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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1744

RIN 0572-AB48

Post-Loan Policies and Procedures Common to Guaranteed and Insured Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. To facilitate the financing of those projects and services, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems in an expedited manner based on the financial strength of the borrowers operations. This will help enable RUS telecommunications providers to compete in an expanding number of telecommunications services may be critical to their financial strength and stability.

EFFECTIVE DATE: This rule is effective August 9, 2001.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250-1590. Telephone number (202) 720-9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require a consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

Executive Order 12988

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

Regulatory Flexibility Act Certification

RUS has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications program provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

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

approved by emergency clearance under OMB Control Number 0572-0126.

Comments on this information collection must be received by October 9, 2001.

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

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

Title: 7 CFR part 1744, subpart B, "Lien Accommodation and Subordination Policy"

Type of Request: New collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per respondent.

Respondents: Business or other for-profit and non-profit institutions.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 23.

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

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees; and number 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Unfunded Mandates

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

Background

RUS is amending its regulations covering lien accommodations under certain circumstances where the borrower's financial strength is sufficient to protect security for the Government's loans and the lender seeking a lien accommodation.

Since the passage of the Telecommunications Act of 1996, which provides for a competitive, deregulated national telecommunications policy framework, the Federal Communications Commission (FCC) has been working to implement the provisions of the law. As those provisions begin to be integrated through the FCC's rulemaking process, the FCC is focusing on the types of telecommunications service that must be made available to all Americans; *i.e.* part of universal service, and the benefits to all Americans from advanced services for schools, libraries, and rural health care providers. The newly competitive environment will undoubtedly affect the rural telecommunications marketplace. For the industry as a whole—urban and rural—competition will offer the means for delivering the universal service concept envisioned by the Telecommunications Act of 1996. In the competitive marketplace of the future, investment in infrastructure will be lucrative in markets where local exchange carriers seek to attract high-usage, low-cost subscribers. Competition will be fierce and

customers will be the winners as their demands for new and improved service at affordable rates will be met. Yet in rural and high-cost areas, where quality of service and advanced service offerings are just as important, there is less potential for investment based on competition. Investment will need to be encouraged in the form of incentives through the universal support mechanisms and the lending programs of RUS, as well as private sources of financing. RUS will continue its partnership with rural America to ensure that telecommunications providers will have the means to modernize their networks; however, industry deregulation and new technological developments have caused RUS borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders.

Due to the changing environment of the telecommunications industry, large or predominately non-rural local exchange carriers (LECs) are selling their more rural exchanges in order to concentrate on their more lucrative service areas. This "sell-off" provides an opportunity for rural LECs to expand their service territories. Typically, these acquired exchanges will need infrastructure improvements and the rural LECs will work hard to provide state-of-the-art service. This will require increased investment. RUS loans for infrastructure building can enable rural LECs to upgrade plant and service territories that may have been neglected for years. All subscribers, urban and rural, benefit from improvements to the national network. While opportunities exist for rural LECs to expand their markets and continue the tradition of providing the best possible service available to rural residents, uncertainties regarding future revenue streams and the availability of funds from universal service support may hamper some small LECs' investment decisions. The amendments to this regulation will help to facilitate funding from non-RUS sources in order to meet the growing capital needs of rural LECs. Depending on the purposes for which a lien accommodation is being sought, RUS will provide "automatic" approval for borrowers that meet the financial

tests described in this rule. RUS believes that borrowers that are financially sound should be afforded more flexibility with regard to financial arrangements with outside lenders for the purpose of promoting rural telecommunications. The tests are designed to ensure that the financial strength of the borrower is more than sufficient to protect the government's loan security interests; hence, the lien accommodations will not adversely affect the government's financial interests.

In addition to providing for automatic lien accommodations, this amendment removes the requirement for borrowers seeking lien accommodations to comply with competitive bid procedures under 7 CFR part 1753. Further, RUS proposes to address other concerns involved in the accommodation of the Government's lien for those borrowers that do not qualify for an automatic lien accommodation in a subsequent revision to this subpart.

Comments

A proposed rule was published December 15, 1999, at 64 FR 69946.

During the comment period that ended February 14, 2000, RUS received comments from the following organizations:

- (1) Cooper, White & Cooper LLR, representing: National Rural Telecom Association Organization for the Protection and Advancement of Small Telecommunications Companies United States Telecom Association; and Western Rural Telephone Association
- (2) Rural Telephone Finance Cooperative; and
- (3) CoBank.

The comments and RUS' responses follow:

Comment summary. The respondents commented that RUS should utilize consolidated financial reports when determining a borrower's eligibility for an "automatic" lien accommodation under this rule, rather than unconsolidated borrower financial statements that reflect only the telecommunication company's or cooperative's financial condition.

RUS response. When dealing with the security of the government's loans, RUS must rely on the financial strength of the borrower and its ability to survive economically based on its "telecommunications service" operations. Basing financial tests on consolidated statements may distort the true health of the borrower's financial position with regards to its operations. In addition, the RUS mortgage does not provide a lien on assets not held by the

borrower and therefore, RUS believes the best measure is to use unconsolidated statements.

Comment summary. The respondents request that RUS implement rule changes that would allow a borrower to effect the release of lien of the government's mortgage on after-acquired property upon a showing of sufficient financial strength to ensure that the government's security interest is adequate to protect the RUS loan.

RUS response. RUS disagrees with this position. RUS views each borrower as an 'on-going' project whereby the strength of its operations as a whole is needed to adequately secure the government's interests. Commercial operations are oftentimes cyclical and evidence of current financial strength is not an insurance of future financial performance.

Comment summary. The respondents requested that RUS clarify whether TIER and Debt Service were calculated on a before or after-tax basis.

RUS response. As noted in the definition section, both ratios use 'net income', denoting that the calculations are after income taxes.

Comment summary. The respondents requested that RUS eliminate the requirement that the weighted average life of the new private lender notes does not exceed the remaining weighted average life of the notes being refinanced, stating that in some cases, longer maturity periods that would reduce debt service payment could improve cash flow. In addition, the respondents requested that the terms of the loans be measured by the borrowers ability to repay the loan as indicated by TIER and Debt Service Coverage.

RUS response. Increasing the life of the loan beyond the remaining original life could have the effect of severely under-collateralizing the debt, thereby putting the lenders at risk of not having sufficient assets to provide adequate security. An open-ended maturity period, as suggested by relying on TIER and Debt Service Coverage indicators, only exacerbates the lenders' risks.

Comment summary. RUS should increase the principal amount of a loan from a private lender to refinance or refund the Government's loan from not greater than 105 percent of the balance of the notes being refunded or refinanced to not less than 112 percent, or eliminate the percentage limitation altogether. The respondents propose that this would allow borrowers to cover additional closing and fees associated with the new financing.

RUS response. RUS recognizes that loans from private lenders may contain fees and equity contribution

requirements, and therefore, will raise the percentage limitation from not more than 105 percent to not more than 112 percent. This should provide a reasonable level at which borrowers seeking to finance closing costs and associated fees and equity contributions would be able to do so.

Comment summary. Sections 1744.30(c)(2)(iii) and (iv) could be in conflict with each other if the number of years remaining on a loan to be refinanced is less than five. Paragraph (c)(2)(iv) requires the refinancing to be amortized for a period of not less than five years.

RUS response. RUS agrees that there is the potential for conflict in the way the proposed rule worded those sections. The final rule has been modified to allow for the amortization period of the loan to be, at a minimum, the original remaining years to maturity.

Comment summary. The respondents stated a preference for a net assets to long-term debt test instead of the proposed net plant to long-term debt test in §§ 1744.30(d)(2) and 1744.30(e)(2). As stated in the rule, the ratio includes, on a pro-forma basis, the new private lender debt but does not include the plant associated with that debt. In addition, where the proceeds of the private lender debt go to a subsidiary, even if the formula accounted for the new assets, they would not be recorded on the borrower's balance sheet, thereby reducing the borrower's ability to meet the test. The respondents argued that using net assets, where the borrower owns assets that are not counted as plant, would be better since many borrowers have substantial assets that are not plant.

RUS response. The premise behind providing "automatic" lien accommodations is based on the strength of a borrower's financial condition and a negligible potential for loan security risk based on that strength. Using net plant rather than net assets counts only those assets on which the government's mortgage provides a perfected first lien. RUS has, however, revised the ratio test to include, on a pro-forma basis, the associated plant to be added by the private lender debt, when that plant is owned directly by the borrower. In the case of a borrower flowing through the proceeds of the private lender debt to a subsidiary, RUS believes that the borrower should have sufficient net plant need to provide RUS with adequate security necessary for the "automatic" lien accommodation, since the subsidiary's assets (financed through the lien accommodation) are not covered by the government's mortgage.

Comment summary. The respondents stated that RUS should consider including "non-plant" costs, such as transaction fees, working capital, and goodwill, associated with exchanges or purchases as eligible costs for lien accommodations under the regulation. They stated that these costs are typically contemplated in the purchase of existing systems as well as in new projects and that if private lenders were willing to finance these "non-plant" costs, RUS should not object to inclusion of these costs under the lien of the mortgage.

RUS response. The "soft costs" associated with the construction or acquisition of assets provide little or no tangible security. Accommodating payment of such costs under the lien of the mortgage would dilute the security of the other mortgage.

Comment summary. The respondents questioned the need for the certification from the borrower's CPA to the financial tests required in sections 1744(d)(5) and (e)(5), and stated that since RUS already had borrowers' CPA audits, certification should only be required when the audit had not yet been received by RUS.

RUS response. The CPA audit does not calculate nor attest to a borrower's achievement of TIER or Debt Service Coverage. The assurance provided by the CPA's certification of the borrower's achievement of the financial requirements is crucial to the "automatic" lien accommodation process. To expedite the process, borrowers may wish to have the CPA prepare the certification at the completion of the annual audit, thereby eliminating the need for further participation by the CPA.

Comment summary. The respondents objected to the provision that the financing agreement between the borrower and the private lender provide for the private lender to terminate advances on its loan to the borrower when the borrower is in default under the terms of its mortgage with RUS. They argue that this places an undue burden on the private lender that is contractually obligated to advance funds under the terms of its loan. The respondents stated that once the terms of the "automatic" lien accommodation have been met, RUS should take the risk for the facility financed. Further, the respondents stated that the burden should be placed on the borrower to cease the request for advances, not on the private lender.

RUS response. As a provision for obtaining an automatic lien accommodation (which does not require RUS approval when the criteria contained in the regulation are met), to

protect the security for the Government's loans, the borrower should cease to incur additional private debt when it is in default on the Government's loans. Further, the respondents incorrectly view the burden as being placed on the private lender, and not on the borrower. The regulation clearly states that the financing agreement, a document prepared and executed prior to the advance of funds, contain the provision for termination of advance of funds upon request by RUS. In the event of a default, RUS would notify the borrower and the private lender so that they could comply with the termination of advance of funds provision. Therefore, notice to the private lender would not place the private lender under two inconsistent obligations.

Comment summary. Section 1744.30(e) pertains only to "wholly-owned" subsidiaries and is silent as to structures in which a borrower is a participant in a joint venture or partnership. The respondents argue that these types of projects are often undertaken for the mutual benefit of numerous telecommunications providers and that the regulation should make provision for these increasingly common ventures.

RUS response. At the present time, RUS believes that limiting the applicability of "automatic" lien accommodations to wholly-owned subsidiaries is prudent and in the best interest of protecting security for the Government's loans. Borrowers are, of course, not prevented from requesting approval for a lien accommodation under the traditional procedures for these types of projects. The comment is, however, beneficial and RUS will take it under advisement for future policy discussion.

Comment summary. The respondents argue that the financial tests in §§ 1744.30(e)(1) (TIER not less than 2.5 and DSC not less than 1.5) and (e)(3) (equity percentage not less than 45 percent) seem excessive and may result in most RUS or RTB borrowers failing to qualify for automatic lien accommodations when the assets are to be owned by a subsidiary.

RUS response. The financial tests required when the assets are to be owned by a subsidiary are more stringent, by design, and are intended to ensure that only the healthiest, strongest borrowers qualify, since there is no direct tie to assets being funded in relation to the security that RUS is giving up. By RUS' calculation, based on the most recent financial data available, 40% of RUS' telecommunications borrowers qualify.

As noted before, in the case of a borrower flowing through the proceeds of the private lender debt to a subsidiary, RUS believes that the borrower should have sufficient financial strength to provide RUS with adequate security, since the subsidiary's assets (financed through the lien accommodation) are not subject to the lien of the borrower's mortgage with RUS.

Comment summary. The respondents inquired whether an equity investment in a subsidiary, as opposed to a loan, would be permissible. In addition, the respondents believed there may be some conflict in RUS' treatment of loans to subsidiaries as investments allowed under the borrower's current mortgage with RUS.

RUS response. Equity investments or contributions are clearly different from loans with defined repayment terms and contractual agreements. RUS intended to only provide for loans to the subsidiary. RUS further has provided, in section 1744.30(i)(2), that such loans, when made in accordance with the terms of this regulation, do not require RUS approval as investments in affiliated companies, thereby releasing the borrower from obtaining "double" approval for the same investment.

Comment summary. Clarification was requested with regard to § 1744.30(e)(6)(vii), regarding the submission, upon request by RUS, of the financing or guarantee agreement between the borrower and the subsidiary.

RUS response. This section is only intended to ensure that RUS has the right to review the terms and conditions, if merited, of the borrower's loan or guarantee of a loan to its subsidiary. With regard to loan guarantees, where the debt exists at the subsidiary level, and the borrower is guaranteeing the debt, automatic approval of a lien accommodation under this section would permit the guarantee of the debt without having it count against the borrower's allowable distribution of capital as contained in the borrower's mortgage with RUS.

Comment summary. The respondents requested that RUS provide acknowledgement for an automatic lien accommodation to the private lender in addition to the acknowledgement to the borrower.

RUS response.

RUS agrees and will provide such acknowledgment.

List of Subjects in 7 CFR Part 1744

Accounting, Loan programs-communications, Reporting and

recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS amends 7 CFR chapter XVII as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 is revised to read as follows:

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

Subpart B—Lien Accommodations and Subordination Policy

2. Sections 1744.20 and 1744.21 are revised to read as follows:

§ 1744.20 General.

(a) Recent changes in the telecommunications industry, including deregulation and technological developments, have caused Rural Utilities Service (RUS) borrowers and other organizations providing telecommunications services to consider undertaking projects that provide new telecommunications services and other telecommunications services not ordinarily financed by RUS. Although some of these services may not be eligible for financing under the Rural Electrification Act of 1936 (RE Act), these services may nevertheless advance RE Act objectives where the borrower obtains financing from private lenders. The borrower's financial strength and the assurance of repayment of outstanding Government debt may be improved as a result of providing such telecommunications services.

(b) To facilitate the financing of new services and other services not ordinarily financed by RUS, RUS is willing to consider accommodating the Government's lien on telecommunications borrowers' systems or accommodating or subordinating the Government's lien on after-acquired property of telecommunications borrowers. To expedite this process, requests for lien accommodations meeting the requirements of § 1744.30 will receive automatic approval from RUS.

(c) This subpart establishes RUS policy with respect to all requests for lien accommodations and subordinations for loans from private lenders. For borrowers that do not qualify for automatic lien accommodations in accordance with § 1744.30, RUS will consider lien accommodations for RE Act purposes under § 1744.40 and non-Act purposes under § 1744.50.

§ 1744.21 Definitions.

The following definitions apply to this subpart:

Administrator means the Administrator of RUS and includes the Governor of the RTB.

Advance means transferring funds from RUS, RTB, or a lender guaranteed by RUS to the borrower's construction fund.

After-acquired property means property which is to be acquired by the borrower and which would be subject to the lien of the Government mortgage when acquired.

Amortization expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Amortization expense	6560.2
(2) Amortization expense—tangible	6563
(3) Amortization expense—intangible	6564
(4) Amortization expense—other ..	6565

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Asset means a future economic benefit obtained or controlled by the borrower as a result of past transactions or events.

Automatic lien accommodation means the approval, by RUS, of a request to share the Government's lien on a pari passu or pro-rata basis with a private lender in accordance with the provisions of § 1744.30.

Borrower means any organization that has an outstanding telecommunications loan made or guaranteed by RUS, or that is seeking such financing. See 7 CFR part 1735.

Construction Fund means the RUS Construction Fund Account into which all advances of loan funds are deposited pursuant to the provisions of the loan documents.

Debt Service Coverage (DSC) ratio means the ratio of the sum of the borrower's net income, depreciation and amortization expense, and interest expense, all divided by the sum of all payments of principal and interest required to be paid by the borrower during the year on all its debt from any source with a maturity greater than 1 year and capital lease obligations.

Default means any event or occurrence which, unless corrected, will, with the passage of time and the giving of proper notices, give rise to remedies under one or more of the loan documents.

Depreciation expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Depreciation expense	6560.1
(2) Depreciation expense—telecommunications plant in service	6561
(3) Depreciation expense—property held for future telecommunications use	6562

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Disbursement means a transfer of money by the borrower out of the construction fund in accordance with the provisions of the fund.

Equity percentage means the total equity or net worth of the borrower expressed as a percentage of the borrower's total assets.

FFB means the Federal Financing Bank.

Financial Requirement Statement (FRS) means RUS Form 481 (OMB—No. 0572—0023). (This RUS Form is available from RUS, Program Development and Regulatory Analysis, Washington, DC 20250—1522).

Government mortgage means any instrument to which the Government, acting through the Administrator, is a party and which creates a lien or security interest in the borrower's property in connection with a loan made or guaranteed by RUS whether the Government is the sole mortgagee or is a co-mortgagee with a private lender.

Hardship loan means a loan made by RUS under section 305(d)(1) of the RE Act.

Interim construction means the purchase of equipment or the conduct of construction under an RUS-approved plan of interim financing. See 7 CFR part 1737.

Interest expense means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Interest and related items	7500
(2) Interest on funded debt	7510
(3) Interest expense—capital leases	7520
(4) Amortization of debt issuance expense	7530
(5) Less Allowance for funds used during construction	7340/ 7300.4
(6) Other interest deductions	7540

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Interim financing means funding for a project which RUS has acknowledged may be included in a loan, should said loan be approved, but for which RUS

loan funds have not yet been made available.

Lien accommodation means sharing the Government's lien on a pari passu or pro-rata basis with a private lender.

Loan means any loan made or guaranteed by RUS.

Loan documents means the loan contract, note and mortgage between the borrower and RUS and any associated document pertinent to a loan.

Loan funds means the proceeds of a loan made or guaranteed by RUS.

Material and supplies means any of the items properly recordable in the following account of the borrower:

Account names	Number
(1) Material and Supplies	1220.1

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net income/Net margins means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Local Network Services Revenues.	5000 through 5069
(2) Network Access Services Revenues.	5080 through 5084
(3) Long Distance Network Services Revenues.	5100 through 5169
(4) Miscellaneous Revenues	5200 through 5270
(5) Nonregulated Revenues ..	5280
(6) Less Uncollectible Revenues.	5200 through 5302
(7) Less Plant Specific Operations Expense.	6110 through 6441
(8) Less Plant Nonspecific Operations Expense.	6510 through 6565
(9) Less Customer Operations Expense.	6610 through 6623
(10) Less Corporate Operations Expense.	6710 through 6790
(11) Other Operating Income and Expense.	7100 through 7160
(12) Less Operating Taxes ...	7200 through 7250/7200.5
(13) Nonoperating Income and Expense.	7300 through 7370
(14) Less Nonoperating Taxes.	7400 through 7450/7400.5
(15) Less Interest and Related Items.	7500 through 7540
(16) Extraordinary Items	7600 through 7640/7600.4
(17) Jurisdictional Differences and Nonregulated Income Items.	7910 through 7990

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Net plant means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Property, Plant and Equipment.	2001 through 2007
(2) Less Depreciation and Amortization.	3100 through 3600

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Notes means evidence of indebtedness secured by or to be secured by the Government mortgage.

Pari Passu means equably; ratably; without preference or precedence.

Plant means any of the items properly recordable in the following accounts of the borrower:

Account names	Number
(1) Property, Plant and Equipment.	2001 through 2007

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Private lender means any lender other than the RUS or the lender of a loan guaranteed by RUS.

Private lender notes means the notes evidencing a private loan.

Private loan means any loan made by a private lender.

RE Act (Act) means the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) RTB means the Rural Telephone Bank.

RUS means the Rural Utilities Service, and includes its predecessor, the Rural Electrification Administration. The term also includes the RTB, unless otherwise indicated.

RUS cost-of-money loan means a loan made under section 305(d)(2) of the RE Act.

Subordination means allowing a private lender to have a lien on specific property which will have priority over the Government's lien on such property.

Tangible plant means any of the items properly recordable in the following accounts of the borrower:

Account names	Number
(1) Telecommunications Plant in Service—General Support Assets.	2110 through 2124
(2) Telecommunications Plant in Service—Central Office Assets.	2210 through 2232
(3) Telecommunications Plant in Service—Information Origination/Termination Assets.	2310 through 2362
(4) Telecommunications Plant in Service—Cable and Wire Facilities Assets.	2410 through 2441
(5) Amortizable Tangible Assets.	2680 through 2682

Account names	Number
(6) Nonoperating Plant	2006

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Telecommunication services means any service for the transmission, emission, or reception of signals, sounds, information, images, or intelligence of any nature by optical waveguide, wire, radio, or other electromagnetic systems and shall include all facilities used in providing such service as well as the development, manufacture, sale, and distribution of such facilities.

Times interest earned ratio (TIER) means the ratio of the borrower's net income or net margins plus interest expense, divided by said interest expense.

Total assets means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Current Assets	1100s through 1300s
(2) Noncurrent Assets	1400s through 1500s
(3) Total telecommunications plant.	2001 through 2007
(4) Less accumulated depreciation.	3100 through 3300s
(5) Less accumulated amortization.	3400 through 3600s

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total equity or net worth means the excess of a borrower's total assets over its total liabilities.

Total liabilities means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Current Liabilities	4010 through 4130.2
(2) Long-Term Debt	4210 through 4270.3
(3) Other Liabilities and Deferred Credits.	4310 through 4370

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Total long-term debt means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Long-Term Debt	4210 through 4270.3

Note: All references to account numbers are to the Uniform System of Accounts (7 CFR part 1770, subpart B).

Weighted-average life of the loans or notes means the average life of the loans or notes based on the proportion of original loan principal paid during each year of the loans or notes. It shall be determined by calculating the sum of all loan or note principal payments expressed as a fraction of the original loan or note principal amount, times the number of years and fractions of years elapsed at the time of each payment since issuance of the loan or note. For example, given a \$5 million loan, with a maturity of 5 years and equal principal payments of \$1 million due on the anniversary date of the loan, the weighted-average life would be: (.2)(1 year) + (.2)(2 years) + (.2)(3 years) + (.2)(4 years) + (.2)(5 years) = .2 years + .4 years + .6 years + .8 years + 1.0 years = 3.0 years. If instead the loan had a balloon payment of \$5 million at the end of 5 years, the weighted-average life would be: (\$5 million/\$5 million)(5 years) = 5 years.

Weighted-average remaining life of the loans or notes means the remaining average life of the loans or notes based on the proportion of remaining loan or note principal expressed in years remaining to maturity of the loans or notes. It shall be determined by calculating the sum of the remaining principal payments of each loan or note expressed as a fraction of the total remaining loan or note amounts times the number of years and fraction of years remaining until maturity of the loan or note.

Weighted-average remaining useful life of the assets means the estimated original average life of the assets to be acquired with the proceeds of the private lender notes expressed in years based on depreciation rates less the number of years those assets have been in service (or have been depreciated). It shall be determined by calculating the sum of each asset's remaining value expressed as a fraction of the total remaining value of the assets, times the estimated number of years and fraction of years remaining until the assets are fully depreciated.

Wholly-owned subsidiary means a corporation owned 100 percent by the borrower.

3. Sections 1744.30, 1744.40, and 1744.50 are redesignated as §§ 1744.40, 1744.50, and 1744.55, respectively.

4. New § 1744.30 is added to read as follows:

§ 1744.30 Automatic lien accommodations.

(a) *Purposes and requirements for approval.* Automatic lien accommodations are available only for refinancing and refunding of notes secured by the borrower's existing Government mortgage; financing assets, to be owned by the borrower, to provide telecommunications services; or financing assets, to be owned by a wholly-owned subsidiary of the borrower, to provide telecommunications services in accordance with the procedures set forth in this section.

(b) *Private lender responsibility.* The private lender is responsible for ensuring that its notes, for which an automatic lien accommodation has been approved as set forth in this section, are secured under the mortgage. The private lender is responsible for ensuring that the supplemental mortgage is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional documents are required or that RUS must take additional actions to secure the notes under the mortgage, the private lender shall follow the procedures set forth in § 1744.40 or § 1744.50, as appropriate.

(c) *Refinancing and refunding.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of refinancing or refunding any notes secured under the Government mortgage, provided that all of the following conditions are met:

(1) No default has occurred and is continuing under the Government mortgage;

(2) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form set forth in Appendix A of this subpart, providing that:

(i) No default has occurred and is continuing under the Government mortgage;

(ii) The principal amount of such refinancing or refunding notes will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded;

(iii) The weighted-average life of the private loan evidenced by the private lender notes will not exceed the weighted-average remaining life of the notes being refinanced or refunded;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(vi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures contained in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(d) *Financing assets to be owned directly by a borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender notes are issued for the purpose of financing the purchase or construction of plant and material and supplies to provide telecommunication services and when such assets are to be owned and the telecommunications services are to be offered by the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes and additional plant on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (d)(1) and

(d)(3) of this section, such certification to be substantially in the form in Appendix B of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in Appendix C of this subpart; provided, that:

(i) The borrower has met each of the requirements in paragraphs (d)(2) and (d)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization over a period not less than the original remaining years to maturity;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(vii) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(viii) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures set forth in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(e) *Financing assets to be owned by a wholly-owned subsidiary of the borrower.* The Administrator will automatically approve a borrower's execution of private lender notes and the securing of such notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, when such private lender

notes are issued for the purpose of financing the purchase or construction of tangible plant and material and supplies to provide telecommunication services and when such services are to be offered and the associated tangible assets are to be owned by a wholly-owned subsidiary of the borrower, provided that all of the following conditions are met:

(1) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's two fiscal years immediately preceding the issuance of the private lender notes;

(2) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes and additional plant on the total long-term debt of the borrower;

(3) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent;

(4) No default has occurred and is continuing under the Government mortgage;

(5) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification by an independent certified public accountant that the borrower has met each of the requirements in paragraphs (e)(1) and (e)(3) of this section, such certification to be substantially in the form in Appendix D of this subpart; and

(6) The borrower has delivered to the Administrator, at least 10 business days before the private lender notes are to be executed, a certification and agreement executed by the President of the borrower's Board of Directors, such certification and agreement to be substantially in the form in Appendix E of this subpart; providing that:

(i) The borrower has met each of the requirements in paragraphs (e)(2) and (e)(4) of this section;

(ii) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with this section and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;

(iii) The weighted-average life of the private loan evidenced by the private lender notes does not exceed the weighted-average remaining useful life of the assets being financed;

(iv) The private lender notes will provide for substantially level debt service or level principal amortization

over a period not less than the original remaining years to maturity;

(v) All of the assets financed by the private loans will be purchased or otherwise procured in bona fide arm's length transactions;

(vi) The proceeds of the private lender notes will be lent to a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;

(vii) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;

(viii) The borrower will promptly report to the Administrator any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its loans;

(ix) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents;

(x) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from RUS; and

(xi) If the private lender determines that a supplemental mortgage is necessary, the borrower will comply with those procedures contained in paragraph (h) of this section for the preparation, execution, and delivery of a supplemental mortgage and take such additional action as may be required to secure the notes under the Government mortgage.

(f) *Borrower notification.* The borrower shall notify RUS of its intention to obtain an automatic lien accommodation under § 1744.30 by providing the following:

(1) The board resolution cited in § 1744.55(b)(1) and the opinion of counsel cited in § 1744.55(b)(2);

(2) The applicable certification or certifications required by paragraph (c)(2); paragraphs (d)(5) and (d)(6); or paragraphs (e)(5) and (e)(6), respectively, of this section, in substantially the form contained in the applicable appendices to this subpart.

(g) *RUS acknowledgment.* Within 5 business days of receipt of the completed certifications and any other information required under this section, RUS will review the information and provide written acknowledgment to the borrower and the private lender of its qualification for an automatic lien

accommodation. Upon receipt of the acknowledgment, the borrower may execute the private lender notes.

(h) *Supplemental mortgage.* If the private lender determines that a supplemental mortgage is required to secure the private lender notes on a pari passu or pro-rata basis with all other notes secured under the Government mortgage, the private lender may prepare the supplemental mortgage using the form attached as Appendix F to this subpart or the borrower may request RUS to prepare such supplemental mortgage in accordance with the following procedures:

(1) The private lender preparing the supplemental mortgage shall execute and forward the completed document to RUS. Upon ascertaining the correctness of the form and the information concerning RUS, RUS will execute and forward the supplemental mortgage to the borrower.

(2) When requested by the borrower, RUS will expeditiously prepare the supplemental mortgage, using the form in Appendix F to this subpart, upon submission by the private lender of:

(i) The name of the private lender;

(ii) The Property Schedule for inclusion as supplemental mortgage Schedule B, containing legally sufficient description of all real property owned by the borrower; and

(iii) The amount of the private lender note.

(3) The government is not responsible for ensuring that the supplemental mortgage has been executed by all parties and is a valid and binding instrument enforceable in accordance with its terms, and recorded and filed in accordance with applicable law. If the private lender determines that additional security instruments or other documents are required or that RUS must take additional actions to secure the private lender notes under the mortgage, the private lender shall follow the procedures established in §§ 1744.40 or 1744.50, as appropriate. Except for the actions of the government expressly established in § 1744.40, the government undertakes no obligation to effectuate an automatic lien accommodation. When processing of the supplemental mortgage has been completed to the satisfaction of the private lender, the borrower shall provide RUS with the following:

(i) A fully executed counterpart of the supplemental mortgage, including all signatures, seals, and acknowledgements; and

(ii) Copies of all opinions rendered by borrower's counsel to the private lender.

(i) *Other approvals.* (1) The borrower is responsible for meeting all

requirements necessary to issue private lender notes and to accommodate the lien of the Government mortgage to secure the private lender notes including, but not limited to, those of the private lender, of any other mortgagees secured under the existing RUS mortgage, and of any governmental entities with jurisdiction over the issuance of notes or the execution and delivery of the supplemental mortgage.

(2) To the extent that the borrower's existing mortgage requires RUS approval before the borrower can make an investment in an affiliated company, approval is hereby given for all investments made in affiliated companies with the proceeds of private

lender notes qualifying for an automatic lien accommodation under paragraph (e) of this section. Any reference to an approval by RUS under the mortgage shall apply only to the rights of RUS and not to any other party.

5. Revise newly redesignated § 1744.50(a)(3), to read as follows:

§ 1744.50 Non-Act purposes.

(a) * * *

(3) Approval of the request is in the interests of the Government with respect to the financial soundness of the borrower and other matters, such as assuring that the borrower's system is constructed cost-effectively using sound engineering practices.

6. In newly redesignated § 1744.55, revise paragraph (a), remove paragraph (b)(5), and redesignate paragraph (b)(6) as paragraph (b)(5), to read as follows:

§ 1744.55 Application procedures.

(a) Requests for information regarding applications for lien accommodations or subordination under this part should be addressed to the Assistant Administrator, Telecommunications Program, Rural Utilities Service, Washington, DC 20250-1590.

* * * * *

7. Appendices A, B, C, D, E, and F are added to subpart B to read as follows:

BILLING CODE 3410-15-P

Appendix A to Subpart B of Part 1744—Statement, Certification, and Agreement of Borrower's President of Board of Directors Regarding Refinancing and Refunding Notes Pursuant to 7 CFR 1744.30(c)

I _____ (Name of President) _____, am President of _____ (Name of Borrower) _____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____ (Name of Private Lender) _____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(c).

(a) The private lender:

- _____ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
- _____ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I hereby certify that all other requirements of 7 CFR 1744.30(c) are met; said requirements being as follows:

- (1) No default has occurred and is continuing under the government mortgage;
- (2) The principal amount of such refinancing or refunding notes, which is _____ dollars, will not be greater than 112 percent of the then outstanding principal balance of the notes being refinanced or refunded; such outstanding principal balance being _____ dollars;
- (3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, will not exceed the weighted-average remaining life of the notes being refinanced or refunded, which is _____ years;
- (4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and
- (5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(c) The borrower agrees that the private lender notes will provide for substantially level debt service or level principal amortization.

(d) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, subpart B.

Signed

Date

Name

Name and Address of Borrower:

**Appendix B to Subpart B of Part 1744—Certification of Independent Certified Public Accountant Regarding Notes
To Be Issued Pursuant to 7 CFR 1744.30(c)**

I/We, (Name of Independent Certified Public Accountant), hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by (Name of Borrower) ("the borrower") on or about (Date private lender notes are to be Signed), evidencing a total loan principal of _____ dollars:

- (a) The borrower has achieved a TIER of not less than 1.5 and a DSC of not less than 1.25 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

<u>Year</u>	<u>TIER</u>	<u>DSC</u>
_____	_____	_____
_____	_____	_____

- (b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 25 percent:

<u>Year</u>	<u>Total Equity</u>
_____	_____

Signed

Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Appendix C to Subpart B of Part 1744—Statement, Certification, and Agreement of Borrower's President of Board of Directors Regarding Notes To Be Issued Pursuant to 7 CFR 1744.30(d)

I _____ (Name of President), am President of _____ (Name of Borrower) (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____ (Name of Private Lender) (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(d).

(a) The private lender:

- _____ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
 _____ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with the private lender notes to be issued pursuant to 7 CFR 1744.30(d) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(d) are met as follows:

- (1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is _____, which is not less than 1.2, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;
- (2) No default has occurred and is continuing under the government mortgage;
- (3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;
- (4) Except as provided in the Government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service (RUS); and
- (5) This certificate is being delivered to RUS at least 10 business days before the private lender notes are to be executed.

(d) The borrower agrees that:

- (1) The proceeds of the private lender notes are to be used for the construction or purchase of the plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;
- (2) The private lender notes will provide for substantially level debt service or level principal amortization;
- (3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions; and
- (4) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.

(e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Signed

Date

Name

Name and Address of Borrower:

**Appendix D to Subpart B of Part 1744—Certification of Independent Certified Public Accountant Regarding Notes
To Be Issued Pursuant to 7 CFR 1744.30**

I/We, (Name of Independent Certified Public Accountant), hereby certify the following with respect to the note or notes (the "private lender notes") to be issued by (Name of Borrower) ("the borrower") on or about (Date private lender notes are to be Signed), evidencing a total loan principal of _____ dollars:

- (a) The borrower has achieved a TIER of not less than 2.5 and a DSC of not less than 1.5 for each of the borrower's 2 fiscal years immediately preceding the issuance of the private lender notes. The TIER and DSC ratios achieved are as follows:

<u>Year</u>	<u>TIER</u>	<u>DSC</u>
_____	_____	_____
_____	_____	_____

- (b) The borrower's equity percentage, as of the most recent fiscal year-end, was not less than 45 percent.

<u>Year</u>	<u>Total Equity</u>
_____	_____

Signed

Date

Name and address of CPA Firm:

All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Appendix E to Subpart B of Part 1744—Statement, Certification, and Agreement of Borrower's President of Board of Directors Regarding Notes To Be Issued Pursuant to 7 CFR 1744.30(e)

I _____ (Name of President) _____, am President of _____ (Name of Borrower) _____ (the "borrower"). The borrower proposes to issue notes (the "private lender notes"), to be dated on or about _____ and delivered to _____ (Name of Private Lender) _____ (the "private lender"). I am duly authorized to make and enter into the following statements, certifications, and agreements for the purpose of inducing the United States of America (the "government"), to give automatic approval to the issuance of the private lender notes pursuant to 7 CFR 1744.30(e).

(a) The private lender:

_____ is a mortgagee under the existing mortgage securing the government's loan to the borrower (the "government mortgage"); or
_____ is not a mortgagee under the government mortgage and the borrower has executed the attached form of supplemental mortgage as provided in 7 CFR 1744.30(h).

(b) I have reviewed the certificate of the independent certified public accountant also being delivered to the government in connection with private lender notes to be issued pursuant to said § 1744.30(e) and concur with the conclusions expressed therein.

(c) I hereby certify that all other requirements of 7 CFR 1744.30(e) are met; said requirements being as follows:

- (1) The ratio of the borrower's net plant to its total long-term debt at the end of any calendar month ending not more than 90 days prior to execution of the private lender notes is _____, which is not less than 1.6, on a pro-forma basis, after taking into account the effect of the private lender notes on the total long-term debt of the borrower;
- (2) No default has occurred and is continuing under the government mortgage;
- (3) The weighted-average life of the private loan evidenced by the private lender notes, which is _____ years, does not exceed the weighted-average remaining useful lives of the assets being financed, which is _____ years;
- (4) Except as provided in the government mortgage, the borrower has not agreed to any restrictions or limitations on future loans from the Rural Utilities Service "RUS"; and
- (5) This certificate is being delivered to RUS at least 10 business days before the private lender note or notes are to be executed.

(d) The borrower agrees that:

- (1) The proceeds of the private lender notes are to be used for the construction or purchase of the tangible plant and materials and supplies to provide telecommunications services in accordance with 7 CFR 1744.30 and such construction or purchase is expected to be completed not later than 4 years after execution of such notes;
- (2) The private lender notes will provide for substantially level debt service or level principal amortization;

- (3) All of the assets financed by the private lender notes will be purchased or otherwise procured in bona fide arm's length transactions;
 - (4) The proceeds of the private lender notes will be lent to, (Name of Subsidiary), a wholly-owned subsidiary of the borrower pursuant to terms and conditions agreed upon by the borrower and subsidiary;
 - (5) The borrower will, whenever requested by RUS, provide RUS with a copy of the financing or guarantee agreement between the borrower and the subsidiary or any similar or related material including security instruments, loan contracts, or notes issued by the subsidiary to the borrower;
 - (6) The borrower will promptly report to RUS any default by the subsidiary or other actions that impair or may impair the subsidiary's ability to repay its private loans; and
 - (7) The financing agreement with the private lender will provide that the private lender shall cease the advance of funds upon receipt of written notification from RUS that the borrower is in default under the RUS loan documents.
- (e) All terms not defined herein shall have the meaning set forth in 7 CFR 1744, Subpart B.

Signed

Date

Name

Name and Address of Borrower:

Appendix F to Subpart B of Part 1744—Form of Supplemental Mortgage

Supplemental Mortgage and Security Agreement, dated as of _____, (hereinafter sometimes called this "Supplemental Mortgage") is made by and among _____ (hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of _____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"¹), _____ (Supplemental Lender³) (hereinafter called _____), a _____ existing under the laws of _____, and is intend to confer rights and benefits on both the Government and _____ and _____ in accordance with this Supplemental Mortgage and the Original Mortgage (hereinafter defined) (the Government and the Supplemental Lenders being hereinafter sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain Restated Mortgage (the "Original Mortgage" as identified in Schedule "A" of this Supplemental Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Utilities Service (hereinafter called "RUS"), and _____; and

Whereas, the Original Mortgage as the same may have been previously supplemented, amended or restated is hereinafter referred to as the "Existing Mortgage"; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same, and to enter into this Supplemental Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity, and to add _____ as a Mortgagee and secured party hereunder and under the Existing Mortgage (the Supplemental Mortgage and the Existing Mortgage, hereinafter sometimes collectively referred to the "Mortgage"); and

Whereas, all of the Mortgagor's Outstanding Notes listed in Schedule "A" hereto is secured pari passu by the Existing Mortgage for the benefit of all of the Mortgagees under the Existing Mortgage; and

Whereas, by their execution and delivery of this Supplemental Mortgage the parties hereto do hereby secure the Additional Notes listed in Schedule "A" ((hereinafter called the Supplemental Lender Notes³)) pari passu with the Outstanding Notes under the Existing Mortgage {and do hereby add _____ as a Mortgagee and a secured party under the Existing Mortgage}; and

-
- 1 If the Rural Telephone Bank is a party to the original Mortgage, then "Rural Telephone Bank (herein after called the "Bank")" should be added here and the words "and the Bank" should be added after each reference to the Government.
 - 2 If the Existing Mortgage already defines a Supplemental Lender, then the supplemental lender in the present transaction is to be called the "Second Supplemental Lender" and the supplemental mortgage should refer to both the supplemental lender and the second supplemental lender.
 - 3 If the Second Supplemental Lender is being added to the mortgage, the reference here should be to the "Second Supplemental Lender's Notes."

Whereas, all acts necessary to make this Supplemental Mortgage a valid and binding legal instrument for the security of such notes and related obligations under the terms of the Mortgage, have been in all respects duly authorized:

Now, Therefore, This Supplemental Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge and grant to the Mortgagees, for the purposes hereinafter expressed, a continuing security interest in all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, in accordance with the Existing Mortgage owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

- A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule; and
- B. all of those fee and leasehold interests in real property set forth in _____ the Existing Mortgage or in any restatement, amendment or supplement thereto, _____; and
- C. all of the kinds, types or items of property, now owned or hereafter acquired, described as Mortgaged Property in the Existing Mortgage or in any restatement, amendment to supplement thereto as Mortgaged Property.

It is Further Agreed and Covenanted That the Original Mortgage, as previously restated, amended or supplemented, and this Supplement shall constitute one agreement and the parties hereto shall be bound by all of the terms thereof and, without limiting the foregoing:

1. All terms not defined herein shall have the meaning given in the Existing Mortgage.
2. The Supplemental Lender Notes are "notes" and "Additional Notes" under the terms of the Existing Mortgage and the Supplemental Mortgage is a supplemental mortgage under the terms of the Existing Mortgage.
3. The holders of the Supplemental Lenders Notes shall be considered as a class, so that in those instances where the Existing Mortgage provides that the holders of majority of the notes issued to other Mortgagees, voting as a class, may approve certain actions or make certain demands, so shall the holders of the Supplemental Lender Notes be considered to be a class with rights and authority equal to those of the holders of notes issued to such other Mortgagees.
4. The Maximum Debt Limit for the Existing Mortgage shall be as set forth in Schedule "A" hereto.
5. The [Second] Supplemental Lender shall immediately cease transfer of funds covered by the Supplemental Lender Notes if it receives notice that RUS has determined that the borrower's financial condition has deteriorated to a level that impairs the security or feasibility of the government's loans to the borrower.

In Witness Whereof, _____ as
Mortgagor⁴

⁴ Spaces are to be provided for the execution by all other parties, together with the printed name and office of the executing individual and the name of the organization represented. Each execution must be acknowledged.

Supplemental Mortgage Schedule A

Maximum Debt Limit and Other Information

1. The Maximum Debt Limit is \$ _____.
2. The Original Mortgage as referred to in the first WHEREAS clause above is more particularly described as follows: _____.
3. The Outstanding Notes referred to in the fourth WHEREAS clause above are more particularly described as follows:
4. The Additional Notes described in the fifth WHEREAS clause above are more particularly described as follows:

Supplemental Mortgage Schedule B

Property Schedule

The fee and leasehold interests in real property referred to in clause A of the granting clause are more particularly described as follows:

Dated: August 6, 2001.
Blaine D. Stockton,
Acting Administrator, Rural Utilities Service.
 [FR Doc. 01-19981 Filed 8-8-01; 8:45 am]
 BILLING CODE 3410-15-C

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 97
[Docket No. 30263; Amdt. No. 2064]
Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as

the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.
 Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

- For Examination—*
1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
 2. The FAA Regional Office of the region in which affected airport is located; or
 3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase—*Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97)

establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as

to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same

reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 97

Air traffic, control, airports, navigation (air).

Issued in Washington, DC on August 3, 2001.

Nicholas A. Sabatini,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME, or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs,

*** * * Effective Upon Publication**

FDC date	State	City	Airport	FDC No.	Subject
07/06/01	NY	Westhampton Beach.	The Francis S. Gabreski	1/6732	Copter ILS RWY 24, AMDT 1A...This NOTAM published in TLO1-17 is hereby rescinded.
07/18/01	FL	Plant City	Plant City Muni	1/7206	VOR RWY 28, AMDT 3A
07/18/01	FL	Plant City	Plant City Muni	1/7207	GPS RWY 10, orgi-A
07/18/01	SC	Cheraw	Cheraw Muni/Lynch Bellinger Field	1/7219	VOR/DME OR GPS RWY 7, AMDT 1
07/23/01	NC	Jacksonville	Albert J. Ellis	1/7419	NDB or GPS RWY 5, AMDT 7A
07/25/01	AK	Bethel	Bethel	1/7501	RNAV (GPS) RWY 18, Orig
7/25/01	AR	Fort Smith	Fort Smith Regional	1/7506	NDB RWY 25, AMDT 24B
07/26/01	IA	Sioux City	Sioux Gateway	1/7540	ILS RWY 13, AMDT 1C
07/26/01	IA	Sioux City	Sioux Gateway	1/7541	HI-ILS RWY 13, AMDT 1
07/26/01	IA	Sioux City	Sioux Gateway	1/7542	NDB RWY 13, AMDT 15B
07/26/01	FL	Avon Park	Avon Park Muni	1/7546	GPS RWY 9, Orig
07/27/01	CA	Santa Maria	Santa Maria Public/Captain G. Allan Hancock Field.	1/7580	ILS RWY 12, AMDT 9C
07/27/01	CA	Santa Maria	Santa Maria Public/Captain G. Allan Hancock Field.	1/7581	VOR or GPS RWY 12, AMDT 13B
07/27/01	ND	Fargo	Hector Intl	7602	RNAV (GPS) RWY 35, Orig
07/30/01	LA	Baton Rouge	Baton Rouge Metropolitan, Ryand Field	1/7669	ILS RWY 13, AMDT 26

FDC date	State	City	Airport	FDC No.	Subject
07/31/01	SC	Charleston	Charleston AFB/INTL	1/7690	RADAR-1, AMDT 16A

[FR Doc. 01-20034 Filed 8-8-01; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30262; Amdt. No. 2063]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase: Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription: Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Donald P. Pate, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some

SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 3, 2001.

Nicholas A. Sabatini,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR

part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LADA/DME, SDF, SDF/DMF; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective September 6, 2001*

Lewistown, MT, Lewistown Muni, VOR RWY 7, Amdt 15
 Lewistown, MT, Lewistown Muni, RNAV (GPS) RWY 7, Orig
 New York, NY, John F. Kennedy Intl, VOR OR GPS-D, Amdt 8, (CANCELLED)
 New York, NY, John F. Kennedy Intl, VOR OR GPS RWY 4L/R, Amdt 15A, CANCELLED
 New York, NY, John F. Kennedy Intl, VOR RWY 4L, Orig
 New York, NY, John F. Kennedy Intl, VOR RWY 4R, Orig
 New York, NY, John F. Kennedy Intl, VOR RWY 31L, Orig
 New York, NY, John F. Kennedy Intl, VOR OR GPS RWY 13L/13R, Amdt 18A
 New York, NY, John F. Kennedy Intl, VOR/DME RWY 22L, Amdt 4D
 New York, NY, John F. Kennedy Intl, VOR/DME RWY 31L, Amdt 13
 New York, NY, John F. Kennedy Intl, ILS RWY 4L, Amdt 10
 New York, NY, John F. Kennedy Intl, ILS RWY 4R, Amdt 29
 New York, NY, John F. Kennedy Intl, ILS RWY 13L, Amdt 16
 New York, NY, John F. Kennedy Intl, ILS RWY 22L, Amdt 23
 New York, NY, John F. Kennedy Intl, ILS RWY 22R, Amdt 2
 New York, NY, John F. Kennedy Intl, ILS RWY 31L, Amdt 10
 New York, NY, John F. Kennedy Intl, ILS RWY 31R, Amdt 14
 New York, NY, John F. Kennedy Intl, RNAV (GPS) RWY 4L, Orig
 New York, NY, John F. Kennedy Intl, RNAV (GPS) RWY 4R, Orig
 New York, NY, John F. Kennedy Intl, RNAV (GPS) RWY 22L, Orig
 New York, NY, John F. Kennedy Intl, RNAV (GPS) RWY 22R, Orig
 New York, NY, John F. Kennedy Intl, RNAV (GPS) RWY 31R, Orig

Memphis, TN, Memphis Intl, RNAV (GPS) RWY 9, Orig
 Memphis, TN, Memphis Intl, RNAV (GPS) RWY 18C, Orig
 Memphis, TN, Memphis Intl, RNAV (GPS) RWY 18L, Orig
 Memphis, TN, Memphis Intl, RNAV (GPS) RWY 18R, Orig
 Memphis, TN, Memphis Intl, RNAV (GPS) RWY 27, Orig
 Memphis, TN, Memphis Intl, RNAV (GPS) RWY 36C, Orig
 Memphis, TN, Memphis Intl, RNAV (GPS) RWY 36L, Orig
 Memphis, TN, Memphis Intl, RNAV (GPS) RWY 36R, Orig

* * * *Effective October 4, 2001*

Leesburg, FL, Leesburg Regional, NDB RWY 31, Amdt 1

* * * *Effective November 1, 2001*

Floral, AL, Floral Muni, RNAV (GPS) RWY 22, Orig
 Panama City, FL, Panama City-Bay County Intl, VOR OR TACAN-A, Amdt 14
 Panama City, FL, Panama City-Bay County Intl, VOR OR TACAN RWY 14, Amdt 16
 Panama City, FL, Panama City-Bay County Intl, VOR OR TACAN RWY 32, Amdt 11
 Panama City, FL, Panama City-Bay County Intl, NDB RWY 14, Amdt 5
 Panama City, FL, Panama City-Bay County Intl, ILS RWY 14, Amdt 16
 Benton, KS, Benton, VOR OR GPS-E, Orig, (CANCELLED)
 St. Louis, MO, Creve Coeur, VOR-A, Amdt 5
 St. Louis, MO, Creve Coeur, RNAV (GPS) RWY 16, Orig
 St. Louis, MO, Creve Coeur, RNAV (GPS) RWY 34, Orig
 Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 9
 Farmington, NM, Four Corners Regional, VOR/DME RWY 7, Amdt 4
 Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 7, Orig
 Farmington, NM, Four Corners Regional, RNAV (GPS) RWY 25, Orig
 Farmington, NM, Four Corners Regional, ILS RWY 25, Amdt 7

[FR Doc. 01-20035 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 40

[TD 8963]

RIN 1545-AX11

Deposits of Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to the requirements for excise tax returns,

payments, and deposits. These regulations affect persons required to report liability for excise taxes on Form 720, "Quarterly Federal Excise Tax Return."

DATES: *Effective Date:* These regulations are effective August 9, 2001.

Applicability Date: These regulations are applicable with respect to returns and deposits that relate to calendar quarters beginning on or after October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Susan Athy (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Excise Tax Procedural Regulations (26 CFR part 40) relating to the requirements for excise tax returns, payments, and deposits. On January 7, 2000, an advance notice of proposed rulemaking that invited comments from the public on issues relating to the requirements for excise tax returns and deposits was published in the **Federal Register** (65 FR 1076). Several written comments were received and considered in drafting the proposed regulations. On February 16, 2001, a notice of proposed rulemaking (REG-106892-00) was published in the **Federal Register** (66 FR 10650). Written comments and requests for a public hearing were solicited.

Written comments responding to the notice were received from one commentator. The comments requested that the safe harbor rule based on look-back quarter liability be modified to be applicable: To each semimonthly period in a quarter if one-sixth of look-back quarter liability is deposited during that semimonthly period; when a taxpayer's liability includes new or reinstated taxes; and when a new legal entity includes a party that filed a Form 720 for the second preceding quarter. The final regulations do not adopt the requested modifications to the look-back safe harbor rule because doing so could significantly reduce the percentage of excise tax liability deposited without any corresponding reduction in the complexity of the deposit rules.

No public hearing was requested or held. After consideration of all of the comments, the proposed regulations are adopted without change by this Treasury decision.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Susan Athy, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 40

Excise taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 40 is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by removing the entries for § 40.6071(a)–1 and 40.6071(a)–2, and § 40.6302(c)–2, 40.6302(c)–3, and 40.6302(c)–4; and adding entries in numerical order to read in part as follows:

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

Section 40.6071(a)–1 also issued under 26 U.S.C. 6071(a). * * *

Section 40.6302(c)–2 also issued under 26 U.S.C. 6302(a).

Section 40.6302(c)–3 also issued under 26 U.S.C. 6302(a). * * *

§ 40.0–1 [Amended]

Par. 2. Section 40.0–1 is amended as follows:

1. Paragraphs (d) and (e) are removed.
2. Paragraph (f) is redesignated as new paragraph (d).

§ 40.6011(a)–1 [Amended]

Par. 3. Section 40.6011(a)–1 is amended by removing paragraph (c).

§ 40.6011(a)–2 [Amended]

Par. 4. Section 40.6011(a)–2 is amended as follows:

1. In paragraph (b)(2), the language “§ 40.6302(c)–1(f)(2)” is removed and “§ 40.6302(c)–1(e)(2)” is added in its place.

2. Paragraph (d) is removed.

Par. 5. Section 40.6071(a)–1 is amended by revising paragraphs (a), (b)(2), and (c) to read as follows:

§ 40.6071(a)–1 Time for filing returns.

(a) *Quarterly returns.* Each quarterly return required under § 40.6011(a)–1(a)(2) must be filed by the last day of the first calendar month following the quarter for which it is made.

(b) * * *

(2) *Semimonthly returns.* Each semimonthly return required under § 40.6011(a)–1(b) must be filed by the last day of the semimonthly period (as defined in § 40.0–1(c)) following the semimonthly period for which it is made.

(c) *Effective date.* This section is applicable with respect to returns that relate to calendar quarters beginning on or after October 1, 2001.

§ 40.6071(a)–2 [Removed]

Par. 6. Section 40.6071(a)–2 is removed.

§ 40.6091–1 [Amended]

Par. 7. Section 40.6091–1 is amended by removing paragraph (d).

Par. 8. Section 40.6101–1 is revised to read as follows:

§ 40.6101–1 Period covered by returns.

See § 40.6011(a)–1(a)(2) for the rules relating to the period covered by the return.

Par. 9. Sections 40.6109(a)–1 and 40.6151(a)–1 are revised to read as follows:

§ 40.6109(a)–1 Identifying numbers.

Every person required under § 40.6011(a)–1 to make a return must provide the identifying number required by the instructions applicable to the form on which the return is made.

§ 40.6151(a)–1 Time and place for paying tax shown on return.

Except as provided by statute, the tax must be paid at the time prescribed in § 40.6071(a)–1 for filing the return, and at the place prescribed in § 40.6091–1 for filing the return.

Par. 10. Section 40.6302(c)–1 is revised to read as follows:

§ 40.6302(c)–1 Use of Government depositaries.

