BBA included a billing provision that required a SNF to submit consolidated Medicare bills for its residents for almost all services that are covered under either Part A or Part B (the statute excluded a small list of services, primarily those of physicians and certain other types of practitioners). With the exception of physical therapy, occupational therapy, and speech-language therapy, section 313 of BIPA has now limited the scope of this provision to apply only to those services that are furnished during the course of a resident's covered Part A stay in the SNF, as discussed in section III.J of this preamble.
- *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. Part A currently pays for SNF services furnished by swing-bed hospitals on a cost-related basis. Section 1888(e)(7) of the Act requires the SNF PPS to encompass these services no earlier than cost reporting periods beginning on July 1, 1999, and no later than the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the proposed rule published in the **Federal Register** on May 10, 2001 (66 FR 23984), we proposed to implement the SNF PPS for swing-bed hospitals effective with cost reporting periods beginning on and after October 1, 2001. However, as discussed in section III.K of this preamble, based on concerns raised during the comment period, we are instead implementing the SNF PPS for swing-bed hospitals effective with cost reporting periods beginning on and after July 1, 2002.

B. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.
2. The case-mix classification system to be applied with respect to these services during the FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure.

Along with a number of other revisions discussed later in this preamble, this final rule provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in various adjustments, within specified timeframes, to the PPS for SNFs. The provisions were described in the final

rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101 provided for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). Section 101 also included a 4 percent across-the-board increase in the adjusted Federal per diem payment rates each year for FYs 2001 and 2002, exclusive of the 20 percent increase. In addition, for certain SNFs located in Baldwin or Mobile County, Alabama, section 155 provided for a special 100 percent facility-specific payment rate for cost reporting periods beginning in FY 2000 and FY 2001. Finally, section 105 provided for payment at a 50 percent Federal, 50 percent facility-specific payment rate for SNFs serving certain specialized patient populations, which became effective on November 29, 1999, and expires on September 30, 2001.

We included further information on all of the provisions of the BBRA in Program Memorandums A–99–53 and A–99–61 (December 1999), and Program Memorandum AB–00–18 (March 2000).

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

As a result of enactment of the BIPA, there are several new provisions that result in adjustments to the PPS for SNFs. The following provisions were described in the proposed rule that we published on May 10, 2001 (66 FR 23984), and are discussed further in section III of this preamble, to the extent that we received public comments concerning them.

• *Section 203—Exemption of Critical Access Hospital (CAH) Swing-beds from SNF PPS.* This provision exempts swing-beds in CAHs from section 1888(e)(7) of the Act (as enacted by section 4432(a) of the BBA) which applies the SNF PPS to SNF services furnished by swing-bed hospitals. Accordingly, this provision enables CAHs to be paid for their swing-bed SNF services on a reasonable cost basis. This provision is effective with cost reporting periods beginning on or after December 21, 2000, the date of the enactment of the BIPA. We included further information on this provision in Program Memorandum A–01–09 (January 16, 2001).

• *Section 311—Elimination of Reduction in SNF Market Basket Update in 2001.* This provision eliminates the one percent reduction reflected in the update formula for the Federal rates for FY 2001 that was required by the BBA. In implementing this change, this provision also modifies the schedule and rates according to which Federal per diem payments are updated to FY 2002. For FY 2002 and FY 2003, the updates would be the market basket index increase minus 0.5 percentage points. This provision also provides a special rule that, for purposes of making payments under the SNF PPS for FY 2001, for the first half of FY 2001 (the period beginning October 1, 2000, and ending March 31, 2001), the market basket update remains at market basket minus 1, and for the second half of the fiscal year (the period beginning on April 1, 2001, and ending on September 30, 2001), the market basket update changes from market basket minus 1 to market basket plus 1.

In addition, this provision requires the General Accounting Office (GAO) to submit a report to Congress by July 1, 2002, on the adequacy of SNF payment rates. It also requires the Secretary to conduct a study of the different systems for categorizing patients in SNFs in a manner that accounts for the relative resource utilization of different patient types, and to submit a report to Congress not later than January 1, 2005.

• *Section 312—Increase in Nursing Component of PPS Federal Rate.* This provision requires the Secretary to increase by 16.66 percent the nursing component of the case-mix adjusted Federal rate specified in the July 31, 2000 final rule (65 FR 46770), as subsequently updated, for services furnished on or after April 1, 2001, and before October 1, 2002. This provision also requires the GAO to conduct an audit of SNF nursing staff ratios, and to submit a report to Congress by August 1, 2002, including a recommendation on whether the temporary 16.66 percent increase in the nursing component should be continued.

• *Section 313—Application of SNF Consolidated Billing Requirement Limited to Part A Covered Stays.* This provision repeals the consolidated billing requirement for services (other than physical therapy, occupational therapy, and speech-language therapy) furnished to those SNF residents who are in noncovered stays, effective January 1, 2001. It also directs the Secretary to monitor Part B payments for those services, in order to guard against duplicate billing and the excessive provision of services.

• *Section 314—Adjustment of Rehabilitation RUGs to Correct Anomaly in Payment Rates.* For services furnished from April 1, 2001, until the date that RUG refinements are implemented, this provision requires the Secretary to increase by 6.7 percent the adjusted Federal per diem rate for all of the following RUG–III rehabilitation groups: RUC, RUB, RUA, RVC, RVB, RVA, RHC, RHB, RHA, RMC, RMB, RMA, RLB, and RLA. This provision supersedes the 20 percent increase that section 101(b) of the BBRA had previously established for the RHC, RMC, and RMB rehabilitation groups, thereby correcting the resulting anomaly under which the payment rates for these particular groups were actually higher than the rates for some other, more intensive rehabilitation RUGs. This provision also requires the Office of Inspector General (OIG) to review whether the RUG payment structure in effect under the BBRA included incentives for the delivery of inadequate care and report to the Congress by October 1, 2001.

• *Section 315—Establishment of Process for Geographic Reclassification.* This provision explicitly permits the Secretary to establish a geographic reclassification procedure that is specific to SNFs, for purposes of payment for covered SNF services under the PPS. However, this cannot occur until the Secretary has collected data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We included further information on several of these provisions in Program Memorandum A–01–08 (January 16, 2001).

E. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We

developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals who were receiving Part A covered services in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. Providers that received new provider exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates, as well as costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, utilizes beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 44 groups. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the RUG–III classification system.

The Federal rates in this rule reflect an update to the rates in the July 31, 2000 update notice (65 FR 46770) equal to the SNF market basket index minus 0.5 percent, as well as the elimination of the 1 percent reduction reflected in the update formula for the FY 2001 payment rates under section 311 of the BIPA. According to section 311 of the BIPA, for FY 2002, we will update the rate by adjusting the current rates by the SNF market basket change minus 0.5 percent.

2. Payment Provisions—Transition Period

The SNF PPS includes an initial, phased transition from a facility-specific rate (which reflects the individual facility's historical cost experience) to the Federal case-mix adjusted rate. The transition extends through the facility's first three cost reporting periods under the PPS, up to and including the one that begins in FY 2001. Accordingly, starting with cost reporting periods that begin in FY 2002, we will base payments entirely on the Federal rates.

F. Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires the Secretary to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis. We have developed a revised and rebased SNF market basket index that consists of the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. A complete discussion concerning the design and application of the SNF market basket index is presented in section III.H of this preamble.

II. Provisions of the Proposed Rule

The proposed rule that we published in the **Federal Register** on May 10, 2001 (66 FR 23984) included proposed FY 2002 updates to the Federal payment rates used under the SNF PPS. In accordance with section 1888(e)(4)(E)(ii)(II) of the Act, the updates reflect the SNF market basket percentage change for the fiscal year minus 0.5 percent, as well as the elimination of the 1 percent reduction reflected in the update formula for the FY 2001 payment rates under section 311 of the BIPA. The proposed rule described our process for revising and rebasing the market basket and included a discussion of a conceptual update framework. In addition, the proposed rule included a discussion of the feasibility of establishing a SNF-specific wage index. Further, the proposed rule described our methodology for adjusting the Federal rates in accordance with sections 311 and 312 of the BIPA, in order to reflect the elimination of the reduction in the market basket and the 16.66 percent increase in the nursing component. In accordance with section 314 of the BIPA, we also provided for an adjustment of rehabilitation RUGs to correct an existing anomaly in the payment rates. We also included a discussion of our commitment to monitor the RUG–III classification system and to pursue RUG refinements. Additionally, we discussed our ongoing efforts to ensure accurate payment for appropriate care in areas such as concurrent therapy, MDS accuracy, and program safeguards.

In addition to discussing these general issues in the proposed rule, we also proposed to make the following specific revisions to the existing text of the regulations:

- In § 410.150, paragraph (b)(14) would be revised to reflect that Part B makes payment to the SNF for its resident's services only in those situations where the SNF itself furnishes the services, either directly or under an arrangement with an outside source.
- In § 411.15, paragraph (p)(1) would be revised to indicate that except for physical, occupational, and speech-language therapy, consolidated billing applies only to those services that a SNF resident receives during the course of a covered Part A stay. Conforming revisions would also be made in §§ 489.20(s) and 489.21(h), in the context of the requirements of the SNF provider agreement. Section 411.15(p)(2) would be revised to indicate that, for Part B services furnished to a SNF resident, the requirement to enter the SNF's Medicare provider number on the Part B claim (which previously applied only to claims for physician services) would apply to all types of Part B claims. Conforming revisions would also be made in the requirements regarding claims for payment, at §§ 424.32(a)(2) and (a)(5). The existing requirement in § 424.32(a)(5), that a SNF include appropriate HCPCS coding and its Medicare provider number on the claims that it files for its residents' services, would be revised by adding that these requirements also apply to these claims when they are filed by an outside entity. In addition, § 411.15(p)(3) would be revised to exclude from the definition of a SNF resident, for consolidated billing purposes, those individuals who reside in the noncertified portion of an institution that also contains a participating distinct part SNF.
- In accordance with section 1888(e)(2)(E) of the Act, § 413.114 would be revised to reimburse swing-bed services of rural hospitals (other than CAHs, which would be paid on a reasonable cost basis) under the SNF PPS described in regulations at subpart J of that part. This conversion to the SNF PPS was proposed to become effective for services furnished during

cost reporting periods beginning on or after October 1, 2001. (However, as discussed in section III.K of this preamble, the conversion will instead become effective for services furnished during cost reporting periods beginning on or after July 1, 2002.) In addition, paragraph (d)(1) of this section would be revised to reflect modifications to the special requirements for swing-bed facilities with more than 49 but fewer than 100 beds (as enacted by section 408 of the BBRA), and a conforming revision would be made in § 424.20(a)(2).

- In § 413.337, a new paragraph (e) would be added to clarify that the temporary increases in payment for certain RUGs under section 101 of the BBRA (as modified by section 314 of the BIPA) will no longer be applicable upon issuance of a new regulation that sets forth a refined case-mix classification system.

More detailed information on each of these issues, to the extent that we received public comments on them, appears in the discussion contained in the following section of this preamble.

III. Analysis and Responses to Public Comments

In response to the publication of the proposed rule on May 10, 2001 (66 FR 23984), we received over 200 comments. Many consisted of form letters, in which we received multiple copies of an identically worded letter that had been signed and submitted by different individuals. Further, we received numerous comments from various trade associations and major organizations. Comments originated from nursing homes, hospitals, and other providers, suppliers, and practitioners, nursing home resident advocacy groups, health care consulting firms and private citizens. The following discussion, arranged by subject area, includes a description of the comments that we received, along with our responses.

A. Research on Case-Mix Refinements

In the proposed rule, we indicated that we would not be modifying the existing case-mix classification system during the current rulemaking cycle. Consequently, the add-ons to the Federal rates for specified RUG–III groups, as required by section 101 of the BBRA and modified by section 314 of the BIPA, will remain in effect during FY 2002.

Comment: We received a number of comments related to the proposed rule's discussion of efforts to refine the case-mix system. In that rule, we specifically invited comments on possible approaches to refining the current case-mix classification system, as well as on identifying and studying alternatives to the current system. Many commenters desired more information regarding our plans for refining the system. A number of commenters were supportive of efforts to refine the system but urged us to pursue approaches that were easy to administer and did not introduce a new burden for providers. A few commenters offered specific approaches to refining the system. These included the use of total cost per day and per Medicare covered episode (as the dependent variable in the analysis) to estimate the explanatory power of potential refinement approaches, and development of a medical complexity index that focuses on diagnoses, comorbidities, or other elements critical to describing the post acute care population. One commenter requested that we articulate in this final rule the principles we use to guide our approach to the SNF PPS and the case-mix refinement, and several others suggested principles they believe we should use in our case-mix refinement work. The suggested principles for our case-mix refinements included administrative feasibility, recognition of clinical complexity of the SNF population, and recognition of extraordinarily high-cost items and services. Several commenters recommended that we never implement refinements so that the additional payment add-ons associated with section 101 of the BBRA would be maintained.

Response: We believe that payments must continue to be adequate in order to support quality care and access to needed services for Medicare beneficiaries. In doing so, the PPS should avoid imposing undue burden on providers. With regard to our efforts to develop case-mix refinements, we intend to develop models that improve upon the statistical performance of the present case-mix system, and thus support accurate pricing of services, while minimizing complexity and controlling for any adverse incentives related to quality of care and program integrity. Achieving a result that reflects goals that are sometimes competing may require that we strike an appropriate balance. We believe the potential exists to find this balance and look forward to pursuing development of case-mix refinements. We believe that our approach to developing refinements will be both responsive to the provider community's concerns and support continued access to quality care for Medicare beneficiaries. As stated in the proposed rule, we are not implementing case-mix refinements for FY 2002. As a result, the 20 percent payment add-ons required by the BBRA (and subsequently modified by the BIPA) will be maintained for FY 2002. However, the Congress intended these payment add-ons to be a temporary measure, to remain in effect only until we provide for refinements to the classification system. Under provisions of the BBRA, implementation of the refinements will result in the expiration of these temporary increases in the payment rates. (In the proposed rule, we proposed to add a new paragraph (e) to § 413.337 to clarify this point.)

Accordingly, it is our intention to develop and implement refinements to the case-mix classification system as soon as feasible. To that end, we have awarded a contract to the Urban Institute for a research project that will, in the initial stages, address the feasibility of developing and implementing such refinements. We plan to review various approaches to determine the most appropriate methodology for the refinements. As we discussed in the proposed rule, this may include further analysis to develop a non-therapy ancillary index, similar to that proposed in the FY 2001 proposed rule. We are also interested in evaluating approaches that take into account proven indicators of resource use in other post acute settings, such as functional status, diagnosis, and comorbidities. We found the comments very helpful in this area and we will consider the specific suggestions of commenters as we continue this effort. Any specific refinement proposal resulting from this research will be included in a future **Federal Register** notice for public comment.

B. Clinical Issues

In the proposed rule published on May 10, 2001 (66 FR 23984), we included a description of our ongoing efforts to support accurate completion of the Minimum Data Set (MDS) 2.0, along with a discussion of our concerns about the provision of concurrent therapy—a practice in which an individual therapist simultaneously treats a number of beneficiaries who (unlike in group therapy) are not working on any common skill development.

1. Minimum Data Set

Comment: We received a few comments commending our efforts to provide more clear definitions of MDS elements, provide more explicit MDS coding instructions, and expand provider training on the MDS. In addition, we received a few comments regarding the complexity of the MDS and the continuing confusion regarding some of the scheduling and completion

requirements. They requested that we consider simplification of the MDS process and that we also make a special effort to make additional training available to professional therapists and other SNF staff in addition to the MDS coordinators.

Response: We appreciate the support of our efforts to clarify MDS elements and scheduling requirements, and to identify ways to simplify the requirements, and we intend to continue these efforts. We recently posted two sets of MDS 2.0 Questions and Answers on our web site at: *www.hcfa.gov/medicaid/mds20/default.htm.* The most recent set was posted in July 2001. As part of our ongoing effort to provide clarification in this area, we are also taking this opportunity to address a Medicare MDS scheduling issue that has come to our attention recently. We have become aware that there are instances in which providers have performed the Medicare-required 14-day assessment prior to the specified assessment window, days 11 through 14. In our discussion of the default rate in the preamble of the May 12, 1998, interim final rule (42 FR 26265) that implemented the SNF PPS, we focused on the default rate as a consequence of late assessments, since we expected late assessments to be the most likely reason for triggering a default payment.

In that discussion, we explained that when the assessment reference date of a Medicare-required assessment is set after the assessment window (including the grace days), the provider will be paid at the default rate for all of the days of the payment window, up until the assessment reference date of the late assessment. We did not include any explanation for the more unusual situation of an assessment reference date that is set prior to the assessment window. However, there have been instances in which assessments have been performed prior to the specified assessment window and questions have been raised about whether, and for how long, the default rate applies. It has been unclear whether the default rate was to be applied to the entire payment window, for the number of days between the assessment reference date and the due date for the assessment, or for the number of days by which the assessment is outside of the assessment window.

Although we did not discuss early assessments in the preamble of the interim final rule, the regulations in § 413.343(c) state that we pay a default rate for the Federal rate when a SNF fails to comply with the assessment schedule. A Medicare-required 14-day assessment with an assessment reference date on either day 9 or 10 is not in compliance with the assessment schedule and is, therefore, subject to payment at the default rate.

If the assessment was performed outside of the specified assessment window due to a scheduling or clerical error and there was no effect on payment as a result of performing the assessment too early, the default rate will be assessed only for the number of days the assessment is out of compliance. For example, a Medicare-required 14-day assessment performed on day 10 would be paid at the default rate for the first day of the payment period that begins on day 15. These claims may be subject to medical review, and the provider may be asked to explain the reason for early assessment and demonstrate that there was no impact on payment.

However, SNFs that systematically use early assessment reference dates will be handled in the same way as SNFs performing frequent late assessments. These facilities may be subject to an onsite review of assessment scheduling practices for the facility, in addition to the imposition of the default rate.

We understand that setting the assessment reference dates outside of the assessment window has usually occurred as a result of misunderstanding of the assessment schedule requirements by facility staff, and we will make every effort to work with providers and the contractor to resolve these issues.

We will expand the scope of our facility monitoring practices in order to detect patterns of assessment reference dates that are outside of, and prior to, the assessment windows. We believe that after three years of participation in the PPS, providers should be aware of, and comply with the required assessment schedule.

Comment: Some commenters noted requests for MDS repository data that had been denied, and asked why we are so restrictive with these data.

Response: MDS repository data contain beneficiary-level clinical information. The Privacy Act of 1974 allows us to disclose information without an individual's consent only if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. The Health Insurance Portability and Accountability Act of 1996 (HIPAA, Pub. L. 104–191) has only reinforced the need to safeguard beneficiary privacy. While we are committed to providing the public with appropriate access to our administrative data, we take beneficiary privacy concerns very seriously. It is our responsibility to protect the privacy of Medicare beneficiaries, and to comply with the related laws and regulations that safeguard their privacy.

A full description of the criteria that are used to determine who may obtain MDS Repository data and for what purposes is provided in the Notice of New System of Records that was published in the **Federal Register** on May 22, 1998 (63 FR 28396). The notice also is available on our web site at: *www.hcfa.gov/medicaid/mds20/mdssor.htm.* The notice makes clear that requests for the data are evaluated individually to determine whether the user qualifies for use of the data. We do provide technical assistance for those with a legitimate need for the data.

2. Therapy

Comment: A few commenters indicated that they were unfamiliar with the term concurrent therapy until encountering the concept in the discussion in the proposed rule. They asked whether it is the same as the practice referred to as dovetailing, and questioned whether it is a significant problem. We received a large number of comments encouraging us to continue to recognize concurrent therapy as skilled therapy. These commenters contended that therapists are treating more than one beneficiary concurrently only when appropriate. All of these commenters opposed any development of new guidance or regulation regarding the delivery of concurrent therapy services. However, some other comments indicated that our concerns regarding concurrent therapy were warranted. Several commenters reported that since the implementation of the SNF PPS, professional therapists are encountering increased pressure to be more productive than they have in the past, including the need to see more than one patient at a time, and performing documentation and collaboration with other members of the care team as non-reimbursed time.

Response: Concurrent therapy and dovetailing are synonymous terms. While the practice of providing concurrent therapy is by no means universal, we perceived a need to discuss this practice in the proposed rule, in order to alert providers to the inappropriate uses of this practice in certain areas of the country. We addressed the practice of concurrent therapy in the proposed rule (66 FR 23991) in order to reiterate Medicare policy and to solicit public comment. Our concern was two-fold: that therapists' professional judgment was

being overridden by pressures to be more productive by treating multiple beneficiaries concurrently; and that the Medicare policy (reiterated below) that allows for the treatment of multiple beneficiaries was being used inappropriately and could lead to diminished quality of care. Apparently, this may not be a problem in the particular localities of most of the commenters. However, we expect that our discussion in the proposed rule may raise awareness and help prevent the inappropriate use of this practice from becoming more widespread.

The proposed rule's discussion also provided an opportunity for us to reiterate Medicare coverage policy regarding skilled rehabilitation therapy. The Medicare SNF benefit provides coverage of skilled, individualized rehabilitation services that are of such a level of complexity and sophistication that the services can be safely and effectively performed only by or under the supervision of a qualified professional therapist. Accordingly, we wished to make clear that it is inappropriate to require, as a condition of employment, that a therapist agree to treat more than one beneficiary at a time in situations where providing treatment in such a manner would compromise the therapist's professional judgment. However, we continue to believe, as do many of the commenters, that concurrent therapy has a legitimate place in the spectrum of care options available to therapists treating Medicare beneficiaries. Our goals are to safeguard the health and safety of beneficiaries and assure that they are provided the most effective, skilled care available. We agree that, at times, such care can be provided concurrently with another therapy patient, as long as the decision to do so is driven by valid clinical considerations. At this time, we will not change our approach, but recognize that we may need to revisit this issue should the need to do so arise.

Comment: One commenter characterized the PPS methodology as creating a perception that the SNF is not paid for anything that is not counted as therapy minutes on the MDS.

Response: We would like to take this opportunity to clarify that this perception is inaccurate. The PPS rates were developed using all of the therapists' time, including both direct and indirect care time. The majority of comments on the proposed rule's discussion of concurrent therapy state that most therapy delivered to Medicare beneficiaries is performed on a one-to-one basis, as has always been the practice. We hope that this discussion will increase awareness among those who mistakenly believe that only the minutes on the MDS are covered by the rates.

Comment: We received many comments regarding language in the proposed rule about the increased financial incentives that BIPA creates for the rehabilitation categories and the potential for upcoding under the SNF PPS to gain higher payments (66 FR 23991). The commenters regarded this language as implying that providers are intentionally manipulating the payment system, and they viewed this to be unwarranted and unfair. They cited a recent report by the Office of the Inspector General that found no evidence of provider upcoding.

Response: The statement in the proposed rule was not intended to imply that large numbers of SNFs are behaving in an abusive manner. Since the implementation of the SNF PPS, the General Accounting Office and MedPAC have been critical of the payment system's method for classification into the rehabilitation groups. Specifically, they have questioned our methodology that assigns a beneficiary into the rehabilitation groups based on the amount of service provided. Thus, a beneficiary who is provided more services is assigned to a higher-paid RUG–III group.