(a) *In general*—(1) *Semimonthly deposits required.* Except as provided by statute or by paragraph (e) of this section, each person required under § 40.6011(a)–1(a)(2) to file a quarterly

return must make a deposit of tax for each semimonthly period (as defined in § 40.0–1(c)) in which tax liability is incurred.

(2) *Treatment of taxes imposed by chapter 33.* For purposes of this part 40, tax imposed by chapter 33 (relating to communications and air transportation) is treated as a tax liability incurred during the semimonthly period—

- (i) In which that tax is collected; or
- (ii) In the case of the alternative method, in which that tax is considered as collected.

(3) *Definition of net tax liability.* Net tax liability means the tax liability for the specified period plus or minus any adjustments allowable in accordance with the instructions applicable to the form on which the return is made.

(4) *Computation of net tax liability for a semimonthly period.* The net tax liability for a semimonthly period may be computed by—

(i) Determining the net tax liability incurred during the semimonthly period; or

(ii) Dividing by two the net tax liability incurred during the calendar month that includes that semimonthly period, provided that this method of computation is used for all semimonthly periods in the calendar quarter.

(b) *Amount of deposit*—(1) *In general.* The deposit of tax for each semimonthly period must be not less than 95 percent of the amount of net tax liability incurred during the semimonthly period.

(2) *Safe harbor rules*—(i) *Applicability.* The safe harbor rules of this paragraph (b)(2) are applied separately to taxes deposited under the alternative method provided in § 40.6302(c)–3 (alternative method taxes) and to the other taxes for which deposits are required under this section (regular method taxes).

(ii) *Regular method taxes.* Any person that made a return of tax reporting regular method taxes for the second preceding calendar quarter (the look-back quarter) is considered to have complied with the requirement of this part 40 for deposit of regular method taxes for the current calendar quarter if—

(A) The deposit of regular method taxes for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability for regular method taxes reported for the look-back quarter;

(B) Each deposit is made on time;

(C) The amount of any underpayment of regular method taxes is paid by the due date of the return; and

(D) The person's liability does not include any regular method tax that was

not imposed at all times during the look-back quarter or a tax on a chemical not subject to tax at all times during the look-back quarter.

(iii) *Alternative method taxes.* Any person that made a return of tax reporting alternative method taxes for the look-back quarter is considered to have complied with the requirement of this part 40 for deposit of alternative method taxes for the current calendar quarter if—

(A) The deposit of alternative method taxes for each semimonthly period in the current calendar quarter is not less than 1/6 of the net tax liability for alternative method taxes reported for the look-back quarter;

(B) Each deposit is made on time;

(C) The amount of any underpayment of alternative method taxes is paid by the due date of the return; and

(D) The person's liability does not include any alternative method tax that was not imposed at all times during the look-back quarter and the month preceding the look-back quarter.

(iv) *Modification for tax rate increase.* The safe harbor rules of this paragraph (b)(2) do not apply to regular method taxes or alternative method taxes for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax to which this part 40 applies unless the deposit of those taxes for each semimonthly period in the calendar quarter is not less than 1/6 of the tax liability the person would have had with respect to those taxes for the look-back quarter if the increased rate of tax had been in effect for the look-back quarter.

(v) *Failure to comply with deposit requirements.* If a person fails to make deposits as required under this part 40, that failure may be reported to the appropriate IRS office and the IRS may withdraw the person's right to use the safe harbor rules of this paragraph (b)(2).

(c) *Time to deposit—(1) In general.* The deposit of tax for any semimonthly period must be made by the 14th day of the following semimonthly period unless such day is a Saturday, Sunday, or legal holiday in the District of Columbia in which case the immediately preceding day which is not a Saturday, Sunday, or legal holiday in the District of Columbia is treated as the 14th day. Thus, generally, the deposit of tax for the first semimonthly period in a month is due by the 29th day of that month and the deposit of tax for the second semimonthly period in a month is due by the 14th day of the following month.

(2) *Exceptions.* See § 40.6302(c)-2 for the special rules for September. See

§ 40.6302(c)-3 for the special rules for deposits under the alternative method.

(d) *Remittance of deposits—(1) Deposits by federal tax deposit coupon.* A completed Form 8109, "Federal Tax Deposit Coupon," must accompany each deposit. The deposit must be remitted, in accordance with the instructions applicable to the form, to a financial institution authorized as a depository for federal taxes (as provided in 31 CFR part 203).

(2) *Deposits by electronic funds transfer.* For the requirement to deposit excise taxes by electronic funds transfer, see § 31.6302-1(h) of this chapter. A taxpayer not required to deposit by electronic funds transfer pursuant to § 31.6302-1(h) of this chapter remains subject to the rules of this paragraph (d).

(e) *Exceptions—(1) Taxes excluded.* No deposit is required in the case of the taxes imposed by—

(i) Section 4042 (relating to fuel used on inland waterways);

(ii) Section 4161 (relating to sport fishing equipment and bows and arrow components);

(iii) Section 4682(h) (relating to floor stocks tax on ozone-depleting chemicals); and

(iv) Section 48.4081-3(b)(1)(iii) of this chapter (relating to certain removals of gasohol from refineries).

(2) *One-time filings.* No deposit is required in the case of any taxes reportable on a one-time filing (as defined in § 40.6011(a)-2(b)).

(3) *De minimis exception.* For any calendar quarter, no deposit is required if the net tax liability for the quarter does not exceed \$2,500.

(f) *Effective date.* This section is applicable with respect to deposits that relate to calendar quarters beginning on or after October 1, 2001.

Par. 11. Section 40.6302(c)-2 is revised to read as follows:

§ 40.6302(c)-2 Special rules for September.

(a) *In general—(1) Separate deposits required for the second semimonthly period.* In the case of deposits of taxes not deposited under the alternative method (regular method taxes) for the second semimonthly period in September, separate deposits are required for the period September 16th through 26th and for the period September 27th through 30th.

(2) *Amount of deposit—(i) In general.* The deposits of regular method taxes for the period September 16th through 26th and the period September 27th through 30th must be not less than 95 percent of the net tax liability for regular method taxes incurred during the respective periods. The net tax liability

for regular method taxes incurred during these periods may be computed by—

(A) Determining the amount of net tax liability for regular method taxes reasonably expected to be incurred during the second semimonthly period in September;

(B) Treating ¹¹/₁₅ of the amount determined under paragraph (a)(2)(i)(A) of this section as the net tax liability for regular method taxes incurred during the period September 16th through 26th; and

(C) Treating the remainder of the amount determined under paragraph (a)(2)(i)(A) of this section (adjusted to reflect the amount of net tax liability for regular method taxes actually incurred through the end of September) as the net tax liability for regular method taxes incurred during the period September 27th through 30th.

(ii) *Safe harbor rules.* The safe harbor rules in § 40.6302(c)-1(b)(2) do not apply for the third calendar quarter unless—

(A) The deposit of taxes for the period September 16th through 26th is not less than ¹¹/₉₀ of the net tax liability for regular method taxes reported for the look-back quarter; and

(B) The total deposit of taxes for the second semimonthly period in September is not less than 1/6 of the net tax liability for regular method taxes reported for the look-back quarter.

(3) *Time to deposit.* (i) The deposit required for the period beginning September 16th must be made by September 29th unless—

(A) September 29th is a Saturday, in which case the deposit must be made by September 28th; or

(B) September 29th is a Sunday, in which case the deposit must be made by September 30th.

(ii) The deposit required for the period ending September 30th must be made at the time prescribed in § 40.6302(c)-1(c).

(b) *Persons not required to use electronic funds transfer.* The rules of this section are applied with the following modifications in the case of a person not required to deposit taxes by electronic funds transfer.

(1) *Periods.* The deposit periods for the separate deposits required under paragraph (a) of this section are September 16th through 25th and September 26th through 30th.

(2) *Amount of deposit.* In computing the amount of deposit required under paragraph (a)(2)(i)(B) of this section, the applicable fraction is ¹⁰/₁₅. In computing the amount of deposit required under paragraph (a)(2)(ii)(A) of this section, the applicable fraction is ¹⁰/₉₀.

(3) *Time to deposit.* In the case of the deposit required under paragraph (a) of this section for the period beginning September 16th, the deposit must be made by September 28th unless—

(i) September 28th is a Saturday, in which case the deposit must be made by September 27th; or

(ii) September 28th is a Sunday, in which case the deposit must be made by September 29th.

(c) *Effective date.* This section is applicable with respect to deposits that relate to calendar quarters beginning on or after October 1, 2001.

Par. 12. Section 40.6302(c)–3 is amended as follows:

1. In paragraph (b)(1)(ii), the language “9-day rule of § 40.6302(c)–1(b)(6)” is removed and “rule of § 40.6302(c)–1(c)(1)” is added in its place.

2. In paragraph (b)(3), last sentence, the language “6th” is removed and “16th” is added in its place.

3. In paragraph (d), first sentence, the language “not less than” is removed and “not less than 95 percent of” is added in its place.

4. In paragraph (f)(4) introductory text, the language “§ 40.6302(c)–1(c)(2)(i)” is removed and “§ 40.6302(c)–1(b)(2)” is added in its place.

5. Paragraphs (f)(5) and (f)(7) are removed.

6. Paragraph (f)(6) is redesignated as paragraph (f)(5).

7. Paragraph (g) is revised.

8. Paragraph (h) is removed.

The revision reads as follows:

§ 40.6302(c)–3 Special rules for use of Government depositories under chapter 33.

* * * * *

(g) *Effective date.* This section is applicable with respect to deposits and returns that relate to taxes that are considered as collected in calendar quarters beginning on or after October 1, 2001.

§ 40.6302(c)–4 [Removed]

Par. 13. Section 40.6302(c)–4 is removed.

§ 40.9999–1 [Removed]

Par. 14. Section 40.9999–1 is removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: July 31, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–19927 Filed 8–8–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8962]

RIN 1545–AY09

Classification of Certain Pension and Employee Benefit Trusts, and Other Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending the regulations defining a domestic or foreign trust for federal tax purposes. The regulations will affect certain specified employee benefit trusts and investment trusts. The regulations provide that these employee benefit trusts and investment trusts are deemed to satisfy the control test for domestic trust treatment if United States trustees control all of the substantial decisions of the trust made by the trustees of the trust.

DATES: *Effective Date:* These regulations are effective August 9, 2001.

Applicability Dates: For dates of applicability of § 301.7701–7(d)(1)(iv) and (v) *Examples 1 and 5*, see § 301.7701–7(e)(3).

FOR FURTHER INFORMATION CONTACT:

James A. Quinn at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 12, 2000, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–108553–00) under section 7701 of the Internal Revenue Code (Code) in the **Federal Register** (65 FR 60822). The proposed regulations add group trusts consisting of qualified plan trusts and IRA trusts, as described in Rev. Rul. 81–100 (1981–1 C.B. 326), and certain investment trusts to the categories of trusts that may use the safe harbor in § 301.7701–7(d)(1)(iv) of the Procedure and Administration Regulations relating to the application of the control test of section 7701(a)(30)(E). The proposed regulations also modify the safe harbor in § 301.7701–7(d)(1)(iv) to clarify that employee benefit trusts and investment trusts identified in the regulations are deemed to satisfy the control test if United States trustees control all of the substantial decisions of the trust made by the trustees of the trust. No one requested to speak at the public hearing scheduled for January 31, 2001. Accordingly, the public hearing was

canceled on January 26, 2001 (66 FR 7867). Comments in response to the notice of proposed rulemaking were received and are addressed in the following Explanation and Summary of Comments. This document finalizes the proposed regulations without change.

Explanation and Summary of Comments

Reporting Requirements for Foreign Widely Held Fixed Investment Trusts

Two commentators were concerned about United States investors in widely held fixed investment trusts that are outside the safe harbor provided by § 301.7701–7(d)(1)(iv)(I) and therefore are treated as foreign trusts. These commentators suggested that United States investors in such trusts should not be subject to reporting under section 6048 and to the corresponding penalties in section 6677 for failure to comply with the section 6048 reporting requirements. A guidance project under section 671 concerning reporting requirements for all widely held fixed investment trusts is currently under consideration. Accordingly, these regulations do not specifically address this issue.

Application to Certain Pension Trusts Created or Organized in Puerto Rico

Section 1022(i)(1) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829) (September 2, 1974), provides for tax exemption for certain trusts created or organized in Puerto Rico that form part of a pension, profit-sharing, or stock bonus plan. Section 1022(i)(2) and § 1.401(a)–50 of the Income Tax Regulations generally provide that the administrator of such a trust may elect to have the trust treated as a trust created or organized in the United States for purposes of section 401(a). In light of the changes made to section 7701(a)(30) in the Small Business Job Protection Act, Public Law 104–188 (110 Stat. 1755) (August 20, 1996), and the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788) (August 5, 1997), and the ensuing regulations, some taxpayers have expressed concerns regarding the continuing application of sections 1022(i)(1) and (2) and § 1.401–50 to a pension trust created or organized in Puerto Rico that is not a domestic trust within the meaning of section 7701(a)(30). Because the application of these provisions is not restricted to trusts that are domestic trusts within the meaning of section 7701(a)(30), the 1996 and 1997 amendments to section 7701(a)(30) and

the ensuing regulations do not affect the application of these provisions.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on the regulations' impact on small business.

Drafting Information

The principal author of these regulations is James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their 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 continues to read in part as follows:

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

Par. 2. Section 301.7701-7 is amended as follows:

1. Paragraph (d)(1)(iv) introductory text is revised.
2. Paragraph (d)(1)(iv)(H) is redesignated as paragraph (d)(1)(iv)(J).
3. New paragraphs (d)(1)(iv)(H) and (d)(1)(iv)(I) are added.
4. In paragraph (d)(1)(v), *Example 1* is revised and *Example 5* is added.
5. The first sentence of paragraph (e)(1) is revised.
6. Paragraph (e)(3) is added.

The revisions and additions read as follows:

§ 301.7701-7 Trusts—domestic and foreign.

* * * * *

(d) * * * (1) * * *

(iv) *Safe harbor for certain employee benefit trusts and investment trusts.*

Notwithstanding the provisions of this paragraph (d), the trusts listed in this paragraph (d)(1)(iv) are deemed to satisfy the control test set forth in paragraph (a)(1)(ii) of this section, provided that United States trustees control all of the substantial decisions made by the trustees of the trust—

* * * * *

(H) A group trust described in Rev. Rul. 81-100 (1981-1 C.B. 326) (*See* § 601.601(d)(2) of this chapter);

(I) An investment trust classified as a trust under § 301.7701-4(c), provided that the following conditions are satisfied—

(1) All trustees are United States persons and at least one of the trustees is a bank, as defined in section 581, or a United States Government-owned agency or United States Government-sponsored enterprise;

(2) All sponsors (persons who exchange investment assets for beneficial interests with a view to selling the beneficial interests) are United States persons; and

(3) The beneficial interests are widely offered for sale primarily in the United States to United States persons;

* * * * *

(v) * * *

Example 1. Trust is a testamentary trust with three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens, and *C* is a nonresident alien. No persons except the fiduciaries have authority to make any decisions of the trust. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because United States persons do not control all the substantial decisions of the trust. No substantial decisions can be made without *C*'s agreement.

* * * * *

Example 5. *X*, a foreign corporation, conducts business in the United States through various branch operations. *X* has United States employees and has established a trust as part of a qualified employee benefit plan under section 401(a) for these employees. The trust is established under the laws of State *A*, and the trustee of the trust is *B*, a United States bank governed by the laws of State *A*. *B* holds legal title to the trust assets for the benefit of the trust beneficiaries. A plan committee makes decisions with respect to the plan and the trust. The plan committee can direct *B*'s actions with regard to those decisions and under the governing documents *B* is not liable for those decisions. Members of the plan committee consist of United States persons and nonresident aliens, but nonresident aliens make up a majority of the plan committee. Decisions of the plan committee are made by majority vote. In

addition, *X* retains the power to terminate the trust and to replace the United States trustee or to appoint additional trustees. This trust is deemed to satisfy the control test under paragraph (d)(1)(iv) of this section because *B*, a United States person, is the trust's only trustee. Any powers held by the plan committee or *X* are not considered under the safe harbor of paragraph (d)(1)(iv) of this section. In the event that *X* appoints additional trustees including foreign trustees, any powers held by such trustees must be considered in determining whether United States trustees control all substantial decisions made by the trustees of the trust.

* * * * *

(e) *Effective date*—(1) *General rule.*

Except for the election to remain a domestic trust provided in paragraph (f) of this section and except as provided in paragraph (e)(3) of this section, this section is applicable to taxable years ending after February 2, 1999. * * *

(3) *Effective date of safe harbor for certain employee benefit trusts and investment trusts.* Paragraphs (d)(1)(iv) and (v) *Examples 1* and 5 of this section apply to trusts for taxable years ending on or after August 9, 2001. Paragraphs (d)(1)(iv) and (v) *Examples 1* and 5 of this section may be relied on by trusts for taxable years beginning after December 31, 1996, and also may be relied on by trusts whose trustees have elected to apply sections 7701(a)(30) and (31) to the trusts for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the SBJP Act.

* * * * *

Approved: July 31, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01-19926 Filed 8-8-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[OSD Administrative Instruction 81]

Privacy Act; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary is adding an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records and to protect the privacy of individuals identified in the system of records.

In addition, this amendment includes specific language for providing periodic Privacy Act training for DoD personnel who may be expected to deal with the new media or the public.

EFFECTIVE DATE: February 5, 2001.

ADDRESSES: OSD Privacy Act Officer, Washington Headquarter Services, Correspondence and Directives Division, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695-1155.

SUPPLEMENTARY INFORMATION:

The proposed rule was published on December 5, 2000, at 65 FR 75897. No comments were received. Executive Order 12866, "Regulatory Planning and Review". The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, or user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary

and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 311

Privacy.

1. The authority citation for 32 CFR part 311 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In § 311.5, paragraph (a)(7)(ii) is revised as follows:

§ 311.5 Responsibilities.

- (a) * * *
- (7) * * *

(ii) Provide guidance and training to organizational entities as required by 5 U.S.C. 552a and OMB Circular A-130. Periodic training will be provided to public affairs officers and others who may be expected to deal with the news media or the public.

* * * * *

3. Section 311.8 is amended by adding paragraph (c)(7) to read as follows:

§ 311.8 Procedures for exemptions.

* * * * *

- (c) * * *

(7) System identifier and name: DGC 20, DoD Presidential Appointee Vetting File.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified

information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to 5 U.S.C. 552a(k)(5) are subsections (d)(1) through (d)(5).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reason: From (d)(1) through (d)(5) because the agency is required to protect the confidentiality of sources who furnished information to the government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

* * * * *

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-19817 Filed 8-8-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Regulation 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency (DLA) is amending its Privacy Act regulations. These changes consist of DLA office code changes and DLA publication name changes. DLA is also adding language to clarify the training requirements for its employees and military members who work with the news media or the public.

EFFECTIVE DATE: December 12, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.

SUPPLEMENTARY INFORMATION: The proposed rule was published on October 13, 2000, at 65 FR 60900. No comments were received during the sixty-day public comment period. Therefore, DLA is adopting the amendments.

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of

Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism

implications. The rules do 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.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 323 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. 32 CFR part 323 is amended by revising footnotes 1 through 8 to read as follows:

Copies may be obtained from the Defense Logistics Agency, ATTN: DSS-CV, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

3. Section 323.2, paragraph (e), is revised to read as follows:

§ 323.2 Policy.

* * * * *

(e) Make reasonable efforts to ensure that records containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside DoD, other than a Federal agency, unless the disclosure is made under DLAR 5400.14, DLA Freedom of Information Act Program (32 CFR part 1285).

* * * * *

4. Section 323.4 is amended as follows:

a. By revising paragraph (a)(1) introductory text.

b. Adding paragraph (a)(1)(v), and

c. Revising paragraph (a)(2) introductory text, paragraphs (a)(3) and (b)(4). The revisions and addition read as follows:

§ 323.4 Responsibilities.

(a) * * *

(1) The Staff Director, Corporate Communications, DLA Support Services (DSS-C) will:

* * * * *

(v) Establish training programs for all individuals with public affairs duties, and all other personnel whose duties require access to or contact with systems of records affected by the Privacy Act. Initial training will be given to new employees and military members upon assignment. Refresher

training will be provided annually or more frequently if conditions warrant.

(2) The General Counsel, DLA (DLA-GC) will:

* * * * *

(3) The DLA Chief Information Office (J-6) will formulate and implement protective standards for personal information maintained in automated data processing systems and facilities.

(b) * * *

(4) Establish training programs for all individuals with public affairs duties, and all other personnel whose duties require access to or contact with systems of records affected by the Privacy Act. Initial training will be given to new employees and military members upon assignment. Refresher training will be provided annually or more frequently if conditions warrant.

5. Section 323.5 is amended by revising, paragraphs (b)(3)(iv), (b)(4), (b)(5), (c)(5)(ii), (c)(6) introductory text, (c)(6)(i), (f)(3), (h)(6), (i)(5)(ii), (j)(5), (k), (l)(1), (l)(2), and (l)(3), and by removing paragraph (b)(3)(v) to read as follows:

§ 323.5 Procedures.

* * * * *

(b) * * *

(3) * * *

(iv) Notice to the individual of his or her right to appeal the denial within 60 calendar days of the date of the denial letter and to file any such appeal with the HQ DLA Privacy Act Officer, Defense Logistics Agency (DSS-CA), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

(4) DLA will process all appeals within 30 days of receipt unless a fair and equitable review cannot be made within that period. The written appeal notification granting or denying access is the final DLA action on access.

(5) The records in all systems of records maintained in accordance with the Office of Personnel Management (OPM) Government-wide system notices are technically only in the temporary custody of DLA. All requests for access to these records must be processed in accordance with the Federal Personnel Manual (5 CFR parts 293, 294, 297 and 735) as well as this part. DLA-GC is responsible for the appellate review of denial of access to such records.

(c) * * *

(5) * * *

(ii) Notification that he or she may seek further independent review of the decision by filing an appeal with the HQ DLA Privacy Act Officer, Defense Logistics Agency (DSS-CA), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and including all supporting materials.

(6) DLA will process all appeals within 30 days unless a fair review cannot be made within this time limit.

(i) If the appeal is granted, DLA will promptly notify the requester and system manager of the decision. The system manager will amend the record(s) as directed and ensure that all prior known recipients of the records who are known to be retaining the record are notified of the decision and the specific nature of the amendment and that the requester is notified as to which DoD Components and Federal agencies have been told of the amendment.

* * * * *

(f) * * *

(3) All records must be disclosed if their release is required by the Freedom of Information Act. DLAR 5400.14, (32 CFR part 1285) requires that records be made available to the public unless exempted from disclosure by one of the nine exemptions found in the Freedom of Information Act. The standard for exempting most personal records, such as personnel records, medical records, and similar records, is found in DLAR 5400.14 (32 CFR part 1285). Under the exemption, release of personal information can only be denied when its release would be a 'clearly unwarranted invasion of personal privacy.'

* * * * *

(h) * * *

(6) DLAI 5530.1, Publications, Forms, Printing, Duplicating, Micropublishing, Office Copying, and Automated Information Management Programs,² provides guidance on administrative requirements for Privacy Act Statements used with DLA forms. Forms subject to the Privacy Act issued by other Federal agencies have a Privacy Act Statement attached or included. Always ensure that the statement prepared by the originating agency is adequate for the purpose for which the form will be used by the DoD activity. If the Privacy Act Statement provided is inadequate, the activity concerned will prepare a new statement of a supplement to the existing statement before using the form. Forms issued by agencies not subject to the Privacy Act (state, municipal, and other local agencies) do not contain Privacy Act Statements. Before using a form prepared by such agencies to collect personal data subject to this part, an appropriate Privacy Act Statement must be added.

(i) * * *

(5) * * *

(ii) Special administrative, physical, and technical procedures are required to protect data that are stored or being processed temporarily in an automated

data processing (ADP) system or in a word processing activity to protect it against threats unique to those environments (see DLAR 5200.17, Security Requirements for Automated Information and Telecommunications Systems,³ and appendix D to this part).

* * * * *

(j) * * *

(5) Systems notices and reports of new and altered systems will be submitted to DLA Support Services (DSS-CA) as required.

* * * * *

(k) Exemptions. The Director, DLA will designate the DLA records which are to be exempted from certain provisions of the Privacy Act. DLA Support Services (DSS-CA) will publish in the **Federal Register** information specifying the name of each designated system, the specific provisions of the Privacy Act from which each system is to be exempted, the reasons for each exemption, and the reason for each exemption of the record system.

(l) * * *

(1) Forward all requests for matching programs to include necessary routine use amendments and analysis and proposed matching program reports to DLA Support Services. Changes to existing matching programs shall be processed in the same manner as a new matching program report.

(2) No time limits are set by the OMB guidelines. However, in order to establish a new routine use for a matching program, the amended system notice must have been published in the **Federal Register** at least 30 days before implementation. Submit the documentation required above to DLA Support Services (DSS-CA) at least 60 days before the proposed initiation date of the matching program. Waivers to the 60 days' deadline may be granted for good cause shown. Requests for waivers will be in writing a fully justified.

(3) For the purpose of the OMB guidelines, DoD and all DoD Components are considered a single agency. Before initiating a matching program using only the records of two or more DoD activities, notify DLA Support Services (DSS-CA) that the match is to occur. Further information may be requested from the activity proposing the match.

* * * * *

6. Section 323.6 is revised to read as follows:

§ 323.6 Forms and reports.

DLA activities may be required to provide data under reporting requirements established by the Defense Privacy Office and DLA Support

Services (DSS-CA). Any report established shall be assigned Report Control Symbol DD-DA&M(A)1379.

Appendix A to Part 323 [Amended]

6a. Appendix A to part 323 is amended by redesignating footnotes 5 through 8 as footnotes 1 through 4 respectfully.

7. Appendix A to part 323 is amended by revising paragraphs C.2., F.2., I.4 to read as follows:

Appendix A to Part 323—Instructions for Preparations of System Notices

C. * * *

2. When multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are contained in an address directory published as an appendix to DLAH 5400.1.

* * * * *

F. * * *

2. For administrative housekeeping records, cite the directive establishing DLA as well as the Secretary of Defense authority to issue the directive. For example, 'Pursuant to the authority contained in the National Security Act of 1947, as amended (10 U.S.C. 133d), the Secretary of Defense has issued DoD Directive 5105.22 (32 CFR part 398), Defense Logistics Agency (DLA), the charter of the Defense Logistics Agency (DLA) as a separate agency of the Department of Defense under this control. Therein, the Director, DLA, is charged with the responsibility of maintaining all necessary and appropriate records.'

I. * * *

4. Retention and disposal. Indicate how long the record is retained. When appropriate, state the length of time the records are maintained by the activity, when they are transferred to a Federal Records Center, length of retention at the Records Center and when they are transferred to the National Archives or are destroyed. A reference to DLAI 5015.1,⁴ DLA Records Management Procedures and Records Schedules, or other issuances without further detailed information is insufficient.

Appendix B to Part 323 [Amended]

8. Appendix B is amended by revising paragraphs C. and F.1. introductory text to read as follows:

Appendix B to Part 323—Criteria for New and Altered Record Systems

* * * * *

C. Reports of new and altered systems. Submit a report of a new or altered system to DLA Support Services (DSS-CA) before collecting information and for using a new system or altering an existing system.

* * * * *

F. * * *

1. The OMB may authorize a Federal agency to begin operation of a system of records before the expiration of time limits described above. When seeking such a waiver, include in the letter of transmittal to DLA Support Services (CA) an explanation

why a delay of 60 days in establishing the system of records would not be in the public interest. The transmittal must include:

* * * * *

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-19818 Filed 8-8-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

32 CFR Part 326

NRO Privacy Act Program

AGENCY: National Reconnaissance Office, DOD.

ACTION: Final Rule.

SUMMARY: The National Reconnaissance Office (NRO) is adding a new responsibility for NRO employees under the NRO Privacy Act Program. NRO employees are now required to participate in specialized Privacy Act training should their duties require dealing with special investigators, the news media, or the public.

In addition, NRO is exempting a Privacy Act system of records. The system of records is QNRO-23, Counterintelligence Issue Files. The exemptions are intended to increase the value of the systems of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the systems of records.

EFFECTIVE DATE: March 9, 2001.

ADDRESSES: National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151-1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808-5029.

SUPPLEMENTARY INFORMATION: The proposed rules were published on September 6, 2000, at 65 FR 53962, and on January 8, 2001, at 66 FR 1280, respectively. No comments were received for either proposed rule.

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or

State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact or entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96-354, "Regulatory Flexibility" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 326

Privacy.

1. The authority citation for 32 CFR part 326 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 326.5 is amended by adding paragraph (j)(11) to read as follows:

§ 326.5 Responsibilities.

* * * * *

(j) Employees, NRO:

* * * * *

(11) Will participate in specialized Privacy Act training should their duties require dealing with special investigators, the news media, or the public.

* * * * *

3. Section 326.17 is amended by adding paragraph (e) to read as follows:

§ 326.17 Exemptions.

* * * * *

(e) QNRO-23

(1) *System name:* Counterintelligence Issue Files.

(2) *Exemptions:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and/or (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the

identity of the recipient, could alert the subject to the existence of the investigation or prosecutable interest by NRO or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. NRO will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

(vi) Consistent with the legislative purpose of the Privacy Act of 1974, the NRO will grant access to nonexempt material in the records being maintained. Disclosure will be governed by NRO's Privacy Regulation, but will

be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-19816 Filed 8-8-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-01-104]

RIN 2115-AA97

Safety Zone; Lake Erie, Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone encompassing the navigable waters adjacent to the Cleveland Port Authority, on Cleveland Harbor, Lake Erie. The Safety Zone is necessary to ensure the safety of spectator vessels during a fireworks display launched from a barge moored to the Cleveland Port Authority property on August 18, 2001. This regulation is intended to restrict vessel traffic from a portion of Lake Erie and Cleveland Harbor. Entry into, transit through or anchoring within this Safety Zone is prohibited unless authorized by the Coast Guard Patrol Commander, which may be contacted on VHF/FM Channel 16.

DATES: This temporary final rule is effective 9 p.m. until 10:15 p.m. (e.s.t.), August 18, 2001.

ADDRESSES: Comments and material that may be received from the public will be made part of docket CGD09-01-104,

and will be available for inspection and copying at Coast Guard Marine Safety Office Cleveland, Ohio, 1055 East Ninth Street, Cleveland, Ohio, 44114, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant John Natale, U.S. Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114. The telephone number is (216) 937-0111.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property. The Coast Guard has not received any complaints or negative comments with regard to this event.

Background and Purpose

On August 18, 2001, at approximately 9:30 p.m. a fireworks and pyrotechnic display will be launched from a barge moored to the end of dock 26 at the Cleveland Port Authority. Spectators are expected to view the display from the adjacent Cleveland Browns football stadium, and private and commercial spectator vessels are expected in Cleveland Harbor. A safety zone will be in effect on August 18, 2001, from 9 p.m. until 10:15 p.m. The safety zone will include the navigable waters of Cleveland Harbor: East Basin, Eastern Section bounded by a line beginning at coordinates 41°30'29"N, 081°42'08"W; continuing north to coordinates 41°30'44"N, 081°42'19"W; then southwest along the breakwall to 41°30'34"N, 081°42'41"W then proceeding southeast to 41°30'19"N, 081°42'26"W, and then along the shoreline back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under

section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review 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). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above regulatory evaluation, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities. This Safety Zone will not have a significant economic impact on a substantial number of small entities for the following reason: this rule will be in effect for approximately one hour. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

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 rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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. A rule with tribal implications has a substantial direct effect on one or more Indian tribe, 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

The Coast Guard has considered the environmental impact of this regulation and concluded that, under figure 2-1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

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 new temporary § 165.T09-983 is added to read as follows:

§ 165.T09-983 Safety Zone; Lake Erie, Cleveland Harbor, Ohio.

(a) *Location.* The safety zone will include the navigable waters of Cleveland Harbor and Lake Erie beginning at coordinates 41°30'29" N, 081°42'08" W; continuing north to coordinates 41°30'44" N, 081°42'19" W; thence southwest along the breakwall to 41°30'34" N, 081°42'41" W; then southeast to 41°30'19" N, 081°42'26" W, and then along the shoreline back to the beginning. All coordinates are based on North American Datum 1983 (NAD 83).

(b) *Effective dates.* This section is effective from 9 p.m. until 10:15 p.m. on August 18, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port, Cleveland or his representative on the Coast Guard vessel on scene. The Coast Guard Patrol Commander may be contacted on VHF Channel 16.

Dated: July 31, 2001.

R. J. Perry,

Commander, U.S. Coast Guard, Captain of the Port, Cleveland, Ohio.

[FR Doc. 01-19935 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 165****[CGD09-01-114]**

RIN 2115-AA97

Safety Zone; Bay City Relay for Life Fireworks, Saginaw River, MI**AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Bay City Relay for Life fireworks display on August 11, 2001. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Saginaw River.

DATES: This temporary final rule is effective on August 11, 2001, from 9 p.m. until 12 midnight.

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 [CGD09-01-114] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott St., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott St., Detroit, MI 48207. The telephone number is (313) 568-9558.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing safety zones to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone will encompass all waters surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°35'03" N, 083°53'06" W (off of Bay City Aggregate). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

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

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor, if any, impacts to mariners will result.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant 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 rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit or anchor in a portion of one of the activated safety zones.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9 p.m. until 12 midnight the day of the event; and vessel traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Detroit or his designated on-scene representative. Before the effective period, we will issue maritime advisories widely available to users of the Saginaw River by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine

Safety Office Detroit (see **ADDRESSES**). 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 would call 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 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) 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 rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would 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

The Coast Guard has 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.

Environment

We have 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 written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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.

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—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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 new temporary § 165.T09-989 is added to read as follows:

§ 165.T09-989 Safety Zone; Bay City, MI, Saginaw River.

(a) *Location.* The safety zone encompasses all waters of the Saginaw River surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 43°35'03" N, 083°53'06" W (off of Bay City Aggregate). The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective on August 11, 2001, from 9 p.m. until 12 midnight (local time). The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into these safety zones is prohibited unless authorized by the

Coast Guard Captain of the Port Detroit, or his designated on-scene representative.

Dated: August 2, 2001.

B.P. Hall,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 01-19934 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-15-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu 01-054]

RIN 2115-AA97

Safety Zone: Japanese Fisheries High School Training Vessel EHIME MARU Relocation and Crew Member Recovery, Pacific Ocean, South Shores of the Island of Oahu, HI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established four temporary safety zones south of Oahu, Hawaii, to protect vessels and mariners from the hazards associated with vessel relocation and crewmember recovery operations of the Japanese Fisheries High School Training Vessel EHIME MARU, which sank after being struck by the submarine USS GREENEVILLE (SSN 772). Entry into these zones is prohibited unless authorized by the Captain of the Port Honolulu, HI.

DATES: This rule is effective from 4 p.m. HST August 1, 2001 until 4 p.m. November 15, 2001.

ADDRESSES: Public comments and supporting material is available for inspection or copying at U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Boulevard, Honolulu, HI, 96813, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Mark Willis, U.S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522-8260.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 28, 2001, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (66 FR 34380), proposing to establish temporary safety zones for the recovery and relocation operation for the Japanese Fisheries High School Training Vessel EHIME MARU. We received no

comments on the proposal. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exist for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the unprecedented and urgent nature of the Navy's relocation and recovery operation, the effective dates for this zone were not known in sufficient time to make this rule effective 30 days after publication in the **Federal Register**.

Background and Purpose

On February 9, 2001, the Japanese Fisheries High School Training Vessel EHIME MARU was struck by the submarine USS GREENEVILLE (SSN 772) approximately 9 nautical miles south of Diamond Head on the island of Oahu, Hawaii. The EHIME MARU sank in approximately 2,000 feet of water. At the time of the sinking, 26 of the 35 crewmembers were successfully rescued. An extensive search failed to locate additional personnel and it is assumed that some, or all, of the nine missing crewmembers were trapped inside the vessel. The EHIME MARU is resting upright on the seafloor at position 21°-04.8'N, 157°-49.5'W. The U.S. Navy plans to recover crewmembers, personal effects, and certain unique characteristic components from the EHIME MARU. In its present location, the vessel is beyond diver capability to safely conduct recovery operations. Therefore, the current recovery plan calls for use of a specially equipped offshore construction vessel to lift the EHIME MARU from the bottom and transport the vessel to a shallow water work site. The EHIME MARU will then be placed back on the seafloor, in approximately 115 feet of water, where Navy divers will enter the hull and attempt to recover crewmembers, personal effects, and uniquely characteristic components found inside. To limit impact on the marine environment, diesel fuel, lubricating oil, loose debris, and any other hazardous materials will be removed to the maximum extent practicable at the shallow water work site. The hull will then be lifted back off the ocean floor and moved to a deep-water relocation site approximately 13 nautical miles south of Barbers Point on the island of Oahu, Hawaii. To support the vessel relocation and crewmember recovery operation, the Coast Guard will establish safety zones as follows:

1. A fixed safety zone, with a radius of 1 nautical mile, centered at 21°-04.8'N, 157°-49.5'W, the present location of the EHIME MARU.

2. A moving safety zone, with a radius of 1 nautical mile, will be in effect during transit of the EHIME MARU and

associated recovery vessels from the present location of the EHIME MARU to the shallow water work site, located within the Naval Defensive Sea Area at approximate position 21°-17.5'N, 157°-56.4'W.

3. A moving safety zone, with a radius of 1 nautical mile, will be in effect during transit of the EHIME MARU and associated recovery vessels from the shallow water work site to the deep water relocation site at approximate position 21°-05.0'N, 157°-07.0'W.

4. A fixed safety zone, with a radius of 1 nautical mile, centered at the coordinates of the deep water relocation site, will be in effect until the EHIME MARU is placed back on the ocean floor. The portion of the safety zone extending beyond the territorial boundary is advisory only.

The safety zones will be enforced sequentially, the exact dates will be dependent on the phase of the operation. These safety zones are effective August 1, 2001, and will remain in effect until the operation ends November 15, 2001. The purpose of these safety zones is to protect vessels and mariners from hazards associated with vessel relocation and crewmember recovery operations of the Japanese Fisheries High School Training Vessel EHIME MARU. Since oil spills may result due to damaged and ruptured fuel tanks, the safety zones will also protect vessels and mariners from the hazards of any pollution response operations that may be necessary. Entry into these safety zones is prohibited unless authorized by the Captain of the Port Honolulu, HI. Representatives of the Captain of the Port Honolulu will enforce the safety zones. The Captain of the Port may be assisted by other federal agencies.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. 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). The U.S. Coast Guard expects the economic impact of this action to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the short duration of the zone and the limited geographic area affected by it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this temporary 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 U.S. Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zones and the short duration of the safety zones in any one area.

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

The U. S. Coast Guard has analyzed this rule under Executive Order 13132, and has determined this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

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.

Environment

The U. S. Coast Guard considered the environmental impact of this action and concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons set out 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. From August 1, 2001, to November 15, 2001, new § 165.T14-054 is temporarily added to read as follows:

§ 165.T14-054 Safety Zone: Japanese Fisheries High School Training Vessel EHIME MARU Relocation and Crew Member Recovery, Pacific Ocean, South Shores of the Island of Oahu, Hawaii.

(a) *Location.* The following areas are safety zones:

(1) At the current location of the Japanese Fisheries High School Training Vessel EHIME MARU, all waters from the surface of the ocean to the bottom within a 1 nautical mile radius centered at 21°-04.8'N, 157°-49.5'W.

(2) All waters from the surface of the ocean to the bottom within a 1 nautical mile radius of the recovery vessels while en route between the current location at 21°-04.8'N, 157°-49.5'W to

the shallow water recovery site at 21°-17.5'N, 157°-56.4'W.

(3) All waters from the surface of the ocean to the bottom within a 1 nautical mile radius of the recovery vessels while en route between the shallow water work site at 21°-17.5'N, 157°-56.4'W to the deep water relocation site at 21°-05.0'N, 157°-07.0'W.

(4) All waters from the surface of the ocean to the bottom within a 1 nautical mile radius centered at 21°-05.0'N, 157°-07.0'W, except those waters extending beyond the territorial seas.

(b) *Designated representative.* A designated representative of the U. S. Coast Guard Captain of the Port is any U. S. Coast Guard commissioned, warrant, or petty officer that has been authorized by the U. S. Coast Guard Captain of the Port, Honolulu, to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior U. S. Coast Guard boarding officer on each vessel enforcing the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into these zones is prohibited unless authorized by the U. S. Coast Guard Captain of the Port or his designated representatives. The Captain of the Port Honolulu will grant general permissions to enter the zones via Broadcast Notice to Mariners.

(d) *Effective dates.* This section is effective from 4 p.m. August 1, 2001, until the operation ends at 4 p.m. November 15, 2001. The public will be notified of the enforcement status of the various zones by Broadcast Notice to Mariners.

Dated: July 31, 2001.

G. J. Kanazawa,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 01-20038 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-15-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA-4122a; FRL-7027-8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for the Allegheny Ludlum Corporation's Brackenridge Facility in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for the Allegheny Ludlum Corporation's Brackenridge facility, a major source of volatile organic compounds (VOC) and nitrogen oxides (NO_x) located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving this revision to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on September 24, 2001 without further notice, unless EPA receives adverse written comment by September 10, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, Mail code 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; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Michael Ioff at (215) 814-2166, the EPA Region III address above or by e-mail at ioff.mike@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_x

sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are: (1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and (3) all other major non-CTG rules were due by November 15, 1992. The Pennsylvania SIP has approved RACT regulations and requirements for all sources and source categories covered by the CTG's.

On February 4, 1994, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to require major sources of NO_x and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994 submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_x RACT requirements. In the Pittsburgh area, a major source of VOC is defined as one having the potential to emit 50 tons per year (tpy) or more, and a major source of NO_x is defined as one having the potential to emit 100 tpy or more. Pennsylvania's RACT regulations require sources, in the Pittsburgh area, that have the potential to emit 50 tpy or more of VOC and sources which have the potential to emit 100 tpy or more of NO_x comply with RACT by May 31, 1995. The regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO_x sources. For other major NO_x sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a "generic" RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 EPA granted conditional limited approval to the

Commonwealth's generic VOC and NO_x RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; or (2) demonstrates that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_x RACT regulations by submitting 485 case-by-case VOC/NO_x RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfied the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_x RACT regulations on a statewide basis. The regulation currently retains its limited approval status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP to satisfy the conditional approval for subject sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties; the limited approval of Pennsylvania's generic VOC and NO_x RACT regulations shall convert to a full approval for the Pittsburgh area.

On July 1, 1997, PADEP submitted revisions to the Pennsylvania SIP which establish and imposes RACT for several sources of NO_x and VOCs. This rulemaking pertains only to the RACT determination made for the Allegheny Ludlum Corporation's Brackenridge facility, a major source of VOC and NO_x located in the Pittsburgh area. The RACT determinations submitted on July 1, 1997 for other sources are or have been the subject of separate rulemakings. The submittal for the Allegheny Ludlum Corporation's Brackenridge facility consists of Plan Approval Order and Agreement upon Consent (CO) No. 260 in which RACT has been established and imposed by the Allegheny County Health Department (ACHD). The PADEP submitted CO No. 260 on behalf of the ACHD as a SIP revision.

II. Summary of the SIP Revision

Allegheny Ludlum Corporation's Brackenridge facility is located in

Allegheny County, Pennsylvania. The facility produces stainless steel and silicon strip steel from basic raw materials and metallic scrap. The facility consists of two basic oxygen furnaces (BOF), four electric arc furnaces (EAF), three electric induction furnaces (EIF), an argon-oxygen decarburization (AOD) vessel, twenty-seven soaking pits and a large number of various metallurgical furnaces and related equipment. The facility's potential NO_x and VOC emissions were 1,613 tons per year and 1,371 tons per year, respectively. The ACHD specified RACT requirements for the facility in CO No. 260 with the effective date of December 19, 1996. Most of the NO_x and VOC emitting installations and processes at this source are subject to specific SIP-approved, presumptive RACT requirements. Other installations and processes are subject to the generic provisions of Pennsylvania's RACT regulation. The NO_x and VOC emitting installations/processes and the RACT determinations are described below.

A. Descriptions of the NO_x Emitting Installations and Processes

The NO_x emitting sources at the facility are comprised largely of BOFs, EAFs, and AOD vessel, soaking pits, and a large number of various natural gas fired heaters and preheating/heating/reheating and annealing furnaces with rated heat inputs values ranging from less than 20 MMBTU/hr to no more than 50 MMBTU/hr with the exception of the three larger units: the Salem and Rust Reheat furnaces and the Hot Band Normalizing furnace with a rated heat input higher than 50 MMBTU/hr. Additional NO_x emitting sources at the facility are certain pieces of the equipment at the annealing and pickling (A&P) lines Nos. 1, 2 and 3, and two gas fired boilers with a maximum heat input rate of 34 MMBTU/hr each.

(1) The BOFs are barrel-shaped furnaces lined with refractories. The maximum production rate is 140 tons of steel per hour, combined. The furnaces are used to refine a charge of hot metal and metallic scrap by high-purity oxygen blown onto the bath at supersonic velocity through the oxygen lance. Various fluxes and alloying materials are added during the refining process to produce molten steel of the required purity and chemical composition.

(2) The EAFs are refractory-lined furnaces are used to melt and partially refine a metal charge consisting of scrap materials, fluxes, and various alloying elements with maximum production rates ranging from 15 to 26 tons of steel per hour. The sufficient heating is

generated inside the furnace by electrical current flowing between the three graphite electrodes and through the metallic charge. The EAFs largely transfer the generation of NO_x emissions from the steelmaking facility to an electric generating unit at a utility plant where those emissions are controlled.

(3) The AOD vessel is a refractory-lined furnace used in the ladle-metallurgical argon-oxygen decarburization process to refine stainless steel outside the EAF. During the oxygen-argon blowing, fluxes and ferro silicon are added to the furnace. Immediately after the decarburization blow, molten steel is argon-stirred to achieve the desired chemical and temperature homogenization of the material.

(4) The soaking pits and heating/reheating furnaces are used to bring ingots and semi-finished steel products to a uniform temperature in order to make them suitable for hot working. Annealing furnaces are used to refine the steel grain structure, to relieve stresses induced by hot or cold working, and to alter the mechanical properties of steel in order to improve its machinability. Heat treatment of stainless and silicon steels is conducted at a slow rate and relatively low temperatures to minimize thermal stresses and to avoid distortion and cracking.

B. Description of the VOC Emitting Installations and Processes

The major VOC emitting sources at the facility are comprised of two BOFs, four EAFs, AOD, scrap preheaters, various hot and cold rolling mills, and sources of fugitive VOC emissions associated with parts cleaners and miscellaneous paints.

C. Description of the Controls Imposed for NO_x and VOCs

(1) *BOFs and VOD vessel:* The sources generate only modest NO_x emissions as a result of combustion of the waste off-gases consisting chiefly of carbon monoxide. Modest VOC emissions are produced during charging of the BOF when the vessel is occasionally charged with scrap contaminated with oily residues. According to EPA publication "Alternative Control Techniques Document—NO_x Emissions from Iron and Steel Mills" (EPA-453/R-94-065), there are no technically and/or economically feasible control options currently available to control NO_x and VOC emissions from such sources, largely due to substantial fluctuations in the off-gas flow and temperatures. However, due to specific conditions at

the Brackenridge facility (the presence of a wet scrubber) some post-process controls could be technically feasible. Accordingly, a case-by-case RACT analysis was performed for the sources. The control options reviewed in the analysis included, but were not limited to, selective catalytic reduction (SCR), selective non-catalytic reduction (SNCR) and flue gas recirculation (FGR) for NO_x emissions and thermal oxidation, absorption, carbon adsorption, catalytic oxidation, inertial separation and condensation for VOC emissions. The ACHD concluded that the only technically and economically feasible option to impose as RACT for both NO_x and VOCs is that this equipment operate and be maintained in accordance with manufacturer's specifications and good engineering and pollution control practices.

(2) *EAFs:* As noted above, the EAF largely transfers the generation of NO_x emissions from the steelmaking facility to an electric generating unit and thus does not represent a source of substantial NO_x emissions. Modest VOC emissions are produced during charging of the EAF when the furnace is occasionally charged with stainless steel scrap contaminated with oily residues. There are no known cases where NO_x or VOC controls have been retrofitted on existing EAFs. Nevertheless, a case-by-case RACT analysis for the source was performed to review various options such as SCR, NSCR, and FGR to control NO_x emissions and thermal oxidation, absorption, carbon adsorption, and catalytic oxidation to control VOC emissions. The ACHD concluded that only technically and economically feasible option to impose as RACT for both NO_x and VOCs is that this equipment operate and be maintained in accordance with manufacturer's specifications and good engineering and pollution control practices.

(3) *EIFs:* These installations do not emit NO_x or VOCs.

(4) *Salem and Rust Reheat Furnaces:* Various NO_x control options such as SCR, SNCR, FGR, Low NO_x burners (LNB), and Low Excess Air (LEA) were considered for the furnaces. The ACHD has examined whether or not those options were technologically feasible and economically viable control methods. The ACHD determined that LEA is the only option both technically and economically feasible. Therefore, ACHD imposed LEA as NO_x RACT for these emission units. The ACHD limited NO_x emissions from each of these furnaces to 0.15 lbs/MMBTU and to 175 tpy and 60 tpy for the Salem and Rust furnaces, respectively. Various VOC control options such as thermal

oxidation, absorption, carbon absorption, catalytic oxidation, thermal separation and condensation were considered for the furnaces. The ACHD has examined whether or not these options were technologically and economically feasible control methods. The ACHD determined that none of these control options are technologically or economically reasonable for these furnaces. The ACHD concluded that a requirement to operate and maintain these installations in accordance with manufacturer's specifications and good engineering and pollution control practices constitutes RACT.

(5) *Hot Band Normalizing Furnace:* The ACHD considered whether or not the NO_x and VOC control options analyzed for the Salem and Rust Reheat furnaces were technologically feasible and economically viable control methods for this furnace. The ACHD concluded that a requirement to operate and maintain these installations in accordance with manufacturer's specifications and good engineering and pollution control practices constitutes RACT.

(6) *Boilers NO. 1 and 2:* The ACHD has determined that based upon the gross heat input rate of 34 MMBTU/hr, the units are subject to the presumptive SIP-approved NO_x RACT requirements.

(7) *Miscellaneous Painting/Coating Activities:* The ACHD has concluded that utilization of the compliant paints/coatings with a maximum VOC content not to exceed specified limits combined with a requirement to maintain all pertinent records will constitute RACT requirements for those activities.

III. EPA's Evaluation of Pennsylvania's SIP Revisions

EPA is approving Pennsylvania's SIP submittal for the Allegheny Ludlum Corporation's Brackenridge facility because CO No. 260 establishes and imposes RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations and also imposes record-keeping, monitoring, and testing requirements sufficient to determine compliance with the applicable RACT determinations.

IV. Final Action

EPA is approving the SIP revision submitted by PADEP on behalf of ACHD to establish and require VOC and NO_x RACT for the Allegheny Ludlum Corporation's Brackenridge facility. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA

is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 24, 2001 without further notice unless EPA receives adverse comment by September 10, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This 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 approves a state rule implementing a Federal standard, and does not alter the

relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-

specific requirements for one named source.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control VOC and NOx from the Allegheny Ludlum Corporation's Brackenridge facility may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen Oxides, Ozone, Reporting and recordkeeping requirements.

Dated: August 1, 2001.
Thomas C. Voltaggio,
Deputy Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(159) to read as follows:

§ 52.2020 Identification of plan.

* * * * *
 (c) * * *

(159) Revision pertaining to VOC and NOx RACT for the Allegheny Ludlum Corporation, Brackenridge facility, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997.

(i) Incorporation by reference.

(A) Letter submitted on July 1, 1997 by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NOx RACT determinations.

(B) Consent Order No. 260, effective December 19, 1996, for the Allegheny Ludlum Corporation, Brackenridge facility, except for conditions 1.8 and 2.5.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determination for the source listed in (i)(B), above.

[FR Doc. 01-20041 Filed 8-8-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA-4123a; FRL-7027-6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Two Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on September 24, 2001 without further notice, unless EPA receives adverse written comment by September 10, 2001. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning & Information Services Branch, Air Protection Division, 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; the Air and Radiation Docket and

Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT:

Janice Lewis at (215) 814-2185 or Betty Harris at (215) 814-2168, the EPA Region III address above or by e-mail at lewis.janice@epa.gov or harris.betty@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), the Commonwealth of Pennsylvania (the Commonwealth or Pennsylvania) is required to establish and implement RACT for all major VOC and NO_x sources. The major source size is determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR). Under section 184 of the CAA, RACT as specified in sections 182(b)(2) and 182(f) applies throughout the OTR. The entire Commonwealth is located within the OTR. Therefore, RACT is applicable statewide in Pennsylvania.

State implementation plan revisions imposing reasonably available control technology (RACT) for three classes of VOC sources are required under section 182(b)(2). The categories are:

(1) All sources covered by a Control Technique Guideline (CTG) document issued between November 15, 1990 and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and (3) all major non-CTG sources. The regulations imposing RACT for these non-CTG major sources were to be submitted to EPA as SIP revisions by November 15, 1992 and compliance required by May of 1995.

The Pennsylvania SIP already includes approved RACT regulations for all sources and source categories covered by the CTGs. On February 4, 1994, PADEP submitted a revision to its SIP to require major sources of NO_x and additional major sources of VOC emissions (not covered by a CTG) to implement RACT. The February 4, 1994

submittal was amended on May 3, 1994 to correct and clarify certain presumptive NO_x RACT requirements. In the Pittsburgh area, a major source of VOC is defined as one having the potential to emit 50 tons per year (tpy) or more, and a major source of NO_x is defined as one having the potential to emit 100 tpy or more. Pennsylvania's RACT regulations require sources, in the Pittsburgh area, that have the potential to emit 50 tpy or more of VOC and sources which have the potential to emit 100 tpy or more of NO_x comply with RACT by May 31, 1995. The regulations contain technology-based or operational "presumptive RACT emission limitations" for certain major NO_x sources. For other major NO_x sources, and all major non-CTG VOC sources (not otherwise already subject to RACT under the Pennsylvania SIP), the regulations contain a "generic" RACT provision. A generic RACT regulation is one that does not, itself, specifically define RACT for a source or source categories but instead allows for case-by-case RACT determinations. The generic provisions of Pennsylvania's regulations allow for PADEP to make case-by-case RACT determinations that are then to be submitted to EPA as revisions to the Pennsylvania SIP.

On March 23, 1998 EPA granted conditional limited approval to the Commonwealth's generic VOC and NO_x RACT regulations (63 FR 13789). In that action, EPA stated that the conditions of its approval would be satisfied once the Commonwealth either (1) certifies that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements currently known to PADEP; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking. On April 22, 1999, PADEP made the required submittal to EPA certifying that it had met the terms and conditions imposed by EPA in its March 23, 1998 conditional limited approval of its VOC and NO_x RACT regulations by submitting 485 case-by-case VOC/NO_x RACT determinations as SIP revisions and making the demonstration described as condition 2, above. EPA determined that Pennsylvania's April 22, 1999 submittal satisfied the conditions imposed in its conditional limited approval published on March 23, 1998. On May 3, 2001 (66 FR 22123), EPA published a rulemaking action removing the conditional status of its approval of the Commonwealth's generic VOC and NO_x RACT regulations on a statewide basis. The regulation currently retains its limited approval

status. Once EPA has approved the case-by-case RACT determinations submitted by PADEP to satisfy the conditional approval for subject sources located in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties; the limited approval of Pennsylvania's generic VOC and NO_x RACT regulations shall convert to a full approval for the Pittsburgh area.

It must be noted that the Commonwealth has adopted and is implementing additional "post RACT requirements" to reduce seasonal NO_x emissions in the form of a NO_x cap and trade regulation, 25 Pa Code Chapters 121 and 123, based upon a model rule developed by the States in the OTR. That rule's compliance date is May 1999. That regulation was approved as SIP revision on June 6, 2000 (65 FR 35842). Pennsylvania has also adopted regulations to satisfy Phase I of the NO_x SIP call and submitted those regulations to EPA for SIP approval. Pennsylvania's SIP revision to address the requirements of the NO_x SIP Call Phase I consists of the adoption of Chapter 145—Interstate Pollution Transport Reduction and amendments to Chapter 123—Standards for Contaminants. On May 29, 2001 (66 FR 29064), EPA proposed approval of the Commonwealth's NO_x SIP call rule SIP submittal. EPA expects to publish the final rulemaking in the **Federal Register** in the near future. Federal approval of a case-by-case RACT determination for a major source of NO_x in no way relieves that source from any applicable requirements found in 25 Pa Code Chapters 121, 123 and 145.

On July 1, 1997 and April 9, 1999, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_x. This rulemaking pertains to the Kosmos Cement Company and the Armstrong Cement & Supply Company. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's SIP submittals consist of enforcement order (EO) 208 issued by the Allegheny County Health Department (ACHD) to the Kosmos Cement Company and operating permit (OP) 10-028 issued by PADEP to the Armstrong Cement & Supply Company which impose VOC and/or NO_x RACT requirements for each source. These two sources are located in the Pittsburgh area.

II. Summary of the SIP Revisions

(1) Kosmos Cement Company

The Kosmos Cement Company (Kosmos) is a cement manufacturing facility located in Pittsburgh,

Pennsylvania. Kosmos is a major source of both NO_x and VOCs. On December 19, 1996, ACHD issued EO 208 to impose RACT on Kosmos. The PADEP submitted EO 208, on behalf of the ACHD, to EPA as a SIP revision. Kosmos produces cement in one long wet process rotary kiln. There are no other NO_x or VOC emitting units at this facility.

Enforcement order 208 requires that the NO_x emissions from the cement kiln not exceed 8.0 lbs of NO_x per ton of clinker and 2105 tpy. Enforcement order 208 also requires that the VOC emissions from the cement kiln not exceed 0.4 lbs of VOC per ton of clinker and 97 tpy. Under EO 208, Kosmos must operate the cement kiln with minimal excess oxygen at all times. Under EO 208, Kosmos must operate and maintain all process and emission control equipment according to good engineering and air pollution control practices.

Under EO 208, Kosmos is required to conduct emissions testing at least once every two years in accordance with any applicable EPA approved test methods and section 2108.02 of Article XXI of the County's air pollution control regulations. Under EO 208, Kosmos must maintain all records and testing data to demonstrate compliance with the EO 208 and Article XXI, section 2105.06. Record keeping requirements shall include the following: measurements of kiln temperatures and oxygen contents; fuel type and amount of fuel used; and amounts of raw material used and the amount of clinker produced. All records shall be maintained for at least two years.

The Kosmos Cement Company is also subject to additional post-RACT requirements to reduce NO_x found at 25 Pa Code Chapters 121, 123 and 145.

(2) Armstrong Cement & Supply Company

Armstrong Cement & Supply Company (Armstrong) is a cement manufacturer located in Cabot, Pennsylvania. Armstrong is a major source of NO_x. Armstrong has two wet kilns for the production of Portland cement. On March 31, 1999, PADEP issued OP 10-028 to impose RACT for these cement kilns as process modifications to increase thermal efficiency in each kiln.

Under OP 10-028, the NO_x emissions from the kilns shall not exceed 6.62 lbs per ton of clinker (6.62 lbs/ton). Compliance is to be demonstrated thorough annual stack testing in accordance with 25 Pa Code Chapter 139 as provided in condition 8 of OP 10-028. Armstrong must maintain daily

clinker production records, on site, in accordance with Pa Code section 129.95. Armstrong must properly operate and maintain all process and emission control equipment according to good engineering and air pollution control practices in accordance with applicable PADEP regulations.

Armstrong Cement Company is also subject to additional post-RACT requirements to reduce NO_x found at 25 Pa Code Chapters 121, 123 and 145.

EPA is approving these RACT SIP submittals because ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and/or NO_x RACT for the Kosmos Cement Company and the Armstrong Cement & Supply Company. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 24, 2001 without further notice unless EPA receives adverse comment by September 10, 2001. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and

therefore is not subject to review by the Office of Management and Budget. 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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This 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 approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by

section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for two named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 24, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the Commonwealth's source-specific RACT requirements to control VOC and/or NO_x from the Kosmos Cement Company and the Armstrong Cement & Supply Company located in the Pittsburgh-Beaver Valley nonattainment area of

Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen Oxides, Ozone, Reporting and record-keeping requirements.

Dated: July 31, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(160) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(160) Revisions pertaining to NO_x and/or VOC RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997, and April 9, 1999.

(i) Incorporation by reference.

(A) Letters dated July 1, 1997 and April 9, 1999, submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_x RACT determinations.

(B) The following sources' Enforcement Order (EO) or Operating Permit (OP):

(1) Kosmos Cement Company, EO 208, effective December 19, 1996, except for condition 2.5.

(2) Armstrong Cement & Supply Company, OP 10-028, effective March 31, 1999.

(ii) Additional Materials—Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in (i)(B), above.

[FR Doc. 01-20045 Filed 8-8-01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-7025-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by Tenneco Automotive (Tenneco) to exclude from hazardous waste control (or delist) a certain solid waste. This final rule responds to the petition submitted by Tenneco to delist F006 stabilized sludge on a "generator specific" basis from the lists of hazardous waste.

After careful analysis and use of the Delisting Risk Assessment Software, the EPA has concluded the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies to 1,800 cubic yards of excavated stabilized waste water treatment sludge currently stored in containment cells at Tenneco's Paragould, Arkansas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills.

EFFECTIVE DATE: August 9, 2001.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The reference number for this docket is "F-00-ARDEL-TENNECO." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas at (214) 665-6775. For technical information concerning this notice, contact Michelle Peace, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665-7430.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

- I. Overview Information
 - A. What rule is EPA finalizing?
 - B. Why is EPA approving this delisting?
 - C. What are the limits of this exclusion?
 - D. How will Tenneco manage the waste if it is delisted?
 - E. When is the final delisting exclusion effective?
 - F. How does this final rule affect states?
- II. Background
 - A. What is a delisting petition?
 - B. What regulations allow facilities to delist a waste?
 - C. What information must the generator supply?
- III. EPA's Evaluation of the Waste Data
 - A. What waste did Tenneco petition EPA to delist?
 - B. How much waste did Tenneco propose to delist?
 - C. How did Tenneco sample and analyze the waste data in this petition?
- IV. Public Comments Received on the Proposed Exclusion
 - A. Who submitted comments on the proposed rule?
 - B. Response to Comments.

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petition, EPA proposed, on May 11, 2001 to exclude the Tenneco waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 66 FR 24085). The EPA is finalizing:

(1) The decision to grant Tenneco's petition to have its wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, subject to certain continued monitoring conditions; and

(2) The decision to use the Delisting Risk Assessment Software, which includes the EPACMTP fate and transport model, to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed in a Subtitle D landfill.

B. Why Is EPA Approving This Delisting?

Tenneco's petition requests a delisting for listed hazardous wastes. Tenneco does not believe the petitioned waste meets the criteria for which EPA listed it as a hazardous waste. Tenneco also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4). In making the final delisting determination, EPA also evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner the waste is nonhazardous with respect to the original listing criteria. If the EPA had found, based on this review, the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes the petitioned waste does not meet these criteria. EPA's final decision to delist waste from Tenneco's facility is based on the information submitted by Tenneco in its petition, including descriptions of the stabilization techniques and analytical data from the Paragould, AR facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. This is a one-time exclusion for 1,800 cubic yards of stabilized waste water treatment sludge.

D. How Will Tenneco Manage the Waste It Is Delisted?

Tenneco currently stores the petitioned waste (stabilized waste water treatment sludge) generated in containment vaults on-site at its facility. Tenneco will dispose of the sludge in a Subtitle D solid waste landfill in Arkansas.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective August 9, 2001. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is

the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

Here are the details: We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Tenneco transports the petitioned waste to or manages the waste in any State with delisting authorization, Tenneco must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste regulation by excluding them

from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to the EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste Did Tenneco Petition EPA To Delist?

On September 8, 2000, Tenneco petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (stabilized sludge from the wastewater treatment plant) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 261.3. Specifically, in its petition, Tenneco Automotive, located in Paragould, Arkansas, requested that EPA grant an exclusion for 1,800 cubic yards of stabilized sludge from electroplating operations, excavated from the Finch Road Landfill and currently stored in containment cells. The resulting waste is listed, in accordance with § 261.3(c)(2)(i) (i.e., the "derived from" rule). The waste code of the constituents of concern is EPA Hazardous Waste No. F006. The constituents of concern for F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

B. How Much Waste Did Tenneco Propose To Delist?

Specifically, in its petition, Tenneco requested that EPA grant a one-time exclusion for 1,800 cubic yards of stabilized sludge.

C. How Did Tenneco Sample and Analyze the Waste Data in This Petition?

To support its petition, Tenneco submitted:

- (1) Historical information on past waste generation and management practices;
- (2) Results of the total constituent list for 40 CFR part 264, Appendix IX volatiles, semivolatiles, and metals except pesticides, herbicides, and PCBs;
- (3) Results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;
- (4) Results from total oil and grease analyses and pH measurements.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on the May 11, 2001, proposal from General Motors (GM).

B. Response To Comments

General Motors (GM) comments the terms used in the DRAS should be more clearly defined. Does the term Cw for waste contamination account for the total mass of contamination in the waste or only that portion that may enter the aqueous phase?

All terms and equations used in the Delisting Risk Assessment Software (DRAS) program are discussed in the Delisting Technical Support Document (DTSD). All abbreviations, acronyms, and variables are listed in Chapter 1, pages x-xx of the DTSD. The DTSD is updated to reflect revisions and modifications to risk algorithms and methodology. The Agency encourages all users and reviewers to comment on the technical support documentation and continues to improve the clarity and transparency of the DTSD. The term Cw is not used in the document. Without specific information to the page location/screen location of the term referenced in the question above, no further response can be provided.

GM comments that the definition of the criteria to be used to determine de minimis risk levels and risk estimates should be provided for a meaningful public review.

Information on the Risk and Hazard Assessment can be found in Chapter 4 of the DTSD. Discussion of criteria and quantification of risk are discussed in this Chapter.

The Delisting Program in its history has never focused on site-specific conditions. It has since its inception

been a program specifically for waste generators. A review of the 40 CFR 260.22 indicates that these are petitions to amend part 261 to exclude a waste produced at a particular facility. The Agency is not currently using the model to predict site-specific results. Since disposal of the delisted waste may occur at any Subtitle C or D landfill in the United States, site-specific considerations are not usually given. The DRAS model is based on national averages of the site specific factors and is intended to model a reasonable worst case scenario for disposal.

The Agency continues to review chemical-specific parameter data. Where appropriate, these data will be incorporated into the DRAS analyses. However, as explained above, in delisting analyses, site specific characteristics (beyond waste constituent concentration and volume) are not incorporated into analyses. Default values are given for many parameters used in risk. The Agency can not fully evaluate how release mechanisms and exposure scenarios may be impacted because the final disposal location remains undefined.

GM comments that documentation of the sensitivity analysis should be provided for a meaningful public review.

The DRAS provides the forward-calculated risk level and back-calculated allowable waste concentration for each exposure pathway, thereby permitting the user to determine which pathway drives the risk for a given chemical. These analyses are currently provided for the user by the DRAS program on the Chemical-Specific Results screen.

GM comments that unlikely scenarios and assumptions which compound the release and risk estimates should be justified.

The DRAS model is intended to model a reasonable worst case model and is based on national averages of these factors. This is the same assumption used for the EPACML.

The DRAS employs standard risk assessment default parameters that are accepted throughout the Agency in risk analyses (i.e., residential exposure @ 350 days/yr, selection of the 90th percentile). These default standards are described and listed in Appendix A of the DTSD.

The DRAS does employ a conservative approach to exposure assessment by assuming the receptor may be exposed to both the most sensitive groundwater pathway and the most sensitive surface exposure pathway. The Agency has no way of

knowing that this situation will not occur and therefore deems it prudent to protect for this condition by adding risks. Again, the Agency has no way of knowing the direction of media flow and must assume that all media flow may move toward the receptor. The Agency has no data to indicate that the landfill volume data and other data from the 1987 landfill survey report is not valid. When updated data are available, they will be incorporated into the analyses.

The groundwater fate and transport model used by the Agency to determine first order decay and other processes is the EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP). This model has been peer reviewed and received an excellent review from the Science Advisory Board (SAB). EPA has proposed use of this SAB-reviewed model and no convincing comments to the contrary have been received.

The DRAS is complex and EPA must explain the models and risk processes used in establishing regulatory limits.

Attached to the Delisting Risk Assessment Software is a Technical Support Document which explains the risk algorithms and documentation of the decisions made in development of the model. Publication costs prohibit the inclusion of all this information into the **Federal Register** notice but it is readily available in both the Technical Support Document and at the Region 6 Delisting page (www.epa.gov/earth1/r6/pd-o/pd-o.htm). However, the Agency believes that the Delisting Risk Assessment Software is no more complex than use of the EPACML for delisting, just because the calculations have been computerized make them no more difficult to understand than the EPACML. Similar regression models were developed for the DRAS. The risk pathways for surface water and air volatilization are evaluated by the same equations used previously in the delisting program. And finally, the pathways for showering and dermal contact are equations which are commonly used in risk assessments performed for cleanups and site assessments under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) commonly known as Superfund and other programs.

GM comments that model should be peer reviewed and the public should have the formal opportunity to provide comments.

The model has been peer reviewed by EPA risk assessors and EPA's Office of

Research and Development scientists. The public has the opportunity to comment on the use of the DRAS model each time a delisting is proposed which is based on the DRAS model. The Agency is currently using the same level of public review used by the delisting program for use of the EPA Composite Model for Landfills in 1991. The model as modified for the delisting program was promulgated in conjunction with its use in evaluating the Reynolds Metals Delisting petition. See, 56 FR 32993 (July 18, 1991). No challenge was made to procedures for promulgating the use of the EPACML in delisting evaluations.

Summary of GM Comments

GM summarizes its comments on the DRAS by stating that (1) EPA is proposing significant changes to the methodology it uses to evaluate delisting petitions. It appears the changes would apply to all future delisting petitions. (2) The proposed changes are complex. (3) It appears the proposed changes would apply in all USEPA Regions. (4) The proposed changes may include elements of the still-draft, unpromulgated, and controversial HWIR waste model. It is inappropriate and contrary to law and the Administrative Procedures Act to use a model prior to public notice and comment. (5) No **Federal Register** notice has been given to clearly indicate the EPA plans to change the way it reviews and evaluates delisting petitions. Instead, references to the changes in the model have been made as part of proposals to delist specific waste streams. (6) If EPA is changing the model it uses to evaluate delisting petitions (from the EPACML to the DRAS model) USEPA should provide specific and clear public notification of this intent. The risk assessment methodology for delisting that has been used since 1991 should still apply until public review period is completed.

The EPA is following the same notice provided for changing from the VHS model to the EPA Composite Model for Landfills (EPACML). See 56 FR 32993, July 18, 1991. The public has the opportunity to comment on the DRAS model each time a delisting is proposed which is based on the DRAS model. General Motors has not stated any reason why the DRAS model is not appropriate for use in evaluating the risk associated with the Tenneco Delisting. EPA will consider use of alternatives model for assessing risk if the comments received show that another model is more appropriate under the circumstances.

General Motors states that use of model with public review and comment

is a violation of the Administrative Procedures Act and law. Opportunity for public review and comment is provided for each delisting petition. Comments are requested for each delisting decision regarding the decision to delist the waste and use of a model to assess the risk posed to human health and the environment. Each time the model is used, just as with the use of the EPACML, the public and interested stakeholders can comment on the appropriateness of the use. In fact, each proposed rule for approving a delisting proposes the use of a model in the evaluation of risk and asks for comment. Examples can be seen in the **Federal Register** for the EPACML as well as the DRAS. See, 56 FR 32993 (July 18, 1991), 64 FR 44867 (August 18, 1999), and 65 FR 75641 (December 4, 2000). Any petitioner or interested party may suggest more appropriate evaluation tools for predicting risk. Thus, EPA believes that adequate public notice has been provided and the APA has not been violated.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The final to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as nonhazardous. There is no additional impact therefore, due to this final rule. Therefore, this proposal would not be a significant regulation and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required however if the Administrator or delegated representative certifies the rule will not have any impact on a small entities.

This rule if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, which was signed into law on March 22, 1995, EPA must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that this final delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local, or tribal governments or the private sector. In addition, the final delisting does not establish any

regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

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

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically

significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature

of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This 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.

XIII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed 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, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that Agency to provide Congress, through the OMB, an

explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 27, 2001.

Stephen Gilrein,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. In Table 1 of Appendix IX, part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * Tenneco Automotive	* * Paragould, AR	* * * Stabilized sludge from electroplating operations, excavated from the Finch Road Landfill and currently stored in containment cells by Tenneco (EPA Hazardous Waste Nos. F006). This is a one-time exclusion for 1,800 cubic yards of stabilized sludge when it is disposed of in a Subtitle D landfill. This exclusion was published on August 9, 2001. (1) <i>Reopener Language:</i> (A) If, anytime after disposal of the delisted waste, Tenneco possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If Tenneco fails to submit the information described in (2)(A) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
		<p>(C) If the Regional Administrator or his delegate determines the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information.</p> <p>(D) Following the receipt of information from the facility described in (1)(C) or (if no information is presented under (1)(C)) the initial receipt of information described in (1)(A), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise.</p> <p>(2) <i>Notification Requirements:</i> Tenneco must do following before transporting the delisted waste off-site: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the exclusion.</p> <p>(A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) Update the one-time written notification if Tenneco ships the delisted waste to a different disposal facility.</p>

* * * * *

[FR Doc. 01-20043 Filed 8-8-01; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 01-150; FCC 01-205]

Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: This document clarifies that non-dominant carriers are required to file applications and obtain Commission approval before consummating a transaction involving an acquisition of corporate control. Connecting carriers, as defined in the Communications Act of 1934, as amended (Act), are not subject to section 214 when engaging in acquisitions of corporate control.

DATES: Effective August 9, 2001.

FOR FURTHER INFORMATION CONTACT: Aaron N. Goldberger, Attorney-Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-1591.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Declaratory Ruling*, CC Docket No. 01-150, FCC 01-205, adopted July 12, 2001 and released July 20, 2001. The complete text of this *Declaratory Ruling* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (ITS, Inc.), CY-B400, 445 12th Street, SW., Washington, DC.

Synopsis of Declaratory Ruling

1. In the *Declaratory Ruling*, the Commission clarifies its rules governing requests for authorization pursuant to section 214 of the Act to transfer domestic interstate transmission lines through an acquisition of corporate control. Under section 214, applicants must obtain Commission authorization before constructing, operating, or acquiring domestic interstate transmission lines. The Commission, in § 63.01, granted blanket authority to domestic interstate communications common carriers to provide domestic interstate services and to construct, acquire, and operate domestic transmission lines. The blanket authority in § 63.01, however, expressly does not apply to acquisitions of

corporate control. When an acquisition of corporate control is involved, carriers must file a section 214 application with the Commission and obtain Commission approval prior to consummating a proposed transaction.

2. The Commission, in the *Declaratory Ruling*, clarifies that non-dominant carriers are required to file applications and obtain Commission approval before consummating a transaction involving an acquisition of corporate control. In particular, there is nothing either in the Commission's previous orders or the plain language of § 63.01 to support the contention that acquisitions of corporate control involving non-dominant carriers are covered under the blanket authority of § 63.01. Connecting carriers, as defined in the Act, are not subject to section 214 when engaging in acquisitions of corporate control.

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Declaratory Ruling*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA

and must be filed by the deadlines for comments on the *Declaratory Ruling* provided in section IV(C) of the *Declaratory Ruling*. The Commission will send a copy of this *Declaratory Ruling*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

2. In the *Declaratory Ruling*, the Commission clarifies that connecting carriers are not required to file section 214 applications for acquisitions of corporate control, and that resellers and other non-dominant carriers must file applications for acquisitions of corporate control.

Legal Basis

3. The legal basis for any action that may be taken pursuant to the *Declaratory Ruling* is contained in sections 2, 4, 201, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–202, 303 and 403, and §§ 1.1, 1.2, and 1.411 of the Commission's rules, 47 CFR 1.1 and 1.411.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The Regulatory Flexibility Act directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rulemaking, if adopted. See 5 U.S.C. 603(b)(3). The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." See 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. See 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. See 15 U.S.C. 632.

5. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission has indicated that there are

4,144 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

6. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. See 13 CFR 121.201; Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987). Further, this analysis discusses the total estimated number of telephone companies falling within the two categories and the number of small businesses in each. This analysis also attempts to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

7. The Commission includes small incumbent local exchange carriers (LECs) in this present Regulatory Flexibility Act analysis. As noted above, a "small business" under the Regulatory Flexibility Act is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." See 15 U.S.C. 632(a)(1). The SBA's Office of Advocacy contends that, for Regulatory Flexibility Act purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999); 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3); 13 CFR 121.102(b). The Commission, therefore, included small incumbent LECs in this Regulatory Flexibility Act analysis, although the Commission emphasizes that this Regulatory Flexibility Act action has no effect on FCC analyses and determinations in other, non-Regulatory Flexibility Act contexts.

8. *Total Number of Telephone Companies Affected*. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. See U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm

Size 1–123 (1995) ("1992 Census"). This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." See 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the proposed rules, herein adopted.

9. *Wireline Carriers and Service Providers*. The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. See 1992 Census, at Firm Size 1–123. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. See 13 CFR 121.201, SIC Code 4813; 1997 NAICS 51331. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs that may be affected by the proposed rulemaking. The Commission further notes that some of these small entities may be "connecting carriers," as defined in section 3(11) of the Act, 47 U.S.C. 153(11), and would not be subject to section 214 or § 63.01 when

engaging in an acquisition of corporate control and thus would not require prior Commission approval to consummate a transaction involving an acquisition of corporate control.

10. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC Code 4813. According to the most recent *Trends in Telephone Service* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,348 providers of local exchange service are small entities or small incumbent LECs that may be affected by the proposed rulemaking.

11. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 171 small entity IXC's that may be affected by the proposed rulemaking.

12. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 212 CAP/competitive LECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 212 small entity CAPs and 10 other LECs that may be affected by the proposed rulemaking.

13. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 24 small entity operator service providers that may be affected by the proposed rulemaking.

14. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone

operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 615 small entity pay telephone operators that may be affected by the proposed rulemaking.

15. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed rulemaking.

16. *Toll-Free 800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. See FCC, CCB Industry Analysis Division,

FCC Releases Study on Telephone Trends, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999). According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the proposed rulemaking.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The Regulatory Flexibility Act requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. See 5 U.S.C. 603(c).

18. In this *Declaratory Ruling*, the Commission clarifies that connecting carriers are not required to file section 214 applications for acquisitions of corporate control.

19. The Commission offers this clarification of an existing rule in order to reduce the regulatory burden for connecting carriers, including small entities. The Commission believes that by expressly articulating that connecting carriers are free from a specific section 214 filing requirement, the Commission has provided small entities the least burdensome of filing requirements, *i.e.*, carriers who were once uncertain of their obligations will now find it unnecessary to assume the costs of filing section 214 applications for acquisitions of corporate control. The Commission notes that any other interpretation of

section 2(b) of the Act would increase and not decrease compliance and reporting requirements for connecting carriers, including small entities.

20. Moreover, in this *Declaratory Ruling*, the Commission also clarifies that resellers and non-dominant carriers are not exempt from § 63.01 and must file applications for acquisitions of corporate control. As the Commission explains in section II(B), there is nothing in either the *1999 Streamlining Order* or the plain language of § 63.01 to support the contention that acquisitions of corporate control involving non-dominant carriers are covered under the blanket authority of § 63.01. Therefore, the Commission clarifies that non-dominant carriers are required to file applications and obtain Commission approval before consummating a transaction involving an acquisition of corporate control. Any alternative approach would violate an existing rule and frustrate the Commission's ability to perform its statutory obligation of considering the public interest in connection with proposed acquisitions of domestic interstate common carriers, including non-dominant carriers.

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

21. None.

Procedural Matters

1. Pursuant to the authority contained in sections 2, 4(i)-(j), 201, 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)-(j), 201, 214, and 303(r), that the *Declaratory Ruling* in CC Docket No. 01-150 IS ADOPTED.

2. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the *Declaratory Ruling*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

3. Pursuant to sections 2, 4(i)-(j), 201, 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)-(j), 201, 214, and 303(r), that the *Declaratory Ruling* in CC Docket No. 01-150 SHALL BECOME EFFECTIVE August 9, 2001.

List of Subjects in 47 CFR Part 63

Communications common carriers, Telecommunications, Transfers of control, Mergers.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
 [FR Doc. 01-20000 Filed 8-8-01; 8:45 am]
BILLING CODE 6712-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1822

Investigations of Suspected Forced or Indentured Child Labor

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to specify NASA's procedure for referring investigations of those suspected of using forced or indentured child labor.

EFFECTIVE DATE: August 9, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546-0001, (202) 358-0481, email: pbrundage@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR provides that agencies should specify whether investigations under FAR 22.1503(e) should be referred to the Inspector General, the Attorney General, or the Secretary of the Treasury. This final rule provides that all such investigations shall be referred to NASA's Inspector General.

B. Regulatory Flexibility

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this rule only affects internal administrative procedures. However, NASA will consider comments from small entities concerning the affected NFS subpart in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Lists of Subjects in 48 CFR Part 1822

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1822 is amended as follows:

1. The authority citation for 48 CFR Part 1822 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 1822.15 is added to read as follows:

Subpart 1822.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor**1822.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor. (NASA supplements paragraph (e))**

(e) All investigations under FAR Subpart 22.15 shall be referred to NASA's Office of Inspector General.

[FR Doc. 01-19997 Filed 8-8-01; 8:45 am]

BILLING CODE 7510-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**48 CFR Parts 1845 and 1852****Property Reporting Requirements**

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA FAR Supplement (NFS) to comply with existing Federal accounting standards and OMB rules on Form and Content of agency financial statements and makes other changes to NASA's property reporting requirements.

EFFECTIVE DATE: August 9, 2001.

FOR FURTHER INFORMATION CONTACT: Lou Becker, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358-4593, email: *lbecker@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:**A. Background**

NASA is adopting as final with changes the interim rule published in the September 11, 2000, **Federal Register** (65 FR 54813-54816) and as corrected in the September 28, 2000, **Federal Register** (64 FR 58231). The OMB Bulletin on Form and Content of Agency Financial Statements prescribes

financial accounting and reporting requirements for Federal agencies. Included are accounting standards which apply to property, plant and equipment. Specific changes included in the interim rule were: Additional instructions on how to adjust previously reported values; a new definition of Agency Peculiar Property to exclude completed end items destined for permanent operation in space; and a new definition of Work in Process to include completed end items destined for permanent operation in space which otherwise meet the definition of Agency Peculiar Property. Comments were received from four groups. All comments received were considered. Changes made in this final rule are for consistency in application and are considered editorial in nature.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because less than three per cent of NASA contracts with small businesses have property reporting requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, applies to this final rule because it contains information collection requirements. Approval for the additional requirements has been obtained under OMB Control No. 2700-0017, approving an increase in burden hours from 5,700 to 8144.

List of Subjects in 48 CFR Parts 1845 and 1852

Government Procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1845 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1845 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1845—GOVERNMENT PROPERTY

2. Revise § 1845.7101 to read as follows:

1845.7101 Instructions for preparing NASA Form 1018.

NASA must account for and report assets in accordance with 31 U.S.C. 3512 and 31 U.S.C. 3515, Federal Accounting Standards, and Office of Management and Budget (OMB) instructions. Since contractors maintain

NASA's official records for its assets in their possession, NASA must obtain annual data from those records to meet these requirements. Changes in Federal Accounting Standards and OMB reporting requirements may occur from year to year, requiring contractor submission of supplemental information with the NASA Form (NF) 1018. Contractors shall retain documentation that supports data reported on NF 1018 in accordance with FAR subpart 4.7, Contractor Records Retention. Classifications of property, related costs to be reported, and other reporting requirements are discussed in this subpart. NASA Form 1018 (see 1853.3) provides critical information for NASA financial statements and property management. Accuracy and timeliness of the report are very important. If errors are discovered on NF 1018 after submission, the contractor shall contact the cognizant NASA Center Industrial Property Officer (IPO) to discuss corrective action. IPO's shall work with NASA Center finance personnel to determine appropriate corrective action and provide guidance to contractors.

3. In section 1845.7101-1, revise paragraphs (c), (d), (g)(2), (h)(2), (i)(2), the introductory text of paragraph (k), and (k)(2) to read as follows:

1845.7101-1 Property Classification.

* * * * *

(c) *Buildings.* Includes costs of buildings, improvements to buildings, and fixed equipment required for the operation of a building which is permanently attached to and a part of the building and cannot be removed without cutting into the walls, ceilings, or floors. Contractors shall report buildings with a unit acquisition cost of \$100,000 or more. Examples of fixed equipment required for functioning of a building include plumbing, heating and lighting equipment, elevators, central air conditioning systems, and built-in safes and vaults.

(d) *Other Structures and Facilities.* Includes costs of acquisitions and improvements of real property (*i.e.* structures and facilities other than buildings); for example, airfield pavements, harbor and port facilities, power production facilities and distribution systems, reclamation and irrigation facilities, flood control and navigation aids, utility systems (heating, sewage, water and electrical) when they serve several buildings or structures, communication systems, traffic aids, roads and bridges, railroads, monuments and memorials, and nonstructural improvements such as sidewalks, parking areas, and fences. Contractors shall report other structures

and facilities with a unit acquisition cost of \$100,000 or more and a useful life of two years or more.

- * * * *
- (g) * * *
- (2) All other items.
- (h) * * *
- (2) All other items.
- (i) * * *
- (2) All other items.
- * * * *

(k) *Agency-Peculiar Property.*
Includes costs of completed items, systems and subsystems, spare parts and components unique to NASA aeronautical and space programs. Examples include research aircraft, reusable space vehicles, ground support equipment, prototypes, and mock-ups. The amount of property, title to which vests in NASA as a result of progress payments to fixed price subcontractors, shall be included to reflect the pro rata cost of undelivered agency-peculiar property. Completed end items which otherwise meet the definition of Agency-Peculiar Property, but are destined for permanent operation in space, such as satellites and space probes, shall be reported as Contract Work in Process. Contractors shall separately report:

- * * * *
- (2) All other items.
- * * * *

4. In section 1845.7101-2, amend the first sentence of the introductory paragraph by capitalizing the word "Centers" the first time it appears and add the following sentence at the end of paragraph (c) to read as follows:

1845.7101-2 Transfers of property.
* * * *

(c) * * * The contracting officer shall assist the Government Property Administrator and the receiving contractor to obtain all required information for the receiving contractor to establish adequate property records.

5. In section 1845.7101-3, delete paragraph (a)(12); amend the second sentence of paragraph (a) and paragraph (e) to read as follows:

1845.7101-3 Unit acquisition cost.

(a) * * * The following is representative of the types of costs that shall be included, when applicable:
* * *

(e) Only modifications that improve an item's capacity or extend its useful life two years or more and that cost \$100,000 or more shall be reported on the NF 1018 on the \$100,000 & Over line. The costs of any other modifications, excluding routine

maintenance, will be reported on the Under \$100,000 line. If an item's original unit acquisition cost is less than \$100,000, but a single subsequent modification costs \$100,000 or more, that modification only will be reported as an item \$100,000 or more on subsequent NF 1018s. The original acquisition cost of the item will continue to be included in the under \$100,000 total. The quantity for the modified item will remain "1" and be reported with the original acquisition cost of the item. If an item's acquisition cost is reduced by removal of components so that its remaining acquisition cost is under \$100,000, it shall be reported as under \$100,000.
* * * *

6. In section 1845.7101-4, revise paragraphs (b) and (h) to read as follows:

1845.7101-4 Types of deletions from contractor property records.
* * * *

(b) *Transferred in Place.* Deletion amounts that result from transfer of property to a follow-on prime contract or other prime contract with the same contractor.
* * * *

(h) *Other.* Types of deletion other than those reported in paragraph (a) through (g) of this section such as those resulting from reclassifications (e.g. from equipment to agency-peculiar property).

1845.701 [Amended]

7. Amend section 1845.7101-5, by removing the last sentence.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Amend the clause at section 1852.245-73 by revising the date of the clause, paragraphs (b)(2), (b)(3), and the fifth sentence of paragraph (c) to read as follows:

1852.245-73 Financial Reporting of NASA Property in the Custody of Contractors.
* * * *

Financial Reporting of NASA Property in the Custody of Contractors (August 2001)
* * * *

(b)(1) * * *
(2) The Contractor shall mail the original signed NF 1018 directly to the cognizant NASA Center Deputy Chief Financial Officer, Finance, unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(3) One copy shall be submitted (through the Department of Defense (DOD) Property Administrator if contract administration has been delegated to DOD) to the following address: [Insert name and address of appropriate NASA Center office.], unless the Contractor uses the NF 1018 Electronic Submission System (NESS) for report preparation and submission.

(c) * * * The Contracting Officer may, in NASA's interest, withhold payment until a reserve not exceeding \$25,000 or 5 percent of the amount of the contract, whichever is less, has been set aside, if the Contractor fails to submit annual NF 1018 reports in accordance with 1845.505-14 and any supplemental instructions for the current reporting period issued by NASA.
* * * *

[FR Doc. 01-19996 Filed 8-8-01; 8:45 am]
BILLING CODE 7510-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 950905226-5282-01; I.D. 083095A]

RIN 0648-AH00

Fisheries of the Exclusive Economic Zone Off Alaska; Extension of Allocations to Inshore and Offshore Components; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document contains a correction to a final rule that was published in the **Federal Register** on December 12, 1995.

DATES: Effective August 9, 2001.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7650.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** at 60 FR 63654 (December 12, 1995) that apportioned pollock nonspecific reserve between inshore and offshore components of the groundfish fishery in the Bering Sea and Aleutian Islands applicable through December 31, 1998. The applicable period for that allocation having expired, the paragraph referring to that allocation of pollock nonspecific reserve

is no longer applicable and must be removed.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Accordingly, 50 CFR part 679 is corrected by making the following correcting amendment:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 1631 *et seq.*

§ 679.20 [Corrected]

2. In § 679.20(b), paragraph (b)(1)(v) is redesignated as paragraph (b)(1)(iv) and paragraph (b)(1)(iv) is removed.

Dated: August 3, 2001.

John Oliver,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 01-20027 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 66, No. 154

Thursday, August 9, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000-NE-13-AD]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to adopt a new airworthiness directive (AD) that is applicable to Rolls-Royce (RR) plc RB211-535E4-37, RB211-535E4-B-37, and RB211-535E4-B-75 series turbofan engines. This proposal would require initial and repetitive ultrasonic inspections of low pressure compressor (LPC) fan blade roots for cracks. This proposal would also require relubrication of LPC fan blades before reinstallation. This proposal is prompted by the discovery of cracks on LPC fan blade roots during an engine overhaul. The actions specified by the proposed AD are intended to detect cracks in LPC fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane.

DATES: Comments must be received by October 9, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-NE-13-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal

holidays. Information regarding this proposed AD may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT:

James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone: (781) 238-7176; fax: (781) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NE-13-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-NE-13-AD, 12 New England Executive Park, Burlington, MA 01803-5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the FAA that an unsafe condition may exist on Rolls-Royce plc (RR) RB211-535E4-37, RB211-535E4-B-37, and RB211-535E4-B-75 series turbofan engines. The CAA advises that during a recent overhaul inspection of a set of LPC fan blades having high cyclic lives, small cracks in the blade roots, on the concave root flanks, were discovered. Cracking of the blade roots, if not corrected, could lead to the propagation of blade cracks, resulting in uncontained multiple fan blade failure, and damage to the airplane.

Manufacturer's Service Information

Rolls-Royce plc has issued service bulletin (SB) RB.211-72-C879, dated January 11, 2000, that specifies ultrasonic inspection of high cyclic life blades either on-wing or at shop visit. The CAA classified this service bulletin as mandatory and issued AD 002-01-2000 in order to assure the airworthiness of these Rolls-Royce plc engines in the UK.

Bilateral Airworthiness Agreement

This engine series is manufactured in the UK, and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RR RB211-535E4 series turbofan engines of the same type design, that are used on Boeing 757 airplanes registered in the United States, the proposed AD would require initial and repetitive ultrasonic inspections of fan blade roots on-wing and during overhaul, and relubrication, according to accumulated life cycles.

Economic Impact

There are approximately 1,021 engines of the affected design in the worldwide fleet. The FAA estimates that 545 engines installed on aircraft of U.S. registry would be affected by this proposed AD. It will take approximately 7.0 work hours per engine to accomplish an on-wing initial inspection, and 2 hours per engine to accomplish an overhaul initial inspection of the proposed actions. The average labor rate is \$60 per work hour. Since the actions are inspections, there are no required parts costs. Based on these figures, the FAA estimates the total cost impact for on-wing initial inspections only, of the proposed AD on U.S. operators, to be \$228,900, and for overhaul initial inspections only, to be \$65,400.

Regulatory Impact

This proposed 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 proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce plc: Docket No. 2000-NE-13-AD.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce (RR) plc RB211-535E4-37, RB211-535E4-B-37, and RB211-535E4-B-75 series turbofan engines with low pressure compressor (LPC) fan blades, part numbers (P/N) listed in the following Table 1 of this AD. These engines are installed on but not limited to Boeing 757 and Tupolev Tu204 series airplanes. Table 1 follows:

TABLE 1.—APPLICABLE LPC FAN BLADE P/N'S.

UL16135	UL16171	UL16182	UL19643	UL20044
UL20132	UL20616	UL21345	UL22286	UL23122
UL24525	UL24528	UL24530	UL24532	UL24534
UL27992	UL28601	UL28602	UL29511	UL29556
UL30817	UL30819	UL30933	UL30935	UL33707
UL33709	UL36992	UL37090	UL37272	UL37274
UL37276	UL37278	UL38029	UL38032	

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 (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: Compliance with this AD is required as indicated, unless already done.

To detect cracks in LPC fan blade roots, which if not detected, could lead

to uncontained multiple fan blade failure, and damage to the airplane, do the following using:

Initial Inspection and Relubrication

(a) Ultrasonically inspect and relubricate all LPC fan blades using the cycles-since-new from one of the following appropriate Flight Profile tables, specified in paragraphs (a)(8), (a)(9), or (a)(10) this AD as follows:

(1) If not already done, remove LPC fan blades.

(2) Remove dry film lubricant from LPC fan blade roots.

(3) Calibrate ultrasonic inspection probe and flaw detector in accordance with Appendix 1, paragraphs 2.A. through 2.I. of Rolls-Royce (RR) Service

Bulletin (SB) RB.211-72-C879, dated January 11, 2000.

(4) Ultrasonically inspect LPC fan blades in accordance with Appendix 1, paragraphs 3.A. through 3.D. of RR SB RB.211-72-C879, dated January 11, 2000.

(5) Replace any LPC fan blades that do not meet the acceptance criteria in Appendix 1, paragraphs 4.A. through 4.B. of RR SB RB.211-72-C879, dated January 11, 2000.

(6) Replace any missing chocking pads.

(7) Relubricate LPC fan blade roots with dry film lubricant before installing LPC fan blades.

(8) For engines that have operated only to flight profile "A," use the following Table 2:

TABLE 2.—ENGINES HAVING OPERATED ONLY TO FLIGHT PROFILE "A" BEFORE INSPECTION, AS DEFINED IN THE AIRCRAFT MAINTENANCE MANUAL.

Number of cycles-since-new (CSN) on the Effective Date of This AD:	Inspect and Relubricate Within:
(i) 17,000 or fewer CSN	350 cycles-in-service (CIS) of accumulating 17,000 CSN.

TABLE 2.—ENGINES HAVING OPERATED ONLY TO FLIGHT PROFILE “A” BEFORE INSPECTION, AS DEFINED IN THE AIRCRAFT MAINTENANCE MANUAL.—Continued

Number of cycles-since-new (CSN) on the Effective Date of This AD:	Inspect and Relubricate Within:
(ii) 17,001 to 18,000 CSN	350 CIS after the effective date of this AD.
(iii) 18,001 to 20,000 CSN	150 CIS after the effective date of this AD.
(iv) In excess of 20,000 CSN	50 CIS after the effective date of this AD.

(9) For engines that have operated only to flight profile “B,” use the following Table 3:

TABLE 3.—ENGINES HAVING OPERATED ONLY TO FLIGHT PROFILE “B” BEFORE INSPECTION, AS DEFINED IN THE AIRCRAFT MAINTENANCE MANUAL.

Number of (CSN) on the Effective Date of This AD:	Inspect and Relubricate Within:
(i) 12,000 or fewer CSN	350 CIS of accumulating 13,000 CSN.
(ii) 12,001 to 13,000 CSN	350 CIS after the effective date of this AD.
(iii) 13,001 to 15,000 CSN	150 CIS after the effective date of this AD.
(iv) In excess of 15,000 CSN	50 CIS after the effective date of this AD.

(10) For engines that have operated to flight profile “A” and “B,” use the following Table 2:

TABLE 4.—ENGINES HAVING OPERATED TO BOTH FLIGHT PROFILES “A” AND “B” BEFORE INSPECTION, AS DEFINED IN THE AIRCRAFT MAINTENANCE MANUAL.

Final Life (FL) Calculation on the Effective Date of This AD:	Inspect and Relubricate Within:
(i) Less than 65% FL	350 CIS of accumulating 65% FL.
(ii) 65% FL to 65% FL plus 1,000 CIS	350 CIS after the effective date of this AD.
(iii) 65% FL plus 1,000 CIS to 65% FL plus 3,000 CIS	150 CIS after the effective date of this AD.
(iv) More than 65% FL plus 3,000 CIS	50 CIS after the effective date of this AD.

Repetitive Inspections and Relubrication

(b) Thereafter, inspect for cracks and relubricate all LPC fan blades in accordance with paragraphs (a)(1) through (a)(7) of this AD, within 1,000 CIS of the last inspection and lubrication.

Alternative Method 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, Engine Certification Office (ECO). Operators shall submit their request 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

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

Issued in Burlington, Massachusetts, on July 12, 2001.

Mark C. Fulmer,
Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.
[FR Doc. 01-19937 Filed 8-8-01; 8:45 am]
BILLING CODE 4910-13-P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 502

RIN 3141-AA10

Definitions: Electronic or Electromechanical Facsimile

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule: Notice of extension of time.

SUMMARY: On June 22, 2001, the National Indian Gaming Commission

(Commission) issued a Notice of Proposed Rulemaking (Volume 66, Number 121, Pages 33494-33495) proposing amending its regulations by removing the definition of “electronic and electromechanical facsimile” now set forth at 25 CFR 502.8 and using, instead, the plain language interpretation of the phrase. Upon a formal request from the United States Department of Justice, the date for filing comments is being extended.

DATES: Comments shall be filed on or before August 21, 2001.

ADDRESSES: Send comments by mail, facsimile, or hand delivery to: Definitions: Electronic and Electromechanical Facsimile, Amendment Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005. Fax number: 202-632-7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION, CONTACT: Michele F. Mitchell at 202-632-7003 or,

by fax, at 202-632-7066 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act ("IGRA" or "Act") 25 U.S.C. 2701-2721, enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). On April 9, 1992, the Commission issued a final rule defining key terms in the Act. Among the terms defined by the Commission was "electronic or electromechanical facsimile." The Commission defined this term by reference to the Johnson Act, 15 U.S.C. 1171(a)(2) and (3). See 25 CFR 502.8. To ensure consistency with developments in the case law and to ensure a uniform approach to this term by the Commission and the courts, the Commission, on June 22, 2001, proposed and sought public comment on removal of 25 CFR 502.8 and on using, instead, the plain language interpretation that has been preferred by the courts. The initial comment period expired on July 23, 2001. The United States Department of Justice has formally requested additional time to prepare comments on the proposed regulation. In addition, several comments were received after the initial comment period ended. The Commission has decided to extend the comment period until August 21, 2001.

Dated: August 3, 2001.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 01-19954 Filed 8-8-01; 8:45 am]

BILLING CODE 7565-01-P

DEPARTMENT OF DEFENSE

32 CFR Part 320

[NIMA Instruction 5500.7R1]

Privacy Act; Implementation

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Proposed rule.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is proposing to revise its existing Privacy Act procedural and exemption rules.

DATES: Comments must be received on or before October 9, 2001 to be considered by this agency.

ADDRESSES: Comments should be sent to the Office of General Counsel, National Imagery and Mapping Agency, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Willess, Associate General Counsel, at (301) 227-2953.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511. "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 320

Privacy.

Part 320 is revised to read as follows:

PART 320—NATIONAL IMAGERY AND MAPPING AGENCY PRIVACY PROGRAM

Sec.

- 320.1 Purposes and scope.
- 320.2 Definitions.
- 320.3 Responsibilities
- 320.4 Procedures for requesting information.
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Authority: Pub. L. 93-579, 88 Stat. 1986 (5 U.S.C. 552a).

§ 320.1 Purpose and scope.

(a) This part is published pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a), (hereinafter the "Privacy Act"). This part:

- (1) Establishes or advises of the procedures whereby an individual can:
 - (i) Request notification of whether the National Imagery and Mapping Agency (NIMA) maintains or has disclosed a record pertaining to him in any nonexempt system of records,
 - (ii) Request a copy or other access to such a record or to an accounting of its disclosure,
 - (iii) Request that the record be amended and
 - (iv) Appeal any initial adverse determination of any such request;
- (2) Specifies those systems of records which the Director, Headquarters NIMA has determined to be exempt from the procedures established by this regulation and from certain provisions of the Privacy Act. NIMA policy encompasses the safeguarding of

individual privacy from any misuse of NIMA records and the provision of the fullest access practicable to individuals to NIMA records concerning them.

§ 320.2 Definitions.

As used in this part:

(a) *Appellate authority (AA)*. A NIMA employee who has been granted authority to review the decision of the Initial Denial Authority (IDA) that has been appealed by the Privacy Act requester and make the appeal determination for NIMA on the releasability of the records in question.

(b) *Individual*. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not "individuals".

(c) *Initial denial authority (IDA)*. A NIMA employee, or designee, who has been granted authority to make an initial determination for NIMA that records requested in a Privacy Act request should be withheld from disclosure or release.

Maintain. Includes maintain, collect, use or disseminate.

(e) *Personal information*. Information about an individual that identifies, relates to or is unique to, or describes him or her; e.g., a social security number, age, military rank, civilian grade, marital status, race, or salary, home/office phone numbers, etc.

(r) *Record*. Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc.), about an individual that is maintained by NIMA, including, but not limited to education, financial transactions, medical history, criminal or employment history, and that contains the individual's name or the identifying number, symbol or other identifying particulars assigned to the individual such as a finger or voice print or a photograph.

(g) *Routine use*. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

(h) *System of records*. A group of records under the control of NIMA from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other

identifying particular assigned to the individual.

(i) *System manager*. The NIMA official who is responsible for the operation and management of a system of records.

§ 320.3 Responsibilities.

(a) Director of NIMA:

(1) Implements the NIMA privacy program.

(2) Designates the Director of the Public Affairs Office as the NIMA Initial Denial Authority.

(3) Designates the Chief of Staff as the Appellate Authority.

(4) Designates the General Counsel as the NIMA Privacy Act Officer and the principal point of contact for matters involving the NIMA privacy program.

(b) NIMA General Counsel:

(1) Oversees systems of records maintained throughout NIMA, administered by IS 'WHAT IS IS'. This includes coordinating all notices of new systems of records and changes to existing systems for publication in the **Federal Register**.

(2) Coordinates all denials of requests for access to or amendment of records.

(3) Assesses and collects fees for costs associated with processing Privacy Act requests and approves or denies requests for fee waivers. Fees collected are forwarded through Financial Management Directorate to the U.S. Treasury.

(4) Prepares the annual report to the Defense Privacy Office.

(5) Oversees investigations of allegations of unauthorized maintenance, disclosure, or destruction of records.

(6) Conducts or coordinates Privacy Act training for NIMA personnel as needed, including training for public affairs officers and others who deal with the public and news media.

(c) NIMA System Managers:

(1) Ensure that all personnel who either have access to a system of records or who are engaged in developing or supervising procedures for handling records in a system of records are aware of their responsibilities for protecting personal information.

(2) Prepare notices of new systems of records and changes to existing systems for publication in the **Federal Register**.

(3) Ensure that no records subject to this part are maintained for which a systems notice has not been published.

(4) Respond to requests by individuals for access, correction, or amendment to records maintained pursuant to the NIMA privacy program.

(5) Provide recommendations to General Counsel for responses to requests from individuals for access, correction, or amendment to records.

(6) Safeguard records to ensure that they are protected from unauthorized alteration or disclosure.

(7) Dispose of records in accordance with accepted records management practices to prevent inadvertent compromise. Disposal methods such as tearing, burning, melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation are considered adequate if the personal data is rendered unrecognizable or beyond reconstruction.

§ 320.4 Procedures for requesting information.

(a) Upon request in person or by mail, any individual, as defined in § 320.2, shall be informed whether or not any NIMA system of records contains a record pertaining to him.

(b) Any individual requesting such information in person may appear at NIMA General Counsel Office (refer to the NIMA address list at paragraph (e) of this section) or at the NIMA office thought to maintain the record in question and shall provide:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) Acceptable identification to verify the individual's identity, e.g., driver's license, employee identification card or medicare card.

(c) Any individual requesting such information by mail shall address the request to the Office of General Counsel (refer to paragraph (e) of this section) or NIMA office thought to maintain the record in question and shall include in such request the following:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) A notarized statement or unsworn declaration in accordance with 28 U.S.C. 1746 to verify the individual's identity, if, in the opinion of the NIMA system manager, the sensitivity of the material involved warrants.

(d) NIMA procedures on requests for information. Upon receipt of a request for information made in accordance with these regulations, notice of the existence or nonexistence of any records described in such requests will be furnished to the requesting party within ten working days of receipt.

(e) Written requests for access to records should be sent to NIMA Bethesda, ATTN: NIMA/GC, Mail Stop

D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003.

(f) Requests for information made under the Freedom of Information Act are processed in accordance with "DoD Freedom of Information Act Program Regulation" (32 CFR part 286).

(g) Requests for personal information from the Government Accounting Office (GAO) are processed in accordance with DoD Directive 7650.1¹ "GAO Access to Records".

§ 320.5 Disclosure of requested information.

(a) Upon request by an individual made in accordance with the procedures set forth in this section, such individual shall be granted access to any pertinent record which is contained in a nonexempt NIMA system of records. However, nothing in this section shall allow an individual access to any information compiled by NIMA in reasonable anticipation of a civil or criminal action or proceeding.

(b) Procedures for requests for access to records. Any individual may request access to a pertinent NIMA record in person or by mail.

(1) Any individual making such request in person shall appear at Office of General Counsel, NIMA Bethesda, ATTN: NIMA/GC, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003, and shall provide identification to verify the individuals' identity, e.g., driver's license, employee identification card, or medicare card.

(2) Any individual making a request for access to records by mail shall address such request to the Office of General Counsel, NIMA Bethesda, ATTN: NIMA/GC, Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003; and shall include therein a signed, notarized statement, or an unsworn statement or declaration in accordance with 28 U.S.C. 1746, to verify identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of the individual's own choosing while reviewing the record requested. If an individual elects to be so accompanied, said individual shall give notice of such election in the request and shall provide a written statement authorizing disclosure of the record in the presence of the accompanying person. Failure to so notify NIMA in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) NIMA determination of requests for access.

(1) Upon receipt of a request made in accordance with this section, the NIMA

Office of General Counsel or NIMA office having responsibility for maintenance of the record in question shall release the record, or refer it to an Initial Denial Authority, who shall:

(i) Determine whether such request shall be granted.

(ii) Make such determination and provide notification within 30 working days after receipt of such request.

(iii) Notify the individual that fees for reproducing copies of records will be assessed and should be remitted before the copies may be delivered. Fee schedule and rules for assessing fees are contained in Sec. 320.9.

(iv) Requests for access to personal records may be denied only by an agency official authorized to act as an Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel.

(2) If access to a record is denied because such information has been copied by NIMA in reasonable anticipation of a civil or criminal action or proceeding, the individual will be notified of such determination and his right to judicial appeal under 5 U.S.C. 552a(g).

(d) Manner of providing access.

(1) If access is granted, the individual making the request shall notify NIMA whether the records requested are to be copied and mailed.

(2) If the records are to be made available for personal inspection the individual shall arrange for a mutually agreeable time and place for inspection of the record. NIMA reserves the right to require the presence of a NIMA officer or employee during personal inspection of any record pursuant to this section and to request of the individual that a signed acknowledgement of the fact be provided that access to the record in question was granted by NIMA

§ 320.6 Request for correction or amendment to record.

(a) Any individual may request amendment of a record pertaining to said individual.

(b) After inspection of a pertinent record, the individual may file a request in writing with the NIMA Office of General Counsel for amendment. Such requests shall specify the particular portions of the record to be amended, the desired amendments and the reasons, supported by documentary proof, if available.

§ 320.7 Agency review of request for correction or amendment of record.

(a) Not later than 10 working days after receipt of a request to amend a record, in whole or in part, the NIMA

Office of General Counsel, or NIMA office having responsibility for maintenance of the record in question, shall correct any portion of the record which the individual demonstrates is not accurate, relevant, timely or complete, and thereafter either inform the individual of such correction or process the request for denial.