Our purpose in making this observation in the proposed rule was to recognize the systemic potential for inappropriate upcoding in any PPS that uses clinical information as the basis for payment. We have not encountered evidence of a significant amount of upcoding under the SNF PPS. In the proposed rule, we were simply making the observation that the BIPA provisions tended to magnify existing adverse incentives, and reinforcing our policy regarding medical review.

C. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

1. Federal Prospective Payment System

This final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2001. The schedule establishes per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates.

The FY 2002 rates reflect an update using the latest market basket index minus 0.5 percentage point. The final FY 2002 market basket increase factor is 3.3 percent, and subtracting 0.5 percentage points yields an update of 2.8 percent. This final update factor reflects the latest available forecast of the SNF market basket, and is 0.4 percent higher than the factor reflected in the proposed rule. In accordance with section 101 of the BBRA and section 314 of the BIPA, we have provided for a temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs, and 6.7 percent for certain others. These temporary increases of 20 percent and 6.7 percent for certain specified RUGs will continue until implementation of case-mix refinements, as described in section 101 of the BBRA and section 314 of the BIPA. Also, in accordance with section 101 of the BBRA, we are providing a 4 percent increase in the adjusted Federal rate for FY 2002. These temporary adjustments (that is, 20 percent, 6.7 percent, or 4 percent) are not reflected in the rate tables (Tables 1, 2, 3, 4, 5, and 6 of this final rule). Rather, in accordance with the statute, they are applied only after all other adjustments (wage and case-mix) have been made (see Table 9). However, the 16.6 percent increase to the nursing component of the Federal rate, established under section 312 of the BIPA, is reflected in the rate tables (Tables 1 through 6).

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM—URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$138.29	$89.29	$11.76	$60.50

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM—RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$132.13	$102.96	$12.56	$61.62

2. Case-Mix Adjustment

The payment rates set forth in this final rule reflect the continued use of the 44-group RUG–III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). Consequently, we will also maintain the add-ons to the Federal rates for specified RUG–III groups, as required by section 101 of the BBRA and subsequently modified by section 314 of the BIPA. The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix values. These tables do not reflect the add-ons (that is, 20 percent, 6.7 percent, or 4 percent) provided for in the BBRA and the BIPA, which are applied only after all other adjustments (wage and case-mix) have been made, but do reflect the 16.66 percent increase in the nursing component of the rate required in section 312 of the BIPA.

TABLE 3.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—URBAN

RUG–III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy component	Non-case mix component	Total rate
RUC	1.30	2.25	179.78	200.90		60.50	441.18
RUB	0.95	2.25	131.38	200.90		60.50	392.78
RUA	0.78	2.25	107.87	200.90		60.50	369.27
RVC	1.13	1.41	156.27	125.90		60.50	342.67
RVB	1.04	1.41	143.82	125.90		60.50	330.22
RVA	0.81	1.41	112.01	125.90		60.50	298.41
RHC	1.26	0.94	174.25	83.93		60.50	318.68
RHB	1.06	0.94	146.59	83.93		60.50	291.02
RHA	0.87	0.94	120.31	83.93		60.50	264.74
RMC	1.35	0.77	186.69	68.75		60.50	315.94
RMB	1.09	0.77	150.74	68.75		60.50	279.99
RMA	0.96	0.77	132.76	68.75		60.50	262.01
RLB	1.11	0.43	153.50	38.39		60.50	252.39
RLA	0.80	0.43	110.63	38.39		60.50	209.52
SE3	1.70		235.09		11.76	60.50	307.35
SE2	1.39		192.22		11.76	60.50	264.48
SE1	1.17		161.80		11.76	60.50	234.06
SSC	1.13		156.27		11.76	60.50	228.53
SSB	1.05		145.20		11.76	60.50	217.46
SSA	1.01		139.67		11.76	60.50	211.93
CC2	1.12		154.88		11.76	60.50	227.14
CC1	0.99		136.91		11.76	60.50	209.17
CB2	0.91		125.84		11.76	60.50	198.10
CB1	0.84		116.16		11.76	60.50	188.42
CA2	0.83		114.78		11.76	60.50	187.04
CA1	0.75		103.72		11.76	60.50	175.98
IB2	0.69		95.42		11.76	60.50	167.68
IB1	0.67		92.65		11.76	60.50	164.91
IA2	0.57		78.83		11.76	60.50	151.09
IA1	0.53		73.29		11.76	60.50	145.55
BB2	0.68		94.04		11.76	60.50	166.30
BB1	0.65		89.89		11.76	60.50	162.15
BA2	0.56		77.44		11.76	60.50	149.70
BA1	0.48		66.38		11.76	60.50	138.64
PE2	0.79		109.25		11.76	60.50	181.51
PE1	0.77		106.48		11.76	60.50	178.74
PD2	0.72		99.57		11.76	60.50	171.83
PD1	0.70		96.80		11.76	60.50	169.06
PC2	0.65		89.89		11.76	60.50	162.15
PC1	0.64		88.51		11.76	60.50	160.77
PB2	0.51		70.53		11.76	60.50	142.79
PB1	0.50		69.15		11.76	60.50	141.41
PA2	0.49		67.76		11.76	60.50	140.02
PA1	0.46		63.61		11.76	60.50	135.87

TABLE 4.—CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—RURAL

RUG–III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy component	Non-case mix component	Total rate
RUC	1.30	2.25	171.77	231.66		61.62	465.05
RUB	0.95	2.25	125.52	231.66		61.62	418.80
RUA	0.78	2.25	103.06	231.66		61.62	396.34
RVC	1.13	1.41	149.31	145.17		61.62	356.10
RVB	1.04	1.41	137.42	145.17		61.62	344.21
RVA	0.81	1.41	107.03	145.17		61.62	313.82
RHC	1.26	0.94	166.48	96.78		61.62	324.88
RHB	1.06	0.94	140.06	96.78		61.62	298.46
RHA	0.87	0.94	114.95	96.78		61.62	273.35
RMC	1.35	0.77	178.38	79.28		61.62	319.28
RMB	1.09	0.77	144.02	79.28		61.62	284.92
RMA	0.96	0.77	126.84	79.28		61.62	267.74
RLB	1.11	0.43	146.66	44.27		61.62	252.55
RLA	0.80	0.43	105.70	44.27		61.62	211.59
SE3	1.70		224.62		12.56	61.62	298.80
SE2	1.39		183.66		12.56	61.62	257.84
SE1	1.17		154.59		12.56	61.62	228.77
SSC	1.13		149.31		12.56	61.62	223.49
SSB	1.05		138.74		12.56	61.62	212.92
SSA	1.01		133.45		12.56	61.62	207.63
CC2	1.12		147.99		12.56	61.62	222.17
CC1	0.99		130.81		12.56	61.62	204.99
CB2	0.91		120.24		12.56	61.62	194.42
CB1	0.84		110.99		12.56	61.62	185.17
CA2	0.83		109.67		12.56	61.62	183.85
CA1	0.75		99.10		12.56	61.62	173.28
IB2	0.69		91.17		12.56	61.62	165.35
IB1	0.67		88.53		12.56	61.62	162.71
IA2	0.57		75.31		12.56	61.62	149.49
IA1	0.53		70.03		12.56	61.62	144.21
BB2	0.68		89.85		12.56	61.62	164.03
BB1	0.65		85.88		12.56	61.62	160.06
BA2	0.56		73.99		12.56	61.62	148.17
BA1	0.48		63.42		12.56	61.62	137.60
PE2	0.79		104.38		12.56	61.62	178.56
PE1	0.77		101.74		12.56	61.62	175.92
PD2	0.72		95.13		12.56	61.62	169.31
PD1	0.70		92.49		12.56	61.62	166.67
PC2	0.65		85.88		12.56	61.62	160.06
PC1	0.64		84.56		12.56	61.62	158.74
PB2	0.51		67.39		12.56	61.62	141.57
PB1	0.50		66.07		12.56	61.62	140.25
PA2	0.49		64.74		12.56	61.62	138.92
PA1	0.46		60.78		12.56	61.62	134.96

D. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using an appropriate wage index, as determined by the Secretary. Section 315 of the BIPA authorizes the Secretary to establish a reclassification system specifically for SNFs, similar to the hospital methodology. However, this reclassification system cannot be implemented until the Secretary has collected data necessary to establish an area wage index for SNFs based on wage data from such facilities. Pursuant to section 106(a) of the Social Security Act Amendments of 1994 (Pub.L. 103–432), the Secretary was directed to begin collecting data on employee compensation and paid hours of employment in SNFs for the purpose of constructing a SNF wage index. Since the inception of a PPS for SNFs, we have utilized hospital wage data in developing a wage index to be applied to SNFs.

The computation of the wage index is similar to past years because we incorporate the latest data and methodology used to construct the hospital wage index (for a discussion, see the May 12, 1998 interim final rule (63 FR 26274)). We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 75.379 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2002. The labor-related relative importance, which we calculate from the SNF market basket, approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2002. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2002 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2002 in four steps. First, we compute the FY 2002 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY

2002 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2002 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2002 relative importance for each of the labor-related cost categories (that is, wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and capital-related) to produce the FY 2002 labor-related relative importance.

Tables 5 and 6 show the Federal rates by labor-related and non-labor-related components. In addition, the wage index budget neutrality factor for FY 2002 is .99835.

Section 1888(e)(4)(G)(ii) of the Act also requires that the application of this wage index be made in a manner that does not result in aggregate payments that are greater or lesser than would otherwise be made in the absence of the wage adjustment. As noted in the proposed rule (66 FR 23993), we are updating the wage index applicable to SNF payments using the most recent hospital wage data and applying the adjustment to fulfill the budget neutrality requirement. (For a discussion of how we calculate the adjustment, see our discussion in the proposed rule at 66 FR 23993.)

TABLE 5.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–III category	Total rate	Labor portion	Non-labor portion
RUC	441.18	332.56	108.62
RUB	392.78	296.07	96.71
RUA	369.27	278.35	90.92
RVC	342.67	258.30	84.37
RVB	330.22	248.92	81.30
RVA	298.41	224.94	73.47
RHC	318.68	240.22	78.46
RHB	291.02	219.37	71.65
RHA	264.74	199.56	65.18
RMC	315.94	238.15	77.79
RMB	279.99	211.05	68.94
RMA	262.01	197.50	64.51
RLB	252.39	190.25	62.14
RLA	209.52	157.93	51.59
SE3	307.35	231.68	75.67
SE2	264.48	199.36	65.12
SE1	234.06	176.43	57.63
SSC	228.53	172.26	56.27
SSB	217.46	163.92	53.54
SSA	211.93	159.75	52.18
CC2	227.14	171.22	55.92
CC1	209.17	157.67	51.50
CB2	198.10	149.33	48.77
CB1	188.42	142.03	46.39
CA2	187.04	140.99	46.05
CA1	175.98	132.65	43.33
IB2	167.68	126.40	41.28
IB1	164.91	124.31	40.60
IA2	151.09	113.89	37.20
IA1	145.55	109.71	35.84
BB2	166.30	125.36	40.94
BB1	162.15	122.23	39.92
BA2	149.70	112.84	36.86
BA1	138.64	104.51	34.13
PE2	181.51	136.82	44.69
PE1	178.74	134.73	44.01
PD2	171.83	129.52	42.31
PD1	169.06	127.44	41.62
PC2	162.15	122.23	39.92
PC1	160.77	121.19	39.58
PB2	142.79	107.63	35.16
PB1	141.41	106.59	34.82
PA2	140.02	105.55	34.47
PA1	135.87	102.42	33.45

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–III category	Total rate	Labor portion	Non-labor portion
RUC	465.05	350.55	114.50
RUB	418.80	315.69	103.11
RUA	396.34	298.76	97.58
RVC	356.10	268.42	87.68
RVB	344.21	259.46	84.75
RVA	313.82	236.55	77.27

TABLE 6.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–III category	Total rate	Labor portion	Non-labor portion
RHC	324.88	244.89	79.99
RHB	298.46	224.98	73.48
RHA	273.35	206.05	67.30
RMC	319.28	240.67	78.61
RMB	284.92	214.77	70.15
RMA	267.74	201.82	65.92
RLB	252.55	190.37	62.18
RLA	211.59	159.49	52.10
SE3	298.80	225.23	73.57
SE2	257.84	194.36	63.48
SE1	228.77	172.44	56.33
SSC	223.49	168.46	55.03
SSB	212.92	160.50	52.42
SSA	207.63	156.51	51.12
CC2	222.17	167.47	54.70
CC1	204.99	154.52	50.47
CB2	194.42	146.55	47.87
CB1	185.17	139.58	45.59
CA2	183.85	138.58	45.27
CA1	173.28	130.62	42.66
IB2	165.35	124.64	40.71
IB1	162.71	122.65	40.06
IA2	149.49	112.68	36.81
IA1	144.21	108.70	35.51
BB2	164.03	123.64	40.39
BB1	160.06	120.65	39.41
BA2	148.17	111.69	36.48
BA1	137.60	103.72	33.88
PE2	178.56	134.60	43.96
PE1	175.92	132.61	43.31
PD2	169.31	127.62	41.69
PD1	166.67	125.63	41.04
PC2	160.06	120.65	39.41
PC1	158.74	119.66	39.08
PB2	141.57	106.71	34.86
PB1	140.25	105.72	34.53
PA2	138.92	104.72	34.20
PA1	134.96	101.73	33.23

As we noted in the proposed rule, we have received many comments over the past few years, asking that we evaluate a SNF-specific wage index, which would be based solely on wage and hourly data from SNFs. Further, the collection of nursing home wage data necessary to develop a SNF-specific wage index is a prerequisite for establishing a SNF-specific geographic reclassification procedure, as authorized by section 315 of the BIPA. To develop this analysis, we have added a schedule to the cost report to gather wage and hourly data from each SNF. In the proposed rule, we published a wage index prototype based on SNF data, along with the wage index based on the hospital wage data that was used in the FY 2001 final rule published July 31, 2000 in the **Federal Register** (65 FR 46770). In addition, we discussed in the proposed rule the wage index computations for the SNF prototype. We also indicated our concern about the reliability of the existing data used in establishing a SNF wage index, in view of the significant variations in the SNF-specific wage data and the large number of SNFs that are unable to provide adequate wage and hourly data. Accordingly, we expressed the belief that a wage index based on hospital wage data remains the best and most appropriate to use in adjusting payments to SNFs, since both hospitals and SNFs compete in the same labor markets. Table 7 shows the hospital wage index for urban areas and Table 8 shows the hospital wage index for rural areas.

TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.7965
Taylor, TX	
0060 Aguadilla, PR	0.4683
Aguada, PR	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9876
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0640
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8500
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9750
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8029
Rapides, LA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
0240 Allentown-Bethlehem-Easton, PA	1.0077
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9126
Blair, PA	
0320 Amarillo, TX	0.8711
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2570
Anchorage, AK	
0440 Ann Arbor, MI	1.1098
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8276
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9241
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4630
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9200
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9842
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0058
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1293
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8230
Lee, AL	
0600 Augusta-Aiken, GA-SC	0.9970
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9597
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9470
Kern, CA	
0720 Baltimore, MD	0.9856
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9593
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3626
Barnstable, MA	
0760 Baton Rouge, LA	0.8149
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8442
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1826
Whatcom, WA	
0870 Benton Harbor, MI	0.8810
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1689
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9352
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8440
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8446
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8808
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7984
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8842
Monroe, IN	
1040 Bloomington-Normal, IL	0.9038
McLean, IL	
1080 Boise City, ID	0.9050
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1289
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9799
Boulder, CO	
1145 Brazoria, TX	0.8209
Brazoria, TX	
1150 Bremerton, WA	1.0758
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.9012
Cameron, TX	
1260 Bryan-College Station, TX	0.9328
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9459
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9883
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4699
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8956
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9496
Natrona, WY	
1360 Cedar Rapids, IA	0.8699
Linn, IA	
1400 Champaign-Urbana, IL	0.9306
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9206
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9264
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9348
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0566
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9369
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8288
Laramie, WY	
1600 Chicago, IL	1.1046
Cook, IL	
De Kalb, IL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9856
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9473
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8337
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9457
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9744
El Paso, CO	
1740 Columbia, MO	0.8686
Boone, MO	
1760 Columbia, SC	0.9492
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8440
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 ColumbusOH	0.9565
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8341
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1646
Benton, OR	
1900 Cumberland, MD-WV	0.8306
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9936
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
1950 Danville, VA	0.8613
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8638
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9225
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8982
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8775
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7987
Macon, IL	
2080 Denver, CO	1.0328
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8779
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0487
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7948
Dale, AL	
Houston, AL	
2190 Dover, DE	1.0296
Kent, DE	
2200 Dubuque, IA	0.8519
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0284
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0532
Dutchess, NY	
2290 Eau Claire, WI	0.8832
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9215
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9638
Elkhart, IN	
2335 Elmira, NY	0.8415
Chemung, NY	
2340 Enid, OK	0.8357
Garfield, OK	
2360 Erie, PA	0.8716
Erie, PA	
2400 Eugene-Springfield, OR	1.1471
Lane, OR	
2440 Evansville-Henderson, IN-KY	0.8514
Posey, IN	
Vanderburgh, IN	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9267
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.9027
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8445
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.0556
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0913
Genesee, MI	
2650 Florence, AL	0.7845
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8722
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0045
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0293
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9374
Lee, FL	
2710 Fort Pierce-Port StLucie, FL	1.0214
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.8053
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9002
Okaloosa, FL	
2760 Fort Wayne, IN	0.9203
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Fort Worth-Arlington, TX	0.9394
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	0.9887
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8792
Etowah, AL	
2900 Gainesville, FL	0.9481
Alachua, FL	
2920 Galveston-Texas City, TX	1.0313
Galveston, TX	
2960 Gary, IN	0.9530
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8336
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8709
Wayne, NC	
2985 Grand Forks, ND-MN	0.9069
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9569

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0048
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8870
Cascade, MT	
3060 Greeley, CO	0.9495
Weld, CO	
3080 Green Bay, WI	0.9208
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9539
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9289
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9217
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.8365
Washington, MD	
3200 Hamilton-Middletown, OH	0.9287
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9425
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1533
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7476
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9367
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1539
Honolulu, HI	
3350 Houma, LA	0.7951
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9631
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
3400 Huntington-Ashland, WV-KY-OH	0.9616
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8883
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9698
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9859
Johnson, IA	
3520 Jackson, MI	0.9257
Jackson, MI	
3560 Jackson, MS	0.8491
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.9013
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9223
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7622
Onslow, NC	
3610 Jamestown, NY	0.8050
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9739
Rock, WI	
3640 Jersey City, NJ	1.1178
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8617
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8723
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.8425
Craighead, AR	
3710 Joplin, MO	0.8727
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battle Creek, MI	1.0639
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9889
Kankakee, IL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
3760 Kansas City, KS-MO	0.9536
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9568
Kenosha, WI	
3810 Killeen-Temple, TX	0.7292
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8890
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9126
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9250
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8526
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9121
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7765
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9067
Polk, FL	
4000 Lancaster, PA	0.9296
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9653
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7849
Webb, TX	
4100 Las Cruces, NM	0.8621
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.1182
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8656
Douglas, KS	
4200 Lawton, OK	0.8682
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9287
Androscoggin, ME	
4280 Lexington, KY	0.8791
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Woodford, KY	
4320 Lima, OH	0.9470
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	1.0173
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8955
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8571
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1948
Los Angeles, CA	
4520 Louisville, KY-IN	0.9529
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8449
Lubbock, TX	
4640 Lynchburg, VA	0.9103
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8957
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0337
Dane, WI	
4800 Mansfield, OH	0.8708
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4860
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8378
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0314
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9913
Brevard, Fl	
4920 Memphis, TN-AR-MS	0.8978
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9757
Merced, CA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
5000 Miami, FL	0.9950
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1469
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9971
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN-WI	1.0930
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.9364
Missoula, MT	
5160 Mobile, AL	0.8082
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0820
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0870
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8201
Ouachita, LA	
5240 Montgomery, AL	0.7359
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9939
Delaware, IN	
5330 Myrtle Beach, SC	0.8771
Horry, SC	
5345 Naples, FL	0.9699
Collier, FL	
5360 Nashville, TN	0.9754
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3643
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2238
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1526
New London, CT	
5560 New Orleans, LA	0.9036
Jefferson, LA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4427
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1622
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1113
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8579
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5319
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9556
Marion, FL	
5800 Odessa-Midland, TX	1.0104
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8694
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1350
Thurston, WA	
5920 Omaha, NE-IA	0.9712
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1123
Orange, CA	
5960 Orlando, FL	0.9642
Lake, FL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8334
Daviess, KY	
6015 Panama City, FL	0.9061
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8133
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8329
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8773
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0947
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9638
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7895
Jefferson, AR	
6280 Pittsburgh, PA	0.9560
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0278
Berkshire, MA	
6340 Pocatello, ID	0.9448
Bannock, ID	
6360 Ponce, PR	0.5218
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9427
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.1111
Clackamas, OR.	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0805
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9843
Utah, UT	
6560 Pueblo, CO	0.8604
Pueblo, CO	
6580 Punta Gorda, FL	0.9015
Charlotte, FL	
6600 Racine, WI	0.9333
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9818
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8869
Pennington, SD	
6680 Reading, PA	0.9583
Berks, PA	
6690 Redding, CA	1.1155
Shasta, CA	
6720 Reno, NV	1.0440
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0960
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9678
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1111
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8371
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1462
Olmsted, MN	
6840 Rochester, NY	0.9347
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9204
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9109
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1831
El Dorado, CA	
Placer, CA	
Sacramento, CA	
A6960 Saginaw-Bay City-Midland, MI	0.9590
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 StCloud, MN	0.9851
Benton, MN	
Stearns, MN	
7000 StJoseph, MO	0.9009
Andrews, MO	
Buchanan, MO	
7040 StLouis, MO-IL	0.8931
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0011
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4684
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9863
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8193
Tom Green, TX	
7240 San Antonio, TX	0.8584
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1265
San Diego, CA	
7360 San Francisco, CA	1.4140
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4193
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4762
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0990
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0802
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3970
Santa Cruz, CA	
7490 Santa Fe, NM	1.0194
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3034
Sonoma, CA	
7510 Sarasota-Bradenton, FL	1.0090
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9243
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton--Wilkes-Barre--Hazleton, PA	0.8683
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1361
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7926
Mercer, PA	
7620 Sheboygan, WI	0.8427
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9373
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9050
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8767
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9139
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9993
St. Joseph, IN	
7840 Spokane, WA	1.0668
Spokane, WA	
7880 Springfield, IL	0.8676
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8567
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0881
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9133
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8637
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0815
San Joaquin, CA	
8140 Sumter, SC	0.7794
Sumter, SC	
8160 Syracuse, NY	0.9621
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1616
Pierce, WA	
8240 Tallahassee, FL	0.8527
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.8925
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8532
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8327
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9809
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.8912
Shawnee, KS	
8480 Trenton, NJ	1.0416
Mercer, NJ	
8520 Tucson, AZ	0.8967
Pima, AZ	
8560 Tulsa, OK	0.8902
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8171
Tuscaloosa, AL	
8640 Tyler, TX	0.9641
Smith, TX	
8680 Utica-Rome, NY	0.8329
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3562
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0994
Ventura, CA	
8750 Victoria, TX	0.8328
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0441
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9610
Tulare, CA	
8800 Waco, TX	0.8129
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0962
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8041
Black Hawk, IA	
8940 Wausau, WI	0.9696
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9777
Palm Beach, FL	
9000 Wheeling, OH-WV	0.7985
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9606
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7867
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8521
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.0877
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9409
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0567
Yakima, WA	
9270 Yolo, CA	0.9701
Yolo, CA	
9280 York, PA	0.9441
York, PA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
9320 Youngstown-Warren, OH	0.9563
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0359
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8989
Yuma, AZ	

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Rural area	Wage index
Alabama	0.7339
Alaska	1.1862
Arizona	0.8681
Arkansas	0.7489
California	0.9772
Colorado	0.8811
Connecticut	1.2077
Delaware	0.9589
Florida	0.8812
Georgia	0.8295
Guam	0.9611
Hawaii	1.1112
Idaho	0.8718
Illinois	0.8053
Indiana	0.8721
Iowa	0.8147
Kansas	0.7769
Kentucky	0.7963
Louisiana	0.7601
Maine	0.8721
Maryland	0.8859
Massachusetts	1.1454
Michigan	0.9010
Minnesota	0.9035
Mississippi	0.7528
Missouri	0.7778
Montana	0.8655
Nebraska	0.8142
Nevada	0.9673
New Hampshire	0.9803
New Jersey [1]	.....
New Mexico	0.8676
New York	0.8547
North Carolina	0.8539
North Dakota	0.7879
Ohio	0.8668
Oklahoma	0.7566
Oregon	1.0027
Pennsylvania	0.8617
Puerto Rico	0.4800
Rhode Island [1]	.....
South Carolina	0.8512
South Dakota	0.7861
Tennessee	0.7928
Texas	0.7712
Utah	0.9051
Vermont	0.9466
Virginia	0.8241
Virgin Islands	0.6747
Washington	1.0209
West Virginia	0.8067
Wisconsin	0.9079

TABLE 8.—WAGE INDEX FOR RURAL AREAS—Continued

Rural area	Wage index
Wyoming	0.8747

[1] All counties within the State are classified urban.

Comment: Several commenters expressed concern that we may discard the SNF-specific wage index without further work or development to ensure its accuracy. Many commenters suggested that we work with the industry to improve the cost reporting forms used in collecting the data, thus improving the editing and auditing that would lead to an improved SNF-specific wage index. Virtually all commenters agreed that the proposed SNF wage index prototype is not appropriate and should not be implemented with the current data shortcomings. We also received many comments suggesting that the SNF-specific wage index is not valid, and that there is no evidence to indicate it would be any better than the hospital wage index currently in use. These commenters maintained that imposing a SNF-specific wage index before improving the data quality would not be justified.

Response: As discussed in the proposed rule, there is a great deal of volatility in the SNF-specific wage index prototype—not only between the hospital wage data, but also between the two years of data that we utilized in developing the SNF-specific wage index prototype. As many commenters suggested, the data could be improved if we were to establish better controls, edits, and screens of the data, and insist that more of the provider's data be audited to ensure its accuracy. We are committed to a process to ensure the accuracy of the data that is required by law. We are considering initiation of a process to develop and make appropriate changes to the cost report to improve the quality of the wage data reported, and intend to work with the industry representatives and others in this effort. We agree that auditing all SNFs would provide more accurate and reliable data; however, this approach involves a significant commitment of resources by us and our contractors and places a burden on providers in terms of recordkeeping and completion of the cost report worksheet. Developing a desk review and audit program similar to what is required in the hospital setting would require significant resources. The fiscal intermediaries (FIs) that are involved in preparing the hospital wage data currently spend considerable resources to ensure the accuracy of the wage data submitted by approximately 6,000 hospitals. This process involves editing, reviewing, auditing, and performing desk reviews of the data. Requiring FIs to do the same for the approximately 14,000 SNFs would nearly triple the FIs' workload and budgets in this area.

We are committed to using a wage index under the SNF PPS that results in enhancing our current payment methodology. In fact, we are continuing to look at ways to improve the processing and accuracy of the current hospital wage data to improve its accuracy and reliability further, especially since these data are currently being used for payment purposes for hospitals and a variety of other providers. While we are committed to improving the accuracy of payments for SNFs, we do not expect to propose a SNF-specific wage index until its impact both on payments and resources is more clearly understood. This will include evidence demonstrating that a SNF-specific wage index would significantly improve our ability to determine payments for facilities, justifying the resources required to collect the data and the burden on providers.

We realize, as a number of commenters suggested, that the impact of any new wage index would vary from one area to another. However, because of the problems associated with the current data, and our inability to demonstrate that the SNF-specific wage index is more reflective of the wages and salaries paid in a specific area, we continue to believe that hospital wage data are the most appropriate data for adjusting payments made to SNFs.

Comment: Two commenters suggested that even though we cannot now implement a SNF-specific wage index, we should encourage legislation that would implement a geographic reclassification system for SNFs using the hospital wage index.

Response: We believe that this is a matter for the Congress to address, as it did in the BIPA. Under section 315 of the BIPA, providers would be allowed to seek geographic reclassification to an adjacent area. However, the statute specifically noted that such reclassification could not be implemented until we have collected the data necessary to establish a SNF-specific wage index. Accordingly, under the current legislative authority, we are prohibited from implementing a SNF reclassification system until such an index becomes available.

Comment: Two commenters suggested that a blend between a hospital wage

index and a SNF-specific wage index might be an appropriate adjustment or phase-in of a SNF-specific wage index, while the data quality is being improved.

Response: If, in the future, we propose to move to a SNF-specific wage index, this approach may be appropriate. However, we do not believe that a blend between a hospital wage index and SNF-specific wage index is currently warranted, nor do we believe that a blend should be implemented until the SNF data is reliable. Calculating a wage index on a blend of hospital data and inaccurate SNF-data is not likely to improve the accuracy of our payments. As we have already indicated, we have concerns about establishing a wage index based on SNF-specific wage data that is unreliable and unaudited, since this could have an arbitrary impact on providers. Accordingly, we do not believe that it would be appropriate to use a blend that, at the present time, includes unreliable and unaudited SNF data.

Comment: Some commenters pointed out two typographical errors in Table 5 of the proposed rule (66 FR 23992), which showed the labor portion of the adjusted Federal rate for RUG–III group BA1 as $704.20, and the total rate for RUG–III group PE2 as $780.99.

Response: The correct dollar amounts for these two items are $104.20 and $180.99, respectively.

Comment: One commenter reported discovering an error in the hospital wage data that was used in computing the current (FY 2001) wage index for the Baltimore MSA. The error was corrected in a timely fashion for the wage index data published in this final rule; however, the commenter indicated that because the hospital(s) did not accurately report their costs on prior year cost reports, the current wage index is incorrect and an adjustment should be made to account for this error.

Response: For the reasons discussed previously, we are continuing to use the hospital wage index under the SNF PPS. Thus, corrections in the underlying data would be made in accordance with the existing process for developing the hospital wage index. We note that this process already includes numerous review and editing procedures, and also provides numerous opportunities for hospitals and other interested parties to detect and question any discrepancies in the data and seek revisions to that data.

E. Updates to the Federal Rate

In accordance with section 1888(e)(4)(E) of the Act and section 311 of the BIPA, the payment rates listed here reflect an update equal to the SNF market basket minus 0.5 percentage point, which equals 2.8 percent. For each succeeding FY, we will publish the rates in the **Federal Register** before August 1 of the year preceding the next Federal FY.

F. Relationship of the RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

We include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption that beneficiaries who are correctly assigned to one of the upper 26 RUG–III groups in the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to that point. (Those beneficiaries assigned to any of the lower 18 groups are not automatically classified as either meeting or not meeting the definition, but instead receive an individual level of care determination using the existing administrative criteria.)

In the proposed rule published in the **Federal Register** on May 10, 2001 (66 FR 24011), we proposed to continue the existing designation of the upper 26 RUG–III groups for purposes of this administrative presumption, consisting of the following RUG–III classifications: All groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

Comment: Commenters expressed support for our proposal to continue the existing designation of the upper 26 RUG–III groups for purposes of the administrative presumption regarding level of care. They noted that since we are not introducing case-mix refinements in the current rulemaking cycle, the existing designation should also remain unchanged.

Response: Consistent with the comments, we are continuing the existing designation of the upper 26 RUG–III groups for purposes of this administrative presumption, consisting of the following RUG–III classifications: All groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

G. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the example of the XYZ SNF described in Table 9, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. XYZ's 12-month cost reporting period begins October 1, 2001. Table 10 displays the 44 RUG–III categories and their respective add-ons, as provided in the BBRA and the BIPA.

TABLE 9.—SNF XYZ IS LOCATED IN STATE COLLEGE, PA WITH A WAGE INDEX OF 0.9133

RUG Group	Labor portion [1]	Wage index	Adjusted labor	Nonlabor portion [1]	Adjusted rate	Percent adjustment	Medicare days	Payment
RVC	$258.30	0.9133	$235.91	$84.37	$320.28	[2] 354.55	50	$17,728
SSC	172.26	0.9133	157.33	56.27	213.60	[3] 264.86	25	6,622
IA2	113.89	0.9133	104.02	37.20	141.22	[4] 146.87	25	3,672
Total							100	27,022

[1] From Table 5.
[2] Reflects a 10.7 percent adjustment (the 4 percent adjustment from section 101(d) of the BBRA and the 6.7 percent adjustment from section 314 of the BIPA).
[3] Reflects a 24 percent adjustment (the 4 percent and 20 percent adjustments from sections 101(a) and (d) of the BBRA).
[4] Reflects the 4 percent adjustment from section 101(d) of the BBRA.

TABLE 10.—BBRA 1999 & BIPA 2000 ADD-ONS, BY RUG–III CATEGORY

RUG–III category	4% [1]	10.7% [2]	24% [3]
RUC		X	
RUB		X	
RUA		X	
RVC		X	
RVB		X	
RVA		X	
RHC		X	
RHB		X	
RHA		X	
RMC		X	
RMB		X	
RMA		X	
RLB		X	
RLA		X	
SE3			X
SE2			X
SE1			X
SSC			X
SSB			X
SSA			X
CC2			X
CC1			X
CB2			X
CB1			X
CA2			X
CA1			X
IB2	X		
IB1	X		
IA2	X		
IA1	X		
BB2	X		
BB1	X		
BA2	X		
BA1	X		
PE2	X		
PE1	X		
PD2	X		
PD1	X		
PC2	X		
PC1	X		
PB2	X		
PB1	X		
PA2	X		
PA1	X		

[1] Represents the 4% increase from the BBRA.
[2] Includes the 4% increase from the BBRA and the 6.7% increase from the BIPA.
[3] Includes the 4% and 20% increases from the BBRA.

For rates addressed in this final rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in FY 1997.

H. The Skilled Nursing Facility Market Basket Index

1. Background

Section 1888(e)(5)(A) of the Act requires the Secretary to establish a market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. Effective for cost reporting periods beginning on or after July 1, 1998, we revised and rebased our 1977 routine costs input price index and adopted a total expenses SNF input price index using data from 1992 as the base year.

The term ''market basket'' technically describes the mix of goods and services needed to produce SNF care, and is also commonly used to denote the input price index that includes both weights (mix of goods and services) and price factors. The term ''market basket'' used in this rule refers to the SNF input price index.

The 1992-based SNF market basket represents routine costs, costs of ancillary services and capital-related costs. The percentage change in the market basket reflects the average change in the price of a fixed set of goods and services purchased by SNFs to furnish all services. For further background information, see the May 12, 1998 **Federal Register** (63 FR 26289).

For purposes of SNF PPS, the SNF market basket is a fixed-weight (Laspeyres type) price index. (A Laspeyres type index compares the cost of purchasing a specified group of commodities in a selected base period to the cost of purchasing that same group at current prices.) The SNF market basket is constructed in three steps. First, a base period is selected and total base period expenditure shares are estimated for mutually exclusive and exhaustive spending categories. Total costs for routine services, ancillary services, and capital are used. These proportions are called cost or

expenditure weights. The second step is to match each expenditure category to a price/wage variable, called a price proxy. These price proxy variables are drawn from publicly available statistical series published on a consistent schedule, preferably at least quarterly. In the final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, weights multiplied by proxy index levels) for all cost categories yields the composite index level in the market basket for a given quarter or year. Repeating the third step for other quarters and years produces a time series of market basket index levels, from which rates of growth can be calculated.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent or prior to the base period are, by design, not considered.

As discussed in the May 12, 1998 **Federal Register** (63 FR 26252), to implement section 1888(e)(5)(A) of the Act, we revised and rebased the market basket so the cost weights and price proxies reflected the mix of goods and services that SNFs purchase for all costs (routine, ancillary, and capital-related) encompassed by SNF PPS in fiscal year 1992.

2. Rebasing and Revising the Skilled Nursing Facility Market Basket

The terms ''rebasing'' and ''revising'', while often used interchangeably, actually denote different activities. Rebasing means shifting the base year for the structure of costs of the input price index (for example, for this rule, we shift the base year cost structure from fiscal year 1992 to fiscal year 1997). Revising means changing data sources, cost categories, and/or price proxies used in the input price index.

We have rebased and revised the SNF market basket to reflect 1997 total cost data (routine, ancillary, and capital-related). Fiscal year 1997 was selected as the new base year because 1997 is the most recent year for which relatively complete data are available. These data include settled 1997 Medicare Cost Reports as well as 1997 data from two U. S. Department of Commerce surveys: The Bureau of the Census' Business Expenditures Survey, and the Bureau of Economic Analysis' Annual Input-Output tables. Preliminary analysis of 1998 data from Medicare Cost Reports showed little change in cost shares from those in the 1997 Medicare Cost Reports.

In developing the market basket, we reviewed SNF expenditure data from Medicare Cost Reports for FY 1997 for each freestanding SNF that had Medicare expenses. FY 1997 Cost Reports are those with cost reporting periods beginning after September 30, 1996 and before October 1, 1997.

Comment: Some commenters believe that the weights derived for use in the revised and rebased market basket are not valid, because only freestanding facility data were used.

Response: As described in the proposed rule, we used SNF expenditure data from Medicare Cost Reports for FY 1997 for each freestanding SNF that had Medicare expenses. We maintained our policy of using data from freestanding SNFs because they reflect the actual cost structure faced by the SNF. Expense data for a hospital-based SNF are affected by the allocation of overhead costs over the entire institution (hospital, hospital-based SNF, hospital-based home health agency, etc). Due to the method of allocation, total expenses will be correct, but the individual components' expenses may be skewed. Therefore, if data from hospital-based SNFs were included, the resultant cost structure could be unrepresentative of the costs facing an average SNF.

Data on SNF expenditures for six major expense categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related, and a residual ''all other'') were edited and tabulated. Using these data, we then determined the proportion of total costs that each category represented. The six major categories for the revised and rebased cost categories and weights derived from SNF Medicare Cost Reports are summarized in Table 10.A.

TABLE 10.A—1992 AND 1997 SKILLED NURSING FACILITY MAJOR COST CATEGORIES AND WEIGHTS FROM MEDICATE COST REPORTS

Cost categories	1992-based skilled nursing facility weights	1997-based skilled nursing facility weights
Wages and Salaries	47.805%	46.889%
Employee Benefits	10.023	9.631
Contract Labor	12.852	6.478
Pharmaceuticals	2.531	3.006
Capital-related Costs	9.778	9.877
All Other Costs	17.012	24.119
Total Costs	100.000	100.000

We fully discuss the methodology for developing these weights in Appendix A. The main methodological difference between the 1992-based SNF market basket and the 1997-based market basket is in the calculation of the contract labor weight. For the 1992-based market basket, we estimated this share using non-salary costs for therapy cost centers. For the 1997-based index, we used the contract labor amounts for a subset of edited reports from Worksheet S–3 in the Medicare Cost Reports. We believe this new methodology provides a more accurate reflection of the share of total costs that are attributable to contract labor. The data from this worksheet were not available in the 1992 Medicare Cost Reports.

Relative weights within the six major categories were derived using relative cost shares from the Bureau of the Census' 1997 Business Expenditures Survey (BES), 1997 Medicare Cost Reports, and the Bureau of Economic Analysis' (BEA) 1997 Annual Input-Output tables. They were used to disaggregate and allocate costs within the six major categories determined from the 1997 SNF Medicare Cost Reports. The BEA Input-Output database is benchmarked at 5-year intervals and updated annually between benchmarks. We are using the annual update for 1997. The BES is updated every five years.

The capital-related portion of the rebased and revised SNF PPS market basket employs the same overall methodology used to develop the capital-related portion of the 1992-based SNF market basket, described in the May 12, 1998 **Federal Register** (63 FR 26289). It is also the same methodology used for the inpatient hospital PPS capital input price index described in the **Federal Register** May 31, 1996 (61 FR 27466) and August 30, 1996 (61 FR 46196). The strength of this methodology is that it reflects the vintage nature of capital, which represents the acquisition and use of capital over time.

Our work resulted in 21 separate categories for the rebased and revised SNF market basket. The 1992-based total cost SNF market basket also had 21 separate cost categories. Detailed descriptions of each cost category and respective price proxy in the 1997-based SNF market basket are provided in Appendix A to this final rule.

Comment: Several commenters felt that the methodology and data sources used by CMS in the development of the market basket raise questions about the transparency and consistency of the index. The commenters were particularly concerned with the use of a fixed-weight (Laspeyres type) index that was only updated periodically and thus did not capture the changing dynamics of the SNF industry.

Response: The methodology and data sources used by CMS for the SNF market basket are consistent with those used in the development of the hospital, home health, and physician market baskets, and prior versions of the SNF market basket. These market baskets have been used over the past two decades to update payments to providers of Medicare services, and the theory and methodology behind these market baskets have been continually revised and refined. We feel the current SNF market basket is based on a sound methodology that is completely consistent with price index theory as used in the development of other official government price indexes, such as those developed by the Bureau of Labor Statistics (BLS) and the Bureau of Economic Analysis (BEA). While the data sources available to develop the SNF market basket are limited, we feel our methodology ensures that these data sources are appropriately used and consistently combined, with great care taken to account for definitional and methodological differences in the data.

As we stated in the proposed rule, our primary data source for developing the SNF market basket is the actual data submitted by SNFs in the Medicare cost reports. Using these data to develop the major cost category weights, we have used actual SNF data that reflect the actual cost experience faced by SNFs in providing care. We use as much detail as is available and accurately reported in the cost reports, and then supplement this information with data reported by nursing homes, of which SNFs represent a significant proportion, as part of official government statistics published by the Bureau of the Census and Bureau of Economic Analysis. These official government statistics are publicly available and also reflect the actual cost experience faced by SNFs and nursing homes. We use the distribution of costs reported in these official statistics, not actual cost levels, to further refine the distribution of the major cost categories measured by the Medicare cost reports. Thus our methodology makes the maximum use of Medicare cost report data submitted by SNFs and uses official government statistics based on data provided by nursing homes and SNFs to develop an index that fully reflects a mutually exclusive and exhaustive set of input costs facing SNFs. In the proposed rule, we specifically identified the data source (even providing the specific worksheets for the Medicare cost report data) from which each index weight was determined.

The SNF market basket is a fixed-weight (Laspeyres type) index that measures how much more or less it would cost, at a later time, to purchase the same mix of goods and services (inputs) that was purchased in the base period. Thus it reflects the pure price change between the current and base period of a fixed set of inputs. Over time, SNFs may alter their mix of inputs, generally from higher cost inputs to lower cost inputs, although this change may reflect a number of different factors. In order to reflect the change in mix over time, we periodically rebase the SNF market basket to a more recent base year. The rebased SNF market basket reflects the mix of inputs for 1997. However, like any fixed-weight index, the SNF market basket does reflect the current prices facing the SNF. So, while the base weights may be from a prior year, the price changes reflected in the index are reflective of the current trends in the SNF industry.

We do not share the commenters' concerns that using a fixed-weight (Laspeyres type) index biases the index or makes it less representative of the changing dynamics of the SNF industry. Unlike the official BLS and BEA price indexes, which generally measure consumption patterns of consumers and producers that can change drastically over a short period of time and for which many interchangeable products exist, the cost distribution of inputs for the SNF in providing services does not vary much over time. As such, the substitution bias that can exist with a fixed-weight price index is not evidenced in our SNF market basket. Thus, while the commenters feel that using a chain-weight or another type of alternative index formulation would make the SNF market basket more reflective of the changing dynamics in the SNF industry, in actuality these alternative index formulas would have no noticeable effect on the annual percent change in the market basket. As shown in Table 10.A., the weights of the major cost categories did not change significantly between 1992 and 1997, other than a methodological change we made in calculating the contract labor weight. The impact of rebasing the index is presented in Table 10.D., and shows that between FYs 1995 and 2000 the impact was always less than 0.1 percentage points, and on average, the 1992-based and 1997-based indexes grew at exactly the same rate during that time. In addition, when we looked at 1998 Medicare cost report data (the most recent year of complete data) we found very little difference in the major cost weights.

We have explored in the past the idea of using alternative index formulations, such as a Paasche, Fisher, Tornqvist, and chained-versions of these indexes, that do not rely on a fixed-weight (Laspeyres type) index formula. In doing this research we found very little variation in the change in the index over time, mostly the result of weights that were relatively stable, as explained above. In addition, developing these alternative index formulations was affected by significant lags in data availability; the Medicare cost report data are at least three years old due to processing time, and the Census and BEA data are available only every five years. Given these outcomes, we did not feel it would be beneficial to switch from the current fixed-weight methodology. We again note that the current methodology is both accurate and conceptually sound in measuring the change in input prices for SNFs, hospitals, HHAs, and physicians.

As in the 1992-based SNF market basket, the 1997-based SNF market basket does not include a separate cost category for professional liability insurance. Our analysis of the BEA 1997 Annual Input-Output survey indicated that the general category for insurance carriers (which includes professional liability insurance as a subset) was, at

just 0.2 percent, a small share of the total costs in 1997. It has been our policy in the past not to provide detailed breakouts of cost categories unless they represent a significant portion of the providers' costs. We also reviewed data available on professional liability insurance from Worksheet S–2 of the SNF Medicare Cost Reports, but found that nearly all SNFs did not report data for malpractice premiums, paid losses, or self-insurance in 1997.

Comment: Several commenters recommended that CMS quickly develop an appropriate weight and price measure to capture professional liability insurance costs.

Response: As we stated in the proposed rule, we have been investigating sources of professional liability insurance costs for SNFs but have been unable to find an existing data source with this information. We are encouraged that the commenters are also interested in CMS acquiring this information, and would appreciate their input on any currently available data or possible approaches to obtaining the data. One possible data source for this information would be the Medicare cost reports. We note, however, that the Medicare cost reports for 1997 did not contain complete information for these costs. We encourage all providers to fully fill out the categories for malpractice premiums, paid losses, or self insurance on the Medicare cost reports. This would likely be the quickest and most efficient way to collect the data. In addition, we will continue to research possible data sources and may pursue data collection efforts if we cannot find the necessary data from publicly available, timely, unbiased sources.