(b) Denials of requests for amendment of a record will be made only by an agency official authorized to act as an Initial Denial Authority, after coordination with the Office of General Counsel. The denial letter will inform the individual of the denial to amend the record setting forth the reasons therefor and notifying the individual of his right to appeal the decision to NIMA.

(c) Any person or other agency to whom the record has been previously disclosed shall be informed of any correction or notation of dispute with respect to such records.

(d) These provisions for amending records are not intended to permit the alteration of evidence previously presented during any administrative or quasi-judicial proceeding, such as an employee grievance case. Any changes in such records should be made only through the established procedures for such cases. Further, these provisions are not designed to permit collateral attack upon what has already been the subject of an administrative or quasi-judicial action. For example, an individual may not use this procedure to challenge the final decision on a grievance, but the individual would be able to challenge the fact that such action has been incorrectly recorded in his file.

§ 320.8 Appeal of initial adverse agency determination on correction or amendment.

(a) An individual whose request for amendment of a record pertaining to him may further request a review of such determination in accordance with this section.

(b) Not later than 30 working days following receipt of notification of denial to amend, an individual may file an appeal of such decision with NIMA. The appeal shall be in writing, mailed or delivered to NIMA, ATTN: Mail Stop D-10, 4600 Sangamore Road, Bethesda, MD 20816-5003. The appeal must identify the records involved, indicate the dates of the request and adverse determination, and indicate the express basis for that determination. In addition, the letter of appeal shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) Upon appeal from a denial to amend a record the NIMA Appellate

¹ Copies may be obtained: <http://web7.whs.osd.mil/corres.htm>

Authority or designee shall make a determination whether to amend the record and must notify the individual of that determination by mail, not later than 10 working days after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(1) The Appellate Authority or designee shall also notify the individual of the provisions of the Privacy Act of 1974 regarding judicial review of the NIMA Appellate Authority's determination.

(2) If on appeal the denial to amend the record is upheld, the individual shall be permitted to file a statement setting forth the reasons for disagreement with the Appellate Authority's determination and such statement shall be appended to the record in question.

(d) The Appellate Authority or designee may extend up to 30 days the time period in which to make a determination on an appeal from denial to amend a record for the reason that a fair and equitable review cannot be completed within the prescribed time period.

§ 320.9 Disclosure of record to persons other than the individual to whom it pertains.

(a) No officer or employee of NIMA will disclose any record which is contained in a system of records, by any means of communication to any person or agency within or outside the Department of Defense without the request or consent of the individual to whom the record pertains, except as described in 32 CFR 310.41; Appendix C to part 310 of this chapter; and/or a NIMA Privacy Act system of records notice.

(b) Any such record may be disclosed to any person or other agency only upon written request, of the individual to whom the record pertains.

(c) In the absence of a written consent from the individual to whom the record pertains, such record may be disclosed only provided such disclosure is:

(1) To those officers and employees of the DoD who have a need for the record in the performance of their duties.

(2) Required under the Freedom of Information Act (32 CFR part 286).

(3) For a routine use established within the system of records notice.

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13.

(5) To a recipient who has provided the NIMA with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and the record is

transferred in a form that is not individually identifiable and will not be used to make any decisions about the rights, benefits or entitlements of an individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the Administrator of the General Services Administration or his designee to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Director, NIMA specifying the particular record and the law enforcement activity for which it is sought.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(9) To either house of Congress, and, to the extent of the matter within its jurisdiction, any committee or subcommittee or joint committee of Congress.

(10) To the Comptroller General or any of the authorized representatives in the course of the performance of the duties of the GAO.

(11) Under an order of a court of competent jurisdiction.

(12) To a consumer reporting agency in accordance with section 3711(f) of title 31.

(d) Except for disclosures made pursuant to paragraphs (c)(1) and (2) of this section, an accurate accounting will be kept of the data, nature and purpose of each disclosure of a record to any person or agency, and the name and address of the person or agency to whom the disclosure was made. The accounting of disclosures will be made available for review by the subject of a record at his request except for disclosures made pursuant to paragraph (c)(7) of this section. If an accounting of disclosure has been made, any person or agency contained therein will be informed of any correction or notation of dispute made pursuant to § 320.6 of this part.

§ 320.10 Fees.

Individuals may request copies for retention of any documents to which they are granted access to NIMA records pertaining to them. Requesters will not

be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with 32 CFR part 310.

§ 320.11 Penalties.

The Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) makes it a misdemeanor subject to the maximum fine at \$5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. The Act also establishes similar penalties for violations by NIMA employees of the Act or regulations established thereunder.

§ 320.12 Exemptions.

(a) Exempt Systems of Record. All systems of records maintained by the NIMA and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to the 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be withheld in the interest of national defense or foreign policy. This exemption is applicable to parts of all system of records, including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-19819 Filed 8-08-01; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Regulation 340-21]

Privacy Act; Implementation

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is proposing to revise four existing exemption rules. The exemption rules are being revised to add reasons from which information may be exempt, and to update the reasons for taking the exemptions.

DATES: Comments must be received on or before October 9, 2001 to be considered by this agency.

ADDRESSES: Records Management Division, U.S. Army Records

Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, 600 6th Street, Ft. Belvoir, VA 22060-5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390 or Ms. Christie King at (703) 806-3711 or DSN 656-3711.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal

governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, it is proposed that 32 CFR part 505 be amended as follows:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 505.5, is amended by revising paragraphs (e)(1), (e)(5), (e)(6), and (e)(19) as follows:

§ 505.5 Exemptions.

* * * * *

(e) Exempt Army records.

(1) *System identifier:* A0020-1a SAIG

(i) *System name:* Inspector General Investigative Files.

(ii) *Exemptions:* (A) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(4)(G) and (H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(iv) *Reason:* (A) From subsection (c)(3) because the release of the

disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(C) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (k)(2) of the Privacy Act of 1974.

(D) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(E) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

(5) *System identifier:* A0027-10a DAJA

(i) *System name:* Prosecutorial Files.

(ii) *Exemptions:* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of the system of records may be exempt pursuant to 5

U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(iii) Authority: 5 U.S.C. 552a(j)(2).

(iv) Reason: (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department to the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part 505), but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, information and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow

disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(6) System identifier: A0027-10b DAJA.

(i) System name: Courts—Martial Records and Reviews.

(ii) Exemptions: Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsection of 5 U.S.C.a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(iii) Authority: 5 U.S.C. 552a(j)(2).

(iv) Reason: (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation that requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part

505), but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of this nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

(19) *System identifier:* A0340-21 TAPC

(i) *System name:* Privacy Case Files.

(ii) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are part. Therefore, information within this system of records may be exempt pursuant to 5 U.S.C. 552a, subsection (d).

(iii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iv) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above

nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

Dated: August 1, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-19815 Filed 8-8-01; 8:45 am]

BILLING CODE 5001-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 122, 123, 124, and 130

[WH-FRL-7024-6]

RIN 2040-AD22

Delay of Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes to delay by 18 months the effective date of a rule published in the **Federal Register** on July 13, 2000. The July 2000 rule amends and clarifies existing regulations implementing section 303(d) of the Clean Water Act (CWA), which requires States to identify waters that are not meeting State water quality standards and to establish pollutant budgets, called Total Maximum Daily Loads (TMDLs), to restore the quality of those waters. The rule also lays out specific time frames under which EPA will assure that lists of waters not meeting water quality standards (the 303(d) lists) and TMDLs are completed as scheduled, and necessary National Pollutant Discharge Elimination System (NPDES) permits are issued to implement TMDLs.

The July 2000 rule generated considerable controversy, as expressed in letters, testimony, public meetings, Congressional action, and litigation. Congress prohibited EPA from implementing the final rule through a spending prohibition attached to the

Military Construction Appropriations Act: FY 2000 Supplemental Appropriations. This provision prohibited EPA from using funds made available for fiscal years 2000 and 2001 "to make a final determination on or implement" the July 2000 TMDL rule. The spending prohibition is scheduled to expire on September 30, 2001 and, barring further action by Congress or EPA, the rule will go into effect 30 days later on October 30, 2001.

Based on the concerns expressed by many interested organizations and in light of a recent report from the National Research Council (NRC), entitled "Assessing the TMDL Approach to Water Quality Management," which recommends changes to the TMDL program, EPA believes that it is important at this time to re-consider some of the choices made in the July 2000 rule. While continuing to operate the program under the 1985 TMDL regulations, as amended in 1992. A delay of the effective date would allow the Agency to solicit and carefully consider suggestions on how to structure the TMDL program to be effective and flexible and to ensure that it leads to workable solutions that will meet the Clean Water Act goals of restoring impaired waters. In addition, EPA believes that its decision voluntarily to reconsider the July 2000 rule may result in revisions to the rule that would resolve at least some of the issues raised in pending litigation in the D.C. Circuit Court of Appeals. Instead of expending resources in lengthy litigation, EPA believes it can speed up the process of putting in place a more workable program, while building a foundation of trust among stakeholders in the basic process for restoring impaired waters. Once this foundation is soundly built, it is far more likely that diverse stakeholders will be able to agree on plans for restoring water quality and far more likely that these important plans will be implemented.

In addition, in response to the NRC report, today's action proposes to revise the date on which States are required to submit the next list of impaired waters. EPA is proposing to revise the date from April 1, 2002 to October 1, 2002. This delay is intended to provide time for EPA to issue guidance incorporating some of the NRC's recommendations regarding the methodology used to develop the list and the content of the list.

DATES: Written comments on this proposed rule should be submitted by September 10, 2001. Comments provided electronically will be

considered timely if they are submitted by 11:59 P.M. September 10, 2001.

ADDRESSES: You may send written comments on this proposed rule to the W-98-31-III TMDL Comments Clerk, Water Docket (MC-4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW; EB-57; Washington, DC 20460; (202) 260-3027 between 9 a.m. and 4:00 p.m. Eastern Time, Monday through Friday excluding legal holidays. Comments may be submitted electronically to ow-docket@epa.gov. The proposed rule and supporting documents are available for review in the Water Docket at the above address. An electronic version of this proposal will be available via the Internet at: <http://www.epa.gov/OWOW/tmdl/delay>.

FOR FURTHER INFORMATION CONTACT: For information about today's proposal, contact: Francoise M. Brasier, U.S. EPA Office of Wetlands, Oceans and Watersheds (4503F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone (202) 401-4078.

SUPPLEMENTARY INFORMATION:

A. Authority

Clean Water Act sections 106, 205(g), 205(j), 208, 301, 302, 303, 305, 308, 319, 402, 501, 502, and 603; 33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1311, 1312, 1313, 1315, 1318, 1329, 1342, 1361, 1362, and 1373.

B. Entities Potentially Regulated by the Proposed Rule

TABLE OF POTENTIALLY REGULATED ENTITIES

Category	Examples of potentially regulated entities
Governments	States, Territories and Tribes with CWA responsibilities.

The table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether you may be regulated by this action, you should carefully examine the applicability criteria in § 130.20 of title 40 of the Code of Federal

Regulations. If you have any questions regarding the applicability of this action to you, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Additional Information for Commenters

Please submit an original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters discuss the proposed delay of the effective date of the July 2000 rule and the proposed delay of the due date for the 2002 list of impaired waters separately. Electronic comments must be submitted as a WordPerfect 5.1, WP6.1 or WP8 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WP 5.1, WP6.1 or WP8, or ASCII file format. Electronic comments on this action may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) or submissions in other electronic formats (e.g., Word, pdf, Excel) will be accepted.

The docket for this rulemaking has been established under number W-98-31-III. The docket is available for inspection from 9 a.m. to 4 p.m. Eastern Time, Monday through Friday, excluding legal holidays, at the Water Docket; EB 57; U.S. EPA; 401 M Street, SW; Washington, D.C. For access to docket materials, please call (202) 260-3027 to schedule an appointment. Every user is entitled to xerox 100 free pages before incurring a charge. Above this quantity, the Docket may charge 15 cents a page.

I. Basis for Today's Action and Request for Comment

A. Why Did EPA Publish the July 13, 2000 Rule?

EPA published a final rule on July 13, 2000 (65 FR 43586) amending the Agency's existing regulations implementing the CWA's TMDL and NPDES programs. The final regulations were intended to:

- a. Provide for a complete national accounting of impaired waterbodies and tracking of progress towards restoration and clean-up;
- b. clarify and provide more specificity regarding the required elements of a comprehensive TMDL program;
- c. achieve national consistency in all elements of the TMDL program;

d. require implementation plans as a specific element of a TMDL under 303(d)

e. require documentation of reasonable assurance that reliable nonpoint source controls would be implemented in order to share load reductions between point and nonpoint sources;

f. require that TMDLs be established at an even pace in the 10 to 15 years following the time a waterbody is first listed;

g. prescribe when EPA would step in to do lists and TMDLs for States, Territories or authorized Tribes;

h. require EPA to issue NPDES permits implementing TMDL wasteload allocations within two years of TMDL establishment, when it is the permitting authority; and

i. require EPA to use its authority to step-in when States fail to revise and re-issue permits needed to implement TMDL wasteload allocations.

B. Why Does EPA Want To Undertake a Further Review of the TMDL Regulations?

As EPA was developing the final rule, many organizations and individuals expressed reservations about the proposed requirements of the rule. The proposal had generated significant concerns and EPA had received more than 34,000 comments on the proposed rule. Because of the controversy, Congress enacted an amendment to the Military Construction Appropriations Act: FY 2000 Supplemental Appropriations (Pub. L. 106-426). This provision prohibited EPA from using funds made available for fiscal years 2000 and 2001 "to make a final determination on or implement" the July 2000 TMDL rule. This Act was signed by the President on July 14, 2000 effectively prohibiting EPA from implementing the final regulations which had been signed by the Administrator on July 11, 2000. Anticipating that the amendment would go into effect, EPA provided that the effective date of the regulations would be 30 days after the date that Congress allowed EPA to implement the regulations.

EPA's decision to promulgate the July 2000 regulations and the content of the final regulations have generated concerns expressed in letters, testimony, public meetings, Congressional action, and litigation. States, business and industry groups, agriculture and forestry organizations, and local governments have questioned the scope, complexity, cost, and inflexibility of some of the new requirements and have challenged the basis for and appropriateness of

some of the new requirements. EPA is listing below some examples of concerns that have been identified to date. State officials and their representatives have expressed concerns about the capacity of State governments to carry out the many new requirements in the final rule and assert that the rule interferes with State authority. Other State objections include criticism that specific load and wasteload allocations in TMDLs, together with the time frames to complete TMDLs and implement them, will limit opportunity for stakeholder involvement in defining equitable point and nonpoint source controls. States have also indicated their concern about the role of EPA in administration of authorized NPDES programs, particularly the rule provisions regarding EPA objection to state-issued expired and administratively-continued permits in order to implement wasteload allocations.

Local government officials have objected to TMDL allocation approaches that could result in municipal point sources bearing an inequitable share of the pollutant load reductions needed to attain water quality standards. Agriculture, forestry, cattle and poultry groups have expressed their concern that the new implementation plan requirement places EPA in an inappropriate position for dealing with nonpoint source controls and that the rule does not allow for adaptive management. Some assert that there is not enough data to support TMDLs, that some pollutants are not suitable for TMDL calculation, that the section 303(d) lists are not based on scientifically-defensible data, or that the delisting criteria are too inflexible.

Environmental groups have expressed their concern that the rule does not do enough to address water quality impairments from nonpoint sources, and have argued that the new schedules in the rule unlawfully extend Clean Water Act deadlines. They also object to EPA's interpretation of what constitutes lack of substantial progress in developing TMDLs, and believe that the rule should specify that EPA immediately act upon a State, Territory or authorized Tribe's failure to meet a deadline.

Many of these concerns are reflected in recent lawsuits challenging the July 2000 rule. Currently ten petitions have been filed by States, industrial and agricultural groups, and environmental organizations asserting that EPA's July 2000 rule exceeds the Agency's authority under section 303(d) of the Clean Water Act. In addition, several groups have intervened in these

lawsuits. The issues raised by the petitioners include the scope and content of the section 303(d) list, the elements of an approvable TMDL, scheduling and backstopping of TMDLs, and the change to the NPDES regulations addressing administrative continuance of permits.

Finally, in the FY 2001 Appropriations Bill, Congress directed EPA to contract with the National Academy of Sciences to evaluate the adequacy of scientific methods and approaches currently available to support development and implementation of TMDLs. The report is available from the National Academy Press. In general, the report is supportive of the TMDL program. However, it includes several recommendations which EPA needs to analyze carefully to determine whether these recommendations can be implemented in the context of the July 2000 rule. Particularly, EPA is examining how the July 2000 rule would need to be revised in order to respond to the NRC's recommendations, including its findings that "many waters now on State 303(d) lists were placed there without the benefit of adequate water quality standards, data or waterbody assessment" and the NRC's recommendation that "adaptive implementation is needed to ensure that the TMDL program is not halted because of a lack of data and information, but rather progresses while better data are collected and analyzed with the intent of improving upon initial TMDL plans."

While no one rule will satisfy all of these concerns, taken together, the concerns expressed by States and other interested parties raise a significant question as to whether the rule sets out a workable and effective approach to meeting Clean Water Act goals.

C. What Is EPA Proposing Today?

1. Delay of the Effective Date of the July 2000 Rule

Today, EPA is proposing to delay the effective date of the TMDL rule until April 30, 2003, to allow time for reconsideration of specific aspects of the rule. EPA intends to use this time to:

- Fully analyze the findings and recommendations of the NRC report;
- Discuss better ways to construct the TMDL program with a broad array of interested parties; and
- Revise the TMDL rules through a notice and comment process.

EPA believes that an 18-month delay of the effective date is the minimum necessary for the Agency to be able to go through a meaningful consultation process, analyze and reconcile the

recommendations of the various stakeholders and implement program changes. During that delay the program will continue to operate under the 1985 TMDL regulations as amended in 1992 at 40 CFR Part 130. Under these regulations, the States and EPA will continue to make significant progress in restoring impaired waters. EPA expects to approve more than 1,500 TMDLs in FY 2001 and is working with the States to improve the technical underpinnings of the program through a series of State/EPA regional forums sponsored by EPA and the Association of State and Interstate Water Pollution Control Administrators and development of technical guidance such as the recently released protocol for developing pathogen TMDLs.

2. Revision of the Due Date on Which States Are Required To Submit the 2002 List of Impaired Waters

Section 130.7 (d)(1) requires that States submit a list of water quality limited segments still requiring TMDLs on April 1 of every even-numbered year. Under this requirement the next list would be due on April 1, 2002. However, EPA has been unable to issue guidance to the States, Territories or authorized Tribes regarding the development of that list because of the uncertainty regarding which set of regulations would control the listing process in 2002, and the Congress's prohibition on spending funds to implement the July 2000 rule. In addition the NRC report provides a number of recommendations for improving the listing process which EPA is considering implementing to the extent they are consistent with the Clean Water Act and the existing regulations. In order to do this, EPA believes that it would have to develop and issue guidance regarding development of the States' 2002 lists that takes into account the various recommendations of the NRC. However, EPA does not believe there is enough time to allow States, Territories and authorized Tribes to be able to participate in the development of that guidance and to use it to develop lists by April 1, 2002, EPA, therefore, believes that it would be appropriate to revise the date for submission of the 2002 lists to be October 1, 2002. A delay of six months will afford EPA the time to develop such guidance and make it available to the States for use in compiling their 2002 lists. Moreover, EPA does not believe that this brief delay of the due date for these lists will in any way pose a risk to public health or jeopardize the clean-up of the Nations's impaired waters. EPA and the

States will continue to develop TMDLs based on the 1998 lists. EPA is not aware of any State where postponing the 2002 list will affect the number of TMDLs to be developed in 2002.

The proposed rule includes a limited exception that would retain the existing requirement for a State to submit a 2002 list by April 1, 2002, if a court order or consent decree or commitment in a settlement agreement expressly requires EPA to take an action related to the State's 2002 list prior to October 1, 2002. In recent years, litigation under Section 303(d) has resulted in court orders, consent decrees, and settlement agreements in a number of States related to EPA obligations in implementing Section 303(d). In order to enable EPA to meet a commitment embodied in a court order, consent decree, or settlement agreement, today's proposed rule would retain the existing requirement for a State to submit a list by April 1, 2002 if a court order or consent decree or commitment in a settlement agreement expressly requires EPA to take an action related to the State's 2002 list prior to October 1, 2002. The Act grants EPA the discretionary authority to interpret the requirement that States submit lists "from time to time." In the exercise of this authority EPA believes that it is appropriate to continue to require a list by April 1, 2002 in those States in which the absence of a list on that date would unsettle an existing court order, consent decree or commitment in a settlement agreement. EPA has reviewed the consent decrees, court orders, and settlement agreements in cases involving the TMDL program and believes the only order, consent decree, or settlement agreement with a requirement for EPA to take an action expressly related to the 2000 list before October 1, 2001, is a consent decree for Georgia.

3. Request for Comment

EPA will consider comments received during the comment period for this notice that address the proposed delay of the July 2000 TMDL rule's effective date, and EPA will decide whether to issue a final delay of the effective date by September 30, 2001. The effect of this delay would be that the TMDL program would continue to operate under the rules promulgated in 1985, as amended in 1992, at 40 CFR Part 130. EPA will also consider comments that address the proposed revision of the due date of the next section 303(d) list to October 1, 2002 and decide whether to promulgate this amendment by September 30, 2001. In addition, EPA will consider comments on its proposal

to retain the existing April 1, 2002, due date if a court order, consent decree, or commitment in a settlement agreement expressly requires EPA to take an action related to the State's 2002 list prior to October 1, 2002. EPA also solicits public comment on whether there are any such orders, consent decrees, or settlement agreements other than a consent decree in Georgia, as noted above. If there are, and if EPA revises the due date to October 1, 2002, as proposed, EPA will notify those States and will identify those States in the notice of final rulemaking as States, subject to the exception, in which submission of a year 2002 list by April 1, 2002, would be required. EPA solicits comments whether to include this exception in the final rule.

II. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

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

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" and as such, has not been submitted to OMB for review.

B. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (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 EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866.

C. *Unfunded Mandates Reform Act (UMRA) of 1995*

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

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or

the private sector. The proposed rule imposes no enforceable duty on any State, local or Tribal government or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA. For the same reason, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any requirement on anyone. Thus, there are no costs associated with this action. Therefore, today's rule is not subject to the requirements of section 203 of UMRA.

D. *Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposed action does not impose any requirements on anyone and does not voluntarily request information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking 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. After considering the

economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed action does not impose any requirements on anyone, including small entities.

F. *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not impose any new technical standards.

G. *Executive Order 13132: Federalism*

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

This proposal 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. It would merely delay the effective date of the July 2000 rule and the due date of the April 2002 lists. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and in accordance with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this

proposed rule from State and local officials.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

This proposed rule would merely delay the effective date of the July 2000 TMDL Rule and delay the due date of the April 1, 2002 lists. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and in accordance with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

I. Plain Language Considerations

The agency is required to write all rules in plain language. EPA invites public comment on how to make this proposed rule easier to understand. Comments may address the following questions and other factors as well:

- A. Has EPA organized the material to suit your needs?
B. Are the requirements in the rule clearly stated?
C. Does the rule contain technical wording or jargon that is not clear?
D. Would a different format (grouping or order of sections, use of headings, paragraphing) make the rule easier to understand?
E. Would more (but shorter) sections be better?
F. Could EPA improve clarity by using additional tables, lists or diagrams?
G. What else could EPA do to make the rule easier to understand?

J. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use", 66 FR 28355 (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Hazardous substances, Indians-lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 130

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 31, 2001.
Christine T. Whitman,
Administrator.

PARTS 9, 122, 123, 124 AND 130—PROPOSED DELAY OF EFFECTIVE DATE AND REVISIONS

For the reasons stated in the preamble, EPA proposes:
1. To delay the effective date of the amendments to 40 CFR part 9, 122, 123, 124 and 130 published July 13, 2000 (65 FR 43586) until April 30, 2003.
2. To amend 40 CFR part 130 to read as follows:

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

a. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

b. Section 130.7 is amended by adding a new sentence after the fourth sentence in paragraph (d)(1) to read as follows:

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

(d) * * * (1) * * * For the year 2002 submission, States must submit a list

required under paragraph (b) of this section by October 1, 2002, unless a court order, consent decree or commitment in a settlement agreement expressly requires EPA to take an action related to the State's 2002 list prior to October 1, 2002, in which case, the State must submit a list by April 1, 2002.

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[FR Doc. 01-20017 Filed 8-8-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA-4122b; FRL-7027-7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NOx RACT Determinations for the Allegheny Ludlum Corporation's Brackenridge Facility in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring reasonably available control technology for the Allegheny Ludlum Corporation's Brackenridge facility, a major source of volatile organic compounds (VOC) and nitrogen oxides (NOx) located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). In the Final Rules section of this Federal Register, EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 10, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief,

Air Quality Planning and Information Services Branch, Mail code 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; and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Michael Ioff at (215) 814-2166, the EPA Region III address above or by e-mail at ioff.mike@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 1, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.
[FR Doc. 01-20040 Filed 8-8-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA-4123b; FRL-7027-5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_x RACT Determinations for Two Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania for the purpose of establishing and requiring reasonably available control technology (RACT) for two major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the Final Rules

section of this **Federal Register**, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by September 10, 2001.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Air Quality Planning 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; Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201 and the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Janice Lewis at (215) 814-2185 or Betty Harris at (215) 814-2168, the EPA Region III address above or by e-mail at lewis.janice@epa.gov or harris.betty@epa.gov. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations"

section of this **Federal Register** publication.

Dated: July 31, 2001.

Thomas C. Voltaggio,

Deputy Regional Administrator, Region III.
[FR Doc. 01-20044 Filed 8-8-01; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 01-150; FCC 01-205]

Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document proposes further streamlining of applications under section 214 of the Communications Act of 1934, as amended (Act), to acquire domestic transmission lines through acquisitions of corporate control where, based on predetermined criteria, it would require little scrutiny for the Commission to determine that they would serve the public interest.

DATES: Comments are due September 10, 2001. Reply Comments are due October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Henry Thaggert, Attorney-Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-7941.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, CC Docket No. 01-150, FCC 01-205, adopted July 12, 2001 and released July 20, 2001. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (ITS, Inc.), CY-B400, 445 12th Street, SW., Washington, DC.

Synopsis of Notice of Proposed Rulemaking

1. The Commission seeks comment on its proposal to streamline its rules with respect to domestic section 214 authorizations involving acquisitions of corporate control. In particular, it proposes streamlined treatment of

applications under section 214 of the Act for transfer of domestic interstate transmission lines through acquisition of corporate control where it would require little scrutiny in order for the Commission to determine that the transaction would serve the public interest.

2. Specifically, the Commission seeks comment on whether to shorten the review period for a predetermined class of domestic section 214 applications so that absent written notice to the contrary from the Commission, transfers involving a predetermined class of non-dominant carriers would automatically be granted after 31 days, and transfers involving a predetermined class of dominant carriers would automatically be granted after 60 days. Additionally, the Commission seeks comment on: (1) What criteria to employ to determine eligibility for streamlined review; (2) how to treat a streamlined domestic section 214 application that is accompanied by a request for waiver of Commission rules; (3) whether the Commission should have the discretion to remove an application from streamlined processing; (4) how the Common Carrier Bureau should treat a streamlined application when the applicants file related applications in other bureaus; and (5) whether the Commission should continue to require resellers and other non-dominant carriers to file applications for transfers of control.

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice of Proposed Rule Making* provided in section IV(C) of the *Notice of Proposed Rule Making*. The Commission will send a copy of the *Notice of Proposed Rule Making*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a).

Need for, and Objectives of, the Proposed Rules

2. The Commission has initiated this proceeding to seek comment on how it might improve and streamline applications under section 214 to

acquire domestic transmission lines through acquisitions of corporate control that require little scrutiny in order for the Commission to determine that they serve the public interest. The Commission also proposes to shorten the review periods for transfers of control.

Legal Basis

3. The legal basis for any action that may be taken pursuant to the *Notice of Proposed Rulemaking* is contained in sections 2, 4, 201, 214, 303 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–202, 303 and 403, and §§ 1.1, 1.411 and 1.412 of the Commission's rules, 47 CFR 1.1, 1.411 and 1.412.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. The Regulatory Flexibility Act directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rulemaking, if adopted. See 5 U.S.C. 603(b)(3). The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." See 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. See 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. See 15 U.S.C. 632.

5. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission has indicated that there are 4,144 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

6. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and

"Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees. See 13 CFR 121.201; Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987). Further, this analysis discusses the total estimated number of telephone companies falling within the two categories and the number of small businesses in each. This analysis also attempts to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

7. The Commission includes small incumbent local exchange carriers (LECs) in this present Regulatory Flexibility Act analysis. As noted above, a "small business" under the Regulatory Flexibility Act is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." See 15 U.S.C. 632(a)(1). The SBA's Office of Advocacy contends that, for Regulatory Flexibility Act purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999); 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3); 13 CFR 121.102(b). The Commission, therefore, included small incumbent LECs in this Regulatory Flexibility Act analysis, although the Commission emphasizes that this Regulatory Flexibility Act action has no effect on FCC analyses and determinations in other, non-Regulatory Flexibility Act contexts.

8. *Total Number of Telephone Companies Affected*. The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. See U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) ("1992 Census"). This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small

incumbent LECs because they are not "independently owned and operated." See 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the proposed rules, herein adopted.

9. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. See 1992 Census, at Firm Size 1-123. According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. See 13 CFR 121.201, SIC Code 4813; 1997 NAICS 51331. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. The Commission does not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small incumbent LECs that may be affected by the proposed rulemaking. The Commission further notes that some of these small entities may be "connecting carriers," as defined in section 3(11) of the Act, 47 U.S.C. 153(11), and would not be subject to section 214 or § 63.01 when engaging in an acquisition of corporate control and thus would not require prior Commission approval to consummate a transaction involving an acquisition of corporate control.

10. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.

See 13 CFR 121.201, SIC Code 4813. According to the most recent *Trends in Telephone Service* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 1,348 providers of local exchange service are small entities or small incumbent LECs that may be affected by the proposed rulemaking.

11. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 171 small entity IXCs that may be affected by the proposed rulemaking.

12. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 212 CAP/competitive LECs carriers and 10 other

LECs reported that they were engaged in the provision of competitive local exchange services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 212 small entity CAPs and 10 other LECs that may be affected by the proposed rulemaking.

13. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 24 small entity operator service providers that may be affected by the proposed rulemaking.

14. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data

specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 615 small entity pay telephone operators that may be affected by the proposed rulemaking.

15. *Resellers (including debit card providers)*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. See 13 CFR 121.201, SIC code 4813; 1997 NAICS 51331. According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service. See FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000). The Commission does not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed rulemaking.

16. *Toll-Free 800 and 800-Like Service Subscribers*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. See FCC, CCB Industry Analysis Division, *FCC Releases Study on Telephone Trends*, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999). According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at

this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity 877 subscribers may be affected by the proposed rulemaking.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. In this *Notice of Proposed Rulemaking*, the Commission proposes a number of steps to reduce the regulatory burden on carriers filing section 214 authorization under the Communications Act. The Commission does not believe that small entities would be disproportionately affected by the implementation of the measures under consideration. In this *Notice of Proposed Rulemaking*, the Commission proposes to clarify existing rules and shorten the review period for a predetermined class of domestic section 214 applications. The Commission expects these changes would save carriers time and labor in the pre-filing stage, by reducing the amount of research required and documentation to be submitted when it is apparent that the transaction would require little scrutiny in order for the Commission to determine that it serves the public interest. The Commission also expects these changes would save carriers time and labor during the review period by reducing costs associated with uncertainty surrounding the current process. Accordingly, any costs associated with the proposed measures in this *Notice of Proposed Rulemaking* would not be greater for small carriers.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

coverage of the rule, or any part thereof, for small entities. See 5 U.S.C. 603(c).

19. In section II(B) of the *Notice of Proposed Rulemaking*, the Commission seeks comment on whether the established Commission review periods for transfers of control should be 31 days for non-dominant carriers. In considering alternatives to a 31-day review, the Commission weighed the need for Commission time to review the application and public record (including adequate time for competitors and other interested parties to file a petition to deny a proposed application), versus the costs faced by the applicants associated with filing, as well as the business and legal uncertainty that accompanies an extended waiting period. Accordingly, it is possible that a 31-day review period would minimize application-related costs and uncertainties while preserving the Commission's ability to review the proposed transaction. The item also seeks comment whether longer or shorter review periods should apply. The review period would apply to all non-dominant carriers including small entities. The Commission staff has come to no conclusion as to what length review period should apply. However, one argument in favor of a 31-day review period is that a shorter review period would have the unintended result of impacting small entities negatively rather than beneficially. Small entities commenting on the appropriate review period may wish to address whether small entities would be negatively impacted by a shorter review period because they would not be able to effectively comment on the public interest benefits or harms of competitors' proposed consolidations.

20. The *Notice of Proposed Rulemaking*, in section II(B), also seeks comment on whether to accord streamlined treatment to applications that are accompanied by requests for waivers of other Commission rules. The Commission has come to no conclusion whether such a rule should apply. However, one consideration in favor of considering waiver requests on a case by case basis is that small entities seeking to comment on issues raised by the waiver may lack the resources to adequately or timely respond otherwise. Therefore, the Commission believes it should maintain the flexibility to consider whether commenters representing the interests of small entities have had adequate opportunity to comment.

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

21. None.

Procedural Matters

1. Pursuant to the authority contained in sections 2, 4(i)-(j), 201, 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)-(j), 201, 214, and 303(r), that the *Notice of Proposed Rulemaking* in CC Docket No. 01-150 is adopted.

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

3. Pursuant to sections 2, 4(i)-(j), 201, 214, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152, 154(i)-(j), 201, 214, and 303(r), that the *Notice of Proposed Rulemaking* in CC Docket No. 01-150 is adopted.

Comments are due September 10, 2001. Reply Comments are due October 9, 2001.

List of Subjects in 47 CFR Part 63

Communications common carriers, Telecommunications, Transfers of control, Mergers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01-20001 Filed 8-8-01; 8:45 am]

BILLING CODE 6712-01-P

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

Forest Service

Kudzu Eradication Environmental Impact Statement—Shawnee National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze eradication of Kudzu infestations on the Shawnee National Forest. The proposed action includes eradication of approximately 90 acres of known kudzu infestations and subsequently identified infestations on the Shawnee National Forest. The purpose and need for this proposal is to remove the kudzu threat to biodiversity on the Shawnee National Forest.

DATES: Comments concerning the proposed action and scope of the analysis should be received within 30 days of this notice to receive timely consideration in the Draft EIS. An open house is scheduled for August 23, 2001 (4:00 p.m. to 8:00 p.m.). The Draft EIS is anticipated to be filed and available for review by December, 2001. The Final EIS is anticipated to be filed by March 2002.

ADDRESSES: Mail written comments to: Tom Neal, Vienna Ranger District, P.O. Box 37, Vienna, IL 62995. Send electronic mail comments to: tneal@fs.fed.us with a subject line that reads "Kudzu Eradication EIS". The open house will be at the Shawnee National Forest Supervisors Office, 50 Highway 145 South, Harrisburg, Illinois. **FOR FURTHER INFORMATION CONTACT:** Tom Neal, EIS Team Leader, or Nicholas J. Giannettino, District Ranger, at the Vienna Ranger District, Address: P.O. Box 37, Vienna, IL 62995; Telephone: (618-658-2111) Tom Neal may also be contacted by electronic mail at tneal@fs.fed.us.

SUPPLEMENTARY INFORMATION: The information presented in the notice is included to help the reviewer determine if they are interested in or potentially affected by this project. The information in this notice is summarized. Those who wish to comment on this project, or are otherwise interested in or potentially affected by it, are encouraged to review more detailed information available. Additional information may be obtained from the contacts listed in the preceding section of this notice or at the Shawnee National Forest's website <http://www.fs.fed.us/r9/shawnee/>.

Purpose of and Need for Action

Kudzu, *Pueraria lobatas*, is an invasive species that was introduced in the 1930's to help control soil erosion. Today, kudzu a federal noxious weed is a classic example of another well-intended introduction that has grown out of control. Kudzu kills, smothers, and suppressed other plants beneath its thickly tangled masses of leaves and vines. It girdles trees, breaks branches and even uproots entire trees through the sheer force of its weight. Kudzu forms extensive monotypical patches, alternating or eliminating native plant communities. Currently, there are six known areas of infestation of Kudzu on the Shawnee National Forest (Forest). Given the invasive nature of kudzu, additional infestations are likely to occur. The purpose and need for this proposal is to remove the kudzu threat to biodiversity on the Forest. This purpose and need is consistent with direction contained in the Shawnee National Forest Amended Land and Resource Management Plan (Forest Plan). This purpose and need is also responsive to other laws, regulations, and policies regarding noxious weeds.

Proposed Action

The proposed action is to eradicate known and subsequently discovered kudzu infestations on the Forest. The proposed action includes eradication of kudzu through application of herbicide at six known sites on the Forest, totaling approximately 90 acres. Herbicides to be used are Transline, Garlon 4, and Rodeo. Application procedures and rates will adhere to directions prescribed by the manufacturers. Kudzu stems extending into trees may be cut to facilitate herbicide application and reduce the quantity of herbicide being

applied. Prescribed fire may be used to reduce the total volume of kudzu vines, facilitating herbicide application and reducing the quantity of herbicide being applied. Treatment will continue annually until kudzu is eradicated. Treatment will be monitored to ensure compliance with herbicide application directions and to access the effectiveness of kudzu eradication methods. All equipment used for treating kudzu will be cleaned prior to leaving the kudzu sites to limit the spread of the kudzu infestation. Kudzu sites may be closed to all wheeled vehicles to limit the possible spread of the kudzu plant. The proposed action also includes treatment of subsequent kudzu sites discovered on the Forest using the methods described above. Although there are no known kudzu infestations in Research Natural Areas on the Forest, if kudzu were found there, Forest Service Research would be involved to coordinate actions for kudzu eradication. Maps of the proposed action are available for viewing and photocopying at the Shawnee National Forest offices. Electronic viewing is also available on the Forest's website: www.fs.fed.us/r9/shawnee/.

Preliminary Issues

The following preliminary issues have been identified relating to the proposal: effects of kudzu on native plant communities, wildlife, and ecosystem diversity; and effects of herbicide on human health, native plant communities, wildlife, water, and fish.

Alternatives

In preparing the EIS, the Forest Service will consider a reasonable range of alternatives to the proposed action, including a "no action" alternative. The no action alternative will be the continuation of implementing the Forest Plan and all applicable laws, regulations, and Forest Orders. In the no action alternative, no kudzu would be treated allowing existing kudzu plants and any future kudzu plants to advance unrestrained onto adjacent National Forest Systems Lands, other public lands, or private lands. Based on the comments received on the proposal, other alternatives will be considered. Possible alternatives for kudzu eradication may include: various herbicides, mechanical treatments, prescribed fire, biological treatments,

silvicultural treatments, and grazing. Suggestions for alternatives that meet the purpose and need are welcome.

Public Participation

Public participation will be an integral part of this project, beginning with the scoping process, which starts with publication of this notice. During the scoping process, the Forest Service will be seeking information, comments, and assistance from Federal, State, County, and local agencies, individuals, and organizations that may be interested in or affected by this project action. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth, (3) elimination of insignificant issues or those which have been covered by a previous environmental review, (4) exploring additional alternatives, (5) identifying potential environmental effects, and (6) determining potential cooperating agencies. In addition to this notice, scoping comments will be solicited through a scoping package that will be sent to the project mailing list and those who otherwise request it; notice in the Southern Illinoisan newspaper, Carbondale IL, and an open house.

Comments concerning the proposed action and scope of the analysis should be received within 30 days of this notice to receive timely consideration in the Draft EIS. We may also meet with the public as needed. The Draft EIS is anticipated to be available by December 2001. The comment period on the Draft EIS will be 45 days from notice in the **Federal Register**.

Reviewer's Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553, (1978). Also, environmental objections that could have been raised at the Draft EIS stage, but were not raised until the completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the Draft EIS, so

that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the Final EIS. To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may address the adequacy of the Draft EIS, or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3, in addressing these points.

Lead and Cooperating Agencies

The Forest Service is the lead agency. The Forest will work in cooperation with the Illinois Department of Natural Resources in developing and evaluating issues and alternatives for the eradication of kudzu.

Responsible Officials

Forrest L. Starkey, Forest Supervisor, Shawnee National Forest, is the responsible official for making a project-level decision on this project. If an amendment to the Forest Plan is necessary to implement the project-level decision, the Forest Supervisor will be responsible for that portion of the decision.

Decision Space

Decision-making for this project is limited to the National Forest System lands administered by the Shawnee National Forest. Decision-making will be based on information in the Draft and Final EIS and supporting record, including consideration of all public comments. Decision-making will be limited to specific activities relating to the proposed action and its purpose and need. No decisions will be made for actions that are not responsive to the expressed purpose and need. The primary decision to be made will be whether or not to implement the proposed actions or an action alternative that responds to the purpose and need. If the proposed action or an action alternative is selected for implementation. The decision may include minor modifications or additional measures are appropriate as necessary. Documentation and rationale of the included modifications and additional measures would be made in a Record of Decision. If no action is selected for implementation, the

Responsible Official may either discontinue the planning effort or document the decision in a Record of Decision.

Dated: August 3, 2001.

Forrest L. Starkey,

Forest Supervisor.

[FR Doc. 01-19959 Filed 8-8-01; 8:45 am]

BILLING CODE 3401-11-M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13) and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Natural Resources Conservation Service's (NRCS) intention to request a revision to a currently approved information collection, Application for Payment.

DATES: Comments on this notice must be received on or before October 1, 2001, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Contact Phyllis I. Williams, Agency OMB Clearance Officer, Natural Resources Conservation Service, U.S. Department of Agriculture, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, MD 20705-5000, telephone number (301) 504-2170. Comments may also be submitted by e-mail to: phyllis.williams2@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Risk Protection Programs.

OMB Control Number: 0578-0028.

Expiration Date of Approval: December 31, 2001.

Type of Request: Revision to a currently approved information collection.

Abstract: The primary objective of the Natural Resources Conservation Service (NRCS) is to work in partnership with the American people to conserve and sustain our natural resources. The purpose of the Risk Protection Program information collection is to provide NRCS program participants a method for making application for participation (CCC-1200 and Appendix) in the Agricultural Management Assistance

and Soil and Water Conservation Assistance programs. This information collection also includes an application for payment (CCC-1245) for participants to provide information regarding completion of conservation program contract activities, provide certification of work performed within the required standards, determine division of payment, ascertain the status of debt register collections, and provide the responsible NRCS official with authority to make Federal cost-share payments to the land user, or third party upon successful completion of a conservation program long-term contract.

Information collected is used by the NRCS to ensure the proper utilization of program funds. The *CCC-1200 and Appendix* and the *CCC-1245* are the basic documents used by USDA program participants to request assistance and payment through the local USDA Service Center in return for applying one or more conservation practices in a long-term contract (FR Notice fr06jn01-40 and fr06jn01-41). NRCS will ask for 3-year OMB approval within 60 days of submitting the request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.54 hours per response.

Respondents: Farms, individuals, or households, or State, local, or Tribal governments.

Estimated Number of Respondents: 5,000.

Estimated Total Annual Burden on Respondents: 2,917.

Copies of this information collection and related instructions can be obtained without charge from Phyllis I. Williams, Directives Manager, NRCS, USDA, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705-5000, telephone number (301) 504-2170, e-mail: phyllis.williams2@usda.gov.

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 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, such as through the use of appropriate automated, electronic, mechanical, or other technologic collection techniques or other forms of information technology. Comments may be sent to:

Phyllis I. Williams, Directives Manager, NRCS, USDA, 5601 Sunnyside Avenue, Mailstop 5460, Beltsville, Maryland 20705-5000, telephone number (301) 504-2170. Comments may also be submitted by e-mail to: phyllis.williams2@usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will become a matter of public record.

Signed at Washington, DC on August 3, 2001.

P. Dwight Holman,

Deputy Chief for Management.

[FR Doc. 01-19995 Filed 8-8-01; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-813]

Canned Pineapple Fruit From Thailand: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 9, 2001.

FOR FURTHER INFORMATION CONTACT:

Constance Handley or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0631 and (202) 482-0650, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days from the date of publication of the preliminary determination (or 300 days if the Department does not extend the time limit for the preliminary determination).

Background

On September 6, 2000, the Department published a notice of initiation of administrative review of the antidumping duty order on canned pineapple fruit from Thailand, covering the period July 1, 1999, through June 30, 2000 (65 FR 53980). On April 10, 2001, the Department published the preliminary results of its administrative review. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 66 FR 18596 (April 10, 2001). In our notice of preliminary results, we stated our intention to issue the final results of this review no later than August 8, 2001.

Extension of Time Limit for Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results until no later than October 9, 2001. *See* Decision Memorandum from Gary Taverman to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 2, 2001.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01-20020 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty New Shipper Review and the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty new shipper review and the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the

preliminary results of the new shipper review and the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The new shipper review covers one exporter, Clipper Manufacturing Company Ltd. The period of review is June 1, 2000, through November 30, 2000.¹ The administrative review covers six manufacturers/exporters, Fook Huat Tong Kee Pte., Ltd., and Taian Fook Huat Tong Kee Foods Co., Ltd. (collectively FHTK), Rizhao Hanxi Fisheries and Comprehensive Development Co., Ltd. (Rizhao), Zhejiang Materials Industry (Zhejiang), and Wo Hing (H.K.) Trading Co. (Wo Hing). The period of review for the administrative review is November 1, 1999, through October 31, 2000.

EFFECTIVE DATE: August 9, 2001.

FOR FURTHER INFORMATION CONTACT:

Hermes Pinilla or Edythe Artman, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3477 or (202) 482-3931, 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. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On November 8, 2000, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) (65 FR 66965). On November 27, 2000, Jinan Import and Export Co. (Jinan) requested a review of exports of its merchandise to the United States. On November 30, 2000, Fook Huat Tong Kee Pte., Ltd., and Taian Fook Huat Tong Kee Foods Co., Ltd. (collectively FHTK), requested a review of their exports to the United States. On the same day, the petitioner, the Fresh Garlic Producers Association and its individual members, requested reviews of the following producers and/or exporters of the subject merchandise:

FHTK; Rizhao Hanxi Fisheries and Comprehensive Development Co., Ltd. (Rizhao); Zhejiang Materials Industry (Zhejiang); Wo Hing (H.K.) Trading Co. (Wo Hing); Feidong; and an unidentified producer or exporter responsible for a shipment of fresh garlic imported by Good Time Produce, Inc. We published a notice of initiation of administrative review on December 28, 2000. See *Fresh Garlic From the People's Republic of China: Initiation of Administrative Antidumping Duty Review*, 65 FR 82322 (Jan. 3, 2001). On November 29, 2000, as amended on December 8, 2000, a legal representative submitted a request for a new shipper review in accordance with section 751(a)(2)(B) of the Act and § 351.214(c) of the Department's regulations on behalf of Clipper Manufacturing Ltd. (Clipper). On January 3, 2001, we initiated a new shipper review for Clipper. See *Fresh Garlic From the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 66 FR 350 (Jan. 3, 2001). On February 9, 2001, the petitioner submitted a request for alignment of the new shipper and administrative reviews. Clipper responded to the Department that it did not object to the petitioner's request. See Memorandum to the File regarding alignment of new shipper and administrative reviews (Feb. 19, 2001). Therefore, we are conducting these two reviews simultaneously.

Extension of Time Limits for Preliminary Results for Administrative and New Shipper Reviews

A number of complex factual and legal questions related to the calculation of dumping margins have arisen in the administrative and new shipper reviews. Therefore, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act. As a result, we are extending the time limit for the preliminary results regarding these reviews to August 17, 2001.

Dated: August 2, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement I.

[FR Doc. 01-20018 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On October 31, 2000, the Department of Commerce (the Department) initiated antidumping duty new shipper reviews of freshwater crawfish tail meat from the People's Republic of China (PRC) for the period of review (POR) of September 1, 1999 to August 31, 2000 for three manufacturers/exporters of subject merchandise: Coastal (Jiangsu) Foods Co., Ltd. (Coastal), Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou), and Shanghai Taoen International Trading Co., Ltd. (Shanghai). See *Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of New Shipper Antidumping Administrative Reviews*, 65 FR 66525 (November 6, 2000)(*Crawfish from China*). Pursuant to § 351.214(f)(2)(ii) of our regulations, we find that an expansion of the normal POR to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the reviews of Coastal and Shouzhou within the time limits set by the Department's regulations, and, therefore, we are rescinding the reviews of these two manufacturers/exporters.

EFFECTIVE DATE: August 9, 2001.

FOR FURTHER INFORMATION CONTACT:

Mark Hoadley or Julio Fernandez, Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-0666 and 202-482-0190, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2000).

¹ The period of review for the new shipper review was established in accordance with § 351.214(g)(1)(ii)(B) of our regulations.

Background

On October 31, 2000, the Department initiated antidumping duty new shipper reviews of freshwater crawfish tail meat from the PRC, for the period September 1, 1999 through August 31, 2000, with respect to three manufacturers/exporters of the subject merchandise: Coastal, Shouzhou, and Shanghai. *See Crawfish from China*.

On June 5, 2001, the Department issued supplemental questionnaires to Coastal, Shouzhou, and Shanghai requesting entry documentation illustrating that the sale of subject merchandise occurred, and that the date of entry took place, within the POR. In the same letter, the Department notified the companies that failure to demonstrate that the date of entry was no more than one month after the end of the POR would result in the rescission of the new shipper review. Shouzhou, Coastal and Shanghai submitted their responses to the Department's supplemental questionnaire on June 12, 2001, and included entry documentation for the shipments of subject merchandise. Due to the business proprietary nature of information regarding the entry and sale dates of the subject merchandise in question, we have analyzed this issue in a business proprietary *Memorandum to Barbara E. Tillman From Julio A. Fernandez through Maureen Flannery Regarding Freshwater Crawfish Tail Meat from the People's Republic of China* (July 23, 2001) (*Crawfish Memo*) (public version on file in the Central Records Unit, Room B-099 of the main Department of Commerce Building).

Final Rescission of Review

Under § 351.214(f)(2)(ii) of the Department's regulations, when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. While the regulations do not provide a definitive date by which the entry must occur, the preamble to the Department's regulations state that both the entry and the sale should occur during the POR, and that only under "appropriate" circumstances should the POR be extended when the entry is made after the POR. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319 (May 19, 1997). While the Department did not adopt a precise cut-off point for entries in the regulations, the entries in this case were made long

after the end of the POR. *See Crawfish Memo*.

Accordingly, we are rescinding the new shipper reviews with respect to Coastal and Shouzhou for the period September 1, 1999 through August 31, 2000. For Shanghai, we are extending the POR by one month. *See Crawfish Memo* for further details. We note that Coastal and Shouzhou will have an opportunity to request a new shipper review in September, 2001. In any such review the Department will cover the particular sales at issue in this case.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: August 2, 2001.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 01-20019 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

DATE: September 11, 2001.

Time: 9 a.m. to 12 p.m.

Place: U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting on September 11, 2001, at the U.S. Department of Commerce.

ETTAC will hear reports on programs in the International Trade Administration, and on the Trade Promotion Coordinating Committee, and the effect of European Union standards on environmental trade. The meeting is open to the public.

ETTAC is mandated by Public Law 103-392. It was created to advise the

U.S. government on environmental trade policies and programs, and to help it to focus its resources on increasing the exports of the U.S. environmental industry. The ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). The ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2002.

For further information phone Jane Siegel or Sage Chandler, Office of Technologies Industries, (ETI), U.S. Department of Commerce at (202) 482-5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: August 2, 2001.

Carlos F. Montouliou,

Acting Deputy Assistant Secretary.

[FR Doc. 01-19948 Filed 8-7-01; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 24, 2001.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020. Nominations may also be submitted via FAX to 301-948-3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic

home page at: <http://www.quality.nist.gov>.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020; telephone 301-975-2361; FAX—301-948-3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will make such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall provide a written annual report on the results of Award activities to the Secretary of Commerce, along with its recommendations for improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST and the Secretary of Commerce.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Board will meet twice annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one day in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledges the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: August 2, 2001.

Karen H. Brown,

Acting Director.

[FR Doc. 01-19978 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 24, 2001.

ADDRESSES: Please submit nomination to Harry Hertz, Director, National Quality Program, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020. Nominations may also be submitted via FAX to 301-948-3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: <http://www.quality.nist.gov>.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, 100 Bureau Drive, Mail Stop 1020, Gaithersburg, MD 20899-1020; telephone 301-975-2361; Fax-301-948-3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Committee Act (5 U.S.C. app. 2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Pub. L. 101-107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality improvements claimed by applicants.

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with the provisions of the Federal Advisory Committee Act.

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of nine members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, education, and health care and will include members familiar with quality improvement in their area of business. No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on March 1 and end on February 28 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq.*

2. The Judges Panel will meet four times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to four days in duration. In addition, each Judge must attend an annual three-day Examiner training course.

3. Committee meetings are closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, and in accordance with section 552b(c)(4) of title 5, United States Code. Since the members of the Judges Panel examine records and discuss Award applicant data, the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person may be privileged or confidential.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing

industries, education, and health care as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education and health care organizations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, it is desired that members be able to devote the equivalent of seventeen days between meetings to either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judge Panel membership.

Dated: August 2, 2001.

Karen H. Brown,
Acting Director.

[FR Doc. 01-19979 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071701E]

Small Takes of Marine Mammals Incidental to Specified Activities; Missile Launch Operations From San Nicolas Island, California

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental

Harassment Authorization (IHA) to take small numbers of pinnipeds by harassment incidental to missile launch operations from the western end of San Nicolas Island, CA (SNI) has been issued to the U.S. Navy, Naval Air Warfare Center Weapons Division (NAWCWD), Point Mugu, CA.

DATES: Effective from July 31, 2001, until July 31, 2002.

ADDRESSES: The application, authorization, supporting documentation, Environmental Assessment, and a list of references used in this document are available by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Simona P. Roberts, NMFS, (301) 713-2322, ext. 106 or Christina Fahy, NMFS, (562) 980-4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On February 5, 2001, NMFS received an application from NAWCWD Point

Mugu requesting an authorization for the harassment of small numbers of four species of pinnipeds incidental to target missile launch operations on SNI, one of the Channel Islands in the Southern California Bight. These operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. The NAWCWD Point Mugu's request for an authorization to incidentally harass small numbers of marine mammals on SNI anticipates 15 launches of Vandal (or similar sized) vehicles from the Alpha Launch Complex on SNI and 5 launches of smaller subsonic targets from either the Alpha Launch Complex or Building 807 for 1 year and commencing as early in 2001 as possible.