After the 21 cost weights for the revised and rebased SNF market basket were developed, we selected the most appropriate wage and price proxies currently available to monitor the rate of change for each expenditure category. With three exceptions (all for the capital-related expenses cost category), the wage and price proxies are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

- *Employment Cost Indexes.* Employment Cost Indexes (ECIs) measure the rate of change in employment wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in occupation or industry mix. ECIs are superior to Average Hourly Earnings (AHEs) as price proxies for input price indexes for two reasons: (1) They measure pure price change, and (2) they are available by both occupational group and by industry.
- *Producer Price Indexes.* Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs were used when the purchases of goods or services were made at the wholesale level.
- *Consumer Price Indexes.* Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by consumers. CPIs were only used when the purchases were similar to those of retail consumers rather than purchases at the wholesale level, or if no appropriate PPI was available.

The contract labor weight of 6.478 was reallocated to (1) wages and salaries, and (2) employee benefits, so that the same price proxies that we use for direct labor costs are applied to contract costs.

The rebased and revised cost categories, weights, and price proxies for the 1997-based SNF market basket are listed in Table 10.B.

TABLE 10.B.—1997-BASED SNF MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost category	1997-based skilled nursing facility market basket weight	Price proxy
Operating Expenses	90.123	
Compensation	62.998	
Wages and Salaries	52.263	ECI for Wages and Salaries for Private Nursing Homes.
Employee benefits	10.734	ECI for Benefits for Private Nursing Homes.
Nonmedical professional fees	2.634	ECI for Compensation for Private Professional, Technical and Specialty workers.
Utilities	2.368	
Electricity	1.420	PPI for Commercial Electric Power.
Fuels, nonhighway	0.426	PPI for Commercial Natural Gas.
Water and sewerage	0.522	CPI–U for Water and Sewerage.
All Other Expenses	22.123	
Other Products	13.522	
Pharmaceuticals	3.006	PPI for Prescription Drugs.
Food	4.136	
Food, wholesale purchase	3.198	PPI for Processed Foods.
Food, retail purchase	0.937	CPI–U for Food Away From Home.
Chemicals	0.891	PPI for Industrial Chemicals.
Rubber and plastics	1.611	PPI for Rubber and Plastic Products.
Paper products	1.289	PPI for Converted Paper and Paperboard.
Miscellaneous products	2.589	PPI for Finished Goods less Food and Energy.
Other Services	8.602	
Telephone Services	0.448	CPI–U for Telephone Services.
Labor-intensive Services	4.094	ECI for Compensation for Private Service Occupations
Non labor-intensive services	4.059	CPI–U for All Items
Capital-related Expenses	9.877	
Total Depreciation	5.266	
Building & Fixed Equipment	3.609	Boeckh Institutional Construction Index (vintage-weighted over 23 years).
Movable Equipment	1.657	PPI for Machinery & Equipment (vintage-weighted over 10 years).
Total Interest	3.852	

TABLE 10.B.—1997-BASED SNF MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES—Continued

Cost category	1997-based skilled nursing facility market basket weight	Price proxy
Government & Nonprofit SNFs	1.890	Average Yield Municipal Bonds (Bond Buyer Index-20 bonds) (vintage-weighted over 22 years).
For-Profit SNFs	1.962	Average Yield Moody's AAA Bonds (vintage-weighted over 22 years).
Other Capital-related Expenses	0.760	CPI–U for Residential Rent.
Total	* 100.000	

* Total may not equal 100 due to rounding

In the 1997-based SNF market basket, the labor-related share for FY 1997 is 73.588 percent, while the non-labor-related share is 26.412 percent. The labor-related share reflects the proportion of the average SNF's costs that vary with local area wages. This share includes wages and salaries, employee benefits, professional fees, labor-intensive services, and a 39.1 percent share of capital-related expenses, as shown in Table 10.C. By comparison, the labor-related share of the 1992-based SNF market basket was 75.888 percent. The labor-related share of the market basket is the sum of the weights for those cost categories that are influenced by the local labor market. The labor-related share is calculated from the base year, which for the revised and rebased SNF market basket is FY 1997.

The labor-related share for capital-related expenses was estimated using a statistical analysis of individual SNF Medicare Cost Reports for 1997, similar to the analysis done on the 1992 SNF Medicare Cost Reports and explained in the May 12, 1998 **Federal Register** (63 FR 26289). The statistical analysis was necessary because the proportion of capital-related expenses related to local area wage costs cannot be directly determined from the SNF capital-related portion of the market basket. We used regression analysis with total costs per day in SNFs as the dependent variable and relevant explanatory variables for size, complexity, efficiency, age of capital, and local wage variation. To account for these factors, we used number of beds, case-mix indexes, occupancy rate, ownership, age of assets, length of stay, FTEs per bed, and wage index values based on the hospital wage index (wages and employee benefits) as independent variables. Our regression analysis indicated that the coefficient on the area wage index was 73.588, which represents the proportion of total costs that vary with local labor markets, holding constant other factors. From the operating portion of the market basket, we can specifically identify cost categories that reflect local labor markets and include them in the labor-related share. These cost categories equal 69.727, and reflect approximately 77 percent of operating costs. Thus, the labor-related share for capital-related costs is 3.861 (73.588 minus 69.727), and reflects approximately 39 percent of capital-related costs.

Capital-related expenses are determined in some proportion by local area labor costs (such as construction worker wages and building materials costs) that are reflected in the price of the capital asset. However, many other inputs that determine capital costs are not related to local area wage costs, such as equipment prices and interest rates. Thus, it is appropriate that capital-related expenses would vary less with local wages than would operating expenses for SNFs. Therefore, we use this analysis in determining the labor-related share for SNF PPS.

All price proxies for the revised and rebased SNF market basket are listed in Table 10.B and summarized in Appendix A to this final rule. A comparison of the yearly historical percent changes from FY 1995 through FY 2000 for the current 1992-based market basket and the 1997-based market basket is shown in Table 10.D.

TABLE 10.C.—1992- AND 1997-BASED LABOR-RELATED SHARE

Cost category	1992-based skilled nursing facility market basket weight	1997-based skilled nursing facility market basket weight
Wages and Salaries	54.262	52.263
Employee Benefits	12.797	10.734
Nonmedical Professional Fees	1.916	2.634
Labor-intensive Services	3.686	4.094
Capital-related	3.227	3.861
Total	75.888	73.588

TABLE 10.D.—COMPARISON OF THE 1992-BASED SKILLED NURSING FACILITY MARKET BASKET AND THE 1997-BASED SKILLED NURSING FACILITY MARKET BASKET, PERCENT CHANGES, 1995–2000

Fiscal years beginning October 1	1992-based skilled nursing facility market basket	1997-based skilled nursing facility market basket
Historical:		
October 1994, FY 1995	2.9	3.0
October 1995, FY 1996	2.7	2.7
October 1996, FY 1997	2.4	2.4
October 1997, FY 1998	2.8	2.8
October 1998, FY 1999	3.1	3.0
October 1999, FY 2000	4.1	4.0
Historical average 1995–2000	3.0	3.0

Released by CMS, OACT, National Health Statistics Group.

The historical average rate of growth for 1995 through 2000 for the SNF 1997-based market basket is similar to that of the 1992-based market basket. The 1997-based SNF market basket provides a more current measure of the annual

price increases for total care than the 1992-based SNF market basket because the cost weights reflect the structure of costs for the most recent year for which there are relatively complete data. The forecasted rates of growth for FY 2002 for the 1997-based and 1992-based SNF market basket are shown in Table 10.E.

TABLE 10.E.—COMPARISON OF FORECASTED CHANGE FOR THE 1992-BASED SKILLED NURSING FACILITY MARKET BASKET, AND THE 1997-BASED SKILLED NURSING FACILITY MARKET BASKET PERCENT CHANGE FOR FY 2002

Fiscal year beginning October 1	1992-based skilled nursing facility market basket	1997-based skilled nursing facility market basket
October 2001, FY 2002	3.5	3.3

Source: Global Insights, Inc., DRI–WEFA, 2nd QTR, 2001; @USMACRO/MODTREND @CISSIM/TRENDLONG0501. Released by CMS, OACT, National Health Statistics Group.

Comment: One commenter indicated that there should be a mechanism to account for forecast error since forecasts of the market basket are used to determine the following year payment update.

Response: Research is currently under way in developing an update framework for the SNF PPS. A conceptual discussion of this framework was presented in the proposed rule. The SNF PPS framework discussed in the proposed rule is similar to the one currently used by us and MedPAC to recommend annual updates to inpatient hospital payments. This framework would account for all non-price factors needed in an update, such as a forecast error correction. Although this would not impact the legislated payment update, the framework would give us the ability to factor in a forecast error adjustment in our recommendation for an update to SNF payments. In addition, our policy has been to use the most recent forecast of the market basket available to update the payment rates. These updated forecasts reflect expectations based on the most up-to-date price data. We note, however, that by definition, the forecasts may differ from later projections or the final number recorded for a given year.

Comment: One comment noted that the base year used to establish the PPS rates was nonrepresentative and, thus, did not reflect the full cost of care. This comment also requested us to explain an apparent discrepancy between the rise in SNF costs between 1995 and 1998 and the market basket increase used to establish the initial rates under the PPS. The commenter noted a disparity of 19.2 percent over this period.

Response: While we agree that certain costs were removed from the 1995 base year data used to establish the initial SNF PPS rates in 1998, the BBA specifically required that these costs not be included in the calculation of the rates. In addition, the removal of these costs from the 1995 base year data does not indicate that the rates are in any way inadequate. In direct contrast to the commenters' statement, the Office of Inspector General (OIG) issued a report shortly after the implementation of SNF PPS entitled ''Review of the Health Care Financing Administration's Development of a Prospective Payment System for Skilled Nursing Facilities'' (Number A–14–98–00350), which asserted that the cost base used to establish the PPS rates was inflated with unnecessary and improperly billed services. In addition, the General Accounting Office (GAO) and MedPAC have both recently stated in reports and testimony before the Congress that the payment rates are adequate.

In addition, while we were unable to confirm the percentage difference referred to in the comment, we would note that the market basket and measures of reported costs represent two entirely different concepts. Accordingly, we do not believe there is a discrepancy, as the concepts cannot be compared to each other.

The market baskets used by Medicare for SNF PPS and other payment systems are, by design, intended to recognize changes from year to year in the price of goods and services purchased by SNFs in providing covered Medicare services. Reported costs, on the other hand, reflect amounts billed by providers and paid for by Medicare. As such, they reflect an array of factors not reflected in the market basket. For example, measures of reported costs would reflect changes in the intensity of services billed for, and the amounts charged to, Medicare. In this case, an examination of the period between 1995 and 1998 shows substantial increases in the price and number of ancillary services billed to Medicare. This certainly appears to be a primary cause of the large increases in reported costs. However, it is unclear from the comment why the payment rates (or the market basket) should be expected to capture such non-price related changes. MedPAC has noted in testimony before the Congress and in recent reports that these cost increases between 1995 and 1998 were not related to changes in the overall case-mix or acuity of the patients served in SNFs or changes in input prices. As an illustrative example, the GAO and OIG have published numerous reports related to this period detailing instances of unnecessary services improperly billed by SNFs. In this context, it would not seem appropriate to capture changes in reported costs associated with improper or unnecessary service delivery in establishing the initial PPS rates.

We believe the SNF market basket, as a measure of input prices, was established consistent with the statute and the methods used to develop such indexes under SNF cost limits and other Medicare payment systems in 1998 and at the present time. Congress mandated that, in establishing the rates, the base year costs from 1995 be updated to 1998 by the market basket. Differences between that update and the increases in reported costs over that period relate to the fundamental differences between the two measurement concepts and are to be expected.

Comment: We received several comments recommending that we undertake a thorough review of the SNF market basket. These comments suggested that we examine the full range of market basket components, including the weights and price proxies used in the current SNF market (with particular attention to wages, benefits, professional liability, and pharmaceuticals), and the appropriateness of using a Laspeyres fixed weight input price index for updating PPS payments. The comments also suggested that we initiate a collaborative process with the nursing home industry and other entities aimed at redesigning the SNF market basket. Several comments suggested that we initiate formal regulations negotiations on the issue of the SNF market basket.

Response: We are committed to ensuring the continued adequacy of our payments to SNFs under the Medicare

program. Our ongoing efforts to refine the case-mix methodology and revise and rebase the market basket offer evidence of our efforts to keep the SNF PPS current in a continually evolving health care environment.

As in the past, we are interested in maintaining a dialogue with the industry, beneficiaries, and other interested parties on this important issue. We will continue to be receptive to new ideas on this and other issues. In the proposed rule, we specifically requested comments on the market basket for the purpose of eliciting ideas and recommendations on refining the market basket components and methodology used for the SNF PPS. While we received few concrete recommendations or suggestions on this subject, a number of important issues and questions were raised which we have and will continue to examine closely. While formal regulations negotiations may offer a good opportunity for us to collaborate with the industry and other interested parties on important regulatory policy initiatives, we believe that without an understanding of the scope and direction of any potential regulatory effort in this area, it is premature for us to comment on whether this issue would be a good candidate for future formal negotiations. We will consider the potential for this in the future and we appreciate the continued interest and thinking of commenters in this area.

I. Update Framework

Medicare payments to SNFs are based on a predetermined national payment amount per day. Annual updates to these payments are required by section 1888(e) of the Act. These updates are usually based on the increase in the SNF market basket. For FY 2002, the update is set at market basket minus 0.5 percent. Our goal is to develop a method for analyzing and comparing expected trends in the underlying cost per day to use in establishing these updates. For a complete discussion of the conceptual framework, see the May 10, 2001 proposed rule (66 FR 23984).

The SNF market basket, or input price index, developed by our Office of the Actuary (OACT), is just one component in the SNF cost per day amount. It captures only the pure price change of inputs (labor, materials, and capital) used by the SNF to produce a constant quantity and quality of care. Other factors also contribute to the change in costs per day, which include changes in case-mix, intensity, and productivity.

In the proposed rule, we outlined a conceptual approach for a SNF-specific update framework, and invited comments on the utility and feasibility of that approach for SNFs, as well as whether certain factors should be accounted for in the framework. We also invited suggestions for potential data sources and analysis to support the model.

Comment: We received numerous comments on the update framework discussed in the proposed rule. These commenters focused on a range of issues related to the framework, including its purpose, structural design, and the data required to operate such a tool effectively. Some commenters recommended that the annual update to payment rates continue to be based solely on the market basket due to concerns that the framework may be too subjective and unpredictable and the data sources potentially unreliable. Others offered technical suggestions related to the data sources and methodology used to develop the different components of the update framework.

Response: As discussed in the proposed rule, an update framework, used in combination with the market basket, seeks to enhance the system for updating payments by addressing factors beyond changes in pure input price. These factors are not reflected in the market basket used for establishing SNF payments, but often have an effect on changes in cost per day. Other factors that result in changes in the cost of SNF services from year to year include such things as patient acuity, intensity of services, and productivity.

Like the update framework used for Medicare's inpatient hospital PPS, an update framework in the context of the SNF PPS would provide a comprehensive and objective tool for measuring and understanding changes in cost per day. These factors are not reflected in the market basket but often have an effect on cost per day from year to year. It can provide information that policy officials in the executive branch and the Congress can use in making decisions about the magnitude of updates each year. This will support the continued accuracy of SNF payments and ensure that the SNF PPS keeps pace with changing economic and health care market trends. We believe the potential value of the framework justifies continued research and development in this area.

We appreciate the comments and technical suggestions offered by commenters concerning potential data sources and methodological approaches for the development of an update framework. While we are not addressing each technical comment individually in this final rule, we wish to assure the commenters that we will take them into consideration as we continue to pursue development efforts in this area. As stated in the proposed rule, we are not proposing to apply an update framework in a recommendation to the Congress at this time. After considerable research and analysis, our intention is to include a specific proposal for an update framework in a future **Federal Register** notice for public comment. This proposal would clearly detail the methodology, data sources, and potential impact of applying an analytical update framework under the SNF PPS.

J. Consolidated Billing

As enacted in section 4432(b) of the BBA, the consolidated billing requirement places with the SNF itself the Medicare billing responsibility for virtually all of the services that a SNF resident receives. In defining the scope of this provision, the original legislation made no distinction between services furnished during the course of a covered Part A SNF stay and those furnished during a SNF stay that Medicare does not cover. However, as we noted in the proposed rule, we did not initially implement the Part B aspect of this provision (in connection with those services furnished during a noncovered SNF stay), because doing so would require making significant systems modifications, which were delayed by systems constraints that arose in connection with achieving Y2K compliance. Accordingly, in the July 30, 1999 final rule (64 FR 41671), we announced an indefinite postponement in the implementation of Part B consolidated billing, along with our intention to publish a notice of the anticipated implementation date for this aspect of consolidated billing in the **Federal Register** at least 90 days in advance.

Subsequently, effective January 1, 2001, section 313 of the BIPA repealed the Part B aspect of SNF consolidated billing, except for physical, occupational, and speech-language therapy, which remain subject to consolidated billing whenever furnished to a SNF resident, regardless of whether Medicare covers that resident's stay in the SNF. In the proposed rule, we set forth several conforming revisions in the regulations to implement these statutory changes in the consolidated billing requirement.

We note that section 313 of the BIPA does not delay the implementation of Part B consolidated billing, but repeals it (except for physical, occupational, and speech-language therapy) completely. Therefore, we hereby

withdraw our previously announced plan to provide 90 days advance notice in the **Federal Register** of an implementation date for Part B consolidated billing with regard to nontherapy services, since this aspect of the provision has now been eliminated and, thus, does not need to be implemented. Further, with regard to physical, occupational, and speech-language therapy furnished during noncovered SNF stays, the Part B billing and tracking responsibilities for SNFs have already been effectively implemented, as SNFs already have specific responsibility for these services, pursuant to the separate Part B therapy payment cap provision enacted by section 4541 of the BBA (see our discussion in the proposed rule, at 66 FR 24020). Accordingly, there is no need to announce a separate implementation date specifically for these three services.

Notwithstanding the repeal of Part B consolidated billing by section 313 of the BIPA, the consolidated billing requirements for services furnished to a SNF resident during the course of a covered Part A stay remain in effect. Further, as we noted in the proposed rule, to the extent that SNFs continue to submit Part B bills, the repeal of Part B consolidated billing would not affect the applicable requirements for fee schedule payment and appropriate HCPCS coding, which remain in the law (at sections 1888(e)(9) and (10) of the Act, respectively).

Comment: Although the BIPA legislation affected only those aspects of consolidated billing relating to the Part B repeal, a number of commenters took this opportunity to reiterate concerns about other aspects of consolidated billing that originally had been expressed during the public comment periods in prior years. For example, we received a number of comments concerning the possible exclusion of additional services from SNF consolidated billing. While the BIPA made no revisions to the statutory list of services that are excluded from consolidated billing, the preceding year's legislation (the BBRA) had created several new categories of excluded services. These exclusions encompassed certain individual services (identified in the statute by HCPCS code) within the categories of chemotherapy and its administration, radioisotope services, and customized prosthetic devices, as well as ambulance services that are furnished in connection with Part B dialysis services. During the public comment period for last year's SNF PPS rule (which implemented these statutory exclusions), a number of commenters recommended designating a broader set of services for exclusion. The commenters identified services such as modified barium swallows, stress tests, hyperbaric oxygen treatments, doppler studies, and nuclear medicine scans as appropriate candidates for exclusion. They also advocated expanding the existing exclusion for certain high-intensity outpatient hospital services to encompass services furnished in other, nonhospital, settings. Many of the comments on this year's SNF PPS proposed rule reiterated these previous recommendations. In addition, a number of commenters now recommended a further set of services for temporary exclusion from the requirement, with possible reinstatement upon implementation of case-mix refinements that might, in their view, better account for these services. These additional services are blood transfusions, total parenteral nutrition, liquid oxygen, specialty beds for patients with severe skin breakdown, and certain I.V. medications. Some commenters also suggested that our evaluation of any case-mix refinements should include consideration of the ability to account accurately for these types of services. One commenter reiterated concerns that many commenters had expressed in previous years about ensuring that a SNF makes timely payment to its suppliers, while another commenter requested that the final rule contain detailed billing instructions concerning the requirement to include the SNF's Medicare provider number on all Part B claims.

Response: When we declined last year to adopt the recommendations to exclude additional services from consolidated billing, we noted that we do not view making additions to the list of excluded services as a part of a process of continual expansion to encompass an ever-broadening array of excluded services. Further, we indicated that an ongoing expansion of the existing exclusions (in the absence of significant changes in the current state of medical practice) would be contrary to the fundamental purpose of the consolidated billing provision, which is to make the SNF responsible for billing Medicare for essentially all of its residents' services, other than those identified in a small number of narrow and specifically delimited statutory exclusions. We do not find in the current public comments any additional evidence, beyond what was advanced previously, to support the recommendations for further exclusions. Therefore, for the reasons set forth in the final rule for FY 2001, we once again decline to adopt these recommendations. Further, we do not share the view of those commenters who suggested that the creation of additional exclusions from consolidated billing could serve, in effect, as an interim substitute for implementing case-mix refinements. We believe that payment adjustments relating to case-mix would best be accomplished directly through refinements in the case-mix classification system. Further, we note that the Congress has already provided an interim adjustment until the refinements can be implemented, in the form of the temporary rate increases for certain specified RUG–III groups. As indicated in our discussion of research on case-mix refinements in section III.A of this preamble, we agree with the recommendation to evaluate the ability of any case-mix refinements to support accurate pricing of services, and we plan to do so as the research in this area proceeds.

In connection with the commenter's concern about ensuring that a SNF pays its suppliers in a timely manner, we noted in the July 30, 1999 final rule (64 FR 41677) that under consolidated billing, a SNF's relationship with its suppliers is a contractual one, in which the terms of the suppliers' payment by the SNF are agreed upon through negotiation between the parties. Accordingly, a supplier can best resolve any concerns that it may have about the adequacy or timeliness of the SNF's payment by ensuring that these concerns are addressed to its satisfaction in its contract with the SNF. Finally, regarding the comment about specific billing procedures for including the SNF's Medicare provider number on Part B claims, we noted in last year's SNF PPS final rule (65 FR 46791, July 31, 2000) that specific operational instructions (such as those describing the details of particular billing procedures) are beyond the scope of the SNF PPS final rule, and are addressed instead through program issuances.

K. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In the proposed rule, we outlined our plans for converting rural swing-bed hospitals to the SNF PPS. We proposed to make the conversion effective with cost reporting periods beginning on and after October 1, 2001, a timeframe consistent with the implementation time limits prescribed in the law. We received a number of comments on this swing bed proposal, nearly all of which expressed concern about the impact that introducing the MDS would have on

facility costs, staffing levels, and patient care. We have carefully considered these comments, and agree that, since our mutual objective is the efficient provision of high quality care, our requirements should be framed in a way that both protects the integrity of the Medicare program and supports provider efforts in this direction. As a result, we have revised our initial proposal in several ways that minimize burden and support swing-bed hospitals in providing quality care while still maintaining the accuracy of our payments.