Measurement of Airborne Sound Levels

The types of sounds discussed in NAWCWD Point Mugu's IHA application are airborne and impulsive. For this reason, this document and the application references both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa²-second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved than this (Buck, 1995) and beyond the scope of this document. Also, airborne sounds are often expressed as broadband A-weighted sound levels (dBA). A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. While it is unknown whether the pinniped ear responds similar to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, A-weighted is better than unweighted pressure levels because the pinniped's highest hearing sensitivity is at higher frequencies than that of humans. As a result, whenever possible, NMFS provides both A-weighted and unweighted sound pressure levels; where not specified for

in-air sounds, A-weighting is implied (ANSI, 1994). In this document, all sound levels have been provided with A-weighting.

Description of the Specified Activity

Target missile launches from SNI are used to support test and training activities associated with operations on the NAWCWD Point Mugu Sea Range. In general, two types of launch vehicles are used, the Vandal and the smaller subsonic targets. Other vehicles used would be similar in size and weight or slightly smaller and would have characteristics generally similar to the Vandal.

Vandal Target Missiles

The Vandal target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 meters (m) (25.2 feet (ft)) in length with a mass at launch of 3,674 kilograms (kg) (8,100 pounds (lbs)) including the solid propellant booster. The three variants of the Vandal (standard, ER and ERR) all have the same dimensions but differ in their operational range. The Vandals are remotely-controlled, non-recoverable missiles that are launched from a land-based launch site (hereafter referred to as Alpha Launch Complex) on the western part of SNI. The Alpha Launch Complex is 153 m (502 ft) above sea level and is approximately 6 kilometers (km) (3.7 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from Alpha Launch Complex vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft).

Vandal launches produce the strongest noise source originating from aircraft or missiles in flight over SNI beaches. Sound measurements were collected during two Vandal launches in 1997 and 1999 and are reported in Burgess and Greene (1998) and Greene (1999). Greene (1999) reported that received A-weighted SPL were found to range from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa²-sec) at 945 m (3,100 ft) to 136 dB (re 20 μ Pa) (SEL of 131 dB re 20 micro-Pa²-sec) at 370 m (1,215 ft). The most intense sound exposure occurred during the first 0.3 to 1.9 seconds after launch.

Subsonic Targets and Other Missiles

The subsonic targets and other missiles are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM-34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM-74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Other types of small missiles that may be launched include the Exocet, Tomahawk, and Rolling Airframe Missile (RAM). All of these smaller targets are launched from either the Alpha Launch Complex or from Building 807, a second launch site on the west end of SNI. Building 807 is approximately 3 m (10 ft) above sea level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. Launch trajectories from Building 807 range from 6 to 45 degrees and cross over the nearest beach at altitudes from 9 to 183 m (30 to 600 ft).

Sound measurements were collected from the launch of a BQM-34S at Naval Air Station (NAS) Point Mugu in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa²-sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa²-sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999).

General Launch Operations

Aircraft and helicopter flights between NAS Point Mugu on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites two hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal launches and various environmental protection restrictions exist near the island's beaches during other times of the year.

Comments and Responses

On April 23, 2001 (66 FR 20435), NMFS published a notice of receipt and a 30-day public comment period was

provided on the application and proposed authorization. Comments were received from the Marine Mammal Commission (MMC) and SRS Technologies.

MMPA Concerns

Comment 1: The MMC believes that the Service's efforts to redefine Level B harassment administratively to include only "biologically significant" disturbance is ill-advised and contrary to the statutory definition of the term. In this regard, the Commission refers the Service to letters from the Commission dated December 7, 2000, January 26, 2001, and February 7, 2001, for a more complete discussion of this issue.

Response. Level B harassment is currently defined in regulation (50 CFR 216.3) as: "Any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild." The current interpretation of this regulatory definition by NMFS, as applied to incidental takings, is that a single pinniped lifting or turning its head or moving a few feet along the beach as a result of a human activity should not be considered a "take" under the MMPA definition of harassment. As stated by NMFS previously (see 66 FR 9291, February 7, 2001), if the only reaction to the activity on the part of the marine mammal is within the normal repertoire of actions that are required to carry out the "behavioral pattern", NMFS considers the activity not to have caused an incidental disruption of the "behavioral pattern", provided the animal's reaction is not otherwise significant due to length or severity, and therefore the reaction is not considered a take by Level B harassment. NMFS notes that, in 50 CFR 17.3, the U.S. Fish and Wildlife Service defines harassment as: "... actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, and sheltering." NMFS supports such a definition when marine mammals are taken incidental to the conduct of missile launches.

NMFS' decision to issue or deny an IHA request is based on the best scientific evidence available showing that the total taking by the specified activity during the specified time period will have a negligible impact on species or stocks of marine mammals and will

not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses. In the Preliminary Conclusions section of the Federal Register notice, the Service states that it has determined that the short-term impact of the activities will result, at worst, in a temporary modification in behavior by certain species and that this behavioral modification, or change, is expected to have a negligible impact on the animals. Negligible impact is defined in regulation (50 CFR 216.103) as: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival".

Comment 2: The MMC recommends that the Service, if it has not already done so, consult with the Navy to determine whether it would be appropriate to seek a more comprehensive, 5-year authorization for harassment, and other possible types of taking, under section 101(a)(5)(A) of the MMPA, rather than separate, 1-year authorizations, under section 101(a)(5)(D) of the Act.

Response: The Navy applied for the incidental harassment authorization, under section 101(a)(5)(D) of the MMPA, in order to be in compliance with the law during implementation of its 2001-2002 San Nicolas Island launch schedule. NAWCWD intends to use this 1-year incidental harassment authorization to develop an appropriate long-term monitoring plan that will become part of any 5-year authorization request. NAWCWD is currently working on a new contract to prepare the application for a 5-year authorization, under section 101(a)(5)(A) of the MMPA.

ESA Concerns

Comment 3: The MMC recommends that the Service, if it has not already done so, advise the applicant to consult with the U.S. Fish and Wildlife Service (FWS) concerning the need for an authorization to take small numbers of sea otters incidental to the proposed activities.

Response: Under the authority of Public Law 99-625, the FWS established an experimental population of California sea otters at SNI. In 1985, the ESA was amended to allow for the establishment of this experimental population of California sea otters on San Nicolas Island (H.R. 1027 Committee Report, May 15, 1985). As part of these 1985 amendments, section 5(c) describes the status of the experimental sea otter population under

the ESA. This section includes a limited exception to section 7 consultations for agency actions proposed to be carried out directly by a military department and occurring within the California sea otter translocation zone. This limited exception means that for purposes of defense-related actions within the SNI translocation zone, sea otters in the experimental population shall be treated as if they were proposed for listing under the ESA and are subject to the informal consultation process under section 7(a)(4) of the ESA. The Navy has consulted with FWS regarding the take of sea otters incidental to missile launch operations on San Nicolas Island. However, no takes of sea otters are expected as a result of launch activities.

Potential Effects Concerns

Comment 4: SRS Technologies noted that the statement: "Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on studies of other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart *et al.*, 1993), anticipated impacts can be predicted. In general, other studies have shown that responses of pinnipeds . . . are highly variable", seems contradictory. SRS commented that this statement seems to be implying that the impacts are predictable, but are going to be highly variable.

Response: The purpose of this discussion is to distinguish the reactions from impacts. As reported in the literature, pinniped responses to launch events of varying loudness, or for different launch vehicles, are variable and appear to depend on context, season, and the type of pinniped exposed to the sounds. While the reported reactions are variable, the Navy believes that the biological impacts of these responses are predictable, and not likely to result in significant injury or mortality, or significant negative impacts to the pinniped populations on SNI.

Comment 5: SRS Technologies noted that their research has shown that the responses of sea lions on San Miguel Island to sonic booms have been highly variable. For the Athena II Ikonos II launch generated sonic boom, 24 sea lions out of a group of 600 sea lions (4% of total) started moving towards the water at the arrival of the 0.95 psf boom (A-weighted SEL of 68.3 dB). For the Athena I Ikonos I launch generated sonic boom, with the same peak amplitude (A-weighted SEL of 75.3 dB), 566 of the sea lions (44%) moved towards the water.

Response: The Navy discussed such reported variability in pinniped reactions to launch sounds in its IHA application, and concluded that the biological impacts of these responses are predictable, and not likely to result in significant injury or mortality, or significant negative impacts to the pinniped populations on SNI.

Comment 6: SRS Technologies commented that in the statement: "The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during the Vandal launches (Burgess and Greene 1998, Greene, 1999)", the "sound levels" need to be specified in terms of the acoustic metric used in this comparison.

Response: Sound exposures necessary to elicit mild TTS in captive California sea lions (a species with more sensitive in-air hearing relative to the harbor and elephant seals) and harbor seals in a sonic boom simulator (Bowles *et al.*, 1999) were possibly 135 dB SEL re 20 (μPa^2)-s, for 0.3 sec exposures (J. Francine, pers. comm.). These are higher than sound levels measured during previous Vandal launches, where there were no sonic booms (126 to 131 dB SEL re 20 (μPa^2)-s, for 0.29 to 1.9 sec exposures (Burgess and Greene 1998; Greene 1999, pers. comm.). The Navy believes that no pinnipeds will be exposed to the levels thought necessary to elicit mild TTS during the planned launches. In addition, the acoustical monitoring program proposed by the Navy will provide data to confirm this for the pinniped haul-out locations on SNI.

Comment 7: Analyzing the sound pressure levels and sound exposure levels provided, SRS Technologies determined the duration of the Vandal launch noise. The duration of the sound at a distance of 945 m would be 2 seconds and the sound at a distance of 370 m would be 0.3 seconds. With these short durations, should it be assumed that these metrics provided are for sonic booms? If these are sonic booms, what about the other metrics (like the peak overpressure and rise time) that are important in characterizing impulsive noise? SRS Technologies does not think it is clear from the document what type of noise is reaching the pinnipeds. Is it short duration launch noise, a sonic boom, or both?

Response: The sounds from two Vandal launches were measured at SNI in 1997 and 1999 and reported in Burgess and Greene (1998) and Greene (1999). Sound levels as received at

Vizcaino South Beach were found to range from 126 to 131 dB SEL re 20 (μPa^2)-s. Targets are subsonic or transonic as they pass over the pinniped haul-out sites, and thus, the Navy believes pinnipeds might be exposed to the most intense sounds for only 0.3 to 1.9 seconds after the launches (Greene 1999), but not likely in the form of a sonic boom (C.R. Greene, Jr. 2001 pers. comm.). The acoustical monitoring program proposed by the Navy will provide data to further characterize the range of sounds that pinnipeds on SNI might be exposed to during these launches, including sonic booms.

Comment 8: The **Federal Register** document briefly discusses the modeling of sound and provides sound level contours for the launch noise. SRS Technologies commented that sound levels should be provided for the predicted noise from the Vandal arriving at pinniped haul-out areas and that the same should be done for the BQM rockets.

Response: The sound levels at the beaches from Vandal launches will be above the 100 dB threshold thought necessary to elicit a disturbance reaction, but far lower than the levels necessary to elicit even mild TTS (e.g., Greene's 136 dB received level value as cited in the 23 April Federal Register Notice). For a more complete analysis of predicted sound levels from Vandal launches the commentator is referred to NAWCWD's application.

Based on previous sound measurements, the Navy estimates that the 100 dBA contour for a BQM-34 is equal to 4,500 feet (1,372 m); this is the maximum distance at which sound levels fall to 100 dBA at a 90 degree azimuth from the launch track (C. Malme, Engineering and Scientific Services; Hingham, MA, unpubl. data). Along the launch track and ahead of the BQM-34, sound levels drop to 100 dBA at a shorter distance (1,800 feet, 549 m). For the smaller BQM-74 and other missiles it is likely that the 100 dBA sound contours will be smaller. Therefore, the BQM sounds will likely not reach 100 dB even at the haul-out sites.

Comment 9: SRS Technologies commented that the statement: "Research and monitoring at VAFB found that prolonged or repeated sonic booms, very strong sonic booms or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water" needs a reference. The use of "prolonged" and "very strong" needs to be quantified. And, assuming the above statement is true, SRS Technologies

would like to see a direct comparison between these levels and the Vandal and BQM rockets.

Response: There is no single reference to the statement commented on by SRS Technologies and the statement has been removed from this Federal Register document. The reference to "prolonged" acoustic stimuli from the VAFB launches, although not a sonic boom, refers to events such as the explosion of a launch booster that resulted in a 104 sec period of popping as the Titan IV booster exploded (Stewart *et al.*, 1993b). Received sound levels for a sonic boom accompanying a Titan launch event might reach 110 dB SEL re 20 μPa (Stewart and Francine, 1992). The Navy concludes that the sound levels recorded from VAFB launch events are 15-20 dB lower than those that pinnipeds on SNI might be exposed to during a Vandal launch. However, the nature of the Vandal launch sounds are different than those from VAFB in that they are loudest for only a very short duration, and launches usually occur at irregular intervals over the course of the year.

Mitigation Concerns

Comment 10: TMMC recommends that any authorization issued to the applicant specify that, if a mortality or serious injury of a seal or sea lion occurs which appears to be related to target launch activities, operations be suspended while the Service determines whether steps can be taken to avoid further injuries or mortalities or whether an incidental take authorization under section 101(a)(5)(A) of the MMPA to cover such taking is needed.

Response: The incidental harassment authorization authorizes the unintentional incidental take of marine mammals in connection with specified activities and prescribes methods of taking and other means of reducing potential adverse impacts on the species or stocks and their habitats. Therefore, the Service does have the authority to suspend the incidental harassment authorization if: (1) the conditions and requirements prescribed in the authorization are not being substantially complied with; or (2) the authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock. Because taking a marine mammal by mortality or serious injury incidental to missile launch activities from San Nicolas Island is not authorized by this incidental harassment authorization, the authorization for incidental harassment may be suspended if a mortality or serious injury of a seal or sea lion is

determined to be related to missile launch activities. Prior to suspension of an incidental harassment authorization the Service must satisfy the statutory requirement of notice and public comment, under section 101(a)(5)(C) of the MMPA, unless the Service determines that an emergency exists that poses a significant risk to the well-being of the species or stock(s) concerned. The level of risk would depend on the level of taking, the status of the affected stock(s), and the likelihood of additional mortality or serious injury takings. The incidental harassment authorization issued to NAWCWD contains the following mitigation measure related to morality and serious injury: If injurious or lethal take is discovered during monitoring, launch procedure and monitoring methods must be reviewed (in cooperation with NMFS) and appropriate changes made prior to the next launch. The Service has no authority to suspend missile launch operations. Such authority is under the jurisdiction of the Department of the Navy and is not within the jurisdiction of the Secretary of Commerce.

Monitoring Concerns

Comment 11: The MMC recommends that prior to issuing the requested authorization, the Service be satisfied that the applicant's monitoring program is sufficient to detect the effects of the proposed target launches, including any mortality and/or serious injury that results from startle responses or stampedes, on entire haul-out aggregations.

Response: The Navy's proposed video monitoring program provides the best compromise between the desire to conduct detailed surveys of the haul-out areas for mortality and/or serious injury, and the logistical limitations and further risks in conducting such surveys. Due to the physical characteristics of many of the haul-out areas, only observers looking directly down at the rear of the areas, or from close offshore, would be able to detect injured or dead animals in these groups. After much discussion with biologists with many years of experience observing the pinnipeds on San Nicolas Island, the Navy concluded that such attempts to survey the haul-out groups at close range prior to and following launches was undesirable on the basis that such searches would result in significant disturbance to the pinnipeds, and greater risk of the types of injury the Navy is attempting to minimize. In addition, safety considerations limit access to the area before launches. Also, there are sensitive biological and cultural

resources in the haul-out areas that cannot be disturbed (special restrictions are in place to limit personnel movements near the beaches). San Nicolas Island has been owned and operated by the Navy for more than 50 years and the island has been used previously for missile and target launches. Despite this history of use, the Navy is not aware of any data to suggest that there has been an increase in the natural mortality rates for those pinniped species hauling out on San Nicolas Island. In addition, surveys suggest that by far the greatest source of mortality for pinnipeds on the island are El Niño events. The Navy will be using three hi-resolution video cameras (one of which has full remote tilt, pan, and zoom capabilities), and two portable cameras, to monitor the haul-out groups. The Navy believes these cameras will provide the least invasive means of assessing the pinnipeds' responses to target missile launches, and the most practicable means to detect the (unlikely) occurrence of injured or dead pinnipeds following a launch.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and does not need to be repeated here.

Marine Mammals

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and the others can be found in Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Barlow *et al.* (1993), Lowry *et al.* (1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*,

1987). Please refer to those documents and the application for further information on these species.

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

Sounds generated by the launches of Vandal target missiles (including the standard, ER, and ERR variants) and smaller subsonic targets and missiles (BQM-34 or BQM-74 type) as they depart sites on SNI towards operational areas in the Point Mugu Sea Range have the potential to take marine mammals by harassment. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. Extremely rapid departure of the Vandal and smaller targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of marine mammal harassment. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on studies of other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart *et al.*, 1993), anticipated impacts can be predicted. In general, other studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM-34 targets from NAS Point Mugu have not normally resulted in harbor

seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches. Given the variability in pinniped response to acoustic disturbance, the Navy conservatively assumes that disturbance reactions will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa²-sec) or higher.

From Lawson *et al.* (1998), the Navy determined a conservative estimate of the SEL at which the disturbance known as TTS may be elicited in harbor seals and California sea lions (SEL of 145 dB re 20 micro-Pa²-sec) and northern elephant seals (SEL of 165 dB re 20 micro-Pa²-sec). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by missiles launched from SNI (see below), suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100 dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch

sounds are predicted to exceed the SEL (100 dBA) disturbance criterion out to a distance of 4,263 m from the Alpha Launch Complex. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100 dBA contour for Vandal launches. For BQM-34 launches from Alpha Launch Complex, the Navy assumes that the 100 dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA, unpublished data). Along the launch track and ahead of the BQM-34, the 100 dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM-74 and Exocet missiles, the Navy predicts that the 100 dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100 dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Since preliminary observations of the responses of pinnipeds to Vandal launches at SNI have not shown injury, mortality, or extended disturbance, the Navy anticipates that the effects of the planned target launches will have no

more than a negligible impact on pinniped populations.

Given that this activity will happen infrequently, and will produce only brief, rapid-onset sounds, it is unlikely that pinnipeds hauled out on beaches at the western end of SNI will exhibit much, if any, habituation to target missile launch activities. In addition, the infrequent and brief nature of these sounds will cause the obscuring of sounds of importance to the pinnipeds (i.e., masking) for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. Therefore, the Navy assumes that these occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals. The monitoring program (see Monitoring section) required to be implemented by NAWCWD Point Mugu as part of this incidental harassment authorization will provide data to further characterize the range of sounds that pinnipeds on SNI might be exposed to during these launches and provide the least invasive means of assessing the pinnipeds' responses to target missile launches, and the most practicable means to detect the (unlikely) occurrence of injured or dead pinnipeds following a launch.

Numbers of Marine Mammals Expected to Be Taken by Harassment

NAWCWD Point Mugu estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

Species by MMPA Stock Designation	Minimum Abundance Estimate of Stock ¹	Harassment Takes in 2001
Northern Elephant Seal (California Stock)	51,625	<2,390
Harbor Seal (California Stock)	27,962	<457
California Sea Lion (U.S. Stock)	109,854	9,614-10,086
Northern Fur Seal (San Miguel Stock)	2,336	3

¹From 1999-2000 NMFS Marine Mammal Stock Assessment Reports.

In their original request, NAWCWD Point Mugu estimated the take of 3 Guadalupe fur seals by harassment incidental to missile launch operations on SNI. On March 19, 2001, the U.S. Navy sent NMFS a modified request eliminating the incidental take of Guadalupe fur seals on SNI. Based on their observational records, the Navy found that when Guadalupe fur seals do occur on SNI, they are found on beaches not affected by missile launch activities.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and thus there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on San Nicolas Island

During the period of proposed activity, harbor seals, California sea lions, and northern elephant seals will

use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Corral Beach) and rocky cobble (e.g., Vizcaino Beach). The pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will not persist in the water near the island for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target

and the JATO bottles from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

Mitigation

To avoid additional harassment to the pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within two hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) Limit launch activities during all pinniped pupping seasons; (2) avoid launch activities during harbor seal pupping season (February to April); (3) not launch target missiles at low elevation (less than 1,000 feet) on launch azimuths that pass close to pinniped haul-out site(s); (4) avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; (5) limit launch activities during the night; (6) ensure aircraft and helicopter flight paths maintain a minimum altitude of 1,000 feet from pinniped haul-out sites; and (7) contact NMFS personnel within 48 hours if injurious or lethal take is discovered during monitoring.

Monitoring

As part of its application, NAWCWD Point Mugu provided a proposed monitoring plan for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in LGL Ltd. Environmental Research Associates (2001).

NAWCWD Point Mugu's incidental harassment authorization contains the following monitoring requirements:

Visual Land-Based Monitoring

The Navy, in conjunction with a biological contractor, will establish a land-based monitoring program to assess effects on the three most common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring will occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring will be conducted via autonomous digital video cameras or, when possible, through direct visual observation.

During the day of each missile launch, the observer will place three digital video cameras on tripods overlooking chosen haul out sites. Each camera will be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Two hours prior to the launch, the observer will circulate among the tripod-mounted cameras to change videocassettes, to adjust camera fields of view (as required by changes in the geometry of the focal groups), and to record visual observations in a field logbook. Following the launch, the observer will return to the site when access is permitted.

During smaller launches when personnel are allowed to remain near one or more haul out beaches that might be impacted, a marine mammal observer will observe pinnipeds at these beaches in a systematic manner before, during, and after the launch. The observer(s) will scan the selected haul out site(s) from one end to the other at a rate of once per minute. Seven x 50 reticle binoculars will be used during the daytime for scanning; supplemented by night vision equipment if launches occur at night.

Following each launch, a biologist will review and code the videotapes as they are played back to a high-resolution color monitor. A VCR with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of the analysis methods can be found in LGL Ltd. Environmental Research Associates (2001).

Acoustical Monitoring

During each launch, the Navy (in conjunction with an acoustical contractor) will obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data will be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three

different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 days. Insofar as possible, acoustic recording locations will correspond with the sites where video monitoring is taking place. Acoustic recordings will also be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions. The collection of acoustic data will provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions.

For further details regarding the installation and calibration of the acoustic instruments and analysis methods refer to LGL Ltd. Environmental Research Associates (2001).

Reporting

For each target missile launch, the lead contractor or lead observer for the holder of this Authorization must provide a status report on monitoring results to NMFS' Southwest Regional Office.

After the first 90 days of the authorization period NAWCWD Point Mugu will provide an initial report on launch activities to NMFS. This report will summarize the timing and nature of any launch operations to date, summarize pinniped behavioral observations, and estimate the amount and nature of all takes by harassment or in other ways. In the event that any cases of pinniped mortality are judged to result from launch activities, this information will be reported to NMFS immediately.

A draft final technical report will be submitted to NMFS 120 days prior to the expiration of the IHA. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first 6 months of the IHA period, plus preliminary information for launches planned during the next 1-2 months. This draft final report will be reviewed by NMFS, and based on comments, revised as necessary.

The revised final technical report, including all monitoring results during the authorization, will be due 90 days after the end of the 1-year IHA period.

Consultation

NAWCWD Point Mugu has not requested the take of any listed species. Therefore, NMFS has determined that a section 7 consultation under the Endangered Species Act is not required at this time.

Although sea otters are not within the jurisdiction of NMFS, the U.S. Fish and Wildlife Service (FWS) established an experimental population of California sea otters at SNI. The FWS, for purposes of defense-related actions within the SNI translocation zone, has designated sea otters as an experimental population that are to be treated as if they were proposed for listing under the ESA and are subject to the informal consultation process under section 7(a)(4) of the ESA. The Navy has consulted with FWS regarding the take of sea otters incidental to missile launch operations on San Nicolas Island. However, no takes of sea otters are expected as a result of launch activities.

National Environmental Policy Act (NEPA)

In July 2000, NAWCWD Point Mugu issued a Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS) to assess the effects of its ongoing and proposed operations in the Sea Range off Point Mugu. While this DEIS analyzes other activities beyond the scope of this IHA request, Section 4.7 describes launches of target missiles from SNI and notes that these launches sometimes cause pinnipeds hauled out on beaches on the western end of SNI to move into the water. Accordingly, the U.S. Navy determined that it should request this 1-year IHA to ensure that its planned missile launch operations are conducted in full compliance with the MMPA.

An Environmental Assessment (EA) has been prepared that examines the environmental consequences of issuing an IHA for take by harassment of small numbers of several pinniped species incidental to conducting 20 missile and target launch operations from San Nicolas Island, California for a 1-year period (2001-2002). This environmental review process has led NMFS to conclude that issuance of an IHA for these activities will not have a significant effect on the human environment. Therefore, preparation of an environmental impact statement on these actions is not required by Section 102(2) of the National Environmental Policy Act or its implementing

regulations. Copies of the EA and the Finding of No Significant Impact are available upon request (see **ADDRESSES**).

Coastal Zone Management Act Consistency

On February 14, 2001, by a unanimous vote, the State of California Coastal Commission concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on San Nicolas Island, and including the commitment to enable continuing Commission staff review of finalized monitoring plans and ongoing monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act.

Determinations

Based on the evidence provided in the application, the EA, and this document, and taking into consideration the comments submitted on the application and proposed authorization notice, NMFS has determined that there will be no more than a negligible impact on marine mammals from the issuance of the harassment authorization to NAWCWD Point Mugu. NMFS is assured that the short-term impact of conducting missile launch operations from SNI in the Channel Islands off southern California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species as a result of launch activities, this behavioral change is expected to have a negligible impact on the pinniped species and stocks.

Since the number of potential harassment takings of northern elephant seals, harbor seals, California sea lions, and northern fur seals is estimated to be small, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

NMFS has issued an IHA to NAWCWD Point Mugu for 15 launches of Vandal (or similar) missiles and 5 launches of smaller subsonic targets from San Nicolas Island, CA for a 1-year period, provided the mitigation,

monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: August 1, 2001.

Donald Knowles,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 01-20029 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080101B]

Marine Mammals; File No. 774-1634-00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Stephen B. Reilly, Director, IDCPA Research Program, Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038 (Principal Investigator: Dr. Karin Forney), has been issued a permit to take spinner dolphins (*Stenella longirostris*) and Pantropical spotted dolphin (*S. attenuata graffmani*), and other small cetaceans for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, Tammy Adams (301) 713-2289, and Nicole Le Boeuf (301) 713-2322.

SUPPLEMENTARY INFORMATION: On June 6, 2001, notice was published in the **Federal Register** (66 FR 30428) that a request for a scientific research permit to take species listed above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: August 3, 2001.

Ann D. Terbush,

*Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. 01-20028 Filed 8-8-01; 8:45 am]

BILLING CODE 3510-22-S

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; Systems of Records; Biennial Publication

AGENCY: Commodity Futures Trading
Commission.

ACTION: Publication of annual notice of
the existence and character of each
system of records that the Commodity
Futures Trading Commission
("Commission") maintains that contains
information about individuals.

SUMMARY: The purpose of this notice is
to announce the existence and character
of the systems of records of the
Commodity Futures Trading
Commission as required by the Privacy
Act of 1974, Public Law 93-579, 5
U.S.C. 552a.

Pursuant to 5 U.S.C. 552a(f), the
Commission, on August 8, 1975,
promulgated rules relating to records
maintained by the Commission
concerning individuals (40 FR 41056).
The rules as amended (17 CFR part 146)
address an individual's rights to know
what information the Commission has
in its files concerning the individual; to
have access to those records; to petition
the Commission to have inaccurate or
incomplete records amended or
corrected; and not to have personal
information disseminated to
unauthorized persons. The full text of
the Commission's rules implementing
the Privacy Act can be found in 17 CFR
part 146.

Under 17 CFR 146.11(a), the
Commission is required to publish
biennially a notice of the existence and
character of each system of records it
maintains that contains information
about individuals. This notice
implements this requirement and, when
read together with the Commission's
rules, will provide individuals with the
information that they need to exercise
fully their rights under the Privacy Act.

FOR FURTHER INFORMATION CONTACT:
Edward W. Colbert, Deputy Secretary to
the Commission, Freedom of
Information Act, Privacy Act and
Government in the Sunshine Act
Compliance Office, (202) 418-5105, or
Stacy Dean Yochum, Counsel to the
Executive Director, (202) 418-5157,
Commodity Futures Trading

Commission, Three Lafayette Centre,
1155 21st Street, NW., Washington, DC
20581.

SUPPLEMENTARY INFORMATION:

Content of Systems Notices

Each of the notices contains the
following information:

1. The name of the system;
2. The location of the system;
3. The categories of individuals on
whom records are maintained in the
system;
4. The categories of records
maintained in the system;
5. The authority for maintaining the
system;
6. The routine uses of records
maintained in the system, including the
categories of users and the purposes of
such uses;
7. The policies and practices for
storing, retrieving, accessing, retaining,
and disposing of records in the system;
8. The title and business address of
the system manager, the agency official
who is responsible for the system of
records;
9. The agency procedures by which an
individual can find out whether the
system of records contains a record
pertaining to him, how he may gain
access to any record pertaining to him
contained in the system of records, and
how he can contest the content of the
records; and
10. The categories of sources of
records in the system.

The following four systems of records
have been exempted, as set forth in the
descriptions of these systems of records,
from certain requirements of the Privacy
Act, as authorized under 5 U.S.C.
552a(k):

CFTC-9 Confidential information
obtained during employee
background investigations.

CFTC-10 Investigatory materials
compiled for law enforcement
purposes.

CFTC-31 Information pertaining to
individuals discussed at closed
Commission meetings.

CFTC-32 Investigatory materials
compiled by the Office of the
Inspector General.

The Location of Systems of Records

The Commission offices are in the
following locations:

- Three Lafayette Centre, 1155 21st
Street, NW., Washington, DC 20581,
Telephone: (202) 418-5000;
- 300 Riverside Plaza, Suite 1600 North,
Chicago, Illinois 60606, Telephone:
(312) 353-5990;
- 4900 Main Street, Suite 721, Kansas
City, Missouri 64112, Telephone:
(816) 931-7600;

- One World Trade Center, Suite 3747,
New York, New York 10048,
Telephone: (212) 466-2061;
- Murdock Plaza, 10900 Wilshire Blvd,
Suite 400, Los Angeles, California
90024, Telephone: (310) 235-6783;
and
- 510 Grain Exchange Building,
Minneapolis, Minnesota 55415,
Telephone: (612) 370-3255.

Where a system of records is stored in
multiple locations, the notice merely
identifies the offices and refers to this
introductory section for each address.
The Commission's headquarters office is
in Washington, DC, and is referred to in
the systems notice as the "principal
office." The Commission maintains
regional offices in Chicago and New
York and smaller offices in Kansas City,
Minneapolis and Los Angeles. For
purposes of this notice, the regional
offices and smaller offices are referred to
collectively as the "regional offices."
"All CFTC offices" means the
headquarters office, the regional offices
and the smaller offices.

In many cases, records within a
system are not available at each of the
offices listed in the system notice. For
example, case files are maintained in
the office where the investigation is
conducted, but certain information may
be maintained in other offices as well.
It is the Commission's responsibility,
unless otherwise specified in the system
notice, to determine where the
particular records being sought are
located. However, if the individual
seeking the records in fact knows the
location, it would be helpful to the
Commission if the requester would
indicate that location.

Scope and Content of Systems of Records

The Privacy Act applies to personal
information about individuals. Personal
information subject to the provisions of
the Privacy Act may sometimes be
found in a system of records that might
appear to relate solely to commercial
matters. For example, the system of
records concerning registration of the
various categories of registrants (CFTC-
20) contains primarily business
information. However, a firm's
application for registration contains a
few items of personal information
concerning key personnel. Because the
capability exists through the National
Futures Association's computer system
to retrieve information from this system
of records not only by use of the name
of the firm but also by the use of the
name of these individuals, this
information is within the purview of the
Privacy Act. See the definition of system

of records in the Privacy Act, 5 U.S.C. 552(a)(5), and § 146.2(g) of the Commission's Privacy Act rules, 17 CFR 146.2(g).

Such a capability would generally not exist, however, in a Commission staff investigation of the activities of a firm unless an individual is registered as an FCM, IB, CTA or CPO. That is, if the investigation was opened under the name of the FCM, information would be retrievable only under that name. Accordingly, information about principals of a firm under investigation that might be developed during the investigation would generally not be retrievable by the name of the individual, and the provisions of the Privacy Act would not apply.

General Statement of Routine Uses

A principal purpose of the Privacy Act is to restrict the unauthorized dissemination of personal information concerning an individual. In this connection, the Privacy Act and the Commission's rules prohibit dissemination except for specific purposes. Individuals should refer to the full text of the Privacy Act, 5 U.S.C. 552a(b), and to the Commission's rules, 17 CFR part 146, for a complete list of authorized disclosures. Only those arising most frequently have been mentioned herein.

The Privacy Act and the Commission's rules specifically provide that disclosure may be made with the written consent of the individual to whom the record pertains. Disclosure may also be made to those officers and employees of the Commission who need the record in the performance of their duties. In addition, disclosures are authorized if they are made pursuant to the terms of the Freedom of Information Act, 5 U.S.C. 552.

The Privacy Act and the Commission's rules permit disclosure of individual records if it is for a "routine use," which is defined as a use of a record that is compatible with the purpose for which it was collected. Unless otherwise indicated, the following routine uses of Commission records are applicable to all CFTC systems. To avoid unnecessary repetition of these routine uses, where they are generally applicable, the system notice refers the reader to the "General Statement of Routine Uses." The notice for each system of records lists any specific routine uses that are applicable to that system.

1. The information may be used by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act or in any

other action or proceeding in which the Commission or its staff participates as a party or the Commission participates as *amicus curiae*.

2. The information may be given to the Justice Department, the Securities and Exchange Commission, the United States Postal Service, the Internal Revenue Service, the Department of Agriculture, the Office of Personnel Management, and to other Federal, state or local law enforcement or regulatory agencies for use in meeting responsibilities assigned to them under the law, or made available to any member of Congress who is acting in his capacity as a member of Congress.

3. The information may be given to any board of trade designated as a contract market by the Commission if the Commission has reason to believe this will assist the contract market in carrying out its responsibilities under the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, and to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a, *et seq.*

4. At the discretion of the Commission staff, the information may be given or shown to anyone during the course of a Commission investigation if the staff has reason to believe that the person to whom it is disclosed may have further information about the matters discussed therein, and those matters appear relevant to the subject of the investigation.

5. The information may be included in a public report issued by the Commission following an investigation, to the extent that this is authorized under section 8 of the Commodity Exchange Act, 7 U.S.C. 12. Section 8 authorizes publication of such reports but contains restrictions on the publication of certain types of sensitive business information developed during an investigation. In certain contexts, some of this information might be considered personal in nature.

6. The information may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, 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, or a grant or other benefit by the requesting agency, to the extent that the information may be relevant to the requesting agency's decision on the matter.

7. The information may be disclosed to a prospective employer in response to

its request in connection with the hiring or retention of an employee, to the extent that the information is believed to be relevant to the prospective employer's decision in the matter.

8. The information may be disclosed to any person, pursuant to Section 12(a) of the Commodity Exchange Act, 7 U.S.C. 16(a), when disclosure will further the policies of that Act or of other provisions of law. Section 12(a) authorizes the Commission to cooperate with various other government authorities or with "any person."

System Notices

The Commission's systems of records are set forth below. For further information contact: Freedom of Information Act (FOIA), Privacy Act and Government in the Sunshine Act Compliance Staff, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Fourth Floor, Washington, DC 20581, (202) 418-5105.

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CFTC-1**SYSTEM NAME:**

Matter Register and Matter Indices.

SYSTEM LOCATION:

This system is located in the Division of Enforcement in the Commission's principal office and regional offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Persons found or alleged to have, or suspected of having, violated the Commodity Exchange Act or the rules, regulations or orders of the Commission adopted thereunder.
- b. Persons lodging complaints with the Commission.
- c. Agency referrals.

CATEGORIES OF RECORDS IN THE SYSTEM:

An index system to CFTC-10 Exempted Investigatory Records and CFTC-16 Enforcement Case Files, including:

- a. The matter register. Records are organized by docket number and/or matter name. The register also indicates the date opened, the disposition and status, the date closed, and the staff member assigned.
- b. The matter register also includes reports recommending openings and closings of investigations.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

Section 8 of the Commodity Exchange Act, 7 U.S.C. 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, loose-leaf binders, computer files, and computer printouts.

RETRIEVABILITY:

By matter name or docket number.

SAFEGUARDS:

General building security. In appropriate cases, the records are maintained in lockable file cabinets. Computer files require password to access.

RETENTION AND DISPOSAL:

The records are destroyed when no longer needed.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Division of Enforcement, in the Commission's principal office and Regional Counsel in New York, Chicago and Los Angeles. See "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

Persons submitting complaints to the Commission, and miscellaneous sources including customers, law enforcement and regulatory agencies, commodity exchanges, National Futures Association, trade sources, and Commission staff generated items.

CFTC-2**SYSTEM NAME:**

Correspondence Files.

SYSTEM LOCATION:

This system is located in the Commission's principal offices at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons corresponding with the Commission, directly or through their representatives. Persons discussed in correspondence to or from the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming and outgoing correspondence and indices of correspondence, and certain internal reports and memoranda related to the correspondence. This system includes only those records that are part of a general correspondence file maintained by the office involved. It includes

correspondence indexed by subject matter, date or assigned number and, in certain offices, by individual name of the correspondent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, in loose-leaf binders, on index cards, computer files and printouts, and related indices on magnetic disk.

RETRIEVABILITY:

By name of correspondent, subject matter, date or assigned number. The name may be either the name of the person who sent or received the letter, or the person on whose behalf the letter was sent or received. It may also be another person who was the principal subject of the letter, where circumstances appear to justify this treatment. See previous discussion concerning the category of records maintained in this system.

SAFEGUARDS:

Secured rooms or on secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

The retention and disposal period depends on the nature of the correspondence. For example, correspondence with the Commission that pertains to the programs and policies of the Commission becomes part of the agency's central files and is kept permanently. Other correspondence may be kept for between one and 10 years, depending on the subject matter.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Secretariat; Director, Office of Public Affairs; Director, Office of Legislative and Intergovernmental Affairs; Executive Director; General Counsel; Director, Division of Enforcement; Director, Division of Trading and Markets; and, Director, Division of Economic Analysis. All are located at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105. Specify the system manager, if known.

RECORD SOURCE CATEGORIES:

Persons corresponding with the Commission and correspondence and memoranda prepared by the Commission.

CFTC-3**SYSTEM NAME:**

Docket Files.

SYSTEM LOCATION:

This system is located in the Office of Proceedings, Proceedings Clerk's Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons involved in any CFTC proceeding.

CATEGORIES OF RECORDS IN THE SYSTEM:

All pleadings, motions, applications, stipulations, affidavits, transcripts and documents introduced as evidence, briefs, orders, findings, opinions, and other matters that are part of the record of an administrative or reparations proceeding. They also include related correspondence and indices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Commission is authorized or required to conduct hearings under several provisions of the Commodity Exchange Act. These files are a necessary concomitant for the conduct of orderly hearings. See also 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are public records unless the Commission or assigned presiding officer determines for good cause to treat them as nonpublic records consistent with the provisions of the Freedom of Information Act. Nonpublic portions may be used for any purpose specifically authorized by the

Commission or by the presiding officer who ordered such nonpublic treatment of the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, computer files, computer printouts, index cards, and microfiche.

RETRIEVABILITY:

By the docket number and cross-indexed by complainant and respondent names.

SAFEGUARDS:

Only items that the Commission or the presiding officer has directed to be kept nonpublic are segregated. Precautions are taken as to these items to assure that access is restricted to authorized personnel only. Access to computer records is limited to authorized personnel and password protected.

RETENTION AND DISPOSAL:

Docket files in reparations cases are maintained for 10 years after final disposition of the case. Docket files in enforcement cases are maintained for 15 years after final disposition of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Fourth Floor, Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

Commission staff members; opposing parties and their attorneys; proceeding witnesses; and miscellaneous sources.

CFTC-4**SYSTEM NAME:**

Employee Leave, Time and Attendance.

SYSTEM LOCATION:

The information in the system is kept in the CFTC offices in which the

employee described by the records is located. Information is also kept centrally on the computer system located in the Department of Agriculture's National Finance Center, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various records reflecting CFTC employees' time and attendance and leave status, as well as the allocation of employee time to designated budget account codes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6101-6133; 5 U.S.C. 6301-6326; 44 U.S.C. 3101.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate requests, this information may be provided to other Federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided to the Justice Department or other Federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of any Federal law or regulation thereunder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Hard copies of time and attendance worksheets, leave request slips and signed printouts; diskettes; mainframe computer (NFC).

RETRIEVABILITY:

By the name of the employee or by the employee number, cross-indexed by name.

SAFEGUARDS:

Lock boxes and/or locked file drawers. Password required for access to diskettes and NFC computer system.

RETENTION AND DISPOSAL:

Hard copy records, including leave slips, signed printouts from the PC-TARE system, overtime approval slips and budget account code worksheets are retained for six years, then destroyed. Diskettes are written over on a 12-month rotating cycle.

SYSTEM MANAGER AND ADDRESS:

Office of Human Resources,
Commodity Futures Trading
Commission, Three Lafayette Centre,
1155 21st Street, NW., Washington, DC
20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC-5**SYSTEM NAME:**

Employee Personnel/Payroll Records.

SYSTEM LOCATION:

This system is located in the Office of Human Resources and the Office of General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 and on a computer system located in the Department of Agriculture's National Finance Center, New Orleans, Louisiana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll related information for current CFTC employees, including payroll and leave data for each employee relating to rate and amount of pay, leave and hours worked, and leave balances, tax and retirement deductions, life insurance and health insurance deductions, savings allotments, savings bonds and charity deductions, mailing addresses and home addresses, direct deposit information, and copies of the CFTC time and attendance reports as well as authorities relating to deductions, including salary offset under part 141 of the Commission's rules. The records maintained in the principal office for all employees may also include: a. Forms required and records maintained under the Commission's rules of conduct and the Ethics in Government Act, such as the SF-278 and requests for approval of

outside employment (CFTC Form 20); b. Various summary materials received in computer printout form; c. Awards information; d. Recruitment, relocation or retention bonuses; and e. Training information.

The official personnel records maintained by the Commission are described in the system notices published by the Office of Personnel Management (OPM/GOVT-1), and are not included within this system. (Check Opm/Govt-1 to see if it includes relocation, retention, etc. bonuses)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 5 U.S.C. APP.
(Personnel Financial Disclosure Requirements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. In response to legitimate requests, this information may be provided to other Federal agencies for the purpose of hiring or retaining employees, and may be provided to other prospective employers, to the extent that the information is relevant to the prospective employer's decision in the matter.

b. The information may be provided to the Justice Department, the Office of Personnel Management or other Federal agencies, or used by the Commission in connection with any investigation or administrative or legal proceeding involving any violation of Federal law or regulation thereunder.

c. Certain information will be provided, as required by law, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System (FPLS) and Federal Tax Offset System to enable state jurisdictions to locate individuals and identify their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

d. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

e. Certain information will be provided, as required by law, to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, computer files, and computer printouts.

RETRIEVABILITY:

By the name or social security number of the employee.

SAFEGUARDS:

Lockable cabinets for paper records. Computer records accessible through password protected security system.

RETENTION AND DISPOSAL:

Maintained according to retention schedules prescribed by the General Records Schedule for each type of personnel/payroll record.

SYSTEM MANAGER(S) AND ADDRESS:

The Office of Human Resources, except for records maintained under the Commission's rules of conduct and the Ethics in Government Act for which the General Counsel is the system manager. See "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; personnel office records; and miscellaneous sources.

CFTC-6**SYSTEM NAME:**

Employee Travel and Transportation Records.

SYSTEM LOCATION:

This system is located in the Office of Financial Management, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In the Commission's headquarters office, transit subsidy applications and distribution records are maintained by the Department of Transportation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Commission member, employee, witness, expert, advisory committee

member or non-CFTC employee traveling on official business for the Commission and any CFTC employee who applies for and receives a transit subsidy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name, address, destination, itinerary, mode and purpose of travel, dates, expenses, miscellaneous claims, amounts advanced, amounts claimed, and amounts reimbursed. Includes travel authorizations, travel vouchers, requests, receipts, invoices from credit card vendors' receipts, and other records. Transit subsidy records contain: In DC, the employee's name and the amount received; in other regions, the employee's name, home address, office, office phone, the last four digits of the social security number, the mode of transportation, and the monthly amount of transportation expenses. Transit subsidy distribution records in offices other than headquarters contain the employee's name and the amount received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701-5752; 31 U.S.C. 1, et seq.; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The information may be provided to the Justice Department or other Federal agencies or used by the Commission in connection with any investigation, or administrative or legal proceeding involving any violation of Federal law or regulation thereunder.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files and computer printout.

RETRIEVABILITY:

By the name of the Commission member, employee witness, expert, advisory committee member or CFTC employee traveling on official business for the Commission or the name of the employee applying for or receiving a transit subsidy and by the last four digits of the social security number.

SAFEGUARDS:

Access to the computer records is protected by a security system. General building security limits access to paper records kept in files of support staff in the offices of travelers and in the Travel Office.

RETENTION AND DISPOSAL:

Travel Records are retained for six years after the period covered by the account. Records of travel that is non-Federally funded are retained for four years. Transit subsidy disbursement records are retained for three years. Transit subsidy applications maintained by CFTC are retained for three years after the employee is no longer in the program or the application is superseded.

SYSTEM MANAGER(S) AND ADDRESS:

Accounting Officer and Network Manager, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC-7

SYSTEM NAME:

Exempted Informal Employment Complaint Files.

SYSTEM LOCATION:

Office of the Executive Director, Three Lafayette Centre, 1155 21st St. NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, including Commission employees, contractors or visitors, who are accused of sexual or other harassment in violation of employment discrimination laws or Commission employment policies, in particular the Commission's Sexual Harassment Policy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports to Commission officials from supervisors, managers, or members of the Commission concerning complaints or concerning observed instances of sexual harassment; records relating to the complaint or incident, relating to any investigation, and to any

disposition of the matter. The potential contents of the system are not limited to complaints or other material under the Commission's Sexual Harassment Policy. Complaints concerning other forms of employment discrimination would be made part of this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR 1614.102(a); 5 U.S.C. § 2302(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The four routine uses for this system are taken from the Commission's General Statement of Routine Uses: published in 64 Fed. Reg. 33829: Number 1 (disclosed in an action where the Commission or a present or former member or employee of the Commission is a party); 2 (given to other federal or state agencies within the scope of their statutory mandates); 4 (disclosed in an investigation); and 6 (disclosed if relevant to a federal agency in connection with a personnel, contracting or licensing action concerning the person about whom the record is maintained).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records stored in files.

RETRIEVABILITY:

Records are retrievable by the name of the employee or third party about whom a complaint or report has been made.

SAFEGUARDS:

In addition to general building security, paper records are maintained in areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the Assistant Secretary for FOI, Privacy and Sunshine Acts Compliance, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures," above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures," above.

RECORD SOURCE CATEGORIES:

Internal complaints, internal investigations, reports of activity which apparently violates the Commission's Sexual Harassment Policy or other employment discrimination prohibitions, proceedings, as relevant, under the EEOC's Federal Sector Complaint Processing rules, 29 CFR part 1614.

CFTC-8**SYSTEM NAME:**

Employment Applications.

SYSTEM LOCATION:

This system is located in the Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for positions with the CFTC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the application and/or the resume of the applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about these records is used in making inquiries concerning the qualifications of the applicant.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders.

RETRIEVABILITY:

By job announcement number. Summary information of applications is also available to staff of the Office of Human Resources through an automated applicant tracking system.

SAFEGUARDS:

Lockable cabinets for paper records. Access to applicant tracking system granted only to appropriate personnel.

RETENTION AND DISPOSAL:

Most applicant records are retained for two years, then destroyed. If a review is pending by the Office of Personnel Management (OPM) or other authority, the records are retained until that review is completed.

SYSTEM MANAGER(S) AND ADDRESS:

The Office of Human Resources, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained.

CFTC-10**SYSTEM NAME:**

Exempted Investigatory Records.

SYSTEM LOCATION:

This system is located in the Office of General Counsel in the Commission's principal office and the Division of Enforcement in the Commission's principal and regional offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals whom the staff has reason to believe have violated, are violating, or are about to violate the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

b. Individuals whom the staff has reason to believe may have information concerning violations of the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

c. Individuals involved in investigations authorized by the Commission concerning the activities of members of the Commission or its employees based upon formal complaint or otherwise.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory materials compiled for law enforcement purposes whose disclosure the Commission staff has determined could impair the effectiveness and orderly conduct of the Commission's regulatory and enforcement program or compromise Commission investigations. This system may include all or any part of the

records developed during the investigation or inquiry, including data from Commission reporting forms, account statements and other trading records, exchange records, bank records and credit information, business records, reports of interviews, transcripts of testimony, exhibits to transcripts, affidavits, statements by witnesses, registration information, contracts and agreements. The system may also contain internal memoranda, reports of investigation, orders of investigation, subpoenas, warning letters, stipulations of compliance, correspondence, and other miscellaneous investigatory matters. The nature of the personal information contained in these files varies according to what is considered relevant by the attorney assigned based on the circumstances of the particular case under investigation, and may include personal background information about the individual involved, his education and employment history, information on prior violations, and a wide variety of financial information, as well as a detailed examination of the individual's activities during the period in question.

RETRIEVABILITY:

By assigned file name, which may be the matter number or the name of the person or firm that is the principal subject of the investigation. A summary index of material is also stored on the computer.

SAFEGUARDS:

In addition to normal office and building security, certain of these records are maintained in locked file cabinets and/or secured file rooms. All employees are made aware of the sensitive nature of investigatory information. Computer access is restricted to authorized personnel.

RETENTION AND DISPOSAL:

Maintained until exemption is no longer necessary, then filed in the appropriate nonexempt system.

If an investigatory matter is closed without institution of a case, the files, other than opening and closing reports, are shipped to off-site storage within 90 days of closing. Records are maintained in off-site storage for 5 years, and then destroyed.

If the Commission files an injunctive or administrative action or an appellate matter, the related investigatory files and records are retained in the office conducting the litigation; the files and records remain exempt from disclosure under the Privacy Act. When the case is concluded, the investigatory materials are stored and disposed of on the same

schedule as the related non-exempt case files (see CFTC-16 and CFTC-17).

The Office of General Counsel retains copies of certain investigatory materials indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Enforcement in the Commission's principal office or the Regional Counsel of the region where the investigation is being conducted, or the General Counsel. See "The Location of Systems of Records."

RECORD SOURCE CATEGORIES:

a. Reporting forms and other information filed with the Commission; b. self-regulatory organizations; c. persons or firms covered by the Commission's registration requirements; d. Federal, state and local regulatory and law enforcement agencies; e. banks, credit organizations and other institutions; f. corporations; g. individuals having knowledge of the facts; h. attorneys; i. publications; j. courts; and k. miscellaneous sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a(k)(2), and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempt from the notification procedures, records access procedures, and record contest procedures set forth in the system notices of other record systems, and from the requirement that the sources of records in the system be described.

CFTC-12

SYSTEM NAME:

Fitness Investigations.

SYSTEM LOCATION:

Records for floor brokers and floor traders with respect to matters commenced prior to August 1, 1994: Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Records for futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, their respective associated persons and principals, with active registration status in any capacity on or after October 1, 1983; leverage transaction merchants and their associated persons and principals with active registration status as such on or after August 1, 1994; floor brokers and floor traders with active registration

status as such on or after August 1, 1994; and Agricultural Trade Option Merchants (ATOMs) and their associated persons: National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606-3447. (See also "Retention and Disposal," *infra*.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply for registration as futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants and agricultural trade option merchants; persons listed or who may be listed as principals (as defined in 17 CFR 3.1); persons who have applied or who may apply for registration as associated persons of the foregoing firms; and floor brokers and floor traders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the fitness of the above-described individuals to engage in business subject to the Commission's jurisdiction. The system contains information in computerized images or alpha-numeric format and hardcopy format including registration forms, schedules and supplements, fingerprint cards which are required for registrants except ATOMs, correspondence relating to registration, and reports and memoranda reflecting information developed from various sources. In addition, the system contains records of each fitness investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(a)(1) and (2), 4k(4), 4k(5), 4n(1), 8a(1)-(5), 8a(10), 8a(11), 17(o) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1)-(5), 12a(10), 12a(11), 21(o) and 23.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The routine uses applicable to all of the Commission's systems of records, including this system, are set forth under the "General Statement of Routine Uses." In addition, the Commission may disclose information contained in this system of records as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.
2. Information contained in this system of records may be disclosed to

any registered futures commission merchant with whom an applicant or registered introducing broker has or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records, but any such disclosure must be made in accordance with NFA rules that have been approved by the Commission or permitted to become effective without Commission approval. The disclosure must be made under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. No specific consent is required by an applicant or registered introducing broker to disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, computer printouts, index cards, and microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or agricultural trade option merchant with which the individual is associated or affiliated.

SAFEGUARDS:

General office security measures include secured rooms or premises with access limited to persons whose official duties require access. Access to computer systems is password protected and limited to authorized personnel only.

RETENTION AND DISPOSAL:

Since 1991, when a fitness investigation is opened by NFA, applications, biographical supplements, other forms, related documents, correspondence and reports are immediately scanned, indexed and stored using computer imaging software so the information may be retrieved and printed. Both hard copy and imaged records are maintained by NFA for 10 years after the individual becomes inactive or for 10 years after the firm with which the individual is associated

becomes inactive. Records retained by CFTC are held for 10 years.

NFA also maintains an index and summary of the hard copy records of this system in a database, the Membership, Registration, Receivables System (MRRS). The MRRS records are maintained permanently by NFA, as applicable, and are updated periodically as long as the individual is active. MRRS records on persons who may apply may be maintained indefinitely; microfiche records produced for back up of MRRS records for 1995 and earlier are maintained permanently by NFA.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Trading and Markets, at the Commission's principal office, or a designee. For records held by NFA, the systems manager is the Vice President for Registration, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606-3447, or a designee.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

Individuals may also request registration information by telephone directly from the NFA information center at 1-800-621-3570 or 312-781-1410. Inquiries can also be made to NFA by FAX (312-781-1459) or via the Internet at inquiry@nfa.futures.org. NFA will query the MRRS system about current registration status and registration history, and will provide instructions on how to make written requests for copies of records. The Internet may be used to obtain information on current registration status and futures-related regulatory actions at www.nfa.futures.org by selecting "BASIC."