Comment: Several commenters expressed concern about the long-term adequacy of the SNF PPS rate structure, and urged us to continue our work to develop SNF PPS refinements. Comments received from swing-bed providers generally described their beneficiary populations as medically complex patients who are often difficult to place following discharge from an acute care hospital stay. They stressed the importance of accurate payment for non-therapy ancillaries in maintaining access for this segment of the Medicare population and for maintaining the financial viability of the swing-bed hospitals.

Response: During the past year, OIG, GAO and MedPAC have reviewed the adequacy of the SNF PPS rates. They have each determined that the current rate structure, including the increases mandated under the BBRA and BIPA, is adequate to maintain access and provide aggregate payments at a level sufficient to provide quality care to Medicare beneficiaries. As stated in our May 10, 2001 proposed rule (66 FR 23984), the need to reflect differences in ancillary usage accurately and the resulting impact on facility costs is a major focus of our research to refine the SNF PPS. Since this research will include analyses of patients currently classified in the Extensive Care and Rehabilitation groups (the two most common types of swing-bed patients), we believe that the needs of swing-bed providers will be addressed. A more detailed discussion of our research plans is provided in section III.A.

Comment: A number of commenters focused on issues related to reimbursement of non-therapy ancillaries, and concluded that a transition to the SNF PPS (which would eliminate cost reimbursement for swing bed ancillary services) would not fully cover the costs of at least some of the beneficiaries currently served. These commenters were concerned about their continued ability to care for medically complex beneficiaries by providing them with the costly services they need, or even to stay in operation. Other commenters pointed out that the anticipated 9 percent increase in overall swing-bed reimbursement, combined with the elimination of restrictions on swing-bed utilization, are likely to increase swing-bed participation rather than reduce the number of swing-bed programs.

Response: In a prospective payment system, costs may exceed payments for an individual patient or group of patients. It is equally possible for payments to exceed costs. However, as stated above, OIG, GAO and MedPAC have concluded that aggregate payments under the SNF PPS are sufficient to maintain access for beneficiaries and to provide needed patient care. In fact, in section V, we have projected an aggregate increase in swing-bed reimbursement using calendar year 1999 actual claims data that includes all therapy and non-therapy ancillary services provided to Medicare beneficiaries. Moreover, the claims data included all ancillary services, including some high-cost services that have been excluded from the SNF PPS under the consolidated billing regulations. As discussed below, swing-bed hospitals will be separately reimbursed for these excluded services, which encompass such high-cost items as MRIs, CAT scans, and intensive chemotherapy. While utilization patterns may change over time, we are not anticipating any sudden, immediate changes in either the type of beneficiaries served or the type of services needed. Therefore, we believe that the providers can continue to provide high quality services to all types of Medicare beneficiaries, even those with complex medical needs who may require a high level of ancillary services, under the current SNF PPS rate structure.

Comment: A small number of commenters suggested that rural swing-bed hospitals with less than 50 beds or those providers designated as sole community hospitals (SCHs) should be exempted from the SNF PPS and reimbursed on a cost basis like swing-beds in critical access hospitals (CAHs). A few commenters recommended that these types of rural hospitals be given a choice between the SNF PPS and the current payment methodology.

Response: Section 203 of the BIPA specifically exempted swing-bed services furnished in CAHs from the SNF PPS. The requirements for swing-beds in rural hospitals were not changed. The statute requires payment to all swing-beds in rural hospitals, including those designated as sole community hospitals, under the SNF PPS after June 30, 2002, the end of the SNF PPS transition period. The statute does not provide any authority for payment to swing-bed hospitals under any other payment system.

Comment: A large number of comments proposed the possibility of an alternative payment mechanism that would assign payment rates solely on the basis of UB–92 information. (The Uniform Bill (UB)–92 also known as the HCFA–1450) form and instructions are used by institutional and other selected providers to complete a Medicare, Part A paper claim for submission to Medicare FIs.) They asked us to consider offering this model to swing-bed hospitals as a voluntary alternative to the SNF PPS.

Response: The statute requires that resident assessment data be used as necessary to develop and implement the SNF PPS rates. Currently, the claims form data do not contain the information necessary to develop the SNF PPS rates. Moreover, as noted previously, the statute is very clear that payment to swing-bed hospitals must be made under the SNF PPS and does not provide for an alternative method of payment after the SNF PPS transition period. However, we acknowledge the considerable amount of time and effort that went into developing the proposal, and the degree of interest generated. Accordingly, we will discuss the proposal in greater detail later in this section, and will ask our contractor to include an analysis of a claims-based classification system in its analysis of program refinements.

Comment: We received a number of comments questioning the use of the full MDS for a new provider group at a time when we are committed to restructuring and streamlining the MDS instrument. These commenters pointed out the inefficiency of training clinical staff on an instrument that will only remain in use for a limited time. Several of these commenters suggested that the conversion to the SNF PPS be postponed until the introduction of the revised MDS.

Response: The statute does not provide any authority to postpone the conversion of swing bed hospitals to the SNF PPS beyond the last day of the SNF PPS transition period; i.e., July 1, 2002. While we are working on a reexamination of our post-acute care data needs consistent with the provisions of section 545 of the BIPA, any new assessment tools will not be available in time for the swing-bed conversion to SNF PPS.

Comment: We also received a few comments supporting our original MDS proposal. These commenters believe

that swing-bed hospitals providing SNF-level services should be subject to the same requirements as SNFs. These commenters pointed out that uniformity is not just a question of fairness, but the only way we could truly compare SNFs and swing-beds in terms of quality, skilled care utilization, and costs.

Response: It is necessary to distinguish between the short-term and long-term effects of our policies. We are certainly committed to reviewing the purposes of collecting data and specifying comparable and compatible data elements across Medicare providers, including post-acute care services and swing-bed hospitals, when such common data elements will allow us to achieve our objectives. Our reevaluation of our patient assessment data needs will start by first examining what we need the data for and whether comparable and compatible data across Medicare providers are appropriate. However, since this review is not yet complete, we must also be sensitive to the short-term impact of imposing a policy that cannot be clearly justified in terms of patient care and program integrity.

Comment: Comments from swing-bed hospitals consistently focused on the burden of using the full MDS, and stressed that they already use a variety of functional screening tools to implement care plans upon admission, and have mechanisms in place to monitor quality. Commenters concluded that requiring the care planning and quality monitoring components of the MDS would be time-consuming and labor intensive without contributing to improved beneficiary outcomes. However, a few commenters questioned the prevailing assumption that swing-bed hospitals were better able to manage care planning and quality monitoring functions than SNFs, and believed the MDS care planning and quality monitoring components would have value for swing-bed hospitals.

Response: In considering the applicability of the full MDS 2.0 for swing-bed hospitals, we considered the usefulness of the MDS instrument for both payment and patient care purposes. In this analysis, we looked at similarities and differences between swing-bed and other SNF service delivery systems. At the time of SNF PPS national implementation, the MDS had already been in use in SNFs for 7 years and was the standard for care planning and quality monitoring. By contrast, although swing-bed hospitals use care planning and quality tools, these are not standard across providers. Further, these tools will continue to be required for the acute care patients in the swing-bed hospital. The introduction of the MDS into the swing-bed setting poses an additional burden to the clinical staff since they will be required to master the MDS as well as maintain their mastery of the tools that the hospital uses for its acute care patients.

As mentioned above, an additional consideration at this time is the impending revision of the MDS 2.0 by CMS. This work is underway, but the revised instrument will not be ready for use before 2003, at the earliest. Intensive training will be required for the swing-bed clinical staff to be able to use the full MDS 2.0 and an additional burden may be imposed as it is expected that more training will be required when the new assessment tool is introduced.

Further, the length of stay for Medicare Part A beneficiaries in swing-beds is much shorter than for similar beneficiaries in SNFs. This shorter length of stay minimizes the usefulness of the MDS-based Quality Indicator system in identifying poor patient outcomes. Finally, by requiring the full MDS at this time, we would be mandating not one but two major changes in swing-bed clinical operations, the current MDS and the next generation of streamlined data assessment tools that are already in the planning stages.

Therefore, we will not require swing-bed facilities to perform the care planning and quality monitoring components included in the full MDS at this time. We will include an analysis of swing-bed requirements in our comprehensive reevaluation of all post-acute data needs, and in the design of any future assessment and data collection tools. In addition, we reserve the right to modify the swing-bed hospital conditions of participation in response to the identification of significant quality concerns.

As specified in section 1888(e)(7) of the Act, we have now determined that an appropriate manner in which to apply the SNF PPS to swing-beds is to establish a unique MDS for swing-bed hospitals. This new 2-page MDS for Swing-Bed Hospitals will use a subset of the MDS information, and will include only those items needed for payment and ongoing analysis of the SNF PPS. This 2-page MDS for Swing-Bed Hospitals may be viewed on our web site at http://www.hcfa.gov/medicare/SNFPPS.gov. Appendix B contains a comparison between the full, six-page MDS and this new, 2-page MDS for Swing-Bed Hospitals.

Comment: Almost every comment on swing-beds that we received raised the issue of the MDS. Most commenters were extremely concerned that the proposed MDS requirements were likely to divert nursing resources from patient care to MDS preparation, increase facility costs by requiring additional nursing staff (if staff were even available in this period of nursing shortages) and possibly reduce the quality of care that the swing-bed hospital is able to provide. Other commenters asserted that swing-bed hospitals providing SNF-level services should be subject to the same requirements as SNFs, in order to maintain a level playing field. They pointed out that there is no data to support a conclusion that rural hospitals are better able to provide care than SNFs, and that data are needed to monitor and evaluate swing-bed services. They also pointed out that SNFs (particularly small rural SNFs) provide the same types of services, but have to respond to the same issues and pressures.

Response: The comments described a wide range of potential outcomes, from minor adjustments in staff assignments to staffing increases of 0.1 to 2.0 FTEs, restrictions on access, negative patient outcomes, and swing-bed closures. Generally, providers commenting on costs estimated that one-third to one-half of the proposed rate increases would be required to comply with the MDS requirements. Even though this information is anecdotal (and still assumes an overall increase in rates), it did raise concerns about the benefits of using the full MDS. By using the customized 2-page MDS for Swing-Bed Hospitals, we will focus our data collection efforts on those items needed for payment and ongoing analyses of the characteristics and service utilization patterns of swing-bed hospital patients. Most of these items are typically part of the routine physical assessment performed by nursing staff and documented in the medical record, and will require little or no extra work by clinical staff.

Comment: A number of commenters questioned the cost estimates provided in our proposed rule. They expressed concern that we had underestimated both the number of staff needing training and the time it would take to prepare, review, encode, and transmit data. Several providers also expressed concern about the cost of computer software needed to support the MDS function. There was also some concern related to the level of effort needed to implement the changes so quickly.

Response: These comments applied to use of the full MDS form, not the customized 2-page MDS for Swing-Bed Hospitals that will actually be used. We have taken these comments into

consideration in updating the cost estimates for this final rule. See sections V and VI.B of this preamble for a more detailed discussion.

We note that we have attempted to address concerns and support the swing-bed hospital conversion effort as much as possible. First, in response to comments, we have revised the implementation date to cost report periods starting on and after July 1, 2002, the latest date permitted by the statute. Second, we have reduced the burden associated with MDS completion by creating a separate 2-page Swing-bed Hospitals MDS. This new instrument will use a subset of the MDS information and will include only those items needed for payment and ongoing analyses of the characteristics and service utilization patterns of care of swing-bed hospital patients. Third, we will develop and distribute a Swing-Bed Manual that will include instructions for MDS coding and related issues. Fourth, we have committed to the development of customized swing-bed MDS software that will be available without charge to each swing-bed provider. Fifth, we have committed to an extensive provider training and support program. Help Desks will be established to respond to clinical and technical questions from swing-bed staff. We are also planning a series of training programs on MDS completion and electronic transmission procedures. We are confident that these initiatives will minimize the disruption to swing-bed operations and provide needed support during the transition period.

Comment: Several commenters indicated that the SNF PPS assessment frequency (5, 14, 30, 60, and 90 days from the start of the Part A stay) was unnecessary in the swing-bed hospital setting. They recommended various alternatives, including eliminating one or more of the current assessments, or requiring only a single MDS to be completed at the end of the stay.

Response: Based on the most recent available data, the average length of stay in a hospital swing-bed is under 9 days. Since the 5-day MDS is used to determine payment for the first 14 days of the stay, hospital staff will generally complete only one MDS for each beneficiary. Furthermore, we note that eliminating some or all of the remaining SNF PPS assessments (14, 30, 60, and 90 days from the start of the Part A stay) would affect only a very limited number of swing-bed providers.

We also note that the type and intensity of care typically changes during the course of a stay. For beneficiaries with short stays, reliance on the 5-day assessment is appropriate, since the intensity level is likely to remain relatively constant over a short time period. However, for longer-stay patients, the intensity of care generally changes over the course of the stay. We recently compared the RUG–III classifications reported on the Medicare 5-day and 14-day assessments, and we found that the data showed an increased acuity level on the 14 day assessment. Thus, collecting MDS data at different points in the stay enables our payments to reflect the actual intensity of care more accurately. Reliance on a single MDS, either the initial 5-day assessment or an MDS completed at the time of discharge, would not as accurately reflect beneficiary resource use. In addition, the data on longer stays will be used to monitor changes in swing-bed utilization patterns and care practices, and to evaluate the need for adjustments to the current swing-bed conditions of participation and care planning requirements.

For these reasons, we have concluded that swing-bed providers must comply with the SNF PPS assessment schedule. Since the MDS for Swing-Bed Hospitals will contain only a small subset of the full MDS items, MDS completion times will be greatly reduced.

Comment: We received a few comments from swing-bed providers concerned that the SNF PPS requirements would have a disproportionate impact on their facilities. For example, one facility mentioned the large number of MDSs that would be required in a facility with short lengths of stay and rapid patient turnover. Another commenter was concerned that time would be wasted by complying with the assessment window for the 14-day assessments (days 11–14) for beneficiaries expected to be discharged before the start of the next SNF PPS payment period.

Response: We agree that individual facility characteristics are a factor in determining the impact of any policy. It is true that a swing-bed hospital serving a high-volume, short stay population may do more than the average number of MDS assessments. We believe that the new 2-page Swing-Bed Hospitals will reduce the burden on clinical staff. We also suggest that, prior to coming under the SNF PPS system, staff evaluate their admission, care planning, and documentation processes, and make changes to integrate the MDS requirements into their daily routines. This will help avoid the documentation burden associated with a new assessment tool caused by putting the new requirements on top of the old and duplicating efforts.

A solid understanding of the assessment schedule will also help staff to maximize their resources and avoid unnecessary work. For example, some flexibility has been built into the assessment schedule through the designation of grace days. In the example described above, the assessment reference date for the 14-day assessment can be performed at any time during the assessment window, from day 11 to as late as day 19. These grace days should be utilized when scheduling assessments for beneficiaries likely to be discharged by day 14.

Comment: A few commenters questioned why swing-bed hospitals need to complete the discharge and reentry tracking forms.

Response: Completion of the discharge and reentry tracking forms will provide us a clear picture of the interaction between acute and post-acute care that may be unique to patients in hospital swing-beds. This data needs to be incorporated into our payment design efforts so that our analyses of the methodologies used accurately reflect swing-bed as well as SNF utilization patterns. Second, the discharge and reentry information is needed to monitor the appropriateness of transfers between acute and post-acute levels of care in swing-bed hospitals.

Comment: A few commenters opposed the development of a swing-bed-specific reason for assessment that would allow swing-bed providers to report changes in patient status that result in a change in RUG–III group but do not require the completion of a Significant Change in Status Assessment (SCSA). These commenters recommended that swing-bed providers subject to the SNF PPS be required to use the same criteria for reporting status changes as SNFs.

Response: The swing-bed conditions of participation do not currently require swing-bed hospitals to perform and transmit SCSAs. As explained below, we have determined that a change in these conditions of participation at this time is not warranted. We also believe that the inability to report clinical changes would decrease the accuracy of SNF PPS payment to swing-bed hospitals. For this reason, we will establish a swing bed-specific reason for assessment that will allow swing-bed providers to complete and transmit MDS data reflecting significant clinical changes in patient status.

Comment: Several commenters recommended the creation of a unique payment mechanism for swing-beds that would eliminate the use of the MDS entirely. The commenters suggested that

a system similar to the MEDPAR analog should be designed to determine payment groups based on the UB–92 claim form. The MEDPAR analog was a tool that we used for estimating SNF case-mix in the development of the initial PPS rates (see 63 FR 26289, May 12, 1998). These commenters suggested that we allow swing-bed hospitals to choose between the regular SNF PPS and this alternative payment model.

Response: Before considering the specifics of this proposal, it is important to state that, while we do have some flexibility in transitioning into the SNF PPS, the statute does limit the options that can be considered. The statute, in section 1888(e)(7) of the Act, does provide us with the authority to determine an appropriate manner in which to apply the provisions of the SNF PPS (as described throughout section 1888(e)) to swing-bed hospital units. We have determined that the framework of SNF PPS and the general requirements of that subsection are appropriate in transitioning these providers to SNF PPS. Specifically, the statute requires, in section 1888(e)(6), that a SNF, or a hospital swing-bed unit must provide the us, in a manner and within the time frames prescribed by the us, the resident assessment data necessary to develop and implement the rates. The statute does not provide authority to develop an entirely new or optional payment system for this class of providers. Similarly, the statute does not provide any authority to replace the existing case-mix system (the RUG–III classification) with the MEDPAR analog, an entirely different modeling system that we had developed to approximate acuity levels on a per stay basis.

We realize that the suggestion of developing a voluntary alternative to the SNF PPS (that would use neither the MDS nor the RUG–III system) stems from concerns over the time requirements for training and MDS preparation. We understand that some commenters were willing to accept a lower degree of rate-setting accuracy by using the approximate acuity level determined from the UB–92, in exchange for eliminating the MDS requirement. However, it is unclear whether the majority of those submitting comments understood that reduced accuracy is likely to result in reduced payment for their medically complex patients, since we would have to establish some type of average payment rate for each of the levels in the payment hierarchy. Beneficiaries who would group into the highest levels of the Extensive Care or Special Care categories would also likely receive lower payments under this option. In addition, the MEDPAR analog was designed as an analytical tool for estimating case-mix in the aggregate for the purpose of standardizing the initial payment rates under the PPS (see 63 FR 26259, May 12, 1998). It was not developed for determining claims level payments to providers, nor do we believe it is appropriate for such an application.

The proposed 9-group charge-based system that these commenters advocated is also vulnerable in its heavy reliance on charges to establish classification criteria or break points. Under this proposal, historical claims data would be used to establish the break points between the different levels of the hierarchy, a method similar to the one used for DRG development. However, in the DRG system, billed charges do not affect the assignment to a specific group. Under the commenters' proposal, the classification breakpoints would be applied to current charges. Any facility could change its payment level by simply modifying its charge structure for specified ancillary services; such as therapy and medical supplies.

In addition, the burden associated with reporting items needed to calculate payment rates is not eliminated under this proposal; it is merely shifted from the clinical staff to medical records and billing staff. Since this proposal assumes that the necessary payment information is present in the medical record, it actually increases the burden on the billing/coding staff without any real reduction in workload for the clinicians. The creation of the new 2-page Swing-Bed Hospital MDS will permit easy recording of the data necessary for RUG–III calculation and billing without requiring major changes to UB–92 preparation requirements.

While we understand the attraction to providers of an option that completely eliminates the MDS documentation and reporting process, the statute does not provide for the establishment of this type of option. Further, we do not believe that this proposal, as presently drafted, is an appropriate way to provide SNF PPS payment to swing-bed hospitals. Moreover, as discussed above, contrary to the commenters' perception, it may not effectively address the burden associated with the MDS, is susceptible to manipulation and abuse, and most seriously, might not provide sufficient payment to a critical and vulnerable sector of our national health care system. For these reasons, we cannot support this proposal, and will instead implement the SNF PPS for swing-bed hospitals, as described in this final rule.

Comment: A few commenters expressed concern about the lack of lead time to prepare for the transition to the SNF PPS. They cited a number of recent changes, such as Outcome and Assessment Information Set (OASIS) and hospital outpatient Ambulatory Payment Classifications (APCs), that have strained hospital resources. They believed that the short timeframes would be disruptive to rural hospitals and detract from patient care.

Response: We agree that ensuring a smooth transition should be a high priority. After considering the concerns raised by the commenters in this regard, we have determined that providing increased lead time would be appropriate. Therefore, in this final rule, we are revising the effective date for swing-bed conversion to the SNF PPS to the start of the provider's first cost reporting period that begins on or after July 1, 2002, the latest possible implementation time frame authorized in the law.

Comment: In the proposed rule, we solicited comments on the possibility of modifying the swing-bed conditions of participation. A number of commenters stated that swing-beds are already subject to the overall hospital certification requirements in addition to the specialized swing-bed conditions of participation. They do not believe that a change in the swing-bed conditions of participation is warranted. Others recommended that all providers that furnish SNF-level services should be subject to the same requirements, and that we should revise the swing-bed conditions of participation to reflect the new SNF PPS requirements.

Response: The Medicare conditions of participation establish standards for patient care, and reflect the needs of different provider types. The fact that two types of providers are reimbursed in the same way is not, in and of itself, a reason to change these requirements. However, we realize that, by eliminating restrictions on swing-bed length of stay and by changing the way services are reimbursed, we may see changes in the type, intensity, and duration of care furnished in swing-bed hospitals. We plan to monitor swing-bed utilization to identify changes that could affect patient care, and to address these issues quickly and appropriately. Accordingly, we believe that it would be premature to revise the existing conditions of participation at this time.

We also considered the current conditions of participation in light of the provisions in section 408 of the BBRA that remove restrictions on swing-bed length of stay. It is possible that these legislative changes, especially

when combined with a new set of payment incentives and disincentives associated with the SNF PPS, will result in longer lengths of stay and changes in the type of beneficiaries treated in swing beds. In other words, swing-bed hospitals could start to resemble SNFs more closely. In that case, the full MDS may be needed to address issues applicable to beneficiaries with longer lengths of stay and different care needs. We plan to monitor swing-bed activity to identify changes in practice patterns.

Comment: In addition to comments on swing-bed requirements, we also received a number of comments questioning the effectiveness of the MDS requirements that are currently in effect for swing beds in critical access hospitals (CAHs). Generally, the comments focused on the time/staff requirements and the effectiveness of completing an assessment instrument that is not collected or used for program monitoring.

Response: CAH swing beds are required to use the MDS for care planning and quality monitoring as part of the CAH conditions of participation. We agree that MDS requirements for swing beds in CAHs should be considered within the scope of our comprehensive reevaluation of post-acute data needs. Therefore, we have chosen not to address CAHs in this regulation.

Comment: In the proposed rule, we noted that swing-bed services are not subject to the SNF consolidated billing requirement at section 1862(a)(18) of the Act (since that provision applies to services that are furnished to residents of SNFs), but are instead subject to the hospital bundling requirement at section 1862(a)(14) of the Act (which applies to services furnished to inpatients of hospitals). Several commenters expressed concern about reconciling hospital bundling requirements and the services excluded from Part A consolidated billing under the SNF PPS. They observed that the hospital bundling requirement is slightly broader in scope than the SNF consolidated billing provision, in that the former provision does not exclude certain types of services that the latter provision specifically excludes (such as Part B dialysis, erythropoietin (EPO), certain services involving chemotherapy and its administration, certain customized prosthetics, and radioisotope services, as described in sections 1888(e)(2)(A)(ii) and (iii) of the Act). The commenters requested clarification on how such services are to be billed when furnished to SNF-level inpatients of those swing-bed hospitals that come under the SNF PPS.