RECORDS SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's employer; Federal, state and local regulatory and law enforcement agencies; commodities and securities exchanges; National Futures Association; National Association of Securities Dealers; foreign futures and securities authorities and INTERPOL; and other miscellaneous sources.

Computer records are prepared from the forms, supplements, attachments and related documents submitted to the Commission or NFA and from information developed during the fitness inquiry.

CFTC-13

SYSTEM NAME:

Interpretative, Exemptive and No-Action Files.

SYSTEM LOCATION:

Most files are prepared by the Division of Trading and Markets and are kept in that Office. Public copies of the interpretative, exemptive and no-action letters, which may be redacted, are also kept in the Secretariat and the Office of Public Affairs, and are also available on the CFTC website (www.cftc.gov). All offices are located at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested the Commission or its staff to provide interpretations, exemptions or no-action positions regarding the provisions of the Commodity Exchange Act or the Commission's regulations thereunder. The requests may have been made directly by an individual, or through the individual's attorney or other representative. A request may also be made on behalf of a registrant or other party that contains information about individuals employed by or affiliated with the registrant or other party. Registrants include futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, agricultural trade option merchants, leverage transaction merchants, associated persons, floor brokers and floor traders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for interpretative, exemptive and no-action letters, supplemental correspondence, any related internal memoranda, other supporting documents and the responses to the requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 2(a)(4) of the Commodity Exchange Act, 7 U.S.C. 4a(c), 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Pursuant to the Commission's rules, 17 CFR 140.98, substantive interpretative, exemptive and no-action letters are made public and published

by the Commission. Portions of such letters or information will be deleted or omitted to the extent necessary to prevent a clearly unwarranted invasion of personal privacy or to the extent they otherwise contain material considered nonpublic under the Freedom of Information Act and the Commission's rules implementing that Act.

b. Information in these files may be used as a reference in responding to later inquiries from the same party, in following up on earlier correspondence involving the same person, or when another person raises the same or similar issues.

c. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders. The redacted outgoing letter is maintained electronically on a Division of Trading and Markets shared drive.

RETRIEVABILITY:

The Division of Trading and Markets (T&M) has two tracking systems in place. One system is based on information contained in incoming correspondence. It may be searched by, among other things, the name of the individual who signed the request letter (the requester) and the firm of which the individual is a partner, owner, or employee (such as a law firm, operating company or registrant.) Searchable fields may also include subject matter information such as the names of the parties and trading entities cited in the document. T&M has a second tracking system which is based on information contained in published and unpublished letters issued by T&M since 1991. This system may be searched by the name of the requester, the firm with which he or she is affiliated and the names of the parties and trading entities involved. Public copy files in the Secretariat and the Office of Public Affairs are filed by the name of the requester, even if another party makes the request on behalf of the requester. If the name of the firm or individual on whose behalf the request is made is not known, the records are maintained in the name of the attorney or other representative making the request.

SAFEGUARDS:

Access to non-public records is limited to the offices where the records are maintained and is limited to authorized personnel.

RETENTION AND DISPOSAL:

Letters signed by the Commission and unique, precedent-setting letters signed by staff are maintained by CFTC for 20 years, then transferred to the National Archives and Records Administration as permanent records. Other letters signed by staff are destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Trading and Markets; the Secretary to the Commission; and the Director, Office of Public Affairs. All system managers are located in the Commission's principal office. See "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

Individuals, corporations, limited liability companies, other business organizations, or representatives seeking interpretations of, exemptions from, or no-action opinions on the provisions of the Commodity Exchange Act or Commission rules.

CFTC-15**SYSTEM NAME:**

Large Trader Report Files.

SYSTEM LOCATION:

The copies of original reports and related correspondence are located in the CFTC office where filed. See further description below. Ancillary records and information (computer printout) may be located in any CFTC office. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals holding reportable positions as defined in 17 CFR parts 17, 18 and 19.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Reports filed by the individual holding the reportable position:
a. Statements of Reporting Trader (CFTC Form 40) contains information described in part 18 of the Commission's rules and regulations,

including the name, address, number, and principal occupation of the reporting trader, financial interest in and control of commodity futures accounts, and information about the trader's business associations;

b. Large trader reporting form (Series 03 Form). Contains information described in part 18 of the Commission's rules and regulations, including the trader's identifying number, previous open contracts, trades and deliveries that day, open contracts at the end of the day, and classification as to speculation or hedging (available on a non-routine basis by special call);

c. Large trader reporting form (Series 04 Form). Contains information described in part 19 of the Commission's rules and regulations, to be filed by merchants, processors and dealers in commodities that have federally imposed speculative position limits. Includes trader's identifying number, stocks owned, fixed price sale and purchase commitments. These reports are filed in the CFTC office in the city where the reporting trader is located. If there is no CFTC office in that city, the reports are filed according to specific instructions of the CFTC.

2. Reports to be filed by futures commission merchants, members of contract markets, foreign brokers and, for large option traders, by contract markets.

a. Identification of "Special Accounts" (CFTC Form 102). Contains material described in part 17 of the Commission's rules and regulations. Includes the name, address, and occupation of a customer whose accounts have reached the reporting level. Also includes the account number that the futures commission merchant uses to identify this customer on the firm's 01 report (see next paragraph), and whether the customer has control of or financial interest in accounts of other traders.

b. Large trader reporting form (Series 01 Form). Contains material described in part 17 of the Commission's rules and regulations, for each "special account." Shows customer account number, reportable position held in each commodity future and option, and information concerning deliveries and exchanges of futures for physicals by persons with reportable positions. These reports are filed, mostly in machine-readable form, in the CFTC office in the city where the contract market involved is located. If there is no CFTC office in that city, they are filed in the office where the CFTC instructs that they be filed.

3. Computer records prepared from information on the forms described in items (1) and (2) above.

4. Correspondence and memoranda of telephone conversations between the Commission and the individual or between the Commission and other agencies dealing with matters of official business concerning the individual.

5. Other miscellaneous information, including intra-agency correspondence and memoranda concerning the individual and documents relating to official actions taken by the Commission against the individual.

6. Reports of Positions and Transactions of Clearing Member Firms. Information is provided in machine-readable form and contains the data prescribed in section 16 of the Commission's regulations. The information includes an identification number for each clearing member, open contracts at the firm for proprietary and customer accounts and transactions such as trades, exchanges of futures for physicals, delivery notices issued and received, and transfers and option exercises. The information is filed in the city where the exchange is located or as instructed by the Commission. Data is transmitted to the CFTC computer system and printouts are available at all CFTC offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4g, 4i, and 8 of the Commodity Exchange Act, 7 U.S.C. 6g, 6i, and 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses." In addition, information concerning traders and their activities may be disclosed and made public by the Commission to the extent permitted by law when deemed appropriate to further the practices and policies of the Commodity Exchange Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF THE RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, computer files, and computer printout.

RETRIEVABILITY:

Form 40, Form 102, correspondence and other miscellaneous information are maintained directly under the name of the reporting trader. The series 01, 03, and 04 forms are maintained by identifying code number. However, information from these forms is included in the computer and retrievable by individual identifier.

SAFEGUARDS:

General office security measures, with recent trading reports stored in lockable file cabinets. Access is limited to those whose official duties require access.

RETENTION AND DISPOSAL:

CFTC Form 40, CFTC Form 102, correspondence, memoranda, etc. are retained on the premises until the account has been inactive for 5 years and are then destroyed. Form 01, 03, and 04 reports are maintained for 6 months on the premises and then held in off-site storage for 5 years before being destroyed. The computer file is maintained for 10 years for Form 01, 03, and 04. Clearing member positions and transactions are maintained for 3 years. Trader code numbers and related information are maintained for 5 years after a trader becomes non-reportable. Account numbers assigned by an FCM are maintained on the system for 1 year after the account is no longer reported.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Surveillance Branch, in the region where the records are located. See "The Location of Systems of Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105. Include the code number assigned by the Commission for filing reports, the name of the futures commission merchant through whom traded, and the time period for which information is sought.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained and futures commission merchants through whom the individual trades. Correspondence and memoranda prepared by the Commission or its staff. Correspondence from firms, agencies, or individuals requested to provide information on the individual.

CFTC-16**SYSTEM NAME:**

Enforcement Case Files.

SYSTEM LOCATION:

This system is located in the Commission's principal and regional

offices. Pending litigation files may be located in other participating offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons or firms against whom the Commission has taken enforcement action based on violations of the Commodity Exchange Act or the rules and regulations promulgated thereunder.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of various public papers filed by or with the Commission or the courts in connection with administrative proceedings or injunctive actions brought by the Commission. Records include, as a minimum, a copy of the complaint, motions filed, exhibits and the final decision and order.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These files are necessary for the orderly and effective conduct of litigation authorized under the Commodity Exchange Act and other Federal statutes. See, e.g., dection 6c of the Commodity Exchange Act, 7 U.S.C. 13a-1, authorizing injunctive actions, and various provisions in that Act authorizing administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses." The information in these files is generally a matter of public record and may be disclosed without restriction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders or binders, disks, computer files, computer printouts. A summary index of material is also stored on the computer.

RETRIEVABILITY:

By case title or in some instances by docket number.

SAFEGUARDS:

General office security measures including secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

After an action is complete, the complaint and any final decision or dispositive orders are kept indefinitely at the headquarters office. Most case files are destroyed after 15 years; unique, precedent-setting cases are forwarded to the National Archives and

Records Administration for permanent retention after 20 years.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Enforcement at the Commission's principal office and Regional Counsel for the region where the records are located. See "The Location of Systems Records."

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

The parties, their attorneys, the Commission's Proceedings Clerk's Office, the relevant court, and miscellaneous sources.

CFTC-17**SYSTEM NAME:**

Litigation Files-OGC.

SYSTEM LOCATION:

This system is located in the Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties involved in litigation with the Commission or litigation in which the Commission has an interest including, but not limited to:

- a. Administrative proceedings before the Commission, including appeals from staff determinations of requests made under FOIA and the Privacy Act;
- b. Federal court cases to which the Commission is a party;
- c. Litigation in which the Commission is participating as amicus curiae; and
- d. Other cases involving issues of concern to the Commission, including those brought by other law enforcement and regulatory agencies and those brought by private parties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Public papers filed in litigation as described above, including appellate and amicus curiae briefs, motions, and final decisions and orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Commodity Exchange Act, 7 U.S.C. 1, et seq., entrusts the Commission with broad regulatory responsibilities over commodity futures transactions. In this connection, the Commission is authorized to bring both administrative proceedings and injunctive actions where there appear to have been violations of the Act. Furthermore, to effectuate the purposes of the Act, it is necessary that the Commission staff be familiar with developments in other actions brought by others that have implications in the commodity law areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is generally a matter of public record and may be disclosed without restriction. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, as well as disks, computer files and computer printouts.

RETRIEVABILITY:

Alphabetically by caption of the case.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access. Computer access is also limited to authorized personnel.

RETENTION AND DISPOSAL:

Maintained in the active files until the action is completed, including final review at the appellate level. Thereafter, transferred to the inactive case files, where a skeletal record of pleadings, briefs, findings, and opinions and other particularly relevant papers may be maintained. These records are maintained on premises for five years, and then transferred to off-site storage. Most case files are destroyed after 15 years; unique precedent setting cases are destroyed after 20 years. A copy of some of the documents may be kept in precedent files for use in later legal research or preparation of filings in other matters.

SYSTEM MANAGER AND ADDRESS:

The Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

The court or regulatory authority before which the action is pending, the attorneys for one of the named parties, and miscellaneous sources.

CFTC-18**SYSTEM NAME:**

Logbook on Speculative Limit Violations.

SYSTEM LOCATION:

This system is located in the Commission's Chicago and New York regional offices. See "The Location of Systems of Records."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have exceeded speculative limits in a particular fiscal year.

CATEGORIES OF RECORDS IN THE SYSTEM:

A listing, by year, of the violations of speculative limits imposed by the Commission and the exchanges. It includes the trader's assigned code number, the commodity involved, the name of the trader, the type of violation, the date of the violation, the date the violation ceased, and the action taken. Copies of warning letters and replies pertaining to the violation listed are maintained with the logbook.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4i and 8 of the Commodity Exchange Act, 7 U.S.C. 6i and 12.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders.

RETRIEVABILITY:

By fiscal year, and within each year by the name of the violator.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for 5 years, then held off-site for 15 years before being destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Surveillance Branch, Central Regional Office, Commodity Futures Trading Commission, 300 South Riverside Dr., Suite 1600 North, Chicago, Illinois 60606; Chief, Surveillance Branch, Eastern Regional Office, Commodity Futures Trading Commission, One World Trade Center, Suite 3747, New York, New York 10048.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves or seeking access to records about themselves contained in this system of records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

Series 03 reports filed by traders and series 01 reports filed by FCMs. Correspondence prepared by the Commission or by the individual or individual's representative.

CFTC-20**SYSTEM NAME:**

Registration of Floor Brokers, Floor Traders, Futures Commission Merchants, Introducing Brokers, Commodity Trading Advisors, Commodity Pool Operators, Leverage Transaction Merchants, Agricultural Trade Option Merchants and Associated Persons.

SYSTEM LOCATION:

National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606-3447.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied or who may apply for registration as futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants and agricultural

trade option merchants (ATOMs); persons listed or who may be listed as principals (as defined in 17 CFR 3.1); persons who have applied or who may apply for registration as associated persons of the foregoing firms; and floor brokers and floor traders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the registration and fitness of the above-described individuals, except ATOMs, to engage in business subject to the Commission's jurisdiction. Information on ATOMs includes only the names and registration status of ATOMs and their associated persons. The system includes registration forms, schedules, and supplements; correspondence relating to registration; and reports and memoranda reflecting information developed from various sources.

Computerized systems, consisting primarily of information taken from the registration forms, are maintained by NFA. Computer records include the name, date and place of birth, social security number (optional), exchange trading privileges (floor brokers and floor traders only), firm affiliation, and the residence or business address, or both, of each associated person, floor broker, floor trader and principal. Computer records also include information relating to name, trade name, principal office address, records address, names of principals and branch managers of futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants, and agricultural trade option merchants.

Directories, when produced, list the name, business address, and exchange affiliation of all registered floor brokers and the name and firm affiliation of all associated persons and principals. These directories are sold to the public by NFA. Registration forms and biographical supplements, except for any confidential information on supplementary attachments to the forms, are publicly available for disclosure, inspection and copying.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4f(a)(1) and (2), 4k(4), 4k(5), 4n(1), 8a(1), 8a(5), 8a(10) and 19 of the Commodity Exchange Act as amended, 7 U.S.C. 6f(1), 6k(4), 6k(5), 6n(1), 12a(1), 12a(5), 12a(10), and 23.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses." In addition, the Commission may disclose information contained in this system of records as follows:

1. Information contained in this system of records may be disclosed to any person with whom an applicant or registrant is or plans to be associated as an associated person or affiliated as a principal.

2. Information contained in this system of records may be disclosed to any registered futures commission merchant with whom an applicant or registered introducing broker has entered or plans to enter into a guarantee agreement in accordance with Commission regulation 1.10 (17 CFR 1.10).

NFA may disclose information contained in those portions of this system of records maintained by NFA, but any such disclosure must be made in accordance with Commission-approved NFA rules and that have been approved by the Commission or permitted to become effective without Commission approval. Disclosures must be made under circumstances authorized by the Commission as consistent with the Commission's regulations and routine uses. No specific consent is required by an applicant or registered introducing broker to disclosure of information to the futures commission merchant with whom it has or plans to enter a guarantee agreement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer files, computer printouts, indexed cards, and microfiche.

RETRIEVABILITY:

By the name of the individual or firm, or by assigned identification number. Where applicable, the NFA's computer cross-indexes the individual's primary registration file to the name of the futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or agricultural trade option merchant with whom the individual is associated or affiliated.

SAFEGUARDS:

General office security measures including secured rooms or premises with access limited to those whose official duties require access. Access to computer files limited to authorized personnel.

RETENTION AND DISPOSAL:

Hard copies of applications, biographical supplements, other forms, related documents and correspondence

are maintained on the NFA's premises, as applicable, for two years after the individual's registration(s), or that of the firm(s) with which the individual is associated as an associated person or affiliated as a principal, becomes inactive. Hard copies of records are then stored at an appropriate site for eight additional years before being destroyed.

NFA also maintains an index and summary of the hard copy records of this system in a database, the Membership, Registration, Receivables System (MRRS). The MRRS records are maintained permanently and are updated periodically as long as the individual has a registration application pending, is registered in any capacity, or is affiliated with any registrant in any capacity. MRRS records on persons who may apply may be maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Trading and Markets, or designee, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, and Vice President for Registration, National Futures Association, 200 West Madison Street, Suite 1400, Chicago, Illinois 60606-3447.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

Individuals may also request registration information by telephone from the NFA information center at 1-800-621-3570 or 312-781-1410. Inquiries can also be made to NFA by FAX (312-781-1459) or via email at inquiry@nfa.futures.org. NFA will query the MRRS system about current registration status and registration and disciplinary history, and will provide instructions on how to make written requests for copies of records. The Internet may be used to obtain information on current registration status and futures-related regulatory actions at www.nfa.futures.org by selecting "BASIC."

RECORD SOURCE CATEGORIES:

The individual or firm on whom the record is maintained; the individual's

employer; and other miscellaneous sources. The computer records are prepared from the forms, supplements, attachments and related documents submitted to the NFA.

CFTC-28**SYSTEM NAME:**

SRO Disciplinary Action File.

SYSTEM LOCATION:

National Futures Association (NFA), 200 West Madison Street, Suite 1400, Chicago, Illinois 60606-3447.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been suspended, expelled, disciplined, or denied access to or by an self-regulatory organization (SRO).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to a disciplinary or other adverse action taken by an SRO, including the name of the person against whom such action was taken, the action taken, and the reasons therefore. The information is maintained on a computerized system, the Background Affiliation Status Information Center (BASIC), and consists primarily of data furnished by SROs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 8c(1)(B) of the Commodity Exchange Act, 7 U.S.C. 12c(1)(B).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Computer files and printouts.

RETRIEVABILITY:

By the name of the individual or firm, or by an NFA identification number.

SAFEGUARDS:

General office security measures. Computer access limited to authorized personnel.

RETENTION AND DISPOSAL:

Retained for ten years.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Contract Markets Section, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

Self-regulatory organizations notifying the Commission of disciplinary or other adverse actions taken.

CFTC-29**SYSTEM NAME:**

Reparations Complaints.

SYSTEM LOCATION:

This system is located in the Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing customer reparations complaints, as well as the firms and individuals named in the complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reparations complaints, answers, supporting documentation and correspondence filed with the Office of Proceedings. If the complaint is forwarded for decision by an administrative law judge or proceedings officer, records become part of CFTC-3, Docket Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 14 of the Commodity Exchange Act, 7 U.S.C. 18.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used in the conduct of the Commission's reparations program. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, computer files, computer printouts.

RETRIEVABILITY:

By docket number and cross-indexed by the name of the complainant and respondent.

SAFEGUARDS:

General office security including secured rooms and, in appropriate cases, lockable file cabinets, with access to offices and computers limited to authorized personnel.

RETENTION AND DISPOSAL:

The records are maintained for 10 years after the case is closed, except that complaints, decisions, and Commission opinions and orders, are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Proceedings, Complaints Section, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, or seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

Persons filing reparations complaints or answers.

CFTC-30**SYSTEM NAME:**

Open Commission Meetings-CFTC.

SYSTEM LOCATION:

This system is located in the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a Commission meeting open for public observation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the individuals who are the subject of discussion at an open Commission meeting.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Act, 5 U.S.C. 552b(f) and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these files is a matter of public record and may be disclosed without restriction. Also see "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders; computer memory; computer printouts; microfiche; and audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics that are discussed at the meetings.

SAFEGUARDS:

Maintained in lockable file cabinets on secured premises or password-protected computer systems, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for at least the statutory period required by the Sunshine Act and Commission regulations (i.e., at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which the meeting or portion of the meeting was held, whichever is later); transferred to the National Archives as permanent records when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOIA, Privacy and Sunshine Acts Compliance Staff, Commodity Futures

Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone (202) 418-5105.

RECORD SOURCE CATEGORIES:

1. The staff in one or more Divisions generates the information recorded during Commission meetings concerning individuals who are the subject of discussion at the meetings.
2. The indices are prepared from the recordings, transcripts and/or minutes.

CFTC-31**SYSTEM NAME:**

Exempted Closed Commission Meetings-CFTC

SYSTEM LOCATION:

This system is located in the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the subject of discussion at a closed Commission meeting.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to individuals who are the subject of discussion at a closed Commission meeting. This information consists of (a) investigatory materials compiled for law enforcement purposes whose disclosure the Commission has determined could impair the effectiveness and orderly conduct of the Commission's regulatory, enforcement and contract market surveillance programs or compromise Commission investigations, or (b) investigatory materials compiled solely for the purpose of determining suitability, eligibility, or qualifications for employment with the Commission to the extent that it identifies a confidential source.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government in the Sunshine Act, 5 U.S.C. 552b(f), and Commission regulations at 17 CFR 147.7.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "General Statement of Routine Uses."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders; computer memory; computer printouts; microfiche; and audiocassette tapes.

RETRIEVABILITY:

The indices to the recordings, transcripts, and minutes of all Commission meetings are organized by year in chronological order. Each yearly index is further indexed in alphabetical order according to subject matter, including the names of individuals, firms, exchanges or other topics, which are discussed at the meetings.

SAFEGUARDS:

Maintained in lockable file cabinets on secured premises or password-protected computer systems, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained on the premises for at least the statutory period required by the Sunshine Act and Commission regulations (i.e., at least two years after each meeting or at least one year after the conclusion of any agency proceeding with respect to which meeting was held, whichever is later); transferred to the National Archives as permanent records when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The records in this system have been exempted by the Commission from certain provisions of the Privacy Act of 1974 pursuant to the terms of the Privacy Act, 5 U.S.C. 552a, and the Commission's rules promulgated thereunder, 17 CFR 146.12. These records are exempted from the notification procedures, record access procedures and record contest procedures set forth in the system notices of other record systems, and from the requirement that the source of records in the system be described.

CFTC-32**SYSTEM NAME:**

Exempted Office of the Inspector General Investigative Files.

SYSTEM LOCATION:

Office of the Inspector General, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of an investigation of fraud and abuse

concerning Commission programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

All correspondence relevant to the investigation; all internal staff memoranda, copies of all subpoenas issued during the investigation, affidavits, statement from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; opening reports, progress reports and closing reports; and an index of individuals investigated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95-452, as amended, 5 U.S.C. App. 3.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The information in the system may be used or disclosed by the Commission in any administrative proceeding before the Commission, in any injunctive action, or in any other action or proceeding authorized under the Commodity Exchange Act or the Inspector General Act of 1978 in which the Commission or any member of the Commission or its staff participates as a party or the Commission participates as *amicus curiae*.

2. In any case in which records in the system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, foreign, state or local, charged with enforcing or implementing the statute, regulation, rule or order.

3. In any case in which records in the system indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, the relevant records may be referred to the appropriate board of trade designated as a contract market by the Commission or to the appropriate futures association registered with the Commission, if the Office of the Inspector General has reason to believe this will assist the contract market or registered futures association in carrying out its self-regulatory responsibilities under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, and regulations, rules or orders issued pursuant thereto, and such records may also be referred to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to

assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, and regulations, rules or orders issued pursuant thereto.

4. The information may be given or shown to anyone during the course of an OIG investigation if the staff has reason to believe that disclosure to the person will further the investigation. Information may also be disclosed to Federal, foreign, state or local authorities in order to obtain information or records relevant to an OIG investigation.

5. The information may be given to independent auditors or other private firms with which the OIG has contracted to carry out an independent audit, or to collate, aggregate or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

6. The information may be disclosed to a Federal, foreign, state or local government agency where records in either system of records pertain to an applicant for employment, or to a current employer of that agency where the records are relevant and necessary to an agency decision concerning the hiring or retention of an employee or disciplinary or other administrative action concerning an employee.

7. The information may be disclosed to a Federal, foreign, state, or local government agency in response to its request in connection with the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

8. The information may be disclosed to the Department of Justice or other counsel to the Commission for legal advice or to pursue claims and to government counsel when the defendant in litigation is (a) any component of the Commission or any member or employee of the Commission in his or her official capacity, or (b) the United States or any agency thereof. The Office of the Inspector General may also disclose information to counsel for any Commission member or employee in litigation or in anticipation of litigation in his or her individual capacity where the Commission or the Department of Justice agrees to represent such employee or authorizes representation by another.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer diskettes and computer files.

RETRIEVABILITY:

Investigative files are retrieved by the subject matter of the investigation or by case file number. An index provides a cross-reference on individuals investigated.

SAFEGUARDS:

The records are kept in limited access areas during duty hours and in file cabinets in locked offices at all other times. These records are available only to those persons whose official duties require such access. Computer files are available only to authorized personnel.

RETENTION AND DISPOSAL:

The Office of the Inspector General Investigative Files and the index to the files are destroyed twenty years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of the Inspector General, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the systems of records, or contesting the content of records about themselves, should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individuals and of the Commission; records of other entities; Federal, foreign, state or local bodies and law enforcement agencies; documents, correspondence relating to litigation, and transcripts of testimony; and miscellaneous other sources.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Under 5 U.S.C. 552a(j)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsections (b), (c)(1), and (2),

(e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent the system of records pertains to the enforcement of criminal laws. Under 5 U.S.C. 552(k)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) to the extent the system of records consists of investigatory material compiled for law enforcement purposes. These exemptions are contained at 17 CFR 146.13.

CFTC-33

SYSTEM NAME:

Electronic Key Card Usage.

SYSTEM LOCATION:

Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, and Chicago Regional Office, 300 Riverside Plaza, Suite 1600 North, Chicago, IL 60606.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized key cardholders in headquarters and the Chicago Regional Office, including CFTC employees, on site contractors, visitors, or representatives of landlords.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer printouts showing name of assigned user, key card number, access level, and status. In headquarters, on request to the landlord, the landlord provides usage information on time and location of key card use by key card user. In Chicago, this information is maintained by the Office of Administrative Services and is accessed only in the event of a building security problem.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 2(a)(2)(A)(b) and 12(b)(3), Commodity Exchange Act, 7 U.S.C. 4a(e) and 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Commission's "General Statement of Routine Uses," Nos. 1, 2, 6 and 7. In addition, information contained in this system may be disclosed by the Commission (1) to any person in connection with architectural, security or other surveys concerning use of office space and (2) to employees and contractors for the purpose of maintenance or service of data processing systems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer diskettes and computer files.

RETRIEVABILITY:

By name of the subject, by assigned key card number, by time period and by entry point.

SAFEGUARDS:

In the headquarters office, information may be requested from the Commission's landlords' databases only by the Director of the Office of Administrative Services, or his/her designee, and the Commission maintains all key card usage records in limited access areas at all times. In Chicago, key card information is maintained in a locked area, with access restricted to staff members of the Office of Administrative Services.

RETENTION AND DISPOSAL:

In accordance with the general record schedules and the Commission's record management handbook the records in the system are considered temporary. Paper records are destroyed when no longer required or after two years, whichever is shorter. Computer diskettes are destroyed when no longer required or after three years, whichever is shorter.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. The system of records and the notification, access and challenge procedures apply only to records of key card usage in the Commission's actual possession. None of these applies to any information solely in a landlord's possession.

RECORD SOURCE CATEGORIES:

The Commission's landlord in headquarters and the Chicago Regional Office provide information on name of assigned user, key card number, access

level, and status is provided by the landlord to the Commission on a weekly basis. The landlords provide information on usage on request.

CFTC-34

SYSTEM NAME:

Telephone System.

SYSTEM LOCATION:

Monthly billing records for long-distance calls and calling card calls are located in the Office of Information Resources Management (OIRM), Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. OIRM in DC and the administrative staff in each regional office keep the most current record of the phone numbers assigned to individual employees and contractors. OIRM keeps records of calling card numbers assigned to all individual employees of the Commission.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally Commission employees and on site contractor personnel) who make telephone calls from Commission telephones or use government issued calling cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of Commission telephones or calling cards to place calls; records indicating assignment of telephone or calling card numbers to employees; and records relating to long-distance telephone call detail information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 41 CFR part 101-35.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Commission's "General Statement of Routine Uses," Nos. 1 and 2. In addition, records and data may be disclosed as necessary (1) to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906; (2) to a telecommunications company or consultant providing telecommunications support to permit servicing the account.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer printouts and CDs.

RETRIEVABILITY:

Records are retrievable by a Commission telephone or calling card number.

SAFEGUARDS:

In addition to general building security, records are maintained in limited access areas at all times.

RETENTION AND DISPOSAL:

In accordance with the general record schedules and the Commission's record management handbook, the records in the system are considered temporary and are destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Telecommunications Specialist, Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures," above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures," above.

RECORD SOURCE CATEGORIES:

Telephone and calling card assignment records; call detail listings received from local and long-distance service providers; results of administrative inquiries relating to assignment of responsibility for placement of specific long-distance calls.

CFTC-35**SYSTEM NAME:**

Interoffice and Internet Email.

SYSTEM LOCATION:

Mail servers in each system location (Washington, DC, Chicago, New York, and Los Angeles) retain records. Records are backed up nightly onto magnetic tape in all locations. In Washington, DC, the most recent two weeks of tapes are kept in locked boxes on site and tapes with information covering the prior two weeks are kept at an off-site storage facility. Tapes with

information covering the most recent four-week period are kept on site, in secured areas, in the Chicago, New York and Los Angeles offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on site contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the use of the interoffice and Internet email system, including the mailbox name, number of objects in the mailbox, and aggregate size of the mailbox.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USER AND THE PURPOSES OF SUCH USES:

CFTC network administrators who have a need for the records in the performance of their duties use the records. See also the Commission's "General Statement of Routine Uses," Nos. 1, and 2. In addition, the records and data, other than the content of individual mailboxes, may also be disclosed to contractors as necessary for assessment, modification, or maintenance of the email system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored on the mail servers in each CFTC location. Servers are backed up nightly to magnetic tape. In Washington, DC, the most recent two weeks of magnetic tape are kept in a locked box in the Computer Room and the prior two weeks are kept at an off-site storage facility. The entire four weeks of magnetic tape information is kept in unlocked boxes in a secured area in the Commission's offices in Chicago, New York and Los Angeles.

RETRIEVABILITY:

The information can be retrieved by assigned interoffice or Internet mail address.

SAFEGUARDS:

Network administrators have access to the email information. This access is generally limited to the "header" information described under "Categories of Records." In addition, the mailbox owner can grant access to objects in the mailbox to others. The tapes are kept in locked storage boxes in Washington, DC, and only network administrators and OIRM management

have keys to the locked boxes. In the Chicago, New York and Los Angeles offices, tapes are kept in a secured area. Only designated OIRM personnel have access to these secured areas.

RETENTION AND DISPOSAL:

Records on magnetic tape are retained for four weeks, and then destroyed as the tape is written over with new information. Records are retained on the mail servers until the sender and receiver delete the information from the email system. Internet email information that is received by the postmaster due to an error in delivery is considered temporary and is destroyed after the problem is corrected. When an employee leaves the Commission, the employee's mailbox is deleted unless the employee or the employee's administrative officer requests that the mailbox be retained in order to recover work-related information.

SYSTEM MANAGER(S) AND ADDRESS:

Network Manager, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Internet email, interoffice email.

CFTC-36**SYSTEM NAME:**

Internet Security Gateway (Firewall) System.

SYSTEM LOCATION:

Firewall software, located on a PC in the Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette Centre, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Information on use of each personal computer is stored on that computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on site contractors who are users of the Internet.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the websites and news groups visited, as identified by the Internet protocol address assigned to each computer, as well as information on the date and time of the website or news group access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by CFTC network administrators for maintenance of the firewall system that protects the CFTC from unauthorized access to its data. The network administrators may also use the information to evaluate the level of use of the agency's Internet browsing capability. See also the Commission's "General Statement of Routine Uses," Nos. 1, and 2. Records may also be disclosed as necessary to the agency's Internet service provider or agency contractor to the extent that the information is necessary for maintenance of the agency's Internet access.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are kept on the software maintained on the firewall gateway server in the headquarters computer room. In addition, a record of the Internet browsing done on each computer is maintained on that PC. The length of time of storage on the firewall gateway server is governed by available disk space on the server. At current levels of browsing usage, the information is stored on the server firewall for six months. Information on websites visited by each PC is also stored in the PC's history file or cache directory. The information is stored on the individual PC until the cache directory consumes 1% of total disk space. Oldest items are then removed until the directory is equal to or less than 1% of the total disk space. History file records are maintained until 100 URLs are entered. (URL stands for "Uniform Resource Locator" and is the address of the site visited, for example, <http://www.cftc.gov>.) The oldest URLs are deleted until the total URL count is equal to or less than 100 entries.

RETRIEVABILITY:

The information can be retrieved by Internet protocol address. The network administrators have access to information about the office location and individuals assigned to each computer, as identified by Internet protocol address.

SAFEGUARDS:

Network administrators, through use of a password protection, have access to the Internet web browsing system information that is stored on the firewall gateway server in the headquarters computer room. Access to the computer room is limited to OIRM employees. The Director of OIRM may grant the Commission's Internet service provider access to the Internet web browsing system information for maintenance purposes. However, the provider would not have access to the information that links Internet protocol addresses to particular computers, locations and individuals.

RETENTION AND DISPOSAL:

Records are retained on the Commission's firewall software for approximately six months, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Network Manager, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Internet, website and news group browsing, website access.

CFTC-37**SYSTEM NAME:**

Lexis/Westlaw Billing Information System

SYSTEM LOCATION:

Office of Information Resources Management, Commodity Futures

Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CFTC employees and on site contractors who are users of the Lexis/Westlaw research system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on the name, search subject, database searched, date, elapsed time, type of charge, and total charge for a search in the Lexis/Westlaw automated research system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and section 12(b)(3) of the Commodity Exchange Act, 7 U.S.C. 16(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used primarily by the Administrative Officer, OIRM, to monitor expenditures and to ensure the availability of funds. Copies of the usage information for staff in a particular division are distributed monthly to the division's administrative officer for review. See the Commission's "General Statement of Routine Uses," Nos. 1 and 2. Lexis/Westlaw can also access the information and uses it for statistical analysis and billing purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

The Administrative Officer, OIRM, maintains billing information in a locked file drawer.

RETRIEVABILITY:

By division, by month of use, by database accessed, by user name and user identification number. Retrieval is done manually.

SAFEGUARDS:

Billing information is kept in a locked file cabinet. Information is provided only to the OIRM Administrative Officer or other CFTC staff who have a need to know for budgeting or billing reconciliation purposes.

RETENTION AND DISPOSAL:

Hard copies of monthly billing statements are retained for two years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Office of Information Resources Management, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Lexis/Westlaw billing information.

CFTC-38**SYSTEM NAME:**

Automated Library Circulation System

SYSTEM LOCATION:

Library, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual CFTC employees who check out books and periodicals from the CFTC Library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records showing the bar code assigned to employees who use the library, title, due date, and hold information on library materials checked-out by individual CFTC employees; records of overdue materials and of employee notification of overdue materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 41 CFR Part 101-27.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Library staff uses the information to track the location of library materials, to provide users on request with a list of materials currently shown as in their possession, and to issue, as necessary, overdue notices for materials. Employees also have the ability to look up their own records to ascertain what materials are in their possession and the date they are due back to the Library. See the Commission's "General Statement of Routine Uses," Nos. 1 and 2. The records may also be disclosed as necessary to agency contractors in

connection with assessment, modification or maintenance of the automated circulation system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Records are stored on the CFTC local area network file server. Records on the identifying bar codes assigned to individuals are stored in the file server and on Rolodex cards.

RETRIEVABILITY:

Records are retrievable by employee name or by the employee's bar code number or by employee's office telephone number.

SAFEGUARDS:

Employees may access their own records. Only authorized CFTC staff members, who are principally staff of the Library or the Office of Information Resources Management, may access records of all employees. Staff members must use an individual password to gain access to the information stored in the computer.

RETENTION AND DISPOSAL:

Records in the system are considered temporary. The records of library transactions are destroyed when an item on loan is returned or reimbursement is made for replacement of the item.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Librarian, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records, or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Library user bar code identifiers; library materials use; overdue notices.

CFTC-39**SYSTEM NAME:**

Freedom of Information Act Requests.

SYSTEM LOCATION:

FOI, Privacy and Sunshine Acts Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Other offices involved in the processing of requests may also maintain copies of the requests and any related internal administrative records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting information from the Commission pursuant to provisions of the Freedom of Information Act, 5 U.S.C. 552, and persons who are the subjects of Freedom of Information Act requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, internal memoranda, response letters, appeals of denials, appeal determinations and electronic tracking data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by Commission staff to process FOIA requests and appeals and to prepare an annual report to the Department of Justice on the Commission's FOIA activity. See also the Commission's "General Statement of Routine Uses," Nos. 1 and 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, computer memory, computer printouts, and microfiche.

RETRIEVABILITY:

By assigned control number, by name of requester, or by subject of request.

SAFEGUARDS:

Paper records and microfiche are maintained in lockable file cabinets on secured premises. Information stored on computers is protected by a password, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

FOIA requests are retained in accordance with General Records Schedule 14 of the National Archives and Records Administration.

SYSTEM MANAGERS AND ADDRESS:

Assistant Secretary to the Commission for FOIA Matters, Office of the Secretariat, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Persons requesting information from the Commission pursuant to the Freedom of Information Act and employees processing the requests.

CFTC-40

SYSTEM NAME:

Privacy Act Requests.

SYSTEM LOCATION:

FOI, Privacy and Sunshine Acts Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies of the requests and any related internal administrative records may also be maintained by other offices involved in the processing of requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons filing requests for access to, correction of, or an accounting of disclosures of personal information contained in system of records maintained by the Commission, pursuant to the Privacy Act of 1974. 5 U.S.C. 552a.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests, internal memoranda, response letters, appeals of denials, appeal determinations and electronic tracking data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by Commission staff to process Privacy Act requests and appeals and to prepare the Commission's Biennial Privacy Act report to Congress. See also the Commission's "General Statement of Routine Uses," Nos. 1 and 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, and microfiche.

RETRIEVABILITY:

By assigned control number or by name of requester.

SAFEGUARDS:

Paper records and microfiche are maintained in lockable file cabinets on secured premises. Information stored on computers is protected by a password, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Privacy Act requests are retained in accordance with General Records Schedule 14 of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary to the Commission for FOIA Matters, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Persons requesting information from the Commission pursuant to the Privacy Act and employees processing the requests.

CFTC-41

SYSTEM NAME:

Requests for Confidential Treatment.

SYSTEM LOCATION:

FOI, Privacy and Sunshine Acts Compliance Office, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. A copy of the request may also be kept by the office receiving the document for which confidential treatment is being requested.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons requesting confidential treatment of, and persons who are the subjects of, documents filed with the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for confidential treatment, the documents for which confidential treatment is requested and electronic tracking data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records are used by Commission staff to determine whether to grant or deny confidential treatment of information submitted to the Commission for which a FOIA request has been received and to process appeals of determinations denying confidential treatment for submitted information. See also the Commission's "General Statement of Routine Uses," Nos. 1 and 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer memory, computer printouts, and microfiche.

RETRIEVABILITY:

By name of requester or by subject of request.

SAFEGUARDS:

Paper records are maintained in lockable file cabinets on secured premises. Information stored on computers is protected by a password, with access limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained for 20 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary to the Commission for FOIA Matters, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves

contained in this system of records should address written inquiry to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

RECORD SOURCE CATEGORIES:

Persons submitting documents to the Commission.

CFTC-42**SYSTEM NAME:**

Debt Collection Files.

SYSTEM LOCATION:

Division of Trading and Markets, Three Lafayette Centre, 1155 21st St. NW., Washington, DC 20581.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe a civil monetary penalty to the Commodity Futures Trading Commission or who have not complied with an order of restitution or disgorgement resulting from an administrative or injunctive enforcement action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Debt collection letters and correspondence to and from the debtor and others related to the debt. The files will generally contain information including the name and address of the debtor, the taxpayer's identification number (which may be the social security number); records of each collection made; and notice(s) to the debtor demanding payment and describing the consequences of non-payment. The files may also contain credit reports; reports of asset searches; copies of income tax returns; financial statements reflecting the net worth of the debtor; if applicable, date by which the debt must be referred to the Department of the Treasury or Department of Justice for further collection action; documentation of judgments or liens; and citation or basis on which the debt was terminated or compromised.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3701, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

In addition to the Commission's "General Statement of Routine Uses," the records regarding the debt and the actions taken to collect the monies may be forwarded to the Department of the Treasury or the Department of Justice for further collection action. Once the records are forwarded to the Department of the Treasury, they are covered by the Treasury/Financial Management

Services System 014, Debt Collection Operations. If the records are forwarded to the Department of Justice, they are covered by the Department's system JMD-006, Debt Collection Management System. Information about the delinquent debt may be disclosed to consumer or commercial reporting agencies as required by 31 U.S.C. 3711(e) and 4 CFR part 102. Reporting may be done directly by the Commission or through the Department of the Treasury upon referral of the delinquent debt for further collection action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records stored in files; computer database.

RETRIEVABILITY:

Records are retrievable by CFTC docket number and by the name of the debtor.

SAFEGUARDS:

In addition to general building security, paper records are maintained in areas accessible only to authorized personnel. Computer security measures limit access to electronic data.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 6.

SYSTEM MANAGER(S) AND ADDRESS:

Division of Trading and Markets, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the system of records or contesting the content of records about themselves should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See "Notification Procedures," above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures," above.

RECORD SOURCE CATEGORIES:

Commission orders, judicial orders, debtors, credit reports from commercial credit bureaus, asset search databases, Department of the Treasury, Department of Justice.

Issued in Washington, DC, on July 31, 2001 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01-19765 Filed 8-8-01; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Proposed Collection; Comment Request**

AGENCY: Washington Headquarters Services, Real Estate and Facilities, Defense Protective Services.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Washington Headquarters Services announces the proposed extension of a 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 forms of information technology.

DATES: Consideration will be given to all comments received by October 9, 2001.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of Defense, Washington Headquarters Services, Real Estate and Facilities Directorate, Defense Protective Services, ATTN: Mr. Barry Jones, Room 2E1084, 1155 Defense Pentagon, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call the Building Pass Office at (703) 697-3682.

Title, Form, and OMB Number: DoD Building Pass Application; DD Form 2249; 0704-0328.

Needs and Uses: The information is used by officials of Security Services, Defense Protective Services, Washington Headquarters Services to maintain a listing of personnel who are authorized a DoD Building Pass.

Affected Public: Individuals or households; business or other for-profit.
Annual Burden Hours: 10,200.
Number of Respondents: 102,000.
Responses Per Respondent: 1.
Average Burden Per Response: 6 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This requirement provides for the collection of information from applicants for Department of Defense (DoD) Building Passes. The information collected from the DD Form 2249, "DoD Building Pass Application," is used to verify the need for and to issue a DoD Building Pass to DoD personnel, other authorized U.S. Government personnel, and DoD consultants and experts who regularly work in or require frequent and continuing access to DoD owned or occupied buildings in the National Capital Region.

Dated: August 2, 2001.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01-19966 Filed 8-8-01; 8:45 am]

BILLING CODE 5001-08-M

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency.

ACTION: Notice of membership of the Defense Information Systems Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: July 1, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Administration Directorate, Defense Information Systems Agency (703) 607-4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DISA SES Performance Review Board. They will serve a one-year renewable term, effective 24 May 1999.

Ms. Diann L. McCoy, Deputy Director for Information Engineering.

James David Bryan, Major General, USA, Vice Director, DISA.

Mr. John Penkoske, Deputy Director for Manpower, Personnel and Security.

Mr. Robert Hutten, Deputy Director for Strategic Plans and Policy, DISA.

Sue A. Engelhardt,

Chief, Civilian Personnel Division.

[FR Doc. 01-19938 Filed 8-8-01; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01-415-000]

East Tennessee Natural Gas Company; Notice of Certificate Application

August 3, 2001.

Take notice that on July 26, 2001, East Tennessee Natural Gas Company (East Tennessee), 5400 Westheimer Court, Houston, Texas 77056-5310, filed an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, as amended, and the Federal Energy Regulatory Commission's (the Commission) Rules and Regulations thereunder. East Tennessee requests authorization to construct, install, own, operate and maintain certain facilities (Patriot Project) to provide up to 510,000 dekatherms per day (Dth/d) of firm natural gas transportation service, all as more fully set forth in the application, which is on file with the Commission, and open for public inspection. This filing may 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). Following its open season, East Tennessee contracted for firm transportation service with seven shippers (Patriot Shippers): NUI Energy Brokers, Inc.; Carolina Power & Light Company; Public Service Company of North Carolina, Inc.; United Cities Gas Company; Henry County Power, LLC; Duke Energy Wythe, LLC; and, Duke Energy Murray, LLC.

The facilities will consist of: (i) a *Mainline Expansion*, which involves improvements along East Tennessee's

existing pipeline in Tennessee and Virginia, including (a) approximately 84.98 miles of pipeline loops (in Franklin, Grundy, Hamilton, Knox, Sequatchie and Sullivan Counties, Tennessee and Smyth, Washington, and Wythe Counties, Virginia), (b) approximately 24.67 miles of new 24-inch diameter pipeline to replace existing smaller diameter pipeline (in Smyth, Washington and Wythe Counties, Virginia), (c) hydrostatic testing of approximately 77.34 miles of existing pipeline to increase the maximum allowable operating pressure of the pipeline, (d) five new compressor stations (in Fentress, Greene, Hamilton, Jackson, and Jefferson Counties, Tennessee) and changes at six existing compressor stations (in Washington and Wythe Counties, Virginia and Morgan, Sevier and Sullivan Counties, Tennessee), and (e) associated mainline valves, piping, and appurtenant pipeline facilities; and (ii) an *Extension*, which includes (a) approximately 93.56 miles of new 24-inch diameter pipeline extending (through Wythe, Carroll, Patrick, Floyd, and Henry Counties, Virginia) from the East Tennessee mainline in Virginia to a new terminus at an interconnection to Transcontinental Pipeline Corporation's mainline in Rockingham County, North Carolina, (b) approximately 7.04 miles of new 16-inch diameter pipeline extending from the new pipeline extension (through Pittsylvania County, Virginia) to a power plant under development by Henry County Power, LLC, in Henry County, Virginia, (c) three new meter stations, and (d) associated valves and appurtenant pipeline facilities.

East Tennessee requests that the Commission issue a preliminary determination by November 15, 2001 and a final certificate by March 27, 2002 to enable East Tennessee to meet the first of its Patriot Shippers' in-service dates of May 1, 2003. The cost of the facilities is estimated to be approximately \$289 million. Firm transportation service of up to 510,000 Dth/d will be rendered to the Patriot Shippers pursuant to East Tennessee's Rate Schedule FT-A. The Patriot Shippers will pay incremental rates to compensate East Tennessee for the costs of the Patriot Project facilities.

Questions regarding this filing should be directed to Steven E. Tillman, Director of Regulatory Affairs, East Tennessee Natural Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, call 713-627-5113, fax 713-627-5947.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to

obtain legal status by becoming a party to the proceedings for this project should, on or before August 24, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

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. 01-19983 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01-361-000]

Northwest Pipeline Corporation; Notice of Site Visit

August 3, 2001.

On August 13 through August 17, 2001, the Office of Energy Projects staff and representatives of Northwest Pipeline Corporation, will conduct a site visit of the proposed facilities of the

Grays Harbor Pipeline Project 2001 in Thurston and Grays Harbor Counties, Washington.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact the Office of External Affairs at (202) 208-1088.

David P. Boergers,
Secretary.

[FR Doc. 01-19982 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01-419-000 and CP01-421-000]

Portland General Electric Company; Notice of Application

August 3, 2001.

Take notice that on July 27, 2001, Portland General Electric Company (Portland General), 121 S.W. Salmon Street, 1 WTC-1301, Portland, Oregon 97204, filed in Docket No. CP01-419-000, an application pursuant to Section 7, Part 157, Subpart F, of the Natural Gas Act (NGA) for issuance of a Blanket Certificate of Public Convenience and Necessity, and in Docket No. CP01-421-000, an application pursuant to Section 7, Part 284, Subpart G of the NGA for issuance of a Blanket Certificate of Public Convenience and Necessity, a Request for Waiver and Extension of Time, and approval of initial rates for firm and interruptible transportation services to be rendered by Portland General and *pro forma* tariff provisions, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for 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 (call (202) 208-2222 for assistance).

Portland General requests the issuance of a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations to permit the construction, acquisition, and abandonment of facilities and for approval of other routine activities permitted by that subpart and the issuance of a blanket certificate pursuant to Subpart G of Part 284 of the Commission's Regulations authorizing

the transportation of natural gas for others.

Portland General requests a waiver of the Commission's electronic data interchange (EDI) and electronic delivery mechanism (EDM) unless and until a customer requests that Portland General implement such standards. Portland General indicates that their pipeline is small and the costs of implementing EDI/EDM are comparatively high. Portland General states that even after the acceptance of the requested blanket open-access certificate, they are likely to serve few, if any, shippers prior to any expansion of its facilities.

Portland General further requests an extension of time by which to comply with the Commission's Electronic Bulletin Board (EBB) requirements until the later of: (a) such time as Portland General has contracted with a shipper to provide service; or (b) one year from the date Portland General's tariff becomes effective. Portland General has previously indicated that it has a limited amount of capacity available in the short term and is likely to serve few, if any, shippers prior to any expansion of its facilities.

Portland General also requests that the Commission grant any additional waivers that it may deem necessary to issue the certificates.

On October 24, 1991, the Commission issued a certificate authorizing Portland General and KB Pipeline Company to construct and operate the Kelso-Beaver Pipeline, 17 miles of 20-inch diameter pipeline, with a capacity of 193 Mmcf per day, in Docket No. CP91-1607-000. Portland General states that it will offer both firm and interruptible services on an open-access, not unduly discriminatory basis pursuant to Part 284 of the Commission's Regulations, with services available at both recourse and negotiated rates. Portland General states that its FT-1 recourse rate is cost-based, designed using a postage stamp, straight-fixed variable rate structure. Portland General indicates that its maximum recourse rate, expressed on a 100 percent load factor basis, is \$0.047. Portland General declares that it will offer shippers interruptible transportation service under Rate Schedule IT-1 when and to the extent that Portland General determines that sufficient capacity is available. Portland General states that its proposed maximum IT-1 rate is the 100 percent load factor equivalent of the maximum FT-1 recourse rate. Portland General indicates that its Rate Schedules FT-1 and IT-1 include overrun and underrun charges. Portland General states that it will charge the Annual Charge

Adjustment surcharge as set forth in the tariff.

Portland General states that one aspect of the certificate application and the *pro forma* tariff is out of the ordinary. Portland General declares that it currently does not provide transportation service for any other party over the Kelso-Beaver Pipeline, including affiliates of Portland General. Instead, Portland general states that it consumes 100 percent of the gas that it transports for itself in the Beaver generating station and, starting this summer, in its new 24.9 MW generation facility. As a consequence, Portland General indicates that it does not have any transportation contracts for the use of the Kelso-Beaver Pipeline.

Portland General proposes to adopt a system similar to that used by the Commission under Order No. 888 (FERC Statutes and Regulations ¶ 31,036) for open-access transmission by electric utilities. Portland General indicates that under Order No. 888, transmission owners serving their own bundled retail load and bundled wholesale requirements customers (collectively, these loads are referred to as native load) do not have to take transmission service under their open-access tariffs. Portland General indicates that instead, they are permitted to reserve capacity on their system to serve their native load, and also are permitted to reserve additional capacity to serve load growth.

Portland General proposes that it similarly be permitted to reserve capacity on the Kelso-Beaver Pipeline for transportation of gas used for Portland General's own consumption. Portland General states that Section 22.1(a) of the General Terms and Conditions has been added to the tariff to implement this proposal. Portland General indicates that under Section 22.1(a), the amount of capacity that Portland General is reserving for its own use must be listed on the Index of Customers and will be posted on its webpage.

Portland General states that it is reserving 122.5 Mmcf per day of capacity to serve the Beaver Station and the 24.9 MW generating facility that will be placed in service this summer, leaving 31.5 Mmcf per day of capacity that is available in the short term. However, Portland General indicates that it has plans to use that 31.5 Mmcf per day in the future, and therefore is reserving that capacity for itself, starting in 2003. Portland General states that this capacity will be used in connection with their future uses, including the Port Westward project. In addition, Portland General declares that it has

received a request for transportation from Summit Power NW LLC (Summit), which has requested 85 Mmcf per day of capacity. Portland General states that it has reached an agreement in principle with Summit to propose an expansion of the Kelso-Beaver Pipeline to the pipeline co-owners that would permit Portland General to grant Summit's request for service. Portland General declares that any expansion would be performed pursuant to an open season.

Any questions regarding this amendment should be directed to Michele Farrell, FERC Project Manager, Portland General Electric Company, 121 S.W. Salmon Street, 1 WTC-1301, Portland, Oregon 97204, at (503) 464-7371.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 24, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be

placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commenters will not be required to serve copies of filed documents on all other parties.

However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01-19985 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01-416-000]

Sierra Production Company; Notice of Application

August 3, 2001.

Take notice that on July 27, 2001, Sierra Production Company, (Sierra), P.O. Box 716, Shelby, Montana 59474, filed an application seeking Section 3 authorization and a Presidential Permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to site, construct, operate and maintain facilities at the International Boundary between the United States and Canada for the importation of 5,000 Mcf per day of natural gas into Montana from Alberta, Canada, all as more fully set forth in the application 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 #" and follow the instructions (call (202) 208-2222 for assistance).

Specifically, Sierra proposes to construct a meter station and small 6-inch gathering pipeline extending from a gathering system and processing facility owned by MCW Transmission, LP, located in the Sweetgrass Hills Area of North Central Toole County, Montana, for a distance of approximately 1,786 feet north to the United States/Canada border. From the International Boundary, the pipeline will extend northeasterly for a distance of 6,379 feet to a gas well owned by Sierra and located in extreme Southern Alberta.

Sierra states that the proposed construction will allow unprocessed gas from the Alberta Province well to be imported into the existing U.S. gathering/processing system, thereby providing much needed natural gas in Montana, adding to Canadian resource development, and benefitting the public and businesses in the area.

Any questions regarding the application should be directed to Sam Baldridge, Petroleum Land Man, Sierra Production Company, P. O. Box 716, Shelby, Montana, 59474, at (406) 261-4464.

There are two to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 24, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest

in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Interventions, 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.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01-19984 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF01-3041-000, et al.]

Southeastern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

August 2, 2001.