Response: The swing-bed provision is unique in that it represents a hybrid benefit. Although the services that a swing-bed provider furnishes under its swing-bed agreement are SNF services, the provider itself is a hospital (and, as such, is subject to the requirements that pertain to hospitals, including hospital bundling). Accordingly, under the SNF PPS, we must consider both the SNF Part A consolidated billing requirements and the hospital bundling requirements. The costs of the high-cost ancillary services (such as MRIs and radioisotope services) that are excluded from the SNF consolidated billing requirement are not included in the SNF PPS per diem. Accordingly, a swing-bed hospital will be permitted to submit a separate bill to its FI for these excluded services, and will receive payment for these high-cost ancillary services over and above the SNF PPS per diem.

Based on our analysis of swing-bed claims data, we have estimated that the conversion to the SNF PPS will increase payments to swing-bed hospitals by over $18 million. These projections are based on claims filed in compliance with the hospital bundling requirements. As such, the claims include charges for ancillary services that will, under the SNF PPS, be separately payable. As a result, actual payment increases should exceed the estimates for swing-bed hospitals serving high-acuity beneficiaries who would be more likely to require these high-cost non-therapy ancillary services.

Comment: In response to our request for comments in the proposed rule on the applicability of the post-acute transfer policy enacted in section 4407 of the BBA to swing-bed hospitals, we received a mixed response. SNF providers advocated inclusion of swing-bed hospitals as a matter of equity. Comments from hospital providers questioned the value of applying this provision to transfers between acute care and swing-bed extended care services. One commenter pointed out that the policy would have limited impact, since beneficiaries in the DRG categories covered by the transfer policy are usually transferred to larger, tertiary care facilities rather than to a rural hospital swing-bed.

Response: As noted by several commenters, swing-bed providers were specifically excluded from this transfer provision of the BBA. However, we plan to monitor swing-bed utilization, and, if inappropriate transfer patterns develop, to recommend legislative action to extend the transfer policy to swing-beds.

Comment: We received a few comments on implementation issues, including the way SNF PPS billing and medical review policies will be applied to swing beds. These commenters urged that SNF and swing-bed bills be reviewed under the same protocols and by the same contractors. For example, a SNF that files more than 2 percent of claims for services in the lower 18 RUG–III categories may be subject to focused medical review. As one commenter pointed out, approximately 9 percent of the swing-bed claims used in our projections grouped in the lower 18 RUG–III groups. If this pattern continues under the SNF PPS, these swing-bed claims should be subject to the same scrutiny as SNF bills.

Response: We agree that all providers reimbursed under the SNF PPS must comply with program requirements. We are also in full agreement that operating policies and procedures should be applied consistently. Over the next few months, we will be finalizing our operating instructions, and will incorporate these comments into our program design efforts. We also welcome additional ideas and suggestions related to billing, medical review, or other program operation functions.

IV. Provisions of the Final Regulations

The provisions of this final rule are as follows:

- In § 410.150, we are revising paragraph (b)(14) to reflect that Part B makes payment to the SNF for its resident's services only in those situations where the SNF itself furnishes the services, either directly or under an arrangement with an outside source.
- In § 411.15, we are revising paragraph (p)(1) to indicate that, except for physical, occupational, and speech-language therapy (to which consolidated billing applies regardless of whether the resident who receives them is in a covered Part A stay), consolidated billing applies only to those services that a SNF resident receives during the course of a covered Part A stay. We are also making conforming revisions in §§ 489.20(s) and 489.21(h), in the context of the requirements of the SNF provider agreement. We are revising paragraph (p)(2) of § 411.15 to indicate that, for Part B services furnished to a SNF resident, the requirement to enter the SNF's Medicare provider number on the Part B claim (which previously applied only to claims for physician services) applies to all types of Part B claims. We are also making conforming revisions in the requirements regarding claims for payment, at §§ 424.32(a)(2) and (a)(5). We are revising the wording of the existing requirement in § 424.32(a)(5) for a SNF to include

appropriate HCPCS coding and its Medicare provider number on the Part B claims that it files for its residents' services, by adding that these requirements also apply to such claims when they are filed by an outside entity. In addition, we are revising § 411.15(p)(3) to exclude from the definition of a SNF resident, for consolidated billing purposes, those individuals who reside in the noncertified portion of an institution that also contains a participating distinct part SNF. We are also clarifying that, for services other than physical, occupational, and speech-language therapy, a beneficiary's resident status ends along with Part A coverage of his or her SNF stay (or, if earlier, when one of the events described in §§ 411.15(p)(3)(i)–(iv) occurs).

• In accordance with section 1888(e)(2)(E) of the Act, we are revising § 413.114 to reimburse swing-bed services of rural hospitals (other than CAHs, which will be paid on a reasonable cost basis) under the SNF PPS described in regulations at subpart J of that part. This conversion to the SNF PPS would be effective for services furnished during cost reporting periods beginning on or after July 1, 2002. We are also revising paragraph (d)(1) of this section to reflect modifications to the special requirements for swing-bed facilities with more than 49 but fewer than 100 beds (as enacted by section 408 of the BBRA), and are making a conforming revision in § 424.20(a)(2).

• In § 413.337, we are adding a new paragraph (e) to clarify that the temporary increases in payment for certain RUGs under section 101 of the BBRA (as modified by section 314 of the BIPA) will expire upon the issuance of a new regulation with the newly refined case-mix classification system.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To evaluate fairly whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

• Whether the information collection is necessary and useful to carry out the proper functions of the agency;

• The accuracy of the agency's estimate of the information collection burden;

• The quality, utility, and clarity of the information to be collected; and

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

§ 413.114(a)(2)—In the May 10, 2001 proposed rule (66 FR 23984), we estimated swing-bed hospital start-up costs and the ongoing costs associated with the use of the MDS for calculating the SNF PPS per diem payment. Those estimates were based on the use of the full MDS, a 6-page paper assessment tool containing more than 400 data items. After careful consideration of the comments received, we have eliminated the requirement for the full MDS and created a 2-page MDS for swing-bed hospitals that reduces the number of data items by approximately 75 percent. We have also carefully considered comments related to our initial time and cost estimates in updating this impact analysis.

As stated in the proposed rule, we used the best available 1999 claims data, and identified 1,250 swing-bed facilities and 97,576 swing-bed stays. The average number of admissions is 78 per swing-bed hospital. Using the same 1999 claims data, the average length of stay is 8.79 days. On average, a typical swing-bed facility would need to complete only one MDS per admission, since the PPS 5-day assessment governs payment for the first 14 days of the stay.

Data Entry: In our proposed rule, we based our projections upon our experience with SNF providers, and adjusted those estimates to reflect the smaller scale of swing bed operations. We received a number of comments expressing concerns that we may have underestimated staffing needs and completion times for the MDS and data entry functions. For example, we estimated that swing beds would generally need to train at least one staff person to handle the MDS data entry and transmission system. The commenters generally recommended training 2 individuals to ensure adequate back-up. We agree that additional training would be appropriate, and have adjusted our estimates.

State agencies currently train SNF staff on these functions, and the training is generally completed in one 4-hour session. Additional training materials and updates to program requirements are generally posted on the MDS web sites, and are available to staff at no cost. By distributing information electronically, and providing Help Desks for software and transmission problems, we minimize the need for staff travel, and reduce the ongoing costs associated with encoding and transmitting MDS data. We have used the original estimate of 4 hours of training time (as published in the proposed rule (66 FR 23984)), since the reduction in MDS requirements has no impact on data entry staff training time. We did not increase the estimates to reflect the cost of replacement staff, since short absences can usually be handled by adjusting work schedules. We did, however, add 2 hours per trainee to reflect travel time.

We also received a number of comments that the estimated data entry time was too low, particularly for staff unfamiliar with the MDS. The substitution of the 2-page Swing-Bed Hospitals MDS for the full MDS should simplify the data entry effort. We expect that the data entry time for the 2-page form will average less than the 15 minutes per assessment we had estimated for the full form. However, in view of the concerns raised in the comments and our unfamiliarity with this new form, we have not reduced our data entry projections. We are also maintaining our projections for approximately 2 hours per month to perform system-related functions, such as processing corrections, retrieving assessment information, printing copies, verifying the accuracy of the data entered into the system, and reviewing program updates and training materials.

These data entry estimates assume that facilities may choose among a variety of approaches to encode the MDS data in electronic format. In many SNFs, the nurses conducting the assessments input their responses directly into the computer, and the data entry time is incorporated into the MDS preparation time. In others, a data entry operator is used to input the MDS data and maintain the MDS processing system. In some facilities, data may be extracted and/or compiled and data-entered by a combination of clinical and technical staff under the overall supervision of an RN. We estimated the hourly rate for data entry at $15, which reflects the salary differentials between the two types of staff typically performing this function: RNs and data operators.

Electronic Transmission: Swing-bed staff will also need training on data transmission procedures. Again, State agencies have already developed training programs in this area, and this training will be available to swing-bed personnel. In response to the comments, we have increased our estimates to include sending two staff employees to a 4-hour training program. We estimated the training time at 4 hours per person plus 2 hours per person travel time.

These employees would be responsible for handling data transmission functions, and would be expected to train other facility staff on a time-available basis. Once the assigned employees have been trained, we estimate that the MDS transmission will take approximately one hour per month.

We projected the hourly rate of data transmission at $15, which reflects the salary differentials between the two types of staff typically performing this function: RNs and data operators. Again, training costs are not affected by the reduction in the MDS requirements, and the cost estimates are the same as those presented in the proposed rule.

MDS Coding: As stated in the proposed rule, we advise each swing-bed hospital to designate an RN to assume lead responsibility, and ensure that this RN is fully trained. Based on the comments, we have increased our training estimates from one to two RNs to reflect the need for backup on the MDS function. We have also adjusted our projections for training time. Our preliminary estimates were for two full days of formal training in MDS clinical coding and SNF PPS assessment scheduling. In view of the reduced MDS coding required using the 2-page Swing-Bed Hospital MDS, we have revised our formal training estimate to 12 hours, plus 4 hours travel time for each RN attending the training.

In addition, we have also reduced our estimates for MDS completion time to reflect the major reduction in the number of MDS items to be completed. In making this adjustment, we recognized that different MDS items may take different amounts of time to complete, and did not assume a direct relationship between the number of items and the total completion time, a methodology that would have resulted in an estimated completion time of approximately 15 minutes.

Instead, we have used an estimated completion time of 30 minutes per swing-bed MDS, or 67 percent of the time originally estimated to complete the full 6-page MDS. Again, as stated in the proposed rule, we believe that swing-bed hospital staff have some advantages when they complete the initial MDS, since they are more familiar with each beneficiary's condition and have full access to the hospital record. However, we have not reduced the time estimate to take these factors into account. Instead, we are using the higher number to reflect the expected learning curve over the first year as staff become more familiar with and proficient in completing the MDS.

As stated above, swing-bed providers averaged 78 stays per year with an average swing-bed length of stay of slightly under 9 days. Therefore, swing-bed providers would generally complete just one SNF PPS assessment for most patients, the 5-day assessment that governs payment for the first 14 days of a stay. To calculate the costs of preparing the MDS, we used 1998 Bureau of Labor Statistics nursing wage data, including fringe benefits, updated to FY 2002 levels using the SNF market basket factor. The average hourly rate of $24.70 is used in the calculations shown in Table 11. In reviewing the cost data in Table 11, we found that the aggregate MDS preparation cost had been transcribed incorrectly in the proposed rule, resulting in an understatement of approximately $1.6 million. This error has been corrected in Table 11, and the adjustments discussed in this section have been incorporated into Table 11 of this final rule, rounded to the nearest dollar.

As shown in Table 11, swing-bed start up costs are expected to average between $2,650 and $4,550 per facility. This estimate includes the cost of hardware and software costs as well as the total start up burden associated of 56 staff hours for staff training on the MDS function. Although the range seems fairly broad, the variations are based on choices that individual facilities will make in setting up their MDS processing and staff support functions. The biggest factor in the cost variation is the selection of MDS software. Facilities choosing to purchase proprietary software (estimated at an initial cost of $1,200) will incur higher start up costs. For each succeeding year, these facilities will incur additional costs for software maintenance and support services (data for second year costs are not shown).

The CMS software is being customized specifically for use with the 2-page Swing-Bed MDS, and will provide all of the basic services needed to store and transmit MDS data used for SNF PPS payment. A Help Desk will also be available to assist swing-bed hospital staff with data transmission problems and support in learning how to use the software efficiently. We have estimated a total burden of 72.5 hours per facility of staff time annually for ongoing administration the MDS function. As indicated in Table 11, we also included the costs for supplies and computer maintenance in our estimates, and projected average facility operating costs of $1,766 for swing-bed hospitals performing one assessment per beneficiary. Although almost all swing-bed facilities submitting comments indicated that their lengths of stay were under 10 days, there were a few swing-bed hospitals with longer lengths of stay. In considering the impact on these facilities, we do recognize a slight additional burden. We have estimated that a facility performing two MDS assessments on 30 percent of its Medicare beneficiaries would require approximately 18 additional hours per year (data not shown). However, the cost of performing these additional assessments would only increase a facility's MDS-related costs from $1.40 to $1.83 per day per patient.

We received a significant number of comments claiming that the operating cost estimates are understated because they do not reflect increased clinical staffing needs associated with MDS preparation and overall coordination of the MDS process within the facility. The impact on swing-bed facility staffing was one of the issues that we considered in our decision to reduce the MDS requirements to the two-page Swing-Bed MDS. We also considered the impact of a new payment system on staff operations, and the need to integrate the MDS process into day-to-day operations. We were concerned that the October 1, 2001 implementation set forth in the proposed rule would not give facility staff enough time to assess their existing operations and make the modifications needed to implement the MDS function smoothly. We believe that, by establishing the 2-page Swing-Bed MDS and by revising the implementation schedule to provide additional time for staff to adjust facility procedures and operating protocols, the MDS function can be integrated into swing-bed operations with existing staff.

TABLE 11.—SWING-BED RURAL HOSPITAL COST OF COMPLETING MDS

Category	Basic option—cost/facility	Small business option—cost/facility	Aggregate cost—basic option	Aggregate cost—small business option
Start Up Costs				
Hardware	$1,400	$2,100	$1,750,000	$2,625,000
Comm. Software	100	100	125,000	125,000
MDS Sftwre-CMS	0	0	0	0
MDS Sftwre—Purchased	1,200	1,200	1,500,000	1,500,000
Staff Training—MDS Coding	790	790	988,000	988,000
Staff Training—Other	360	360	450,000	450,000
Start-Up Subtotal				
With CMS Sftwre	$2,650	$3,350	$3,313,000	$4,188,000
With Purchased Software	$3,850	$4,550	$4,813,000	$5,688,000
Operating Cost				
MDS Preparation	963	963	1,204,125	1,204,125
MDS Entry	323	323	403,125	403,125
MDS Transmission	180	180	225,000	225,000
Supplies	200	200	250,000	250,000
Maintenance	100	100	125,000	125,000
Operating Cost	$1,766	$1,766	$2,207,250	$2,207,250
First Year Costs				
With CMS Sftwre	$4,416	$5,116	$5,520,250	$6,395,250
With Purchased Software	$5,616	$6,316	$7,020,250	$7,895,250

§ 424.32(a)(5)—In the proposed rule (66 FR 34984), we proposed to revise § 424.32(a)(5) to reflect the new statutory requirement that all Part B claims for services furnished to SNF residents must include the SNF's Medicare provider number. Because the burden associated with this additional requirement is incidental to the completion of a claim, we were unable to estimate the burden associated with this new requirement, and explicitly solicited comment on this point. As a result of this new requirement, we will be revising the OMB clearance package for the CMS–1500 (Common Claim Form), OMB number 0938–0008, which we will submit to OMB for review.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 413.411(a)(2) and 424.32(a)(5). These requirements are not effective until they have been approved by OMB.

VI. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order (EO) 12866, the Unfunded Mandate Reform Act (UMRA, Pub. L. 104–4), the Regulatory Flexibility Act (RFA, Pub. L. 96–354), and the Federalism Executive Order (EO) 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This final rule is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate its impact will be to increase the payments to SNFs by approximately $1.5 billion in FY 2002, or 10.3 percent. The update set forth in this final rule applies to payments in FY 2002. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. This rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

Executive Order 13132 (effective November 2, 1999) establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments, preempt State law, or otherwise have Federalism implications. As stated above, this rule will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $10 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity.

The policies contained in this final rule would update the SNF PPS rates by increasing the payment rates published in the July 31, 2000 notice (65 FR 46770). While we do not believe that this will have a significant effect upon small entities overall, some individual

providers may experience significant increases in payments, while others (those that are concluding their final year under the transition from facility-specific to full Federal rates) may experience decreases, as discussed later in this section.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Although we are delaying implementation for the 1,250 swing-bed facilities that would start receiving payment under the SNF PPS until July 1, 2002, we do find that the payments to these facilities will increase overall. Some swing-bed facilities may receive significant increases in Medicare related payments, as described later in this section. Accordingly, the following analysis includes a specific examination of the projected impact of these provisions on small rural hospitals.

A. Background

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for periods beginning on or after July 1, 1998. This section specifies that the base year cost data to be used for computing the RUG–III payment rates must be from cost reporting periods beginning in FY 1995 (that is, October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates.

This final rule sets forth updates of the SNF PPS rates contained in the July 31, 2000 final rule (65 FR 46770). Table 12 presents the projected effects of the policy changes in the SNF PPS from FY 2001 to FY 2002, as well as statutory changes effective for FY 2001 and FY 2002. In so doing, we estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit based on the latest available Medicare claims data and MDS 2.0 assessment data from 2000. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of the Final Rule

The purpose of this final rule is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to provide an update to the rates for FY 2002. We believe that the revisions and clarifications mentioned elsewhere in the preamble (for example, the update to the wage index used for adjusting the Federal rates) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the rule. As such, these revisions will not represent an additional burden to the industry.

The aggregate increase in payments associated with this final rule is estimated to be $1.5 billion, or 10.3 percent. The current estimate varies substantially from that computed for the proposed rule, which forecast an increase in payment of only $300 million, or 2.1 percent. In reviewing the estimate used for the proposed rule, an error was discovered in the component of the calculations associated with determining the impact of the expiration of the transition. This error caused the downward effect on payments associated with the transition's expiration to be magnified. This error has now been corrected and a more accurate estimate of this effect now appears in Table 12.

The effect of the 20 percent add-on from the BBRA (as subsequently revised by the BIPA) is $1.0 billion; however, since this add-on became effective in FY 2001, it has already been reflected in the impact analysis for last year's final rule (65 FR 46770) and, thus, does not represent a new, additional impact for the FY 2002 payment rates. There are three areas of change that produce this increase for facilities:

1. The effect of facilities being paid the full Federal rate.
2. The implementation of provisions in the BIPA, such as the 16.6 percent increase in the nursing component of the Federal rate and the elimination of the one percent reduction in the SNF market basket update for FY 2001.
3. The total change in payments from FY 2001 levels to FY 2002 levels. This includes all of the previously noted changes in addition to the effect of the annual update to the rates.

As seen in Table 12, some of these areas are expected to result in increased aggregate payments and others are expected to tend to lower them. The breakdown of the various categories of data in the table is as follows:

The first row of figures in the table describes the estimated effects of the various policies on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban and rural categories. The remainder of the table shows the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database. The third column shows the effect of the expiration of the transition and movement to the full Federal rates for all SNFs. This change has an overall effect of lowering payments by an estimated 1.6 percent, affecting hospital-based facilities more than freestanding facilities. The main reason for such a large decrease is the BBRA provision that allowed facilities to choose the full Federal rate. When given the option to do so, an estimated 74 percent of the facilities elected to go to the full Federal rate. This meant that the only facilities left to transition to the full Federal rate are ones for which the expiration of the transition will cause a decrease in reimbursement. In contrast, those facilities receiving the full Federal rate will experience a 12.1 percent increase in payments. The overall effect of the expiration of the transition was to reduce reimbursement, but the effects across regions are quite variable.

The fourth column shows the projected effect of the 16.66 percent add-on to the nursing portion of the Federal rate mandated by BIPA 2000. As expected, this results in an increase in payments for all facilities; however, as seen in the table, the varying effect of the SNF PPS transition results in a distributional impact. In addition, since this increase only applies to the nursing

portion of the payment rate, the effect on total expenditures is less than 16.66 percent.

The fifth column of the table shows the effect of the change in the add-on for the rehabilitation RUGs. The total impact of this change is zero percent; however, there are distributional effects of this change, as seen in the table.

The sixth column of the table shows the effect of the annual update to the wage index. The total impact of this change is zero percent; however, there are distributional effects of the change.

The seventh column of the table shows the effect of all of the changes on the FY 2002 payments. This includes all of the previous changes, including the update to this year's payment rates by the market basket. Rebasing of the market basket index from 1992 to 1997 had little impact on the overall changes displayed in this column. It is projected that payments will increase by 10.3 percent in total, assuming facilities do not change their care delivery and billing practices in response. As can be seen from this table, the combined effects of all the changes vary widely by specific types of providers and by location. For example, freestanding facilities experience payment increases, while the effects of the transition cause decreases in payments for hospital-based providers.

TABLE 12.—PROJECTED IMPACT OF FY 2002 UPDATE TO THE SNF PPS

	Number of facilities	Transition to Federal rates	Add-on to nursing rates	Add-on to rehab RUGs	Wage index change	Total FY 2002 change
Total	9037	−1.6%	8.0%	0.0%	0.0%	10.3%
Urban	6300	−1.7%	8.1%	0.1%	0.1%	10.5%
Rural	2737	−1.1%	7.8%	−0.7%	−0.3%	9.6%
Hospital based urban	683	−4.1%	8.6%	−0.8%	−1.0%	6.2%
Freestanding urban	5617	−1.3%	8.0%	0.3%	0.2%	11.2%
Hospital based rural	533	−2.3%	8.5%	−2.0%	−1.7%	6.0%
Freestanding rural	2204	−0.9%	7.7%	−0.4%	0.0%	10.3%
Urban by Region						
New England	630	−0.3%	8.4%	0.0%	0.2%	12.4%
Middle Atlantic	877	−0.4%	8.4%	−1.4%	−2.2%	8.1%
South Atlantic	959	−2.5%	7.8%	0.9%	1.3%	11.5%
East North Central	1232	−0.8%	8.2%	0.6%	0.3%	12.4%
East South Central	212	−1.8%	8.0%	0.0%	1.3%	11.5%
West North Central	469	−1.5%	8.0%	−0.2%	−0.4%	9.8%
West South Central	519	−4.7%	8.4%	0.3%	−0.5%	7.0%
Mountain	303	−3.4%	7.6%	1.1%	1.2%	10.4%
Pacific	1070	−2.9%	7.9%	0.6%	0.6%	10.1%
Rural by Region						
New England	88	−0.3%	8.0%	−0.3%	0.3%	11.8%
Middle Atlantic	144	−0.3%	8.0%	−1.8%	−1.6%	8.0%
South Atlantic	373	−1.0%	7.8%	0.2%	0.4%	11.4%
East North Central	561	−0.5%	7.8%	−0.3%	0.0%	11.0%
East South Central	255	−1.5%	7.9%	−2.3%	−2.0%	5.6%
West North Central	581	−1.5%	7.9%	−1.5%	−0.4%	8.2%
West South Central	354	−2.5%	8.0%	−0.1%	1.0%	10.3%
Mountain	204	−1.0%	7.3%	−0.4%	−0.2%	9.6%
Pacific	151	−0.9%	7.4%	0.3%	−0.8%	9.9%

As noted earlier, in accordance with section 1888(e)(7) of the Act, we are providing in this final rule to pay rural hospitals for SNF-level swing-bed services under the SNF PPS, effective with cost reporting periods beginning on and after July 1, 2002. In doing so, we have examined the anticipated impact of this payment change on swing-bed facilities.