Take notice that the following filings have been made with the Commission:

1. Southeastern Power Administration

[Docket No. EF01-3041-000]

Take notice that on July 30, 2001, the Deputy Secretary of the Department of Energy confirmed and approved Rate Schedules VA-1, VA-2, VA-3, VA-4, CP&L-1, CP&L-2, CP&L-3, CP&L-4, AP-1, AP-2, AP-3, AP-4, and NC-1 for power from Southeastern Power Administration's (Southeastern) Kerr-Philpott System. The approval extends through September 30, 2006.

The Deputy Secretary states that the Commission, by order issued February 13, 1997, in Docket No. EF96-3041-000, confirmed and approved Rate Schedules KP-1-D, JHK-2-B, JHK-3-B, and PH-1-B.

Southeastern proposes in the instant filing to replace these rate schedules.

Comment date: August 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Rock River I, LLC

[Docket No. EG01-271-000]

Take notice that on July 30, 2001, Rock River I, LLC (Rock River), whose sole member is SeaWest WindPower, Inc., located at 1455 Frazee Road, Ninth Floor, San Diego, California 92108, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Rock River will construct, own or lease and operate a wind-powered generating facility with a maximum planned output of 50 MW in Carbon County, Wyoming. The proposed wind power plant is expected to deliver test power to the grid no later than August 30, 2001 and to commence commercial operations by October 2001.

Comment date: August 23, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Western Systems Power Pool

[Docket No. ER91-195-047]

Take notice that on July 30, 2001, the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the

June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. New York Independent System Operator, Inc.

[Docket Nos. ER00-3591-008 and ER00-1969-009]

Take notice that on July 30, 2001, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff in order to include a description of the circumstances under which it would allocate charges associated with Bid Production Cost Guarantee payments to Long Island customers, pursuant to the Commission's order issued on June 29, 2001 in the above-captioned dockets.

The NYISO has requested an effective date of September 30, 2001 for the filing.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Indiana Gas & Electric Company

[Docket No. ER01-1938-001]

Take notice that on July 30, 2001, Southern Indiana Gas & Electric Company (SIGECO), tendered for filing revised transmission tariff sheets to its FERC Electric Tariff, Second Revised Volume No. 3 in compliance with the Commission's order issued on June 28, 2001, Southern Indiana Gas & Electric Co., 95 FERC ¶61,462 (2001).

The revisions in this filing will become effective on December 1, 2001.

Copies of the filing were served upon the public utility's jurisdictional customers and with the Indiana Utility Regulatory Commission.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket No. ER01-2045-000]

Take notice that on July 30, 2001, New York State Electric & Gas Corporation (NYSEG) submitted a compliance filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's letter order issued on July

13, 2001. NYSEG's compliance filing includes a revised Statement of Policy and Standards of Conduct, corresponding to its FERC Electric Tariff, Original Volume No. 3.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. NYSEG Solutions, Inc.

[Docket No. ER01-2046-001]

Take notice that on July 30, 2001, NYSEG Solutions, Inc. (NYSEG Solutions) submitted a compliance filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's letter order issued on July 13, 2001. NYSEG Solutions' compliance filing includes a revised Statement of Policy and Standards of Conduct, corresponding to its FERC Electric Tariff, Original Volume No. 2.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. South Glens Falls Energy, LLC

[Docket No. ER01-2047-001]

Take notice that on July 30, 2001, South Glens Falls Energy, LLC (South Glens Falls) submitted a compliance filing with the Commission pursuant to the Commission's letter order issued on July 13, 2001. South Glens Falls' compliance filing includes a revised Statement of Policy and Standards of Conduct, corresponding to its FERC Electric Tariff, Third Revised Volume No. 1.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Energetix, Inc.

[Docket No. ER01-2052-001]

Take notice that on July 30, 2001, Energetix, Inc. (Energetix) submitted a compliance filing with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's letter order issued on July 13, 2001. Energetix's compliance filing includes a Statement of Policy and Code of Conduct as required in the July 13 Order.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER01-2402-000]

Take notice that on July 30, 2001, Southern California Edison Company (SCE) filed with the Federal Energy Regulatory Commission (Commission) a

Notice of Cancellation, to be effective the 1st day of July 2001, for Service Agreement No. 35 under FERC Electric Tariff Original Volume No. 5.

The filing was served on those parties on the Service List in the above-referenced docket.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER01-2713-000]

Take notice that on July 30, 2001, Southwestern Public Service Company (Southwestern) tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Lea County Electric Cooperative, Inc. (Lea County) filed in Docket No ER97-3905-000.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Public Service Company

[Docket No. ER01-2714-000]

Take notice that on July 30, 2001, Southwestern Public Service Company (Southwestern) tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with New Corp Resources, Inc. (New Corp) filed in Docket No ER97-3903-000.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Southwestern Public Service Company

[Docket No. ER01-2715-000]

Take notice that on July 30, 2001, Southwestern Public Service Company (Southwestern) tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Roosevelt Electric Cooperative, Inc. (Roosevelt) filed in Docket No ER97-3902-000.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Public Service Company

[Docket No. ER01-2716-000]

Take notice that on July 30, 2001, Southwestern Public Service Company

(Southwestern) tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Farmers' Electric Cooperative, Inc. (Farmers) filed in Docket No ER97-3901-000.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Southwestern Public Service Company

[Docket No. ER01-2717-000]

Take notice that on July 30, 2001, Southwestern Public Service Company (Southwestern) tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Lyntegar Electric Cooperative, Inc. (Lyntegar) filed in Docket No ER97-3906-000.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. American Transmission Company LLC

[Docket No. ER01-2718-000]

Take notice that on July 30, 2001, American Transmission Company LLC (ATCLLC) tendered for filing an executed Generation-Transmission Interconnection Agreement between ATCLLC and Upper Peninsula Power Company.

ATCLLC requests an effective date of June 29, 2001.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Southwestern Public Service Company

[Docket No. ER01-2719-000]

Take notice that in July 30, 2001, Southwestern Public Service Company (Southwestern) tendered for filing its proposed non-fuel and non-purchased power operations and maintenance expense savings credit resulting from its merger with Public Service company of Colorado required in its agreement with Central Valley Electric Cooperative, Inc. (Central Valley) filed in Docket No ER97-3904-000.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas And Electric Company/Kentucky Utilities Company

[Docket No. ER01-2720-000]

Take notice that on July 30, 2001, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed Netting Agreement between the Companies and Wabash Valley Power Association, Inc.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Cinergy Services, Inc.

[Docket No. ER01-2721-000]

Take notice that on July 27, 2001, Cinergy Services, Inc. (Cinergy Services), on behalf of PSI Energy, Inc. and The Cincinnati Gas & Electric Company (the Operating Companies) tendered for filing amendments to the Operating Companies' Market-Based Power Sales Tariff—MB, FERC Electric Tariff Original Volume No. 7 (the Tariff) to become effective August 27, 2001.

Copies of this filing were served on wholesale customers under the Tariff and the public service commissions of Indiana, Ohio and Kentucky.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Progress Energy, Inc. on behalf of Carolina Power & Light Company

[Docket No. ER01-2722-000]

Take notice that on July 31, 2001, Carolina Power & Light Company (CP&L) tendered for filing Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Ameren Energy, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of CP&L.

CP&L is requesting an effective date of July 30, 2001 for the Service Agreements.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Progress Energy Inc. on behalf of Carolina Power & Light Company

[Docket No. ER01-2723-000]

Take notice that on July 30, 2001, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, Axia Energy, LP. Service to this eligible buyer

will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for sales of capacity and energy at market-based rates.

CP&L requests an effective date of July 27, 2001 for this Service Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 20, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Avista Corporation, Bonneville Power Administration, Idaho Power Company, Montana Power Company, Nevada Power Company, PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., Sierra Pacific Power Company

[Docket No. RT01-35-001]

Take notice that on July 25, 2001, the RTO West Filing Utilities filed a response pursuant to the Federal Energy Regulatory Commission's order issued on July 12, 2001, in the above-referenced proceeding.

Copies of said filing have been served on all parties to this proceeding.

Comment date: August 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of 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.

David P. Boergers,

Secretary.

[FR Doc. 01-20002 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Protests, and Motions To Intervene

August 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of Licenses.

b. *Project Nos:* 2255-050, 2291-065, and 2292-052.

c. *Date Filed:* July 17, 2001.

d. *Applicants:* Nekoosa Papers, Inc. (Nekoosa) and Domtar Wisconsin Dam Corp. (Domtar Wisconsin).

e. *Name and Location of Projects:* The Centralia Project No. 2255, the Port Edwards Project No. 2291, and the Nekoosa Project No. 2292 are located on the Wisconsin River in Wood County, Wisconsin. These projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant Contacts:* For Nekoosa: Mr. Matthew D. Manahan, Pierce Atwood, One Monument Square, Portland, ME 04101, (207) 791-1189. For Domtar Wisconsin: Mr. Sean Mahoney, Verrill & Dana, LLP, One Portland Square, P.O. Box 586, Portland, ME 04112, (207) 774-4000.

h. *FERC Contact:* James Hunter, (202) 219-2839.

i. *Deadline for filing comments and or motions:* September 7, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Comments, 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. Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* The Applicants propose a transfer of the licenses for the Centralia, Port Edwards, and Nekoosa hydroelectric projects from Nekoosa to Domtar Wisconsin. The

transfer is sought in connection with Domtar Wisconsin's intended acquisition of the project resources from Nekoosa. The Applicants state that the personnel who currently manage and operate the projects for Nekoosa will continue to do so for Domtar Wisconsin.

k. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Secretary.

[FR Doc. 01-19986 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

August 3, 2001.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Non-Project Use of Project Lands and Waters.
- b. *Project No:* 2503-061.
- c. *Date Filed:* July 9, 2001.
- d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* On Lake Keowee at the Crooked Creek RV Park, in Wagener Township, Oconee County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201-1006. Phone: (704) 382-5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219-3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and motions:* September 14, 2001.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, 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.

Please include the project number (2503-061) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to the Crooked Creek RV Park, Inc., four parcels of project land totaling 2.22 acres for the construction of 60 boat slips, a boat access ramp with a courtesy dock, a gasoline dock, and a swimming

area. The boat slips would provide access to the reservoir for residents of and visitors to the Crooked Creek RV Park. Approximately 1,100 feet of shoreline will be stabilized with erosion control cloth and granite rock. No dredging is proposed.

l. *Locations of the Application:* 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).

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to

have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Secretary.

[FR Doc. 01-19987 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Protests, and Motions To Intervene

August 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Transfer of Licenses.
- b. *Project Nos:* 2492-005, 2618-013, and 2660-013.
- c. *Date Filed:* July 17, 2001.

d. *Applicants:* Georgia-Pacific Corporation (Georgia-Pacific) and Domtar Maine Corp. (Domtar Maine).

e. *Name and Location of Projects:* The Vanceboro Project No. 2492 and the Forest City Project No. 2660 are located on the East Branch of the St. Croix River in Washington and Aroostook Counties, Maine. The West Branch Project No. 2618 is located on the West Branch of the St. Croix River in Washington, Hancock, and Penobscot Counties, Maine. These projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contacts:* For Georgia-Pacific: Mr. Matthew D. Manahan, Pierce Atwood, One Monument Square, Portland, ME 04101, (207) 791-1189. For Domtar Maine: Mr. Sean Mahoney, Verrill & Dana, LLP, One Portland Square, P.O. Box 586, Portland, ME 04112, (207) 774-4000.

h. *FERC Contact:* James Hunter, (202) 219-2839.

i. *Deadline for filing comments and or motions:* September 7, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Comments, 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. Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* The Applicants propose a transfer of the licenses for the Vanceboro, West Branch, and Forest City water storage projects from Georgia-Pacific to Domtar Maine. The transfer is sought in connection with Domtar Maine's intended acquisition of the project resources from Georgia-Pacific. The Applicants state that the personnel who currently manage and operate the projects for Georgia-Pacific will continue to do so for Domtar Maine.

The licenses for the West Branch and Forest City projects expired September 30, and August 31, 2000, respectively, however, notices authorizing continued operation were issued for both projects. The transfer application was filed within five years of the expiration of the licenses for these two projects. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preambles 1986-1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

k. *Locations of the application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket #" and follow the instructions ((202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

"COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01-19988 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12063-000.

c. *Date filed:* July 2, 2001.

d. *Applicant:* Bill Arkoosh.

e. *Name of Project:* Littlewood River Ranch II.

f. *Location:* On the Little Wood River in Lincoln County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)-825(r).

h. *Applicant Contacts:* Ted Sorenson, Sorenson Engineering, 5203 South 11th East, Idaho Falls, ID 83404, (208) 528-8069 or Nick Josten, at same address (208) 528-6152.

i. *FERC Contact:* Elizabeth Jones (202) 208-0246.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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.

Please include the Project Number (12063-000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would not alter the current release or flow patterns through the Little Wood River. The project would consist of: (1) A proposed one-half mile open flume feeder canal to feed a 40 foot drop, (2) two generating units with a total installed capacity of 1.1 MW, (3) approximately two miles of new 12.5 kV transmission lines to connect to the existing grid, and (4) appurtenant facilities.

The project would have an estimated annual generation of 5.2 GWH.

l. Copies of this filing are on file with the Commission and are available for public inspection. 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).

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the

particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The

Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 01-19989 Filed 8-8-01; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, Motions to Intervene, Recommendations, and Terms and Conditions

August 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Conduit Exemption.
- b. *Project No.:* 12086-000.
- c. *Date filed:* July 13, 2001.
- d. *Applicant:* Trinity Meadows, L.P.
- e. *Name of Project:* Hillcrest Hydro Project.
- f. *Location:* On an existing conduit described as the "Carney Ditch" or "Aqueduct" used for agricultural and domestic purposes on a 200-acre apple ranch. The source of water for the conduit is Hatchet Creek in Shasta County, California near the town of Montgomery Creek. The project would not occupy federal or tribal lands.
- g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)-825(r).
- h. *Applicant Contact:* Mr. J. Ross Carter, 1314 Oregon Street, Redding, CA 96001, (530) 246-0111.
- i. *FERC Contact:* Tom Papsidero, (202) 219-2715.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. *Deadline for filing comments, protests and motions to intervene:* (September 9, 2001).

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. 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. Please include the project number (P-12086-000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The project would consist of a turbine and a 105-kilowatt generator connected to a 12-inch-diameter water supply pipeline which provides water to the apple orchard. The average annual generation would be 774,000 kilowatthours.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. 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). A copy is also available for inspection and reproduction at the address shown in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no

later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to

which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,
Secretary.

[FR Doc. 01-19990 Filed 8-8-01; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, Motions To Intervene, Recommendations, and Terms and Conditions

August 3, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Conduit Exemption.
- b. *Project No.:* 12095-000.
- c. *Date filed:* July 31, 2001.
- d. *Applicant:* The Metropolitan Water District of Southern California (MWD).
- e. *Name of Project:* OC-88 Small Conduit Hydroelectric Project.
- f. *Location:* In Orange County, California. The project would be located in the OC-88 Service Connection, which transfers water from the Allen-McCulloch Pipeline (AMP) to the South County Pipeline. The two primary sources of water for the AMP are the Colorado River Aqueduct and the (California) State Water Project. The

project would not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)-825(r).

h. *Applicant Contacts:* Mr. Joseph E. Tait and Ms. Diana Mahmud, The Metropolitan Water District of Southern California, P.O. Box 54153, Los Angeles, CA 90054-0153, (213) 217-6360 and 217-6985.

i. *FERC Contact:* James Hunter, (202) 219-2839.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. *Deadline for filing motions to intervene, protests and comments:* September 4, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. 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. Please include the project number (P-12095-000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The project would consist of placing back in service an existing 750-kW turbine generating unit, which has not been operated since MWD acquired ownership. Energy currently dissipated in pressure reducing valves as water is transferred from the AMP to the South County Pipeline could then be captured. The average annual generation would be 4 gigawatthours.

m. *Available Locations of Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions ((202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h above.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,
Secretary.

[FR Doc. 01-19991 Filed 8-8-01; 8:45 am]
BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7029-9]

Notice of Availability of a Draft Report on Costs Associated With the Total Maximum Daily Load Program and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for comment.

SUMMARY: EPA has developed and is requesting comment on a draft report

and two supporting technical documents on the total national costs associated with the Total Maximum Daily Load (TMDL) program. The TMDL program requires States to identify waters that are not meeting State water quality standards and to establish pollutant budgets, called TMDLs, to restore the quality of those waters. The draft report, and the support documents, were prepared in response to a directive contained in the Conference Report #106-988 describing the VA/HUD and Independent Agencies Appropriations Act for FY 2001. The Conference Report asked for a comprehensive assessment of resources required for the development and implementation of TMDLs, including costs to States and the public and private sectors. EPA will consider comments on this draft report and will then issue a final report.

DATES: Written comments should be submitted by December 7, 2001. Comments submitted electronically will be considered timely if they are submitted by 11:59 p.m. December 7, 2001.

ADDRESSES: You may send written comments to the W-00-31-II TMDL Comments Clerk, Water Docket (MC-4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW., EB-57, Washington, DC 20460; (202) 260-3027 between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday excluding legal holidays. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. The draft report and two supporting documents are available for review in the Water Docket at the above address. The complete text of the draft report and supporting documents is available on the Internet at: <http://www.epa.gov/OWOW/tmdl/costs>. Copies of the complete draft can also be obtained by request from Myra Price at the above address, by E-mail at *price.myra@epa.gov* or by calling (202) 260-7108

FOR FURTHER INFORMATION CONTACT: John Wilson at (202) 260-7878 or Francoise Brasier at (202) 260-5668

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Environmental Protection Agency published a TMDL rule on July 13, 2000 (the July 2000 rule) to clarify existing TMDL program regulations, promulgated in 1985 and amended in 1992, and improve the TMDL program. The TMDL program is the framework by

which EPA works cooperatively with the States, Territories, and authorized Tribes to restore those waters that do not achieve the clean water goals—water quality standards—set for them by the States.

The July 2000 rule generated considerable controversy. Particularly, there was concern that EPA's estimate of the cost of the July 2000 rule (i.e., \$22.8 million per year, as described in the accompanying economic analysis) was unrealistic, and significantly underestimated the full cost of the TMDL program.

In response to these and other concerns, Congress directed EPA to conduct a more comprehensive assessment of the costs of developing and implementing TMDLs and report those findings to the Appropriations Committees. This comprehensive assessment includes the cost of monitoring impaired waters, developing TMDLs for the listed waters and implementing the TMDLs. These costs are based on both the existing program as well as the requirements of the July 2000 rule, which is not effective yet. The directive was contained in the Conference Report #106-988 describing the VA/HUD and Independent Agencies Appropriations Act for FY 2001. In response, EPA has prepared a draft report which is the subject of today's notice.

B. Key Findings

EPA's draft report estimates the total national cost to develop TMDLs and then compares the estimated cost to actual costs experienced by States and EPA to date. The report also estimates the costs to pollutant sources of implementing TMDLs to restore impaired waters under various scenarios. In addition, the report addresses economic analysis issues raised by the Comptroller General. The Comptroller General's comments can be found on the Internet at <http://www.gao.gov/cgi-bin/getrpt?GAO/RCED-00-206R>.

Key findings of the report include:

1. The costs to pollutant sources for implementing the TMDL program are expected to be between approximately \$1 billion and \$3.4 billion per year but might be higher or lower depending on the extent to which States choose to allocate more of the reductions to sources with lower control costs versus equal percentage reductions to sources regardless of costs.

The report examines costs under three potential scenarios: (1) A "least flexible" scenario which describes a uniform and inflexible approach for allocating point and nonpoint source

pollutant loads, (2) a "moderately cost-effective" scenario under which pollutant load reductions are targeted to the appropriate point and nonpoint sources and (3) a "more cost-effective" scenario, under which a State could minimize costs by assigning most of the pollutant load reductions to sources that have relatively low costs for achieving these reductions. Under the "more cost-effective" scenario, the cost of measures to implement TMDLs for impaired waters now identified by States is estimated to be between \$900 million and \$3.2 billion per year. Under the "moderately cost-effective" scenario, costs would be expected to be between \$1 billion and \$3.4 billion per year. Under the "least flexible" scenario, costs might be as high as \$4.3 billion per year.

2. The average costs of developing TMDLs is estimated to be between \$63 million and \$69 million per year nationwide over the next 15 years.

This estimate is based on the 36,000 TMDLs that will need to be developed for the various pollutants in the over 20,000 waterbodies identified as impaired. The average cost of developing an individual TMDL is estimated to be about \$50,000, with a range of costs between \$26,000 and over \$500,000. The costs of TMDL development cited in this report are based on requirements of the existing TMDL program as well as new provisions added in July 2000, but not yet in effect. The costs of the additional requirements associated with the July 2000 regulations represent less than 10% of the total TMDL development cost estimated in this report.

3. The cost of water quality monitoring to support the development of TMDLs is expected to be approximately \$17 million per year.

This is a preliminary national estimate of additional monitoring needed to support TMDL development and implementation from a limited survey of State experiences to date.

C. Request for Comments

EPA is requesting comments on all aspects of this draft report and the support documents. Please submit an original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the sections in the draft report or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Electronic comments must be submitted as a WordPerfect 5.1, WP6.1 or WP8 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WP 5.1, WP6.1 or WP8, or ASCII file format. Electronic comments on this Notice may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) or submissions in other electronic formats (e.g., Word, pdf, Excel) will be accepted.

The information received in response to this notice will be filed under docket number W-00-31-II, and includes 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. SW., Washington, DC. For access to docket materials, please call (202) 260-3027 to schedule an appointment.

Dated: August 2, 2001.

Diane C. Regas,

Acting Assistant Administrator for Water.

[FR Doc. 01-20016 Filed 8-8-01; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, August 14, 2001 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PREVIOUSLY ANNOUNCED DATE&TIME: Thursday, August 16, 2001; Meeting open to the public.

This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 694-1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 01-20087 Filed 8-7-01; 11:29 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION**Sunshine Act Meeting**

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 66 FR 35242.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m.—August 15, 2001.

CHANGE IN THE MEETING:

Removal of item in the OPEN portion of the meeting.

Item 1—Ocean Shipping Reform Act Impact Study; Docket No. 01-01—The Impact of the Ocean Shipping Reform Act of 1998.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523-5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01-20177 Filed 8-7-01; 4:06 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**Sunshine Act Meeting**

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Monday August 13, 2001.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:*Discussion Agenda*

1. Proposed 2002—2003 Federal Reserve Board budget objective.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$6 per cassette by calling 202-452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Michelle A. Smith, Assistant to the Board; 202-452-3204.

SUPPLEMENTARY INFORMATION: You may call 202-452-3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: August 6, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01-20069 Filed 8-8-01; 4:49 pm]

BILLING CODE 6210-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of the Secretary****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. National Centers of Excellence in Women's Health; Supplemental Community Survey—NEW—The Office of Women's Health (OWH) is currently conducting a study of patient satisfaction and service utilization to assess the National Centers of Excellence (CoE) in Women's Health program. This proposed collection of information would survey women in three communities with a CoE, to compare the data with CoE patient data and national benchmark data. The information will be used to enhance the analysis of the CoE study. Respondents: Individuals; Number of Respondents: 600; Frequency of Response: one-time; Burden per Response: 15 minutes; Total Burden: 150 hours.

OMB Desk Officer: Allison Herron Eyd.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690-6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: July 18, 2001.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 01-19999 Filed 8-8-01; 8:45 am]

BILLING CODE 4150-33-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Board of Scientific Counselors, Agency for Toxic Substances and Disease: Notice of Charter Renewal**

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Committee to the Director, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through July 28, 2003.

FOR FURTHER INFORMATION CONTACT:

Robert Spengler, Sc.D., Executive Secretary, Board of Scientific Counselors, Agency for Toxic Substances and Disease, 1600 Clifton Road, NE, M/S E-28, Atlanta, Georgia 30333, telephone 404/498-0003 or fax 404/498-0081.

The Director, Management and 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: August 3, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01-19957 Filed 8-8-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

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 committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.—5:00 p.m., September 12, 2001; 8:30 a.m.—3:30 p.m., September 13, 2001

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health and Surgeon General, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from CDC, Food and Drug Administration and Centers for Medicare & Medicaid Services (formerly the Health Care Financing Administration), Unregulated Tests Workgroup report, report on the Secretary's Advisory Committee on Genetic Testing, discussion of communication strategies and manufacturer's pre-market clearance submission and good manufacturing practices.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT:

Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop F-11, Atlanta, Georgia 30341-3724, telephone 770/488-8042, fax 770/488-8279.

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: August 3, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01-19958 Filed 8-8-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Centers for Disease Control and Prevention: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the National Vaccine Advisory Committee, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through July 30, 2003.

FOR FURTHER INFORMATION CONTACT:

Martin G. Myers, M.D., Executive Secretary, National Vaccine Advisory Committee, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, (D-66), Atlanta, Georgia 30333, telephone 404/687-6672 or fax 404/687-6687.

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: August 3, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01-19956 Filed 8-8-01; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: HCFA-379]

Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid

Services (CMS), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection

Request: Extension of a currently approved collection; *Title of Information Collection:* The Financial Statement of Debtor and Supporting Regulations in 42 CFR, Section 405.376; *Form No.:* HCFA-379 (OMB# 0938-0270);

Use: This form is used to collect financial information which is needed to evaluate requests from physicians/suppliers to pay indebtedness under an extended repayment schedule, or to compromise a debt less than the full amount;

Frequency: Other: As needed;

Affected Public: Business or other for-profit, and individuals or households;

Number of Respondents: 500;

Total Annual Responses: 500;

Total Annual Hours: 1,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access CMS's Web Site address at <http://www.hcfa.gov/reg/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 13, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01-19939 Filed 8-8-01; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare and Medicaid Services****[Document Identifier: HCFA-R-142]****Agency Information Collection Activities: Submission For OMB Review; Comment Request**

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Information Collection Requirements Contained in BPD-393, Examination and Treatment for Emergency Medical Conditions and Women in Labor and HCFA-1005-IFC, PPS for Hospital Outpatient Services and Supporting Regulations Contained in 42 CFR 488.18, 489.20 and 489.24; *Document No.:* HCFA-R-142 (OMB# 0938-0667); *Use:* The Information Collection Requirements contained in BPD-393, Examination and Treatment for Emergency Medical Conditions and Women in Labor and HCFA-1005-IFC, contains requirements for hospitals to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. HCFA will use this information to help assure compliance with this mandate and protect the public. This information is not contained elsewhere in regulations. *Frequency:* On occasion; *Affected Public:* Individuals or Households, not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 5,600; *Total Annual Responses:* 5,600; *Total Annual Hours Requested:* 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access CMS's web site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503

Dated: July 13, 2001.

John P. Burke III,

CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01-19940 Filed 8-8-01; 8:45 am]

BILLING CODE 4120-03-P**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Center for Medicare and Medicaid Services****[Document Identifier: CMS-10048]****Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)****AGENCY:** Center for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information

collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

This Health Insurance Flexibility and Accountability (HIFA) Section 1115 Model Demonstration will enable states to use Medicaid and SCHIP funds in concert with private health insurance options to expand coverage to low-income uninsured individuals, with a focus on those with income at or below 200 percent of the Federal poverty level. The model demonstration application will facilitate State efforts in designing programs to cover the uninsured.

CMS is requesting OMB review and approval of this collection by August 24, 2001, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by August 20, 2001.

Type of Information Collection Request: New collection; *Title of Information Collection:* Health Insurance Flexibility and Accountability Section 1115 Model Waiver; *Form No.:* CMS-10048 (OMB# 0938-XXXX); *Use:* This Health Insurance Flexibility and Accountability (HIFA) Section 1115 Model Demonstration will enable states to use Medicaid and SCHIP funds in concert with private health insurance options to expand coverage to low-income uninsured individuals, with a focus on those with income at or below 200 percent of the Federal poverty level. The model demonstration application will facilitate State efforts in designing programs to cover the uninsured; *Frequency:* Other: 5 years after initial submission; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 25; *Total Annual Responses:* 25; *Total Annual Hours:* 250.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections

referenced above, access CMS' Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786-1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by August 20, 2001: Center for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850 Fax Number: (410) 786-0262 Attn: John Burke, CMS-10048 and, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395-6974

or (202) 395-5167 Attn: Brenda Aguilar, CMS Desk Officer.

Dated: August 1, 2001.

John P. Burke, III,

CMS Reports Clearance Officer, CMS, Office of Information Services Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 01-19955 Filed 8-8-01; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Computerized Support Enforcement Systems.

OMB No.: 0980-0271.

The information being collected is mandated by Section 454(16) which provides for the establishment and operation by the State agency, in accordance with an initial and annually updated advance planning document approved under section 452(d) of this

state, of a statewide system meeting the requirements of section 454A. In addition, 454A(e)(1) requires that States create a State Case Registry (SCR) within their statewide automated child support systems, to include information on IV-D cases and non-IV-D orders established or modified in the State on or after October 1, 1998. Section 454A(e)(5) requires States to regularly update their cases in the SCR.

The data being collected for the Advance Planning Document is a combination of narrative, budget and schedules which are used to provide funding approvals on an annual basis and to monitor and oversee system development.

The data being collected for the State Case Registry is used to transmit mandatory data elements to the Federal Case Registry where it is used for matching against other data bases for the purposes of location of individuals, assets, employment and other child support related activities.

Respondents: The respondents are 54 State and Territorial Child Support Agencies.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
307.15 (APD)	2	1	240	480
307.15 (APDU)	54	1	60	3240
307.11(e)(1)(ii), Collection of non-IV-D data for SCR States	54	25,200	.046	62,597
307.11(e)(1)(ii), Collection of non-IV-D data for SCR-courts	3,045	447	.029	39,472
307.11(e)(3)(v), Collection of Child Data for IV-D cases for SCR-courts	3,045	213	.083	53,833
307.11(f)(1), Case Data Transmitted from SCR to FCR: New cases and case updates	54	46,379	2.82	130,788
Total .....	.....	.....	.....	290,410

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfante Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: August 6, 2001.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 01-19998 Filed 8-8-01; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in September 2001. The meeting will be an open session and will include a Department

of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, and an update on the draft guidelines for alternative specimen testing and on-site testing.

If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443-6014. The transcript for the open session will be available on the following website: workplace.samhsa.gov. Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention Drug Testing Advisory Board.

Meeting Date: September 5, 2001; 8:30 a.m.—4:00 p.m.

Place: Embassy Suites Hotel 4300 Military Road N.W., Washington, D.C.

Type: Open: September 5, 2001; 8:30 a.m.—4:00 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443-6014, and FAX: (301) 443-3031

Dated: August 3, 2001.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 01-19933 Filed 8-8-01; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4655-N-18]

Notice of Proposed Information Collection: Comment Request; Technical Suitability of Products Program Section 521 of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 9, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Director, Manufactured Housing and Standards Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-6423 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for

review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Technical suitability of Products Program, Section 521 of the National Housing Act.

OMB Control Number, if applicable: 2502-0313.

Description of the need for the information and proposed use: Section 521 of the National Housing Act (12 U.S.C. 1735e) which was added by Section 216 of the Housing and Urban Development Act of 1965 (Pub. L. 89-117) requires the Department to adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under the National Housing Act.

Under this program, manufacturers of nonstandard housing-related materials, products or structural housing systems must apply to HUD for a determination of technical acceptance. The two major categories of acceptance are structural building systems, subsystems, and components, and structural and nonstructural materials and products. Currently, the Department for this program requests the information when new applicants desire review and recognition. Without the information, the technical suitability of the products and materials for home construction cannot be determined. This program also helps to promote the use of innovative and new materials/products in homes with mortgages insured under the National Housing Act.

Agency form numbers, if applicable: HUD-92005.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: There are 2,050 total

annual hours estimated for a total of 50 respondents. The frequency of collection is once per application, and each application is estimated to average approximately 41 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 30, 2001.

Sean G. Cassidy,

General deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 01-19921 Filed 8-8-01; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4655-N-19]

Notice of Proposed Information Collection: Comment Request Preauthorized Debits, HUD PAD Authorization

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 9, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 8001, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, Financial Operations Center, Department of Housing and Urban Development, telephone 518-464-4200 extension 4206 (this is not a toll free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected

agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Preauthorized Debits, HUD PAD Authorization.

OMB Control Number, if applicable: 2502-0424.

Description of the need for the information and proposed use: The information is used by HUD to establish a voluntary preauthorized debit (PAD) of an individual's banking account for the purpose of paying an outstanding debt owed to the Department.

Agency form numbers, if applicable: HUD 92090.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 18, number of respondents is 70, frequency of response is on occasion, and the estimated time per response is 15 minutes.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 30, 2001.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 01-19922 Filed 8-8-01; 8:45 am]

BILLING CODE 4210-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4655-N-20]

Notice of Proposed Information Collection: Comment Request; Reporting Requirements for the Auction of Section 221(g)(4) Multifamily Mortgages

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 9, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708-2866 (this is not a toll-free number), for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Reporting Requirements for the Auction of Section 221(g)(4) Multifamily Mortgages.

OMB Control Number, if applicable: 2501-0460.

Description of the need for the information and proposed use: HUD collects information from assigning mortgagees on form HUD-93487-A "Project Summary Data Sheet", and makes the information available to bidders participating in the auction of Section 221(g)(4) mortgages. Mortgagees that purchase the mortgages will submit form HUD-93487 "Billing for Section 221(g)(4) Monthly Interest Enhancement Payment," in order to obtain their monthly interest enhancement payments.

Agency form numbers, if applicable: HUD-93487-A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 153; estimated time to prepare the information is 20 minutes for HUD-93487, and 1½ hours to prepare HUD-93487A; the frequency is 1 for HUD-93487 and 12 times for HUD-93487A; and the annual burden hours requested is 153.

Status of the proposed information collection: Reinstatement with change, of previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 30, 2001.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 01-19923 Filed 8-8-01; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-350-1430-PF-01-24 1A]

Extension of Approved Information Collection, OMB Approval Number 1004-0189

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 certain information from entities desiring a right-of-way across public lands under 43 CFR part 2800 and 43 CFR part 2880. BLM and several other agencies use Form 299, Application for Transportation and Utility System and Facility, to determine whether or not applicants qualify to hold right-of-way grants across public lands and several other purposes.

DATES: You must submit your comments to BLM at the address below on or before October 9, 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: WOCComment@blm.gov. Please include "ATTN: 1004-0189" 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 Alzata L. Ransom, Realty Use Group, on (202) 452-7772 (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 Ms. Ransom.

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.

Title XI of the Alaska National Interest Lands Conservation Act of December 2, 1980, requires that the Departments of Agriculture, Interior, and Transportation use a consolidated form in connection with rights-of-way for transportation and utility. The Federal Land Policy and Management Act of 1976, the Mineral Leasing Act, and the regulations under 43 CFR part 2800 and 43 CFR part 2880 authorizes BLM to use Form 299. BLM will use Form 299 to collect information to:

- (1) Determine if the applicant qualifies for a right-of-way grant;
- (2) Identify and communicate with the applicant on its right-of-way application;
- (3) Identify the project location;
- (4) Determine and compare existing and proposed land uses; and
- (5) Determine if alternate routes and modes are available to the applicant on the right-of-way application.

Without this information, BLM would not be able to properly administer its right-of-way program.

Based upon BLM experience and recent tabulations of activity, we process approximately 4,900 applications each year. The public reporting information collection burden takes about 2 hours to complete. The estimated number of responses per year is 4,900. The estimated total annual burden is 9,800 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 24, 2001.

Michael H. Schwartz,
BLM Information Collection Clearance Officer.

[FR Doc. 01-20026 Filed 8-8-01; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-1050-EE-01-24 1A]

OMB Approval Number 1004-0182; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On December 18, 2000, the

BLM published a notice in the **Federal Register** (65 FR 79117) requesting comments on this proposed collection. The comment period ended on February 16, 2001. The BLM received no comments from the public in response to that notice. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Information Clearance Officer at the telephone number listed below.

The OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, (1004-0182), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO-630), 1849 C St., NW., Mail Stop 401LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;
3. Ways to enhance the quality, utility and clarity of the information collected; and
4. 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 forms of information technology.

Title: Grazing Lease or Permit Application; Reindeer Grazing Permit (43 CFR 4300).

OMB Approval Number: 1004-0182.

Bureau Form Number: Form AK 4201-1, Grazing Lease or Permit Application and Form AK 4132-2, Reindeer Grazing Permit.

Abstract: BLM collects this information from Alaska Native permittees under its Reindeer Grazing Program to assess the compatibility of grazing on the land with multiple-use objectives for the area.

Frequency: Once.

Description of Respondents: Alaska Natives, groups of Alaska Natives, or associations/corporations of Alaska Natives who want to graze reindeers on

public lands in Alaska that are vacant and unappropriated.

Estimated Completion Time: 1 hour and 15 minutes.

Annual Responses: 6.

Filing Fee Response: \$10.

Annual Burden Hours: 7.

Bureau Clearance Officer: Michael Schwartz, (202) 452-5033.

Dated: June 15, 2001.

Michael H. Schwartz,

BLM Information Collection Clearance Officer.

[FR Doc. 01-20025 Filed 8-8-01; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-059-1610-DO-018E]

Public Lands in the Dillon Field Office, Beaverhead and Madison Counties, MT

AGENCY: Dillon Field Office, Bureau of Land Management, Dillon, Montana, Interior.

ACTION: Notice of intent to prepare a Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for public lands in the Dillon Field Office, Beaverhead and Madison Counties, Montana.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare a RMP and associated EIS under the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA). The plan will provide a framework to guide subsequent management decisions on approximately 902,528 acres of public land and 1,305,504 acres of subsurface mineral estate administered by the BLM in Madison and Beaverhead Counties. However, 59,287 acres of public land located immediately south of the Big Hole River in Beaverhead County will not be included in this planning effort. This land is administered by the BLM Butte Field Office and will be considered in future planning efforts for that area.

The RMP will establish desired conditions for the public lands covered by the plan and identify appropriate public land uses for a number of resource values and programs. A wide range of alternatives will be considered in developing the plan, which will take into account local, regional, and national needs and concerns. This notice also initiates the public scoping process to examine issues and develop planning criteria to guide the planning process. Nominations for Areas of

Critical Environmental Concern (ACEC) may also be submitted during the comment period.

DATES: The scoping comment period will commence with the publication of this notice. Formal scoping will end October 9, 2001. Comments on issues, planning criteria, and special area nominations should be received on or before the end of the scoping period.

ADDRESSES: For further information and/or to have your name added to the mailing list, contact Renee Johnson, RMP Project Leader, Bureau of Land Management, Dillon Field Office, 1005 Selway Drive, Dillon, Montana; Telephone 406-683-8016; Fax 406-683-2970. Comments should be sent to the above address or may be sent by electronic mail (e-mail) to *MT_Dillon_RMP@blm.gov*. Comments submitted during this planning process, including names and street addresses of respondents, will be available for public review at the Dillon Field Office during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: The RMP to be prepared for the public lands administered by the Dillon Field Office will identify goals, objectives, standards and guidelines for management of a variety of resources and values. The plan will specify actions, constraints, and general management practices necessary to achieve desired conditions. The plan will also identify any areas requiring special management such as ACECs. The scope of the RMP will be comprehensive. Certain existing standards and guidelines and other BLM plans will be incorporated into the RMP such as Standards for Rangeland Health and Guidelines for Livestock Grazing as set out by the Western Montana Resource Advisory Council (RAC), policies and strategies outlined in the Montana Weed Management Plan, the Interim Management Policy and Guidelines for Lands Under Wilderness Review, the Centennial Travel Management Plan which covers BLM land in the southern portion of the

Centennial Valley in Beaverhead County, and the Montana/Dakotas Statewide Fire Management Plan and associated Dillon Fire Management Plan update, once completed. The planning process will also analyze and incorporate information previously compiled on oil and gas leasing.

This notice provides the public an opportunity to suggest issues, concerns, needs, and resource use, development and protection opportunities for consideration in preparation of the plan. A number of decisions related to various resource values and programs will be made as a result of this planning effort. The major issues identified to date include (1) Management of vegetation, especially sagebrush-steppe habitats; (2) watershed management especially regarding water quality, fishery values and riparian areas; (3) management of areas with special values; (4) conservation and recovery of special status species; (5) travel management and access to public lands; (6) availability and management of public lands for commercial uses; and (7) land tenure adjustments. In addition to the major issues, a number of management questions and concerns will be addressed in the plan. Issues and management concerns may be identified by interested parties during the scoping phase. After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories: (1) Issues to be resolved in the plan; (2) issues resolved through policy or administrative action; and (3) issues beyond the scope of the plan. BLM will provide feedback to the public on the final issues to be addressed in the plan. An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, forestry, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics.

The following planning criteria have been proposed to guide development of the plan, to avoid unnecessary data collection and analyses, and to ensure the plan is tailored to the issues. Other criteria may be identified during the public scoping process. After gathering comments on planning criteria, BLM will finalize the criteria and provide feedback to the public on the criteria to be used throughout the planning process.

- The RMP will comply with applicable Federal laws and regulations.

- The RMP will be accompanied by an EIS prepared under NEPA.

- The RMP will only cover lands under jurisdiction of the Dillon Field Office. This includes split estate, where the surface is private, but subsurface minerals are Federal. This does not include BLM lands in Beaverhead County along the south side of the Big Hole River under jurisdiction of the Butte Field Office.

- The RMP will study public land in the planning area not yet inventoried for wilderness characteristics.

- The RMP will consider the recovery plans in place for threatened and endangered species which utilize the planning area, including Whooping Crane, Bald Eagle, Grizzly Bear, Wolf, and Lynx.

- The RMP will consider the management strategies developed for Westslope Cutthroat Trout, Fluvial Arctic Grayling and Sage Grouse when developing the plan.

- The RMP will recognize the State of Montana's responsibility to manage wildlife populations, including hunting and fishing uses.

- RMP decisions will be compatible to the extent possible with the plans and mandates of other agencies and governments that share jurisdiction in the region.

- The RMP will consider and integrate local, Statewide and national interests.

- Actions proposed by the RMP must be achievable given technological, budget and staffing limits.

The BLM is also requesting public input for nominations considered worthy of ACEC designation. To be considered as a potential ACEC, an area must meet the criteria of relevance and importance as established and defined in 43 CFR 1610.7-2. Nominations must include descriptive materials, detailed maps, and evidence supporting the "relevance" and "importance" of the resource or area. Several nominations have already been proposed in previous planning efforts including the Madison River Corridor, the Virginia City Historic District, the Axolotl Lakes area, the Block Mountain area, the Upper Centennial Basin Bald Eagle Nesting Areas, the Sage Creek area, Lima Reservoir area, the Muddy Creek/Big Sheep Creek area, Everson Creek, Badger Gulch, Bannack Historic District, the Centennial Mountains from Nemesis Mountain to Price Creek, Clark Canyon, Maiden Rock, the East Fork of Blacktail Deer Creek, and the Ferruginous Hawk Nesting area. The Soap Gulch-Camp Creek area and the Jerry Johnson Creek area were previously nominated but are now administered by the BLM's Butte

Field Office and will not be considered in the Dillon planning effort. All other existing and new ACEC nominations within the planning area will be evaluated during development of the RMP.

Public Participation Opportunities

The BLM is seeking comments, concerns and views of a diverse array of individuals, groups, organizations, agencies, and governments. Early participation by all those interested is encouraged and will help determine the future management of public lands administered by the Dillon Field Office. The BLM anticipates inviting both Beaverhead and Madison Counties to become Cooperating Agencies under the provisions of the NEPA given special expertise the counties have in certain areas. The Montana Consensus Council, established under the Governor's Office, has also conducted a situation assessment prior to publication of this notice and is making recommendations to BLM to enhance the public participation process.

A scoping brochure will be sent to the public and interested parties after publication of this notice. The mailing list will continue to be updated and modified during the planning process. Press releases will be provided to local and regional newspapers regarding the initiation of the plan, availability of the scoping brochure, and the comment period. Information on the planning process and notice of the scoping period will also be placed on the Dillon Field Office website at www.mt.blm.gov/dfo. Public meetings and workshops will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, meetings will be held in the communities of Dillon, Sheridan, and Ennis. Other locations in the vicinity of the planning area may be included. At least 15 days public notice will be given for activities where the public is invited to attend. Meetings and comment deadlines will be announced through the local news media, newsletters and the Dillon Field Office Website (www.mt.blm.gov/dfo). The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participants who wish to clarify the views they expressed. Newsletter updates and newspaper articles will be used throughout development of the RMP to keep the public informed of progress on the plan. Documents and other information pertinent to this proposal may be examined at the Dillon Field Office located in Dillon, Montana.

Dated: July 23, 2001.

Scott Powers,

Field Manager.

[FR Doc. 01-20022 Filed 8-8-01; 8:45 am]

BILLING CODE 4310--\$-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 July 2, 2001, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings Montana, September 10, 2001.

Tps. 6, 7, and 8 S., Rs. 25, 26, and 27 E.

The plat, representing the Amended Protraction Diagram 9 Index of unsurveyed Townships 6, 7, and 8 South, Ranges 25, 26, and 27 East, Principal Meridian, Montana, was accepted July 2, 2001.

T. 6 S., R. 25 E.

The plat, representing Amended Protraction Diagram 9 of unsurveyed Township 6 South, Range 25 East, Principal Meridian, Montana, was accepted July 2, 2001.

T. 6 S., R. 26 E.

The plat, representing Amended Protraction Diagram 9 of unsurveyed Township 6 South, Range 26 East, Principal Meridian, Montana, was accepted July 2, 2001.

T. 6 S., R. 27 E.

The plat, representing Amended Protraction Diagram 9 of unsurveyed Township 6 South, Range 27 East, Principal Meridian, Montana, was accepted July 2, 2001.

T. 7 S., R. 26 E.

The plat, representing Amended Protraction Diagram 9 of unsurveyed Township 7 South, Range 26 East, Principal Meridian, Montana, was accepted July 2, 2001.

T. 7 S., R. 27 E.

The plat, representing Amended Protraction Diagram 9 of unsurveyed Township 7 South, Range 27 East, Principal Meridian, Montana, was accepted July 2, 2001.

T. 8 S., R. 26 E.

The plat, representing Amended Protraction Diagram 9 of unsurveyed Township 8 South, Range 26 East, Principal Meridian, Montana, was accepted July 2, 2001.

T. 8 S., R. 27 E.

The plat, representing Amended Protraction Diagram 9 of unsurveyed Township 8 South, Range 27 East, Principal Meridian, Montana, was accepted July 2, 2001.

The amended protraction diagram was 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 diagram accepted July 2, 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 the amended protraction diagram, accepted July 2, 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 diagram 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: July 9, 2001.

Steven G. Schey,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 01-20024 Filed 8-8-01; 8:45 am]

BILLING CODE 4310-DN-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-040-1430-EU-040F]

Notice of Realty Action: Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Sale of Public Lands in Lincoln County, Nevada.

SUMMARY: The below listed public land in Lincoln County, Nevada has been designated for disposal under Public Law 106-298, the Lincoln County Land Act of 2000. The lands will be offered for competitive sale in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713, 1719, and 1740) at not less than fair market value (FMV). The sale is scheduled at public auction on October 12, 2001.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Assistant Field Manager, Nonrenewable Resources, Ely Field Office.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Jeffrey A. Weeks, Assistant Field Manager, HC 33 Box 33500, Ely, Nevada 89301-9408.

FOR FURTHER INFORMATION CONTACT:

Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents, are available at the Ely Field Office of the Bureau of Land Management, at 702 North Industrial Way, Ely, Nevada 89301, or by calling Kevin Finn at (775) 289-1849. In addition, information may be obtained by calling the General Services Office in San Francisco at (415) 522-3428 or by e-mail to karen.hoover@gsa.gov. Additional, but not all information, will be available on the Internet at <http://www.nv.blm.gov>.

SUPPLEMENTARY INFORMATION: The following described parcels of public land situated in Lincoln County, Nevada are being offered competitive sale.

Mount Diablo Meridian

Parcel A (N-74965)

T. 12 S., R. 71 E.,

Sec. 16, lots 2 to 7 inclusive, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 17, lots 2 and 3, W $\frac{1}{2}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 18, E $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 19, E $\frac{1}{2}$;

Sec. 20;

Sec. 21, W $\frac{1}{2}$;

Sec. 28, W $\frac{1}{2}$;

Sec. 29, lot 1, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and SW $\frac{1}{4}$;

Sec. 30, lots 5, 8, 9 and 12;

Sec. 31, lots 5, 8 and 9;

Sec. 32, lots 1 and 4, E $\frac{1}{2}$, NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 33, W $\frac{1}{2}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 34, lot 7;

The areas described aggregate 4,357.63 acres.

Parcel B (N-74966)

T. 12 S., R. 70 E.,

Sec. 25, E $\frac{1}{2}$;

Sec. 36, E $\frac{1}{2}$ and SW $\frac{1}{4}$;

T. 12 S., R. 71 E.,

Sec. 29, lot 2;

Sec. 30, lots 6, 7, 10, and 11, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 31, lots 6, 7, and 10, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 32, lots 2 and 3;

The areas described aggregate 2,009.57 acres.

The above legal descriptions are subject to minor adjustments upon final approval of the official plats of survey, which will also provide a new legal description for these land parcels. If the land is sold, conveyance of the locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required

to pay a \$50.00 non-refundable filing fee in conjunction with the final payment for processing of the conveyance of the locatable mineral interests. The terms and conditions applicable to the sale are as follows:

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licenses, and licensees, and lessees, retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid and existing rights. Encumbrances of record are available for review during business hours, 7:30 to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, Nevada.

4. The parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. The high bidder will be required to sign a Development Agreement and Reconveyance Agreement within 30 days of the oral auction. The Development Agreement is to assure organized and planned development, and to assure a Master Plan submission to Lincoln County by the high bidder within 6 months of the auction. The Reconveyance Agreement is for the purpose of assuring compliance with the need for roads, school sites, and other public facilities. The Reconveyance Agreement will require at least 25% of the total acreage within the parcel to be transferred to Lincoln County for public purposes. Further information regarding the required Development and Conveyance Agreements may be obtained by calling Ace Robinson at 702-870-4043 or Paul Donohue at 775-962-1001.

6. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold harmless the United States from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third party, arising out of, or in connection with, the patentee's use, occupancy, or operations of the patented real property. The indemnification and hold harmless

agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violation of federal, state, and local laws and regulations that are now, or may in the future become, applicable to the real property; (2) Judgements, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resources damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

The appraisal report for the parcels will be available for public review at the BLM's Ely Field office on or before August 10, 2001. Bids at the oral auction must be for not less than appraised fair market value (FMV).

The parcels will be offered for competitive sale by oral auction beginning at 10:00 a.m. PDT, October 12, 2001, at the Mesquite City Hall, 10 East Mesquite Blvd., Mesquite, Nevada. Registration for oral bidding will begin at 8:00 a.m. the day of sale and will continue throughout the auction. All bidders are required to register.

The highest qualifying bid for each parcel will be declared the high bid. The apparent high bidder must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashier's check, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The remainder of the full bid price must be paid within 180 calendar days of the date of sale. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. Federal law requires that

bidders must be U.S. citizens 18 years of age or older, a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit. In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made on the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government.

Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale; conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing and potential uses for nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Assistant Field Manager, Ely Field Office, 702 North Industrial, Ely, Nevada 89301. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, communication of the sale would be fully consistent with FLPMA or other applicable laws or is determined not in the public interest. Any comments

received during this process, as well as the commentator's name and address, will be available to the public in the administrative record and/or pursuant to the Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentator's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: July 18, 2001.

Jeffrey A. Weeks,

Assistant Field Manager, Nonrenewable Resources.

[FR Doc. 01-20021 Filed 8-8-01; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[NM-050-1430-ES; NMNM 101695]

Notice of Realty Action; Recreation and Public Purposes Act Classification (R&PP); New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; R&PP Classification.

SUMMARY: The following public lands in Socorro County, New Mexico, have been examined and found suitable for classification for lease or conveyance to the State of New Mexico, through the Regents of the Museum of New Mexico (State Monuments Division) under the provisions of the R&PP Act, as amended (43 U.S.C. 869 et. seq.). The New Mexico State Monuments Division, in partnership with the BLM, proposes to use the land to jointly construct, staff, and manage El Camino Real International Heritage Center ("Center").

New Mexico Principal Meridian

T. 8 S., R. 3 W.,

Sec 24, SW¹/₄ SE¹/₄ and W¹/₂ SE¹/₄ SE¹/₄
Sec 25, lots 5, 6, 19, and 20.

Containing 119.33 acres more or less;

The lands are not needed for other federal purposes. BLM will be a partner with the State of New Mexico in constructing, staffing, and operating the Center. Lease or conveyance is

consistent with BLM's amended land use plan and would be in the public interest.

DATES: Interested parties may submit comments on the classification or proposed lease/conveyance. Comments must be submitted on or before September 24, 2001.

ADDRESSES: Comments should be sent to Field Office Manager, Socorro Field Office, 198 Neel Ave., NW., Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Charles Carroll, Resource Advisor, Socorro Field Office, 198 Neel Ave., NW, Socorro, New Mexico 87801, or telephone (505) 838-1278.

SUPPLEMENTARY INFORMATION: The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals deposits in the land and the rights of the United States, or persons authorized by the United States, to prospect for, mine and remove such deposits from the same under applicable laws and regulations to be established by the Secretary of the Interior.

4. An easement for Socorro County Road 255.

Detailed information concerning this action is available for review at the Socorro Field Office, 198 Neel Ave., NW, Socorro, New Mexico.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the address listed above.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Heritage Center facility. Comments on the classification are restricted to whether the land is physically suited for a Heritage Center facility, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding

the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Heritage Center facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: July 13, 2001.

Kate Padilla,

Socorro Field Office Manager.

[FR Doc. 01-20023 Filed 8-8-01; 8:45 am]

BILLING CODE 4310-FB-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 U.S.C. 50.7, notice is hereby given that a proposed Consent Decree in *United States of America v. Diamond Shamrock Refining Co., L.P.* Civil Action No. H-01-2494 was lodged on July 25, 2001, with the United States District Court for the Southern District of Texas.

The Consent Decree settles an action brought under Clean Air Act ("CAA") Section 111, 42 U.S.C. 7411, Clean Water Act ("CWA") section 301, 33 U.S.C. 1311, and RCRA sections 3002 and 3005, 42 U.S.C. 6922 and 6925, for violations alleged at petroleum refineries in Three Rivers, Texas ("the Three Rivers Refinery") and Sunray, Texas ("the McKee Refinery") owned and operated by Diamond Shamrock Refining Co., L.P. ("DSRC"). The proposed Consent Decree requires, among other items, that DSRC obtain required permit coverage under the CWA for the land application site associated with the Three Rivers Refinery ("Irrigation Site") and that DSRC modify the Irrigation Site to prevent the discharge of treated process wastewater to waters of the United States. DSRC will also replace existing pumps on volatile organic compound ("VOC") service with leakless pumps as a supplemental environmental project ("SEP") and pay a civil penalty of \$1.2 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be

addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America v. Diamond Shamrock Refining Co., L.P.* (S.D. Tx.). DOJ Ref. #90-7-1-926.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Texas, 910 Travis, Suite 1500, Houston, TX 77002 and the office of the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy please refer to *United States of America v. Diamond Shamrock Refining Co., L.P.* (S.D. Tx.), DOJ Ref. #90-7-1-926 and enclose a check in the amount of \$11.25 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01-19942 Filed 8-8-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 U.S.C. 50.7, notice is hereby given that on July 10, 2001, a proposed Consent Decree and Consent Order and Protocol in *United States v. Murphy Farms, et al.*, Civil Action Nos. 7:98-CV-4-F(1), 7:98-CV-19-F(1), and 5:98-CV-209 F(1) was lodged with the United States District Court for the Eastern District of North Carolina.