We analyzed data from swing-bed claims for calendar years 1996 through 1998 to determine Medicare payments made under the current swing-bed payment system. The claims data reflect the predetermined routine cost payments and the interim payment for ancillary services. While the interim payment rate for ancillary services is subject to final cost settlement, it represents a reasonable proxy for actual swing-bed payments.

We then adjusted the historical data on swing-bed payments to 2002 levels. For calendar years 1999 through 2001, we projected the average payment per day, using the 6.5 percent growth rate calculated from the most recent available data from calendar years 1997 and 1998. For 2002, we used a blended growth rate that reflects a projected increase in payment for routine services equal to the market basket of 2.4 percent, but retains the historical growth factor of 6.5 percent for ancillary payments. In 1998, the average payment per day was $205.41. The estimated swing-bed payment per day for 2002 under the existing method of reimbursement is $258.41.

We then estimated the amount that would have been paid for the same services under the SNF PPS. This estimate reflected both adjustments for geographic variation and case-mix. For the geographic adjustment, we used the average rural wage index for FY 2001 (that is, 0.8700). In preparing this final rule, we found a minor error in the calculation of the estimate published in the proposed rule that slightly overstated anticipated payments for swing-bed hospitals under the SNF PPS. We corrected the error and recalculated this impact analysis. The revised data are presented in this final rule.

As described in the proposed rule, we used the MEDPAR case-mix analog (described in detail in the SNF PPS interim final rule published on May 12, 1998 (63 FR 26252)) to estimate how the national swing-bed population would classify into RUG–III categories. We found that 69 percent of the covered days would be assigned to just two RUG–III categories (or six groups):

Medium Rehabilitation and Extensive Services.

We also noted that 9 percent of the covered days were assigned to categories that are not typically associated with a Medicare level of care (Impaired Cognition and lower groups). We have not assumed that these claims were paid in error. Rather, we are assuming that these patients had skilled care needs other than ones that could be captured using the MEDPAR case-mix analog, and we have included these stays in our analysis.

TABLE 13.—RUG–III FREQUENCY DISTRIBUTION USING CALENDAR YEAR 1999 CLAIMS

RUG–III category level	Number of days paid	Percent of total days
Ultra High Rehab	30,618	3%
Very High Rehab	33,687	4%
High Rehab	76,596	9%
Medium Rehab	264,614	30%
Low Rehab	58,016	7%
Extensive Services	288,131	33%
Special Care	11,540	1%
Clinically Complex	35,304	4%
Impaired Cognition	4,737	1%
Other	72,293	8%
Total	875,536	100%

Our next step was to project the SNF PPS payments for these swing-bed services. For the purposes of this analysis, we used the calendar year frequency distribution and number of covered swing-bed days shown in Table 13. Unique nursing case-mix weights have already been developed for each level of the MEDPAR case-mix analog. These weights were used to adjust the FY 2002 rural SNF PPS rates set forth in this final rule to determine the SNF PPS rates used in this estimate. We adjusted these rates for all the BBRA and the BIPA add-ons applicable for FY 2002.

Based on our analysis, the FY 2002 SNF PPS payment amount exceeds the projected payments under the current swing-bed payment system for that year in 5 of the 10 case-mix analog categories that included 79 percent of the swing-bed days. In fact, for the two most common RUG–III categories, medium rehabilitation and extensive services, the projected increases are substantial: 10 percent for medium rehabilitation and 12 percent for extensive services. In addition, in two categories, Impaired Cognition and Other, where the projected SNF PPS rate is lower than the projected swing-bed payment amount, the MDS records are likely to group into much higher categories when using the full RUG–III algorithm.

In terms of aggregate Medicare expenditures, we estimate that the transition to SNF PPS will increase payments for SNF-level swing-bed services by 8 percent, or approximately $18.3 million. Aggregate start-up costs are estimated to be between $3.3 and $5.7 million, and first year operating costs, including estimated costs associated with the MDS completion, are estimated to be $2.2 million.

Based on these estimates, we believe the financial impact on swing-bed providers will be positive, with the anticipated 8 percent payment increase serving to offset the estimated start-up costs associated with MDS completion and transmission. Although the aggregate percentage increase has been adjusted downward from 9 percent to 8 percent, the reduction in MDS requirements has been even more significant. Swing-bed hospitals had expressed strong concerns that the expected increases would be eroded by their MDS costs. With the reduction in the MDS requirements, the impact of the projected 8 percent increase may represent an addition of dollars available to support swing-bed operations.

Finally, in accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

VII. Federalism

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

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

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

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

* * * * *

Subpart I—Payment of SMI Benefits

2. In § 410.150, the introductory text of paragraph (b) is republished, and paragraph (b)(14) is revised to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(14) To an SNF for services (other than those described in § 411.15(p)(2) of this chapter) that it furnishes to a resident (as defined in § 411.15(p)(3) of

this chapter) of the SNF who is not in a covered Part A stay.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

3. The authority citation for part 411 continues to read as follows:

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

Subpart A—General Exclusions and Exclusion of Particular Services

4. In § 411.15, paragraph (p)(1) is revised, and paragraph (p)(2) introductory text, paragraph (p)(2)(i), and paragraph (p)(3) introductory text are revised to read as follows:

§ 411.15 Particular services excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.* (1) *Basic rule.* Except as provided in paragraph (p)(2) of this section, any service furnished to a resident of an SNF during a covered Part A stay by an entity other than the SNF, unless the SNF has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the SNF's residents. Services subject to exclusion under this paragraph include, but are not limited to—

(i) Any physical, occupational, or speech-language therapy services, regardless of whether the services are furnished by (or under the supervision of) a physician or other health care professional, and regardless of whether the resident who receives the services is in a covered Part A stay; and

(ii) Services furnished as an incident to the professional services of a physician or other health care professional specified in paragraph (p)(2) of this section.

(2) *Exceptions.* The following services are not excluded from coverage, provided that the claim for payment includes the SNF's Medicare provider number in accordance with § 424.32(a)(5) of this chapter:

(i) Physicians' services that meet the criteria of § 415.102(a) of this chapter for payment on a fee schedule basis.

(3) *SNF resident defined.* For purposes of this paragraph, a beneficiary who is admitted to a Medicare-participating SNF is considered to be a resident of the SNF for the duration of the beneficiary's covered Part A stay. In addition, for purposes of the services described in paragraph (p)(1)(i) of this section, a beneficiary who is admitted to a Medicare-participating SNF is considered to be a resident of the SNF regardless of whether the beneficiary is in a covered Part A stay. Whenever the beneficiary leaves the facility, the beneficiary's status as an SNF resident for purposes of this paragraph (along with the SNF's responsibility to furnish or make arrangements for the services described in paragraph (p)(1) of this section) ends when one of the following events occurs—

* * * * *

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

5. The authority citation for part 413 is amended to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, 1886, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395(f)b, 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, 1395ww, and 1395yy).

Subpart F—Specific Categories of Costs

6. In § 413.114:

a. Paragraph (a) is revised.

b. In paragraph (c), the heading is revised.

c. In paragraph (d)(1), the introductory text is revised.

§ 413.114 Payment for posthospital SNF care furnished by a swing-bed hospital.

(a) *Purpose and basis.* This section implements section 1883 of the Act, which provides for payment for posthospital SNF care furnished by rural hospitals and CAHs having a swing-bed approval.

(1) *Services furnished in cost reporting periods beginning prior to July 1, 2002.* Posthospital SNF care furnished in general routine inpatient beds in rural hospitals and CAHs is paid in accordance with the special rules in paragraph (c) of this section for determining the reasonable cost of this care. When furnished by rural and CAH swing-bed hospitals approved after March 31, 1988 with more than 49 beds (but fewer than 100), these services must also meet the additional payment requirements set forth in paragraph (d) of this section.

(2) *Services furnished in cost reporting periods beginning on and after July 1, 2002.* Posthospital SNF care furnished in general routine inpatient beds in rural hospitals (other than CAHs) is paid in accordance with the provisions of the prospective payment system for SNFs described in subpart J of this part, except that for purposes of this paragraph, the requirements of § 413.343(a) must be met using the specific assessment instrument and data designated by CMS for this purpose. Posthospital SNF care furnished in general routine inpatient beds in CAHs is paid based on reasonable cost, in accordance with the provisions of subparts A through G of this part (other than paragraphs (c) and (d) of this section).

* * * * *

(c) *Special rules for determining the reasonable cost of posthospital SNF care furnished in cost reporting periods beginning prior to July 1, 2002.*

* * * * *

(d) *Additional requirements*—(1) *General rule.* For services furnished in cost reporting periods beginning prior to July 1, 2002, in order for Medicare payment to be made to a swing-bed hospital with more than 49 beds (but fewer than 100), the following payment requirements must be met:

* * * * *

7. In § 413.337, paragraph (e) is added to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(e) Pursuant to section 101 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) as revised by section 314 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), using the best available data, the Secretary will issue a new regulation with a newly refined case-mix classification system to better account for medically complex patients. Upon issuance of the new regulation, the temporary increases in payment for certain high cost patients will no longer be applicable.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

8. The authority citation for part 424 continues to read as follows:

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

9. In § 424.20(a)(2), the heading is revised to read as follows:

§ 424.20 Requirements for posthospital SNF care.

(a) * * *

(2) *Special requirement for certifications performed prior to July 1, 2002: A swing-bed hospital with more than 49 beds (but fewer than 100) that*

does not transfer a swing-bed patient to a SNF within 5 days of the availability date.

* * *

* * * * *

Subpart C—Claims for Payment

10. In § 424.32, the introductory text of paragraph (a) is republished, and paragraphs (a)(2) and (a)(5) are revised.

§ 424.32 Basic requirements for all claims.

(a) A claim must meet the following requirements:

* * * * *

(2) A claim for physician services, clinical psychologist services, or clinical social worker services must include appropriate diagnostic coding for those services using ICD–9–CM.

* * * * *

(5) All Part B claims for services furnished to SNF residents (whether filed by the SNF or by another entity) must include the SNF's Medicare provider number and appropriate HCPCS coding.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

11. 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).

Subpart B—Essentials of Provider Agreements

12. In § 489.20, the introductory text is republished, and the introductory text of paragraph (s) is revised.

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for any physical, occupational, or speech-language therapy services furnished to a resident of the SNF under § 411.15(p) of this chapter (regardless of whether the resident is in a covered Part A stay), and also either to furnish directly or make arrangements for all other Medicare-covered services furnished to a resident during a covered Part A stay, except the following:

* * * * *

13. In § 489.21, the introductory text is republished, and paragraph (h) is revised to read as follows:

§ 489.21 Specific limitations on charges.

Except as specified in subpart C of this part, the provider agrees not to charge a beneficiary for any of the following:

* * * * *

(h) Items and services (other than those described in §§ 489.20(s)(1) through (15)) required to be furnished under § 489.20(s) to a resident of an SNF (defined in § 411.15(p) of this chapter), for which Medicare payment would be made if furnished by the SNF or by other providers or suppliers under arrangements made with them by the SNF. For this purpose, a charge by another provider or supplier for such an item or service is treated as a charge by the SNF for the item or service, and is also prohibited.

Note: These appendices will not appear in the Code of Federal Regulations.

Appendix A

Technical Features of the 1997 Skilled Nursing Facility Market Basket Index

As discussed in the preamble of this final rule, we have revised and rebased the SNF market basket. This appendix describes the technical aspects of the 1997-based index made final in this rule. We present this description of the market basket in three steps:

- A synopsis of the structural differences between the 1992-and the 1997-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1997-based market basket.
- A description of the data sources used to measure price change for each component of the 1997-based market basket, making note of the differences, if any, from the price proxies used in the 1992-based market basket.

I. Synopsis of Structural Changes Adopted in the Revised and Rebased 1997 Skilled Nursing Facility Market Basket

We have made just one major structural change between the current 1992-based and the 1997-based SNF market baskets, which is that more recent SNF cost data were used in the revised and rebased SNF market basket.

The 1997-based market basket contains cost shares for six major cost categories that were derived from an edited set of FY 1997 Medicare Cost Reports for freestanding SNFs that had Medicare expenses. FY 1997 cost reports have cost reporting periods beginning after September 30, 1996 and before October 1, 1997. The 1992-based market basket used data from the PPS–9 Medicare Cost Reports for freestanding SNFs with Medicare expenses greater than 1 percent of total expenses. PPS–9 cost reports have cost reporting periods beginning after September 30, 1991 and before October 1, 1992. Cost allocations for the 1997-based SNF market basket within the six major cost categories use Medicare Cost Reports and two Department of Commerce data sources: the 1997 Business Expenditures Survey, Bureau of the Census, Economics and Statistics Administration, and the 1997 Bureau of Economic Analysis' Annual Input-Output tables.

II. Methodology for Developing the Cost Category Weights

Cost category weights for the 1997-based market basket were developed in two stages. First, base weights for six main categories (wages and salaries, employee benefits, contract labor, pharmaceuticals, capital-related expenses, and a residual ''all other'') were derived from the SNF Medicare Cost Reports described above. The residual ''all other'' cost category was divided into subcategories, using U.S. Department of Commerce data sources for the nursing home industry. Relationships from the 1997 Business Expenditures Survey and data from the 1997 Annual Input-Output tables were used to allocate the all other cost category.

Below we describe the source of the main category weights and their subcategories in the 1997-based market basket.

- *Wages and Salaries:* The wages and salaries cost category is derived using 1997 SNF Medicare Cost Reports. The share was determined using wages and salaries from Worksheet S–3, part II and total expenses from Worksheet B. This share represents the wage and salary share of costs for employees of the nursing home, and does not include the wages and salaries from contract labor, which is allocated to wages and salaries at a later step.

We improved the methodology for calculating the weight of contract labor, as well as that for the calculation of the fringe benefits share. Both changes result in more accurate but, in each case, lower weights in the revised market basket. The weight for wages only, as determined from the Medicare Cost Reports and excluding contract labor, increased between 1992 and 1997 (from 45.805 to 46.889). This is consistent with the rate of change of the price of wages and salaries, as represented by the ECI for wages and salaries in nursing homes, which increased at a pace faster than that of the overall market basket during the 1992–1997 period. However, when the 1997 wage share of contract labor was added to the 1997 weight for wages, the resultant weight for wages was lower than in the 1992-based index.

- *Employee Benefits:* The weight for employee benefits was determined using 1997 Medicare Cost Reports. The share was derived using wage-related costs from Worksheet S–3, part II.
- *Contract Labor:* The weight for the contract labor cost category was derived using 1997 Medicare Cost Reports. For the 1997-based SNF market basket, we used a group of cost reports edited for data entered for contract labor on Worksheet S–3, part II. This methodology differed from that of the 1992 SNF market basket (where we estimated contract labor costs using data from Worksheet A) since Worksheet S–3, part II, was not available in the 1992 Cost Reports. This methodology produces results that are similar to the contract labor share in the 1997 Business Expenditures Survey. Contract labor was not available in the 1992 Asset and Expenditure Survey. As explained in the preamble, contract labor costs were distributed between the wages and salaries and employee benefits cost categories, under the assumption that contract costs should

move at the same rate as direct labor costs even though unit labor cost levels may be different.

• *Pharmaceuticals:* The pharmaceuticals cost weight was derived from 1997 SNF Medicare Cost Reports. This share was calculated using non-salary costs from the pharmacy and drugs charged to patients' cost centers from Worksheet A.

• *Capital-Related:* The weight for the overall capital-related expenses cost category was derived using 1997 SNF Medicare Cost Report data from Worksheet B. The subcategory and vintage weights within the overall capital-related expenses were derived using additional data sources.

In determining the subcategory weights for capital, we used a combination of information from the 1997 SNF Medicare Cost Reports and the 1997 Census Business Expenditures Survey.

We estimated the depreciation expense share of capital-related expenses from the SNF Medicare Cost Reports using data from edited cost reports with data completed on Worksheet G. For the 1992-based SNF market basket, we had depreciation expenses from the 1992 Asset and Expenditure Survey. When we calculated the ratio of depreciation to wages from the 1997 SNF Medicare Cost Reports, the result was consistent with the ratio from the 1997 Business Expenditures Survey. The distribution between building and fixed equipment and movable equipment was determined from the 1997 Business Expenditures Survey. From these calculations, depreciation expenses (not including depreciation expenses implicit from leases) were estimated to be 33.2 percent of total capital-related expenditures in 1997.

The interest expense share of capital-related expenses was also derived from the same edited 1997 SNF Medicare Cost Reports. Interest expenses are not identifiable in the 1997 Business Expenditures Survey. We determined the split of interest expense between for-profit and not-for-profit facilities based on the distribution of long-term debt outstanding by type of SNF (for-profit or not-for-profit) from the 1997 SNF Medicare Cost Reports. Interest expense (not including interest expenses implicit from leases) was estimated to be 24.3 percent of total capital-related expenditures in 1997.

We used the 1997 Business Expenditures Survey to estimate the proportion of capital-related expenses attributable to leasing building and fixed and movable equipment. This share was estimated to be 34.9 percent of capital-related expenses in 1997. The split between fixed and movable lease expenses was directly available from the 1997 Business Expenditures Survey. We used this split, and the distribution of depreciation and interest calculated above to distribute leases among these cost categories.

The remaining residual after depreciation, interest, and leasing, is considered to be other capital-related expenses (insurance, taxes, other). Other capital-related expenses were estimated to be 7.7 percent of total capital-related expenditures in 1997.

Table A–1 shows the capital-related expense distribution (including expenses from leases) in the 1997 SNF PPS market basket and the 1992 SNF market basket.

TABLE A–1.—CAPITAL-RELATED EXPENSE DISTRIBUTION

	1992-based SNF capital-related expenses as a percent of total capital—related expenses	1997-based SNF capital-related expenses as a percent of total capital—related expenses
Total	100.0	100.0
Depreciation	60.5	53.3
Building and Fixed Equipment	42.1	36.5
Movable Equipment	18.4	16.8
Interest	32.6	39.0
Other capital-related expense	6.9	7.7

As explained in section I.F of the preamble, our methodology for determining the price change of capital-related expenses accounts for the vintage nature of capital, which is the acquisition and use of capital over time. In order to capture this vintage nature, the price proxies must be vintage-weighted. The determination of these vintage weights occurs in two steps. First, we must determine the expected useful life of capital and debt instruments in SNFs. Second, we must identify the proportion of expenditures within a cost category that are attributable to each individual year over the useful life of the relevant capital assets, or the vintage weights.

The derivation of useful life of capital is explained in detail in the May 12, 1998 interim final rule (63 FR 26252). The useful lives for the 1997-based SNF market basket are the same as the 1992-based SNF market basket. The data source that was previously used to develop the useful lives of capital is no longer available and a suitable replacement has not been identified. We asked for comments on any data sources that would provide the necessary information for determining useful lives of capital and debt instruments, but did not receive any suitable alternatives.

Given the expected useful life of capital and debt instruments, we must determine the proportion of capital expenditures attributable to each year of the expected useful life by cost category. These proportions represent the vintage weights. We were not able to find an historical time series of capital expenditures by SNFs. Therefore, we approximated the capital expenditure patterns of SNFs over time using alternative SNF data sources. For building and fixed equipment, we used the stock of beds in nursing homes from the CMS National Health Accounts for 1962 through 1997. We then used the change in the stock of beds each year to approximate building and fixed equipment purchases for that year. This procedure assumes that bed growth reflects the growth in capital-related costs in SNFs for building and fixed equipment. We believe this assumption is reasonable since the number of beds reflects the size of the SNF, and as the SNF adds beds, it also adds fixed capital.

Comment: Several commenters expressed concern over the use of the net changes in the number of SNF beds as an approximation of capital acquisitions over time. Commenters felt that the market basket was only reflecting changes in the number of beds and not increases in other components that are inflation sensitive.

Response: As pointed out in the proposed rule, we use the net change in the stock of beds each year to reflect the growth in real purchases of buildings and fixed capital equipment each year. This is done for use in determining the proportion of capital expenditures attributable to each year of the expected useful life of an asset or 'vintage weight'. This measure is not used to measure the inflationary increases in costs from year to year facing SNFs nor is it used to determine the actual weight of depreciation in the index. Again, the net change in the number of beds is used to establish 'vintage weights and, as such, should reflect real capital purchases as opposed to nominal purchases. Therefore, we feel that the use of the change in the number of SNF beds, while not an exact measure of purchases since it would include beds taken out of service, approximates SNF capital purchases because if the SNF is adding beds, it is most likely also adding fixed capital. We were unable to find another suitable time series of capital purchases that met our proxy selection criteria, and therefore will continue to use the stock of beds to approximate capital purchases.

For movable equipment, we used available SNF data to capture the changes in intensity of SNF services that would cause SNFs to purchase movable equipment. We estimated the change in intensity as the trend in the ratio of non-therapy ancillary costs to routine costs from the 1989 through 1997 SNF Medicare Cost Reports. For 1962 through 1988 we estimated these values using regression analysis. The time series of the ratio of non-therapy ancillary costs to routine costs for SNFs measures changes in intensity in SNF services, which are assumed to be associated with movable equipment purchase patterns. The assumption here is that as non-therapy ancillary costs increase compared with routine costs, the SNF caseload becomes more complex and would require more movable equipment. Again, the lack of direct movable equipment purchase data for SNFs over time required us to use alternative SNF data sources. The resulting two time series, determined from beds and the ratio of non-therapy ancillary to routine costs, reflect real capital purchases of building and fixed equipment and movable equipment over time, respectively.

To obtain nominal purchases, which are used to determine the vintage weights for interest, we converted the two real capital purchase series from 1963 through 1997 determined above to nominal capital purchase series using their respective price proxies (Boeckh institutional construction index and PPI for machinery and equipment). We then combined the two nominal series into one nominal capital purchase series for 1963 through 1997. Nominal capital purchases are needed for interest vintage weights to capture the value of the debt instrument.

Once these capital purchase time series were created for 1963 through 1997, we averaged different periods to obtain an average capital purchase pattern over time. For building and fixed equipment we averaged thirteen 23-year periods, for movable equipment we averaged twenty-six 10-year periods, and for interest we averaged fourteen 22-year periods. The vintage weight for a given year is calculated by dividing the capital purchase amount in any given year by the total amount of purchases during the expected useful life of the equipment or debt instrument. This methodology was described in full in the May 12, 1998 **Federal Register** (63 FR 26252). The resulting vintage weights for each of these cost categories are shown in Table A–2.

TABLE A–2.—VINTAGE WEIGHTS FOR 1997-BASED SNF PPS CAPITAL-RELATED PRICE PROXIES

Year	Building and fixed equipment	Movable equipment	Interest
1	0.082	0.083	0.025
2	0.086	0.088	0.028
3	0.085	0.089	0.031
4	0.083	0.090	0.034
5	0.077	0.091	0.038
6	0.069	0.097	0.042
7	0.063	0.106	0.046
8	0.060	0.111	0.049
9	0.050	0.116	0.051
10	0.040	0.128	0.051
11	0.040	.....	0.052
12	0.036	.....	0.053
13	0.030	.....	0.051
14	0.020	.....	0.050
15	0.016	.....	0.049
16	0.014	.....	0.048
17	0.012	.....	0.049
18	0.017	.....	0.050
19	0.018	.....	0.051
20	0.023	.....	0.051
21	0.025	.....	0.049
22	0.027	.....	0.051
23	0.029	.....	.....
Total	1.000	1.000	1.000

Sources: 1997 SNF Medicare Cost Reports; CMS, National Health Accounts.
Note: Totals may not sum to 1.000 due to rounding.

• *All Other:* Subcategory weights for the All Other category were derived using information from two U.S. Department of Commerce data sources. Weights for the three utilities cost categories, as well as that for telephone services, were derived from the 1997 Business Expenditure Survey. Weights for other cost categories were derived from the 1997 Annual Input-Output tables.

III. Price Proxies Used To Measure Cost Category Growth

A. Wages and Salaries

For measuring price growth in the wages and salaries cost component of the 1997-based SNF market basket, we use the percentage change in the ECI for wages and salaries for private nursing homes.

Comment: Commenters questioned the ability of the ECI for nursing home wages and salaries to capture trends in wages in SNFs. The commenters were specifically concerned that the ECI was not capturing the wage increases shown by other data sources, that the difference in skill mix between SNFs and nursing homes was not being reflected, and that the fixed weights in the ECI was not representative of the current SNF skill mix.

Response: We believe that the ECI for wages and salaries in nursing homes is the best price proxy for measuring wage changes facing SNFs. This wage series reflects actual wage data reported by nursing homes to BLS. This proxy meets our criteria of relevance, reliability, timeliness, and time-series length. The commenters expressed concern that the ECI for nursing homes was not capturing the wage increases shown by other data sources, including other BLS surveys. Two BLS surveys, other than the ECI, that measure wages for nursing homes, the Average Hourly Earnings (AHE) and the Employer Cost for Employee Compensation (ECEC), reflect both changes in hourly wage and changes in skill mix. As we stated in the proposed rule, change in occupational mix does not represent a price change and, as such, should not be included in an input price index. Otherwise, changes in prices are confounded with shifts among occupations. In addition, the AHE includes only earnings for nonsupervisory workers, and the ECEC is only published annually for March of each year. Thus neither of these wage measures meet our criteria for use in the SNF market basket. Although referenced in the comments we received, we have not been provided other data sources measuring wages for SNF

employees and, as such, cannot make a determination of the relevance, reliability, timeliness, or time-series length of the data.

For our purposes, the ECI appropriately keeps the occupational mix constant. Currently, the ECI reflects the 1990 distribution of occupations as measured by the BLS Occupational Employment Survey. The BLS periodically updates this distribution to reflect a more recent occupational mix. When the BLS updates the occupational distribution it will be reflected in the ECI for wages and salaries in nursing homes and, therefore, will be reflected in the SNF market basket. However, it is appropriate that the SNF market basket currently reflect the wage increases associated with a fixed occupational mix rather than confound changes in wages with changes in skill mix.

The commenters were concerned that the ECI reflected wages in nursing homes and not just for SNFs, which they feel have a different skill mix. The ECI for nursing homes captures wages for SNFs and other types of nursing and personal care facilities as defined by the Standard Industrial Classification (SIC). Employment in skilled nursing care facilities, as measured by the Current Employment Survey, includes skilled nursing homes, convalescent homes, extended care facilities, and mental retardation hospitals. Skilled nursing care facilities, as defined by SIC, represent a significant portion (at least 70 percent) of total nursing home employment. The BLS does not publish data, nor are we aware of any available data that meet our criteria, at a more detailed level than total nursing homes. As such, we feel that while the ECI for nursing homes does include more than SNFs, the wage trends and skill mix in SNFs are adequately represented by this proxy.

B. Employee Benefits

For measuring employee benefits price growth in the 1997-based market basket, the percentage change in the ECI for benefits for private nursing homes is used. The ECI for benefits for private nursing homes is also a fixed-weight index that measures pure price change and is not affected by shifts in occupation. Again, we believe that the ECI for nursing homes is the most acceptable and appropriate benefit series available from reliable, timely, and relevant statistical sources.

C. All Other Expenses

• *Nonmedical professional fees:* The ECI for compensation for Private Industry Professional, Technical, and Specialty Workers is used to measure price changes in nonmedical professional fees.

• *Electricity:* For measuring price change in the electricity cost category, the PPI for Commercial Electric Power is used.

• *Fuels, nonhighway:* For measuring price change in the Fuels, Nonhighway cost category, the PPI for Commercial Natural Gas is used.

• *Water and Sewerage:* For measuring price change in the Water and Sewerage cost category, the CPI–U (Consumer Price Index for All Urban Consumers) for Water and Sewerage is used.

• *Food-wholesale purchases:* For measuring price change in the Food-wholesale purchases cost category, the PPI for Processed Foods is used.

• *Food-retail purchases:* For measuring price change in the Food-retail purchases cost category, the CPI–U for Food Away From Home is used. This reflects the use of contract food service by some SNFs.

• *Pharmaceuticals:* For measuring price change in the Pharmaceuticals cost category, the PPI for Prescription Drugs is used.

Comment: Some commenters were concerned that the price proxy used for pharmaceuticals is inappropriate, since the PPI for prescription drugs may have a different distribution of drugs included than SNFs use.

Response: The PPI commodity grouping for ethical preparations (prescription drugs) is a combined index. The weights for each product included in this PPI are based on the gross value of shipments (domestic products only) across all industries engaged in the production of ethical preparations. The weights include all prescription drugs that are made in the U.S. and do not include proprietary or biological preparations. The weighting of all ethical preparations according to the value of shipments means that pharmaceuticals used by SNFs are included. While there may not be quite the same proportions of pharmaceuticals used in SNFs as in the PPI, there is no evidence provided by the commenters or that we have found suggesting a different price change than reported by the PPI. There does not exist an alternative proxy for SNF pharmaceuticals that meets our criteria for inclusion in the index. Based on this, we feel the PPI for prescription drugs does provide an accurate representation of the pure price change of pharmaceuticals faced by SNFs, and thus is an appropriate price proxy.

• *Chemicals:* For measuring price change in the Chemicals cost category, the PPI for Industrial Chemicals is used.

• *Rubber and Plastics:* For measuring price change in the Rubber and Plastics cost category, the PPI for Rubber and Plastic Products is used.

• *Paper Products:* For measuring price change in the Paper Products cost category, the PPI for Converted Paper and Paperboard is used.

• *Miscellaneous Products:* For measuring price change in the Miscellaneous Products cost category, the PPI for Finished Goods less Food and Energy is used. This represents a change from the 1992 SNF market basket, in which the PPI for Finished Goods is used. Both food and energy are already adequately represented in separate cost categories and should not also be reflected in this cost category.

• *Telephone Services:* The percentage change in the price of Telephone Services as measured by the CPI–U is applied to this component.

• *Labor-Intensive Services:* For measuring price change in the Labor-Intensive Services cost category, the ECI for Compensation for Private Service Occupations is used.

• *Non Labor-Intensive Services:* For measuring price change in the Non Labor-Intensive Services cost category, the CPI–U for All Items is used.

D. Capital-Related Expenses

All capital-related expense categories have the same price proxies as those used in the 1992-based SNF PPS market basket described in the May 12, 1998 **Federal Register** (63 FR 26252). The price proxies for the SNF capital-related expenses are described below:

• *Depreciation—Building and Fixed Equipment:* The Boeckh Institutional Construction Index for unit prices of fixed assets.

• *Depreciation—Movable Equipment:* The PPI for Machinery and Equipment.

• *Interest—Government and Nonprofit SNFs:* The Average Yield for Municipal Bonds from the Bond Buyer Index of 20 bonds. CMS input price indexes, including this rebased SNF index, appropriately reflect the rate of change in the price proxy and not the level of the price proxy. While SNFs may face different interest rate levels than those included in the Bond Buyer Index, the rate of change between the two is not significantly different.]

• *Interest—For-profit SNFs:* The Average Yield for Moody's AAA Corporate Bonds. Again, the final rebased SNF index focuses on the rate of change in this interest rate and not the level of the interest rate.

Comment: One commenter indicated that the AAA corporate bond proxy is not appropriate for SNFs.

Response: We feel that the yield on Moody's AAA corporate bond rating is an appropriate proxy to use to measure the interest costs faced by SNFs. While the interest rate levels may not be equal for differently rated bonds, over the long term on which vintage weighting is based, the growth rates of the bond yields move similarly.

• *Other Capital-related Expenses:* The CPI–U for Residential Rent.

TABLE A–3.—A COMPARISON OF PRICE PROXIES USED IN THE 1992-BASED AND 1997-BASED SKILLED NURSING FACILITY MARKET BASKETS

Cost category	1992-based price proxy	1997-based price proxy
Wages and Salaries	ECI for Wages and Salaries for Private Nursing Homes.	Same
Employee Benefits	ECI for Benefits for Private Nursing Homes	Same

TABLE A–3.—A COMPARISON OF PRICE PROXIES USED IN THE 1992-BASED AND 1997-BASED SKILLED NURSING FACILITY MARKET BASKETS—Continued

Cost category	1992-based price proxy	1997-based price proxy
Nonmedical professional fees	ECI for Compensation for Private Professional and Technical Workers.	Same
Electricity	PPI for Commercial Electric Power	Same
Fuels	PPI for Commercial Natural Gas	Same
Water and sewerage	CPI-U for Water and Sewerage	Same
Food—Wholesale purchases	PPI—Processed Foods	Same
Food—Retail purchases	CPI-U—Food Away From Home	Same
Pharmaceuticals	PPI for Prescription Drugs	Same
Chemicals	PPI for Industrial Chemicals	Same
Rubber and plastics	PPI for Rubber and Plastic Products	Same
Paper products	PPI for Converted Paper and Paperboard	Same
Miscellaneous products	PPI for Finished Goods	PPI for Finished Goods less Food And Energy
Telephone services	CPI-U for Telephone Services	Same
Labor-intensive services	ECI for Compensation for private service occupations.	Same
Non labor-intensive services	CPI-U for All Items	Same
Depreciation: Building and Fixed Equipment	Boeckh Institutional Construction Index	Same
Depreciation: Movable Equipment	PPI for Machinery and Equipment	Same
Interest: Government and Nonprofit SNFs	Average Yield Municipal Bonds (Bond Buyer Index—20 bonds).	Same
Interest: For-profit SNFs	Average Yield Moody's AAA Bonds	Same
Other Capital-related Expenses	CPI-U for Residential Rent	Same

APPENDIX B.—SWING-BED DATA ELEMENTS

MDS item description	MDS2.0 item
First Name, Middle Initial, Last Name	AA1a, 1b, 1c
Gender	AA2
Birth Date	AA3
Marital Status	A5
Ethnicity/Race	AA4
Zip Code	AB4
Resident SSN	AA5a
Resident Medicare Number	AA5b
Resident Medicaid Number	AA7
Secondary Payer Source	A7
Facility Medicare Provider Number	AA6b
Facility Medicaid Provider Number	AA6a
Admitted From at Entry to Swing-Bed Extended Care Services	Similar to AB2
Prior Acute Care Admission Date	New Item
Admission Date	AB1
Readmission Date	A4
Assessment Reference Date	A3
Reason for Assessment	Similar to AA8
Discharge Status	R3
Discharge Date	R4
Comatose	B1
Short Term Memory	B2a
Cognitive skills/Daily Decision-Making	B4
Making Self Understood	C4
Negative Statements	E1a
Repetitive Statements	E1b
Repetitive Verbalizations	E1c
Persistent Anger with Others	E1d
Self Deprecation	E1e
Expression of Unrealistic Fears	E1f
Recurrent Statements of Fears for the Future	E1g
Repetitive Health Complaints	E1h
Repetitive Anxious Complaints/Concerns	E1i
Unpleasant mood in morning	E1j
Insomniac/Change in Sleeping Patterns	E1k
Sad/Pained/Worried Facial Expression	E1l
Crying/tearfulness	E1m
Repetitive physical movements	E1n
Withdrawal from activities of interest	E1o
Reduced Social Interaction	E1p
Behavior symptom—Wandering frequency	E4aa
Behavior symptom—Verbally Abusive frequency	E4ba

APPENDIX B.—SWING-BED DATA ELEMENTS—Continued

MDS item description	MDS2.0 item
Behavior symptom—Physically Abusive frequency	E4ca
Behavior symptom—Socially Inappropriate/disruption frequency	E4da
Behavior symptom—Resists care frequency	E4ea
ADL-Self Performance—Bed Mobility	G1aa
ADL Support—Bed Mobility	G1ab
ADL—Self Performance—Transfer	G1ba
ADL Support—Transfer	G1bb
ADL—Self Performance—Eating	G1ha
ADL—Support—Eating	G1hb
ADL Self-Performance—Toileting	G1ia
ADL Support—Toileting	G1ib
Any scheduled toileting plan	H3a
Bladder retraining plan	H3b
Diabetes mellitus	I1a
Aphasia	I1r
Cerebral Palsy	I1s
Hemiplegia/hemiparesis	I1v
Multiple Sclerosis	I1w
Quadriplegia	I1z
Pneumonia	I2e
Septicemia	I2g
Dehydrated—output exceeds input	J1c
Delusions	J1e
Fever	J1h
Hallucinations	J1i
Internal bleeding	J1j
Vomiting	J1o
Weight loss	K3a
Parenteral IV	K5a
Feeding Tube	K5b
Total calories by IV	K6a
Average fluid intake by IV	K6b
Ulcers—Stage 1	M1a
Ulcers—Stage 2	M1b
Ulcers—Stage 3	M1c
Ulcers—Stage 4	M1d
Pressure Ulcer	M2a
Burns	M4b
Open lesions	M4c
Surgical Wounds	M4g
Pressure relieving device for chair	M5a
Pressure relieving device for bed	M5b
Turning/Repositioning program	M5c
Nutrition/hydration program	M5d
Ulcer Care	M5e
Surgical wound care	M5f
Application of dressings	M5g
Application of ointments/medications	M5h
Infection of foot	M6b
Open lesions on foot	M6c
Application of dressings	M6f
Time Awake—Morning	N1a
Time Awake Afternoon	N1b
Time Awake—Evening	N1c
Time Awake—None of the Above	N1d
Injections	O3
Chemotherapy	P1aa
Dialysis	P1ab
IV Meds	P1ac
Oxygen Therapy	P1ag
Radiation	P1ah
Suctioning	P1ai
Trach Care	P1aj
Transfusions	P1ak
Ventilator/respirator	P1al
Therapy Days—Speech	P1baa
Therapy Minutes—Speech	P1bab
Therapy Days OT	P1bba
Therapy Minutes—OT	P1bbb
Therapy Days—PT	P1bca
Therapy Minutes—PT	P1bcb
Therapy Days Respiratory	P1bda

APPENDIX B.—SWING-BED DATA ELEMENTS—Continued

MDS item description	MDS2.0 item
Therapy Minutes—Respiratory	P1bdb
Range of Motion—Passive	P3a
Range of Motion—Active	P3b
Splint or brace assistance	P3c
Bed Mobility	P3d
Transfer	P3e
Walking	P3f
Dressing or grooming	P3g
Eating or swallowing	P3h
Amputation/prosthesis care	P3i
Communication	P3j
Physician Visits	P7
Physician Orders	P8
Ordered Therapies	T1b
Estimated Therapy days	T1c
Estimated Therapy Minutes	T1d
Medicare Case-Mix Group	T3a
Medicaid Case-Mix Group, if Applicable	T3b
HIPPS Assessment Indicator	New Item (software generated)
RN Signature	R2a
Date of RN Signature	R2b

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: July 23, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 24, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–18869 Filed 7–26–01; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Tuesday,
July 31, 2001

Part III

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133F]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Research Fellowships Program for Fiscal Year (FY) 2002

Purpose of the Program: The purpose of this Fellowship program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities. Fellows may conduct original research in any area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows may address problems encountered by individuals in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships. (a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications. (b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area which is directly pertinent to disability and rehabilitation.

Applicants are not required to submit a budget with their proposal. These are one Full Time Equivalent (FTE) awards: the applicant must work principally on the fellowship during the year. The applicant cannot receive support through any other federal government grants during this period. We define one FTE as equal to 40 hours per week.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This notice addresses the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: (a) Only individuals are eligible to be recipients of Fellowships. (b) Any individual is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities.

Note: Institutions are not eligible to be recipients of Fellowships.

Deadline for Transmittal of Applications: October 9, 2001.

Application Available: July 31, 2001.

Maximum Award Amount: Merit: $45,000; Distinguished: $55,000.

Estimated Number of Awards: 10.

Note: The estimated funding level in this notice does not bind the Department of Education to make awards, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Project Period: 12 months.

Page Limitation: The application must be limited to no more than 24 pages double spaced.

Note: The Secretary will reject without consideration or evaluation any application for a Research Fellowship that does not adhere to the 24 page double space limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82, 85, 86, and 97; and 34 CFR part 356, Research Fellowships.

Note: Applicants need to put their Social Security Number in Block #2 on the 424 form in place of the DUNS Number.

Selection Criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the selection criteria in 34 CFR 350.54. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734.

You may also contact ED Pubs via its Web site: http://www.ed.gov/pubs/edpubs.html or its E-mail address (edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133F.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351.

If you use a TDD, you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a TDD may call the TDD number at (202) 205–4475. Internet: Donna.Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, or computer diskette) on request to the contact person listed in the preceding paragraph.

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You may review 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 the following site: www.ed.gov/legislation/FedRegister. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 762(e).

Dated: July 19, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

[FR Doc. 01–18969 Filed 7–30–01; 8:45 am]

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Federal Register

Tuesday,
July 31, 2001

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year (FY) 2002; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133G and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year (FY) 2002

Summary: We invite applications for new FY 2002 grant awards under the Field-Initiated Projects (84.133G) and Advanced Rehabilitation Research Training Projects (84.133P). We take this action to focus research attention on an area of national need.

National Education Goals

The eight National Education Goals focus the Nation's education reform efforts and provide a framework for improving teaching and learning.

This notice addresses the National Education Goal that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97; and 34 CFR part 350.

APPLICATION NOTICE FOR FY 2002

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
84.133G Field-Initiated Projects	October 10, 2001	30	$150,000	36
84.133P Advanced Rehabilitation Research Training Projects.	October 10, 2001	5	$150,000	60

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount in any year (See 34 CFR 75.104(b)).

Note: The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Selection Criteria

Field-Initiated Projects

The selection criteria to be used to carry out research or development FI projects will be provided in its application package.

Advanced Rehabilitation Research Training Projects

The selection criteria to be used for the ARRT Projects will be provided in its application package.

Field-Initiated Projects

Purpose: Field-Initiated (FI) projects must further one or both of the following purposes: (a) Develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; or (b) improve the effectiveness of services authorized under the Act. FI projects carry out either research activities or development activities.

In carrying out a research activity, a grantee must identify one or more hypotheses and, based on the hypotheses identified, perform an intensive, systematic study directed toward new or full scientific knowledge or understanding of the subject or problem studied.

In carrying out a development activity, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes. Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved since a project may affect those who receive services, provide services, or administer services.

There are two different sets of selection criteria for FI projects: One set to evaluate applications proposing to carry out research activities, and a second set to evaluate applications proposing to carry out development activities. The set of FI selection criteria that will be used to evaluate an application will be based on the applicant's designation of the type of activity that the application proposes to carry out.

The applicant should: (a) Clearly identify on the cover page of the application whether the proposal is for a research or a development project; (b) identify if the application is a resubmittal from the FY 2000 or FY 2001 competition and include the assigned FY 2000 or FY 2001 application number (i.e., H133G00, H133G01) in the abstract, the introduction, and in a cover letter; and (c) if applicable, identify their qualifying minority entity status in the abstract and transmittal letter.

Invitational Priorities

The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are: (a) Projects that improve the functioning of individuals with hearing related conditions such as unilateral hearing loss, hyperacusis, tinnitus, or difficulties in using hearing aids or cochlear implants; (b) projects that study use of the new ''International Classification of Functioning, Disability and Health'' (ICIDH–2) systems in promoting the independence and quality of life of persons with disabilities; (c) projects that collaborate with international assistive technology and rehabilitation engineering projects including, but not limited to, those that could be carried out under Science and Technology Agreements between the U.S. and other countries; (d) projects that enhance functioning of people with newly recognized disabilities or conditions such as multiple chemical sensitivity (MCS), chronic fatigue immune deficiency syndrome (CFIDS), and fibromyalgia; and (e) projects that use information technology to address the rehabilitation and employment needs of individuals who are both deaf and blind.

Eligible Applicants: Parties eligible to apply for grants under this program are

States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 764.

Advanced Rehabilitation Research Training Projects

Purpose: Advanced Rehabilitation Research Training (ARRT) projects must provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience. ARRT projects train rehabilitation researchers, including individuals with disabilities, with particular attention to research areas that support the implementation and objectives of the Rehabilitation Act and that improve the effectiveness of services authorized under the Act.

ARRT projects must carry out all of the following activities: Recruit and select candidates for advanced research training; provide a training program that includes didactic and classroom instruction, is multidisciplinary, and emphasizes scientific methodology, and may involve collaboration among institutions; provide research experience, laboratory experience or its equivalent in a community-based research setting, and a practicum that involves each individual in clinical research and in practical activities with organizations representing individuals with disabilities; provide academic mentorship or guidance, and opportunities for scientific collaboration with qualified researchers at the host university and other appropriate institutions; and provide opportunities for participation in the development of professional presentations and publications, and for attendance at professional conferences and meetings as appropriate for the individual's field of study and level of experience.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29 U.S.C. 762(k).

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW., Switzer Building, 3317, Washington, DC 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting GCST. Telephone: (202) 205–8351. If you use a TDD, you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: Donna.Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Dated: July 19, 2001.

Francis V. Corrigan,

Deputy Director, National Institute on Disability and Rehabilitation Research.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 360/P.L. 107–21

To honor Paul D. Coverdell. (July 26, 2001; 115 Stat. 194)

S. 1190/P.L. 107–22

To amend the Internal Revenue Code of 1986 to rename the education individual retirement accounts as the Coverdell education savings accounts. (July 26, 2001; 115 Stat. 196)

Last List July 26, 2001

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