In this action the United States sought civil penalties and injunctive relief from Murphy Farms, Inc., and D.M. Farms of Rose Hill, alleged operators of a facility that discharged pollutants without an National Pollutant Discharge Elimination System ("NPDES") permit. The facility consisted of five hog farms joined by a common waste system. In December 1998, the District Court found the defendants liable for discharging hog waste into nearby streams on two occasions and ordered the defendants to apply for an NPDES permit. The Consent Decree resolves the United States' claim for penalties and injunctive relief relating to these and other unpermitted discharges, as well as a claim for injunctive relief. The Consent Decree provides for the payment of a \$72,000 civil penalty, the use of buffer zones, improved

agricultural practices, better training, and other prophylactic measures that will help prevent future discharges. The facility's operation will also be governed by a NPDES permit, which the State of North Carolina issued on March 19, 2001.

The United States entered this litigation as an intervener in a suit initially brought by the American Canoe Association, the Professional Paddlesports Association, and the Conservation Council of North Carolina (collectively, the "Citizen Plaintiffs"). The Citizen Plaintiffs participated in the negotiation of the Consent Decree and agree with its terms. The Citizen Plaintiffs and the defendants negotiated a separate agreement known as the Consent Order and Protocol, which is attached to the Consent Decree. Under this document, the Citizen Plaintiffs are not entitled to participate in the enforcement of the Consent Decree until the defendants' motions to have the Court reconsider its earlier rulings concerning standing and *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation*, 484 U.S. 49 (1987), are resolved in Citizen Plaintiffs' favor. The Consent Order and Protocol provides that the Citizen Plaintiffs automatically become parties to the Consent Decree in the event that these issues are resolved in their favor. It also establishes a procedure for the resolution of those issues and the Citizen Plaintiffs' claim for attorneys' fees and litigation expenses.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree and Consent Order and Protocol. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice,

Washington, DC 20044-7611, and should refer to *United States v. Murphy Farms, et al.*, D.J. Ref. 90-5-1-1-06326.

The Consent Decree and Consent Order and Protocol may be examined at the Office of the United States Attorney, 310 New Bern Avenue, Suite 800, Federal Building, Raleigh, North Carolina, and at U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia. A copy of the Consent Decree and Consent Order and Protocol may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611. In requesting a copy, please enclose a check in the amount of \$12.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01-19943 Filed 8-8-01; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 27, 2001.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation contact Darrin

King at (202) 693-4129 or E-Mail *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395-7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics (BLS).

Title: Annual Refiling Survey (ARS).

OMB Number: 1220-0032.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households; farms; Federal Government; and State, Local, or Tribal Government.

Frequency: Every 3 years.

Number of Respondents: 2,272,998.

Form No. (survey)	Annual responses	Average response time (hours)	Burden hours
BLS 3023-NVS	2,092,708	.083	173,695
BLS 3023-NVM	37,334	.25	9,334
BLS 3023-NCA	142,956	.167	23,874
Total	2,272,998	.....	206,903

Total Annualized Capital/Startup Costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: To ensure the continued accuracy of published economic statistics, the information supplied by the employers must be periodically

reviewed and updated. For this purpose, the BLS-3023 forms, collectively known as Annual Refiling Survey (ARS) forms, are used in conjunction with the UI tax reporting system in each State Employment Security Agency (SESA). The information collected on the ARS forms is used to review the existing industry code assigned to each

establishment. The industry codes for establishments in which business activity has changed since the last review are updated to reflect this change. As a result of these updates, the industry data that the BLS and SESAs publish accurately reflect changes that occur in the industrial composition of the economy. This survey is authorized

by 29 U.S.C. 2 and Section 15 of the Wagner-Peyser Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01-19951 Filed 8-8-01; 8:45 am]

BILLING CODE 4510-24-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Report on Employment, Payroll, and Hours (BLS-790)." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before October 9, 2001.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202-691-7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202-691-7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Current Employment Statistics (CES) Survey is a Federal/State program of the Bureau of Labor Statistics. It produces monthly estimates of employment, hours, and earnings based

on U.S. nonagricultural establishment payrolls. Information for these estimates is derived from a sample of 359,400 reports, as of April 2001. Each month, these firms report their employment, payroll, and hours on forms identified as the BLS-790. An additional 46,400 establishments, (as of April 2001), currently are collected for the Wholesale Trade, Mining, Construction, and Manufacturing industries under the new probability-based sample design. Other industry divisions will be phased in over the next two years. When the phase-in is complete in early 2003, the BLS expects to be collecting data from 172,500 Unemployment Insurance (UI) accounts for the new design, representing about 445,000 work sites. As industries are converted to the new design, there will be a reduction in the number of reports collected for the current design.

The BLS-790 forms are used for both the current and probability-based designs, and are submitted for clearance. A list of all form types currently used is attached. Respondents in the probability design receive variations of the basic collection forms, depending on their mode of reporting. The BLS is requesting approval through December 31, 2004.

Conversion to the North American Industrial Classification System (NAICS)

Forms for the NAICS-based sample are included in this request. The BLS plans to introduce the NAICS forms in January 2003. The NAICS forms incorporate significant improvements in forms design and layout based on cognitive testing and expert review. These forms may undergo further testing and review prior to their introduction. The forms will be resubmitted for clearance if any substantive changes are made. In general, the data elements and data item definitions remain the same under NAICS as they were under the Standard Industrial Classification (SIC) basis. However, the BLS has taken this opportunity to consolidate several forms and streamline others. All Service-producing industries under NAICS will be collected using the Service Producing Industries form E. This form collects all of the data items previously collected on the SIC-based form E. This will provide the BLS with an opportunity to collect commissions in all service producing sectors where such payments are fairly common. This improvement should enhance the quality of CES earnings estimates. The SIC-based form types A, B, and C are retained; however, they have been re-titled to reflect the NAICS sector names. Reporting requirements

for education units have been reduced. All education sectors, public and private, will report only All Employees, Women Workers, and Faculty employment. The Public Administration NAICS reports will continue to be collected using the G form, which only collects all employees and women.

The CES program is a voluntary program under Federal statute. Reporting to the State agencies is voluntary in all but four States (California, Oregon, Washington, North Carolina) and Puerto Rico.

Automated data collection methods are now used for most of the CES sample. Approximately 214,300 reports are collected using Touch-tone Data Entry (TDE), as of April 2001. In comparison, 26,700 reports are collected by mail. The balance of the sample, 164,800 reports, is collected through other automated methods including Computer Assisted Telephone Interviewing (CATI), Electronic Data Interchange (EDI), facsimile collection, and submission of tapes and diskettes.

Research on use of the World Wide Web (WWW) for data collection is continuing. We expect that reporting via the WWW will grow as more respondents gain access to the Web at their workstations. We currently are testing the use of digital certificates for improving the security of reporting.

The probability design currently is collected by using CATI for initial enrollment, and CATI, TDE, Fax, or EDI for ongoing collection. Because of the need to maintain acceptable response rates, the BLS will be switching more ongoing collection to permanent CATI and away from self-reporting via TDE and Fax. This will necessitate a 25% reduction in the sample size to accommodate the increased resource demands of CATI. However, because of higher response, the BLS expects the number of usable responses will remain about the same.

I. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the Report on Employment, Payroll, and Hours (BLS-790).

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Report on Employment, Payroll, and Hours (BLS-790).

OMB Number: 1220-0011.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, local, or tribal government.

CURRENT DESIGN REPORTING BURDEN

Form	Number of respondents	Frequency of responses	Annual response	Minutes to complete report	Annual burden hours
BLS-790 BM	400	12	4,800	15	1,200
BLS 790-G, G-S	38,400	12	460,800	5	38,400
BLS 790-F1, F2, F3	18,800	12	225,600	7	26,320
All other BLS-790	261,700	12	3,140,400	7	366,380
Total	319,300	.....	3,831,600	.....	432,300

PROBABILITY DESIGN REPORTING BURDEN

Form	Number of respondents	Frequency of responses	Annual response	Minutes to complete report	Annual burden hours
BLS 790-F1, F2, F3	2,700	12	32,400	7	3,780
All other BLS-790	51,500	12	618,000	7	72,100
Total	54,200	.....	650,400	.....	75,880

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 30th day of July, 2001.

Jesus Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 01-19950 Filed 8-8-01; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Rockhouse Creek Development Corp.

[Docket No. M-2001-075-C]

Rockhouse Creek Development Corp., P.O. Box 1389, Gilbert, West Virginia 25621 has filed a petition to modify the application of 30 CFR 75.1103

(automatic fire warning devices) to its No. 1 Mine (I.D. No. 46-08366) located in Mingo County, West Virginia. The petitioner proposes to use an alternative method for automatic fire warning devices. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Coastal Coal-West Virginia, LLC

[Docket No. M-2001-076-C]

Coastal Coal-West Virginia, LLC, 61 Missouri Run Road, Cowen, West Virginia 26206 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Popular Ridge No. 1 Deep Mine (I.D. No. 46-08885) located in Webster County, West Virginia. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,400 volts at its Popular Ridge No. 1 Deep Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. San Juan Coal Company

[Docket No. M-2001-077-C]

San Juan Coal Company, P.O. Box 561, Waterflow, New Mexico 87421 has filed a petition to modify the application of 30 CFR 75.804(a) and (b) (underground high-voltage cables) to its San Juan South Mine (I.D. No. 29-02170) and San Juan Deep Mine (I.D. No. 29-02201) located in San Juan County, New Mexico. The petitioner proposes to use 4,160-volt cables for longwall equipment, with a symmetrical 3/C, 3/G, and 1/GC construction and a ground check conductor not smaller than a No. 16 (AWG). The high-voltage cables would be Cablec Anaconda brand 5KV 3/C type SHD+GC or similar 5,000-volt cable with a center ground check conductor, but otherwise manufactured to the ICEA Standard S-75-381 for Type SHD, three-conductor cables. The petitioner asserts that the cables would be MSHA accepted flame-resistant and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Black Beauty Coal Company

[Docket No. M-2001-078-C]

Black Beauty Coal Company, P.O. Box 290, Georgetown, Illinois 61846 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires,

high-voltage cables and transformers) to its Vermillion Grove Mine (I.D. No. 11-03060) located in Vermillion County, Indiana. The petitioner proposes to use high-voltage (2,400-volt) cables in the last open crosscut at the working continuous miner section(s). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Drummond Company, Inc.

[Docket No. M-2001-079-C]

Drummond Company, Inc., P.O. Box 10246, Birmingham, Alabama 35202-0246 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Shoal Creek Mine (I.D. No. 01-02901) located in Jefferson County, Alabama. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,400 volts at its Shoal Creek Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Beech Fork Processing, Inc.

[Docket No. M-2001-080-C]

Beech Fork Processing, Inc., P.O. Box 480, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors) to its No. 5 Mine (I.D. No. 15-18407) located in Martin County, Kentucky. The petitioner proposes to use permanently installed spring-loaded devices instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to comments@msha.gov, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before

September 10, 2001. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 30th day of July 2001.

David L. Meyer,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 01-19944 Filed 8-8-01; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Employment Standards Administration

Office of Workers' Compensation Programs, Information Collection; OMB Approval, Energy Employees Occupational Illness Compensation Program Act Forms (Various)

ACTION: Notice of OMB approval under the Paperwork Reduction Act.

SUMMARY: The Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act, a collection of information under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA or Act).

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S-3524, 200 Constitution Ave., NW., Washington, DC 20210, (202) 693-0031.

SUPPLEMENTARY INFORMATION: On May 25, 2001, the Employment Standards Administration, Office of Workers' Compensation Programs, published an interim final rule governing the administration of the EEOICPA, and requested OMB approval under the Paperwork Reduction Act of an information collection consisting of 9 forms/reporting requirements under the Act. The forms/reporting requirements are: EE-1, Claim for Benefits Under Energy Employees Occupational Illness Compensation Program Act; EE-2, Claim for Survivor Benefits Under Energy Employees Occupational Illness Compensation Program Act; EE-3, Employment History for Claim Under Energy Employees Occupational Illness Compensation Program Act; EE-4, Employment History Affidavit for Claim Under the Energy Employees Occupational Illness Compensation Program Act; EE-7, Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act; EE-15/EN-15, letter to claimant requesting information on approved claims concerning possible tort suits, third

party settlements, other eligible survivors, fraud convictions, and corrections; EE-20/EN-20, Acceptance of Payment Under the Energy Employees Occupational Illness Compensation Program Act; EE-915, Claim for Medical Reimbursement Under the Energy Employees Occupational Illness Compensation Program Act; and 20 CFR 30.214, a medical report required when an injury, illness or disability is sustained as a consequence of cancer.

OMB has approved the information collection request for three years. The OMB control number assigned to this information collection is 1215-0197, and the expiration date is 7/31/2004.

Dated: August 1, 2001.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration, Department of Labor.

[FR Doc. 01-19949 Filed 8-8-01; 8:45 am]

BILLING CODE 4510-CH-P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. APP.2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: September 11, 2001.

Time of Meeting: 10 a.m. to 12 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 105, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than August 24, 2001. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219-5250.

Dated: August 3, 2001.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 01-19925 Filed 8-8-01; 8:45 am]

BILLING CODE 7515-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-286]

Entergy Nuclear Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Nuclear Operations, Inc. (the licensee) to withdraw its September 7, 2000, application for proposed amendment to Facility Operating License No. DPR-64 for the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

The proposed amendment would have modified the Technical Specifications to extend the surveillance frequency from 720 hours to 1440 hours for the Fuel Storage Building Emergency Ventilation system. The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 15, 2000 (65 FR 69064). However, by letter dated July 16, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 7, 2000, and the licensee's letter dated July 16, 2001, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index/html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr@nrc.gov.

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

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-19974 Filed 8-8-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Denial of Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Section 50.34(b)(6)(ii) of Title 10 of the Code of Federal Regulations Part 50 [10 CFR 50.34(b)(6)(ii)], requires that the Final Safety Analysis Report (FSAR) include information related to how the requirements of 10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," will be satisfied. The regulation at 10 CFR 50.54(a)(3) requires licensees to submit changes that reduce commitments in its Quality Assurance Program (QAP) description for NRC review prior to implementation. By letter dated July 13, 1999, as supplemented, October 14 and 22, 1999, January 26, and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal), the licensee requested an exemption from the requirements of 10 CFR 50.34(b)(6)(ii) with respect to the extent that this regulation incorporates provisions from 10 CFR Part 50, Appendix B, except for Criterion III, "Design Control," Criterion XV, "Nonconforming Materials, Parts, or Components," and Criterion XVI, "Corrective Action." The licensee also requested an exemption from the requirements of 10 CFR 50.54(a)(3) to the extent that it would require the

licensee to submit an update to its QAP that would result from the changes that would occur from the exemptions granted to the special treatment requirements of 10 CFR Parts 21, 50, and 100. The scope of the exemptions requested was limited to those safety-related structures, systems or components (SSCs) categorized in accordance with STPNOC's risk-informed categorization process as low safety significant (LSS) or non-risk significant (NRS).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present pursuant to 10 CFR 50.12(a)(2)(i) whenever application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Special circumstances are present pursuant to 10 CFR 50.12(a)(2)(iii) when compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. Special circumstances are present under 10 CFR 50.12(a)(2)(iv) whenever an exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption. Special circumstances are present under 10 CFR 50.12(a)(2)(v) whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Special circumstances are present under 10 CFR 50.12(a)(2)(vi) whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If 10 CFR 50.12(a)(2)(vi) is relied on exclusively for satisfying the special circumstances provision of 10 CFR

50.12(a)(2), the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.34(b)(6)(ii) and 10 CFR 50.54(a)(3). The NRC has determined that exemptions from these requirements are not appropriate as documented in the safety evaluation dated August 3, 2001, prepared in support of the licensee's exemption requests.

The underlying purpose of the requirements is for the licensee to document how the quality assurance requirements of 10 CFR Part 50, Appendix B, will be satisfied, including changes to the application of these requirements to safety-related SSCs. The application of a risk-informed categorization process or changes to special treatment requirements applied to safety-related SSCs does not affect the underlying purpose of the requirement of 10 CFR 50.34(b)(6)(ii) or 10 CFR 50.54(a)(3) related to the documentation describing the licensee's QAP. Should the licensee be granted exemptions from any of the requirements of 10 CFR Part 50, Appendix B, for LSS and NRS SSCs, the documentation describing its QAP should note that exemptions have been granted for LSS and NRS SSCs from those requirements. Changes to the QAP that supplement any exemptions from the requirements of 10 CFR Part 50, Appendix B should be reviewed and approved pursuant to the requirements of 10 CFR 50.34(a)(3).

Further, the NRC has found that none of the special circumstances described under 10 CFR 50.12(a)(2) that are necessary for the Commission to grant the exemption are satisfied with regard to the specific requirements of 10 CFR 34(b)(6)(ii) or 10 CFR 50.54(a)(3). There are no conflicts with other rules or requirements of the Commission, the underlying purpose of the rule would not be met by granting the exemption, compliance with the rule would not result in undue hardship or excessive costs, granting the exemption would not result in either a benefit to the public health and safety or a decrease in safety, STPNOC is not seeking temporary relief from the regulation, and there are no other material circumstances not previously considered for which it would be in the public interest to grant an exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is not appropriate. Further, the Commission

has determined that special circumstances are not present. Therefore, the Commission hereby denies STPNOC the exemptions from the 10 CFR 50.34(b)(6)(ii) requirements that the FSAR include information related to how the requirements of 10 CFR Part 50, Appendix B will be satisfied for STP and from the requirements of 10 CFR 50.54(a)(3) to submit for NRC review and approval changes to the QAP that would result from the granting of exemptions from the special treatment requirements of 10 CFR Parts 21, 50, and 100.

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

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-19961 Filed 8-8-01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Under Section 50.49(b) of Title 10 to the Code of Federal Regulations, Part 50, [10 CFR 50.49(b)] criteria were established that defined the scope of components to be subject to the requirements of 10 CFR 50.49 [the Environmental Qualification (EQ) Rule]. As defined under 10 CFR 50.49(b) the scope of electrical equipment important to safety that must be included under a program for qualifying equipment includes (1) safety-related electric equipment, (2) nonsafety-related electric equipment whose failure under postulated environmental conditions

could prevent satisfactory accomplishment of safety functions (a) through (c) specified below, and (3) certain post-accident monitoring equipment. Under the regulation, safety-related electric equipment is that relied upon to remain functional during and following design-basis events to ensure (a) the integrity of the reactor coolant pressure boundary, (b) the capability to shut down the reactor and maintain it in a safe shutdown condition, or (c) the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guidelines in 10 CFR 50.34(a)(1), 10 CFR 50.67(b)(2), or 10 CFR 100.11 as applicable. Further, under the regulation, design-basis events are defined as conditions of normal operation, including anticipated operational occurrences, design-basis accidents, external events, and natural phenomena for which the plant must be designed to ensure functions (a) through (c) defined above.

The purpose of the EQ rule, as defined under 10 CFR 50.49(a), is that licensee's shall establish a program for qualifying electric equipment. The EQ rule provides detailed requirements for the documentation requirements and methodology for qualification that licensee's shall implement to meet the purpose of the rule.

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal), the licensee requested an exemption from the requirements of 10 CFR 50.49(b) to exclude structures, systems, or components (SSCs) categorized as low safety significant (LSS) and non-risk significant (NRS), using the licensee's categorization process, from the scope of SSCs subject to the EQ Rule.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If the special circumstance of 10 CFR 50.12(a)(2)(vi) is

relied on exclusively, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.49(b). The NRC's evaluation is provided in a safety evaluation (SE), dated August 3, 2001, prepared in support of this exemption.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices (for example the five methods for procuring replacement SSCs that include vendor documentation, equivalency evaluation, technical evaluation, technical analysis, and testing) provide the licensee with a framework that, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis environmental conditions.

In its review, the staff concluded that the requirements of 10 CFR 50.49(e) related to (1) temperature and pressure, (2) humidity, (3) chemical effects, (4) radiation, (5) aging, (6) submergence, and (7) synergistic effects represent design requirements that must be addressed in the licensee's alternative treatment processes so that the licensee could determine that the SSCs remain capable of performing their safety functions under design-basis environmental conditions. Based on these findings, the staff determined that LSS and NRS SSCs could be excluded from the scope of 10 CFR 50.49, except to the extent that design requirements are imposed by 10 CFR 50.49(e)(1) through (7), without undue risk to public health and safety.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are

most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application of this special circumstance during the Commission meeting held on July 20, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby partially grants, subject to the conditions described below, STPNOC the exemption from the requirements of 10 CFR 50.49(b) for SSCs at STP categorized as LSS and NRS to the extent that this rule defines the scope of SSCs subject to the requirements of 10 CFR 50.49 except the requirements of 10 CFR 50.49(e)(1) through (7) continue to apply to the extent that these requirements describe the design conditions of (1) temperature and pressure, (2) humidity, (3) chemical effects, (4) radiation, (5) aging, (6) submergence, and (7) synergistic effects. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed FSAR submittal dated May 21,

2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

- a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

- b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

- c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

- d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

- e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.
John A. Zwolinski,
*Director, Division of Licensing Project
 Management, Office of Nuclear Reactor
 Regulation.*
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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al. South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Under Section 50.55a(f) of Title 10 to the Code of Federal Regulations, Part 50, [10 CFR 50.55a(f)], as it applies to STP, pumps and valves that are classified as American Society of Mechanical Engineers, Boiler and Pressure Vessel Code (ASME Code) Code Class 1, 2, or 3 must be designed and be provided with access to enable the performance of inservice testing (IST) for assessing operational readiness as set forth in Section XI of the applicable edition and addendum of the ASME Code applied to the construction of the particular pump or valve. Further, throughout the service life of STP, pumps and valves that are classified as ASME Code Class 1, 2, and 3 must meet the IST requirements, except design and access provisions, set forth in the applicable edition and addendum of the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) to the extent practical within the limitations of design, geometry and materials of construction of the components.

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal), STPNOC requested an exemption from

the requirements of 10 CFR 50.55a(f) to the extent that it imposes the IST requirements under Section XI of the ASME Code and under the OM Code on safety-related structures, systems, or components (SSCs) at STP categorized as low safety significant (LSS) and non-risk significant (NRS). Also, STPNOC requested an exemption from the requirements of 10 CFR 50.55a(f) to the extent that it imposes the repair and replacement requirements of Section XI of the ASME Code on ASME Code Class 2 and 3 SSCs at STP categorized as LSS or NRS.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If the special circumstance of 10 CFR 50.12(a)(2)(vi) is relied on exclusively, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.55a(f). The NRC's evaluation is provided in a safety evaluation (SE), dated August 3, 2001, prepared in support of this exemption.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices provide the licensee with a framework that, if effectively

implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions. Based on these findings, the staff determined that LSS and NRS SSCs could be excluded from the scope of 10 CFR 50.55a(f) to the extent that it imposes the IST requirements under Section XI of the ASME Code and under the OMB Code for ASME Code Class 1, 2, and 3 components without undue risk to public health and safety.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application of this special circumstance during the Commission meeting held on July 20, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below. STPNOC the exemption from the requirements of 10 CFR 50.55a(f) to the extent that it imposes the IST requirements under Section XI of the ASME Code and under

the OM Code for ASME Code Class 1, 2, and 3 SSCs at STP categorized as LSS or NRS. Further, the NRC determined that 10 CFR 50.55a(f) does not impose the repair and replacement requirements of Section XI of the ASME Code, therefore an exemption from these requirements is not necessary. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly,

based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Under Section 50.55a(g) of Title 10 to the Code of Federal Regulations, Part 50, [10 CFR 50.55a(g)], as it applies to STP, components that are classified as American Society of Mechanical Engineers, Boiler and Pressure Vessel Code (ASME Code) Class 1, 2, or 3 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of the applicable edition and addendum of the ASME Code applied to the construction of the particular component. Further, throughout the service life of STP, components (including supports) that are classified as ASME Code Class 1, 2,

and 3 must meet the requirements [including those for inservice inspection (ISI), repair, and replacement], except design and access provisions and preservice examination requirements, set forth in Section XI of the applicable edition and addendum of the ASME Code, to the extent practical within the limitations of design, geometry and materials of construction of the components.

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8, and May 21, 2001, (hereinafter, the submittal), STPNOC requested an exemption from the requirements of 10 CFR 50.55a(g) to the extent that it imposes the ISI requirements of Section XI of the ASME Code on ASME Code Class 1, 2, and 3 safety-related structures, systems, and components (SSCs) at STP categorized as low safety significant (LSS) or non-risk significant (NRS). Also, STPNOC requested an exemption from the requirements of 10 CFR 50.55a(g) to the extent that it imposes the repair and replacement requirements of Section XI of the ASME Code on ASME Code Class 2 and 3 SSCs at STP categorized as LSS or NRS.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If the special circumstance of 10 CFR 50.12(a)(2)(vi) is relied on exclusively, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.55a(g). The NRC's evaluation is provided in a safety evaluation (SE), dated August 3, 2001, prepared in support of this exemption.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that

appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices provide the licensee with a framework that, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions. Based on these findings, the staff determined that LSS and NRS SSCs could be excluded from the scope of 10 CFR 50.55a(g) without undue risk to public health and safety to the extent that 10 CFR 50.55a(g) imposes the ISI requirements for ASME Code Class 1, 2, and 3 components, and the repair and replacement requirements for ASME Code Class 2 and 3 components, of Section XI of the ASME Code.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application

of this special circumstance during the Commission meeting held on July 20, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from the requirements of 10 CFR 50.55a(g) to the extent that it imposes the ISI requirements of Section XI of the ASME Code on ASME Code Class 1, 2, and 3 safety-related SSCs at STP categorized as LSS or NRS. Further, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from the requirements of 10 CFR 50.55a(g) to the extent that it imposes the repair and replacement requirements of Section XI of the ASME Code on ASME Code Class 2 and 3 SSCs at STP categorized as LSS or NRS. As conditions of these exemptions:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

- a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

- b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

- c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by

the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

- d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

- e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al. South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the

licensee's site in Matagorda County, Texas.

2.0 Request/Action

Under Section 50.55a(h)(2) of Title 10 to the Code of Federal Regulations, Part 50, [10 CFR 50.55a(h)(2)] for nuclear power plants with construction permits issued after January 1, 1971, but before May 13, 1999, protection systems must meet the requirements stated in either Institute of Electrical and Electronics Engineers (IEEE) Std. 279, "Criteria for Protection Systems for Nuclear Power Generating Stations," or in IEEE Std. 603-1991, "Criteria for Safety Systems for Nuclear Power Generating Stations," and the correction sheet dated January 30, 1995. STPNOC is committed to meet IEEE 279-1971. The scope of IEEE 279 states that this standard establishes the minimum safety-related functional performance and reliability requirements for protection systems in a nuclear power plant. Fulfillment of these requirements does not necessarily establish the adequacy of protective system functional performance and reliability, but failure to fulfill any of these requirements usually indicates system inadequacy.

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8, and May 21, 2001, (hereinafter, the submittal), STPNOC requested an exemption from the requirements of 10 CFR 50.55a(h) to the extent that it imposes the requirements of Sections 4.3 and 4.4 of IEEE 279 on structures, systems, and components (SSCs) categorized as low safety significant (LSS) and non-risk significant (NRS), using the licensee's categorization process. Section 4.3 of IEEE 279 contains requirements for the quality of components and modules. Section 4.4 of IEEE 279 contains requirements for equipment qualification. The other requirements listed in IEEE 279, including functional and design requirements, will continue to be applied.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever

there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If the special circumstance of 10 CFR 50.12(a)(2)(vi) is relied on exclusively, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.55a(h)(2). The NRC's evaluation is provided in a safety evaluation (SE), dated August 3, 2001, prepared in support of this exemption.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices provide the licensee with a framework that, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions. Based on these findings, the staff determined that LSS and NRS SSCs could be excluded from the scope of 10 CFR 50.55a(h)(2) to the extent that it imposes the requirements of Sections 4.3 and 4.4 of IEEE 279 on LSS and NRS SSCs without undue risk to public health and safety.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC

operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application of this special circumstance during the Commission meeting held on July 20, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from the requirements of 10 CFR 50.55a(h)(2) to the extent that it imposes the requirements of Sections 4.3 and 4.4 of IEEE 279 on SSCs at STP categorized as LSS and NRS. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

- a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

- b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated

May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Under Section 50.59 of Title 10 to the Code of Federal Regulations, Part 50, (10 CFR 50.59) requirements were established by which licensees could make changes to their facilities without prior NRC approval. For changes to the facility as described in the Final Safety Analysis Report (FSAR) (or to procedures as described in the FSAR), the licensee is to perform an evaluation of the change to determine whether certain conditions are met—if so, prior NRC approval for the change is required. The purpose of the rule is to ensure that the NRC has the opportunity to review changes of potential significance to the basis for licensing of the facility before they are implemented. The rule requires licensees to review proposed changes, and if they meet criteria that are related to accident probability or consequences, to seek prior NRC review and approval before implementing the particular change.

As discussed in a rulemaking that revised the 10 CFR 50.59 requirements published on October 4, 1999, (64 FR 53582) the rule was originally established to allow licensees the ability to make certain changes to their facilities, but also to preserve the functional requirements and information included in the FSAR on how the facilities, including its structures, systems, and components (SSCs), conform with NRC requirements for design, construction, and operation of the plant. The rule revision was intended to clarify which changes require evaluation and which changes require prior NRC approval.

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8, and May 21, 2001, (hereinafter, the submittal), the licensee requested an exemption from the requirements of 10 CFR 50.59 [in particular, Paragraphs 50.59(c)(1), 50.59(c)(2) and 50.59(d)(1) of the revised rule] to perform a written evaluation for changes in special treatment requirements for low safety significant (LSS) and non-risk significant (NRS) SSCs. STPNOC further requested an exemption from the requirement to seek prior NRC approval for such changes to the extent that they fall within the listed criteria in 10 CFR 50.59.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present under 10 CFR 50.12(a)(2)(ii) when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.59 [Sections 50.59(c)(1), 50.59(c)(2) and 50.59(d)(1) under the revised rule]. The NRC's evaluation is provided in a safety evaluation (SE), dated August 3, 2001, prepared in support of this exemption. The FSAR for STP includes descriptions of many of the special treatment requirements as presently applied to SSCs. As such, the proposed approach described in the licensee's submittal that revises treatment applied to SSCs based on the results of the categorization process will result in changes to the descriptions of this treatment in the FSAR. These changes to the FSAR would fall within the scope of those requiring evaluation, and possibly prior NRC review and approval, pursuant to 10 CFR 50.59. STPNOC is proposing that it would not be required to evaluate FSAR changes that result from changes in the treatment for SSCs categorized as LSS or NRS or to seek prior NRC review and approval for these changes pursuant to 10 CFR 50.59. The exemption request does not extend to changes to functional requirements for SSCs that are described in the FSAR.

In the licensee's submittal, it requested exemptions from certain special treatment and process requirements in 10 CFR 21.3; 10 CFR 50.34(b)(6)(ii); 10 CFR 50.34(b)(10); 10 CFR 50.34(b)(11); 10 CFR 50.49(b); 10 CFR 50.54(a)(3); 10 CFR 50.55a(f); 10 CFR 50.55a(g); 10 CFR 50.55a(h); 10 CFR 50.65(b); 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 1, GDC 2, GDC 4, and GDC 18; 10 CFR Part 50, Appendix B; 10 CFR 50, Appendix J, Option B, Section III.B; and 10 CFR Part 100, Appendix A, Sections VI(a)(1) and (2). These exemption requests are being made to enable STPNOC to apply certain requirements in a graded manner based upon the safety/risk significance

of the SSCs. The NRC's SE dated August 3, 2001, provides a complete description of the extent of the requested exemptions from these regulations. The regulations for which exemptions are being sought include "special treatment" requirements, such as qualification, inspection, testing, monitoring, and quality assurance requirements.

As noted, the purpose of the requirements in 10 CFR 50.59 is for licensees to assess proposed changes in order to identify when NRC review is needed. As part of the overall exemption review, NRC has reviewed the categorization methodologies used to determine the risk significance of SSCs. Further, NRC has reviewed the elements of the treatment processes proposed by the licensee that would be applicable to the various categories of SSCs. The specific changes to FSAR requirements resulting from use of these processes is part of the implementation process following the granting of the exemptions to the special treatment requirements of 10 CFR Parts 21, 50, and 100. Therefore, requiring an additional review of individual changes to the FSAR with respect to the exemptions from the special treatment requirements, for the purposes of deciding on the need for NRC prior approval, is unnecessary in that NRC review of the licensee's processes that will lead to those detailed FSAR changes was performed during the review of the requested exemptions. As previously noted, the scope of the exemption requested from 10 CFR 50.59 is only for changes concerning special treatment requirements for SSCs categorized as LSS or NRS. Any other changes to the facility (or procedures) as described in the FSAR, even if they relate to LSS or NRS SSCs, would not be exempted from the requirements of 10 CFR 50.59.

The NRC concluded that the intent of the underlying regulation (10 CFR 50.59) for prior NRC approval of particular changes contained in the submittal is satisfied by the review conducted for the exemptions from the special treatment requirements of 10 CFR Parts 21, 50, and 100. Thus, application of the rule to the particular instances of changes to specific special treatment as described in the FSAR is not necessary.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also,

special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from the requirements of 10 CFR 50.59(c)(1), (c)(2), and (d)(1) to the extent that they require the licensee to perform a written evaluation for changes to the STP FSAR, and to seek prior NRC approval of these changes, resulting from the exemptions granted to the requirements of 10 CFR Parts 21, 50, and 100 requested in the licensee's submittal. All other changes to the FSAR, even those associated with LSS and NRS SSCs, are not included within the scope of the exemption granted. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed FSAR submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Under § 50.65(b) of Title 10 to the Code of Federal Regulations, part 50, (10 CFR 50.65(b)) criteria were established that defined the scope of components to be subject to the requirements of 10 CFR 50.65 (the Maintenance Rule). As defined under 10 CFR 50.65(b), the scope of the Maintenance Rule includes "(1) Safety-related structures, systems and components that are relied upon to

remain functional during and following design-basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable;" (2) nonsafety-related structures, systems, or components (i) "[t]hat are relied upon to mitigate accidents or transients or are used in plant emergency operating procedures (EOPs)[,]" or (ii) "[w]hose failure could prevent safety-related structures, systems, and components from fulfilling their safety-related function[,]" or (iii) "[w]hose failure could cause a reactor scram or actuation of a safety-related system."

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8, and May 21, 2001, (hereinafter, the submittal), STPNOC requested an exemption from the requirements of 10 CFR 50.65(b) to exclude structures, systems, and components (SSCs) categorized as low safety significant (LSS) and non-risk significant (NRS) from the scope of the Maintenance Rule, with the exception that the requirements of 10 CFR 50.65(a)(4) would continue to apply.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If 10 CFR 50.12(a)(2)(vi) is relied on exclusively for satisfying the special circumstances provision of 10 CFR 50.12(a)(2), the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.65(b). The NRC's evaluation is provided in a safety evaluation (SE),

dated August 3, 2001, prepared in support of this exemption. The NRC evaluated the consequence of excluding LSS and NRS SSCs from scope of the Maintenance Rule. Information provided by the licensee in the submittal sufficiently describes a risk-informed categorization process that can identify a class of SSCs (LSS and NRS) that have little or no safety significance. The overall STPNOC process provides for adequate oversight to validate and recognize changes in safety significance and degradation in LSS and NRS SSCs.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices provide the licensee with a framework that, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions. Based on these findings, the staff determined that LSS and NRS SSCs could be excluded from the scope of 10 CFR 50.65, with the exception that the requirements of 10 CFR 50.65(a)(4) would continue to apply, without undue risk to public health and safety.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this

exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application of this special circumstance during the Commission meeting held on July 20, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from the requirements of 10 CFR 50.65(b) for SSCs at STP categorized as LSS and NRS to the extent that this rule defines the scope of SSCs subject to the requirements of 10 CFR 50.65(a)(1), (a)(2), and (a)(3). The requirements of 10 CFR 50.65(a)(4) continue to apply to the scope of all SSCs defined under 10 CFR 50.65(b). As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

- a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

- b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated

May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.
John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Co., et al., South Texas Project, Units 1 and 2; Denial of Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

The General Design Criteria (GDC) of Appendix A to Title 10 of the Code of Federal Regulations part 50 (10 CFR part 50, appendix A), establish minimum requirements for the principal design criteria for water-cooled nuclear power plants. The underlying purpose of the GDC is to establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components (SSCs) important to safety; that is, SSCs that provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public. By letter dated July 13, 1999, as supplemented, October 14 and 22, 1999, January 26, and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal), the licensee requested an exemption from the requirements of 10 CFR part 50, appendix A, GDC 1, "Quality Standards and Records," GDC 2, "Design Bases for Protection Against Natural Phenomena," GDC 4, "Environmental and Dynamic Effects Design Bases," and GDC 18, "Inspection and Testing of Electric Power Systems." The scope of the exemption is limited to those safety-related SSCs that are categorized in accordance with the licensee's risk-informed categorization process as low safety significant (LSS) or non-risk significant (NRS).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present under 10 CFR 50.12(a)(2)(i) whenever application of the regulation in the particular circumstances conflicts with other rules or requirements of the Commission. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Special

circumstances are present pursuant to 10 CFR 50.12(a)(2)(iii) when compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. Special circumstances are present under 10 CFR 50.12(a)(2)(iv) whenever an exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption. Special circumstances are present under 10 CFR 50.12(a)(2)(v) whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation. Special circumstances are present under 10 CFR 50.12(a)(2)(vi) whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If 10 CFR 50.12(a)(2)(vi) is relied on exclusively for satisfying the special circumstances provision of 10 CFR 50.12(a)(2), the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of GDC 1, GDC 2, GDC 4, and GDC 18. The NRC has determined that an exemption from these requirements is not appropriate as documented in the safety evaluation (SE) dated August 3, 2001, prepared in support of the licensee's exemption request.

GDC 1 states, in part, that plant equipment shall be designed, fabricated, erected, and tested to quality standards that are commensurate with the importance of the safety function performed. GDC 1 additionally requires that a quality assurance program (QAP) shall be established and implemented to provide adequate assurance that plant equipment is functional, and that appropriate records be maintained for various activities. The NRC concluded that even for LSS and NRS SSCs it remains necessary (1) To use appropriate standards (as available and applicable) commensurate with the risk significance, (2) to establish and implement a QAP, (3) to maintain plant records as determined by the licensee, and (4) for the licensee to have confidence, commensurate with their risk significance, that LSS and NRS SSCs will be capable of functioning

under design-basis conditions. Further, as discussed in the SE dated August 3, 2001, prepared in support of the licensee's exemption requests, the NRC has determined that it should deny the related licensee requests for exemptions from 10 CFR 50.34(b)(6)(ii) that requires the QAP be described in the Final Safety Analysis Report and 10 CFR 50.54(a)(3) that requires the licensee to submit certain changes to the QAP to the NRC for review and approval. In part, the basis for the NRC's determination to deny these related exemption requests is that the NRC found that the application of a risk-informed categorization process or changes to special treatment requirements applied to safety-related SSCs does not affect the underlying purpose of the requirements. Also, the licensee has submitted a revision to the STP QAP that meets the requirements of GDC 1 for LSS and NRS SSCs as discussed in the SE, dated August 3, 2001, prepared in support of the licensee's requested exemptions. As such, the NRC determined that an exemption from GDC 1 is not necessary as the licensee's submittal continues to meet the requirements of GDC 1.

The licensee requested exemptions to GDC 2, 4, and 18 to the extent that they require tests and inspections to (1) Demonstrate that SSCs are designed to withstand the effects of natural phenomena without loss of capability to perform their safety functions (GDC 2), (2) are able to withstand environmental effects (GDC 4), and (3) be performed for individual features, such as wiring, insulation, connections, switchboards, relays, switches, and buses (GDC 18). The NRC determined that GDC 2, GDC 4, and GDC 18, specify design requirements and do not require tests and/or inspections to be performed. Other regulations, from which the licensee has requested exemptions, specify testing and/or inspection requirements on SSCs. Further, the licensee has stated that safety-related LSS and NRS SSCs would be designed to satisfy original design requirements, including the design requirements of GDC 2, GDC 4, and GDC 18. Therefore, the NRC determined that an exemption from these regulations is not necessary, as the licensee will continue to maintain the design of safety-related LSS and NRS SSCs consistent with the design requirements of GDC 2, GDC 4, and GDC 18.

Further, the NRC has found that none of the special circumstances described under 10 CFR 50.12(a)(2) that are necessary for the Commission to grant the exemptions are satisfied with regard to the specific requirements of GDC 1, GDC 2, GDC 4, and GDC 18. There are

no conflicts with other rules or requirements of the Commission, the underlying purpose of the rules would not be met by granting the exemptions, compliance with the rules would not result in undue hardship or excessive costs, granting the exemptions would not result in either a benefit to the public health and safety or a decrease in safety, STPNOC is not seeking temporary relief from the regulations, and there are no other material circumstances not previously considered for which it would be in the public interest to grant the exemptions.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemptions are not appropriate. Further, the Commission has determined that special circumstances are not present. Therefore, the Commission hereby denies STPNOC the exemptions requested from the requirements of GDC 1, GDC 2, GDC 4, and GDC 18 for STP.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

In the introduction to Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing

Plants," of Title 10 of the Code of Federal Regulations Part 50 (10 CFR Part 50, Appendix B), it states that nuclear power plants "include structures, systems, and components [SSCs] that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. This appendix establishes quality assurance requirements for the design, construction, and operation of those structures, systems, and components. The pertinent requirements of this appendix apply to all activities affecting the safety-related functions of those structures, systems, and components; these activities include designing, purchasing, fabricating, handling, shipping, storing, cleaning, erecting, installing, inspecting, testing, operating, maintaining, repairing, refueling, and modifying." Under 10 CFR Part 50, Appendix B, there are 18 criteria to be met by the licensee's quality assurance program. These 18 criteria are (I) Organization, (II) Quality Assurance Program, (III) Design Control, (IV) Procurement Document Control, (V) Instructions, Procedures, and Drawings, (VI) Document Control, (VII) Control of Purchased Material, Equipment, and Services, (VIII) Identification and Control of Materials, Parts, and Components, (IX) Control of Special Processes, (X) Inspection, (XI) Test Control, (XII) Control of Measuring and Test Equipment, (XIII) Handling, Storage, and Shipping, (XIV) Inspection, Test, and Operating Status, (XV) Nonconforming Materials, Parts, or Components, (XVI) Corrective Action, (XVII) Quality Assurance Records, and (XVIII) Audits.

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal), the licensee requested an exemption from the definition of scope of SSCs to be covered by the rule in the introduction of 10 CFR Part 50, Appendix B, to the extent that it imposes the requirements of 15 of the 18 criteria on SSCs categorized as low safety significant (LSS) or non-risk significant (NRS) in accordance with the licensee's categorization process. The three criteria that are not included within the scope of the licensee exemption request and that will continue to be applied to activities associated with all safety-related SSCs (including LSS and NRS SSCs) are Criterion III, "Design Control," Criterion XV, "Nonconforming Materials, Parts, or

Components," and Criterion XVI, "Corrective Action."

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If the special circumstance of 10 CFR 50.12(a)(2)(vi) is relied on exclusively, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR Part 50, Appendix B (excluding the requirements of Criteria III, XV, and XVI). The NRC's evaluation is provided in a safety evaluation (SE) dated August 3, 2001, prepared in support of this exemption.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices provide the licensee with a framework that, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions. Based on these findings, the staff determined that LSS and NRS SSCs could be excluded from the scope of 10 CFR Part 50, Appendix B (the requirements of Criteria III, XV, and XVI would continue to apply), without undue risk to public health and safety.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application of this special circumstance during the Commission meeting held on July 20, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from the definition of the scope of SSCs to be covered by the rule in the introduction of 10 CFR Part 50, Appendix B, to the extent that it imposes the requirements of Criteria I, II, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XVII, and XVIII for SSCs at STP categorized as LSS and NRS. The requirements imposed by Criteria III, XV, and XVI of 10 CFR Part 50, Appendix B, continue to apply to all safety-related SSCs. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as

supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

*Director, Division of Licensing Project
Management Office of Nuclear Reactor
Regulation.*

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Under Option B of Appendix J to Title 10 of the Code of Federal Regulations part 50 (10 CFR part 50, appendix J, Option B) a performance based set of testing requirements is provided to ensure that leakage through primary reactor containments for water cooled power reactors or structures, systems, and components (SSCs) penetrating these containments does not exceed allowable leakage rates specified in the Technical Specifications and that the integrity of the containment structure is maintained during its service life. Also required by 10 CFR Part 50, Appendix J, Option B, Section III.B, is that "the sum of the leakage rates at accident pressure of Type B tests and pathway leakage rates from Type C tests, must be less than the performance criterion (L_a) with margin, as specified in the Technical Specifications."

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal), the licensee requested an exemption from 10 CFR Part 50, Appendix J, Option B, Section III.B, "Type B and C Tests," to the extent that this regulation imposes Type C leakage rate testing on

certain containment isolation valves. The scope of the exemption includes those containment isolation valves categorized as low safety significant (LSS) or non-risk significant (NRS) in accordance with the licensee's categorization process and satisfying one or more of the following criteria:

a. The valve is required to be open under accident conditions to prevent or mitigate core damage events.

b. The valve is normally closed and in a physically closed, water filled system.

c. The valve is in a physically closed system whose piping pressure rating exceeds the containment design pressure rating and that is not connected to the reactor coolant pressure boundary.

d. The valve is in a closed system whose piping pressure rating exceeds the containment design pressure rating, and is connected to the reactor coolant pressure boundary. The process line between the containment isolation valve and the reactor coolant pressure boundary is non-nuclear safety (*i.e.*, the valve itself would have been classified as non-nuclear safety were it not for that fact that it penetrates the containment building).

e. The valve size is 1-inch nominal pipe size or less (*i.e.*, by definition the valve failure does not contribute to large early release).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If the special circumstance of 10 CFR 50.12(a)(2)(vi) is relied on exclusively, the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the Type C leakage rate testing requirements of 10 CFR part 50, Appendix J, Option B, Section III.B. The NRC's evaluation is provided in a safety evaluation (SE), dated August 3, 2001, prepared in support of this exemption.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices provide the licensee with a framework that, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions.

In addition, in determining whether to grant this exemption, the NRC reviewed the licensee's submittal and specifically reviewed the criteria for excluding containment isolation valves from Type C testing. The NRC found that these criteria are reasonable in that even without Type C testing the probability of significant leakage during an accident (that is, leakage to the extent that public health and safety is affected) is small. Based on its review of these criteria, the NRC found that the licensee's assumption that these valves contribute zero leakage is acceptable. In addition, the NRC reviewed the licensee's application of the proposed criteria to the various containment isolation valves and found that the licensee was appropriately applying the criteria.

Based on these findings, the staff determined that LSS and NRS SSCs, meeting the additional criteria proposed by the licensee for containment isolation valves, could be excluded from the scope of Type C leakage rate testing required by 10 CFR part 50, Appendix J, Option B, Section III.B, without undue risk to public health and safety.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization

process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application of this special circumstance during the Commission meeting held on July 20, 2001.

The licensee has stated that "STP does not plan to revise the allowable leakage values contained in the Technical Specifications * * * Those penetrations which have been removed from Appendix J scope by this exemption request will be assumed to contribute zero leakage * * * " Since the cumulative total applies only to leakage from those leak tests that are performed and not the leakage from each penetration, the NRC concluded there is no need for an exemption from the requirement that "the sum of the leakage rates at accident pressure of Type B tests and pathway leakage rates from Type C tests, must be less than the performance criterion (L_a) with margin, as specified in the Technical Specifications."

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from 10 CFR part 50, Appendix J, Option B, Section III.B, to the extent that it imposes Type C testing requirements on safety-related containment isolation valves satisfying one or more of the criteria specified above, and categorized as LSS or NRS at STP. Based on the staff's determination that there is no need for an exemption

from the requirement that "the sum of the leakage rates at accident pressure of Type B tests and pathway leakage rates from Type C tests, must be less than the performance criterion (L_a) with margin, as specified in the Technical Specifications," the exemption granted does not extend to this provision of the regulation. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal**

Register (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of an FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Section 50.34(b)(10) of Title 10 of the Code of Federal Regulations part 50 [10 CFR 50.34(b)(10)], states for operating license holders whose construction permit was issued prior to January 10, 1997, that the earthquake engineering criteria in Section VI of Appendix A to 10 CFR part 100 continues to apply. For operating license holders whose construction permit was issued prior to January 10, 1997, 10 CFR 50.34(b)(11) states that the reactor site criteria in 10 CFR part 100, and seismic and geological siting criteria in Appendix A to 10 CFR part 100 continues to apply. Section VI.(a)(1) of Appendix A to 10 CFR part 100, requires that those structures, systems, and components

(SSCs) that are necessary to assure (1) the integrity of the reactor coolant pressure boundary, (2) the capability to shut down the reactor and maintain it in a safe condition, or (3) the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures shall remain functional during a safe shutdown earthquake (SSE). Further, in addition to seismic loads, including aftershocks, these SSCs shall be designed to take into account applicable concurrent functional and accident-induced loads. Section VI.(a)(2) of Appendix A to 10 CFR part 100, requires that all SSCs of the nuclear power plant necessary for continued operation without undue risk to the health and safety of the public shall be designed to remain functional and within applicable stress and deformation limits when subject to the effects of the vibratory motion of the operating basis earthquake (OBE) in combination with normal operating loads. Both Sections VI.(a)(1) and (2) provide a description of the methods for seismically qualifying these SSCs. These methods involve either a suitable dynamic analysis or a suitable qualification test to demonstrate that the SSCs can withstand the seismic and other concurrent loads, except where it can be demonstrated that the use of an equivalent static load method provides adequate conservatism.

By letter dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal), the licensee requested an exemption from the testing and specific types of analyses required to demonstrate that SSCs are designed to withstand the SSE and OBE for those safety-related SSCs that are categorized in accordance with its risk-informed categorization process as low safety significant (LSS) or non-risk significant (NRS). The licensee would not maintain safety-related LSS and NRS components in a seismically qualified condition in accordance with the requirements specified in 10 CFR part 100. Further, the licensee could replace a safety-related LSS or NRS SSC with an SSC that is not seismically qualified in accordance with the requirements specified in 10 CFR part 100.

3.0 Discussion

There are no specific provisions in 10 CFR part 100 for granting exemptions. However, the licensee has also requested an exemption from 10 CFR 50.34(b)(10) and 10 CFR 50.34(b)(11), which can be granted provided the provisions of 10 CFR 50.12 are met. As

discussed in the August 3, 2001, safety evaluation (SE) prepared in support of this exemption, the staff determined it is consistent with Commission policy to apply the exemption provisions of 10 CFR 50.12 to exemptions from the requirements of 10 CFR part 100, Appendix A, Sections VI.(a)(1) and (2) to the extent requested by the licensee. The staff informed the Commission of the decision to apply the requirements of 10 CFR 50.12 to the exemptions requested from Appendix A to 10 CFR part 100, Sections VI.(a)(1) and VI.(a)(2), during the Commission meeting on July 20, 2001.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under 10 CFR 50.12(a)(2)(vi), special circumstances are present whenever there is any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. If 10 CFR 50.12(a)(2)(vi) is relied on exclusively for satisfying the special circumstances provision of 10 CFR 50.12(a)(2), the exemption may not be granted until the Executive Director for Operations has consulted with the Commission.

The NRC has completed its evaluation of STPNOC's request for an exemption from the requirements of 10 CFR 50.34(b)(10), 10 CFR 50.34(b)(11), Section VI.(a)(1) of Appendix A to 10 CFR part 100, and Section VI.(a)(2) of Appendix A to 10 CFR part 100. The design aspects of these regulations would continue to apply, that is, the design requirements related to the capability of the SSCs to remain functional considering SSE and OBE seismic loads shall be maintained and must be included as a design requirement or procurement requirement of replacement SSCs. The NRC's findings are documented in a SE dated August 3, 2001, prepared in support of the requested exemption.

The staff has reviewed STPNOC's integrated SSC categorization process. The categorization process was found to use both a probabilistic and a deterministic based methodology that appropriately addressed the issues of defense-in-depth, safety margins, and aggregate risk impacts. The staff finds the proposed categorization process to be acceptable to categorize the risk

significance of both functions and SSCs for use in reducing the scope of SSCs subject to special treatment. The categorization process provides an acceptable method for defining those SSCs for which exemptions from the special treatment requirements can be granted. In support of its finding on the licensee's categorization process, the staff also found that the alternative treatment practices provide the licensee with a framework that, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions. Based on these findings, the staff determined that LSS and NRS SSCs could be excluded from the scope of 10 CFR 50.34(b)(10), 10 CFR 50.34(b)(11), Section VI.(a)(1) of Appendix A to 10 CFR part 100, and Section VI.(a)(2) of Appendix A to 10 CFR part 100, without undue risk to public health and safety.

The staff also found that granting of this exemption is in the public interest in that it enhances the effectiveness and efficiency of the NRC's oversight of the licensee's activities at STP by focusing its resources on those SSCs that are most significant to maintaining public health and safety. Likewise, the licensee's resources and attention can be focused on those SSCs that have the highest contribution to plant risk. Further, the licensee's categorization process provides a method for establishing a licensing basis for STP that is consistent with the risk-informed approach in the NRC's reactor oversight process. This enhances the regulatory framework under which STPNOC operates its facility and by which the NRC oversees the licensee's activities.

As discussed further in the August 3, 2001, SE prepared in support of this exemption, the NRC has concluded that the special circumstances of 10 CFR 50.12(a)(2)(vi) are satisfied in that the licensee has presented a material circumstance (the categorization process) that was not considered when the regulations were adopted and that provides an acceptable method for refining the scope of SSCs to include under the regulations. Furthermore, it is in the public interest to grant such exemptions. Finally, as required by 10 CFR 50.12(a)(2)(vi), the Executive Director for Operations has consulted with the Commission in the application of this special circumstance during the Commission meeting held on July 20, 2001.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by

law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from 10 CFR 50.34(b)(10), 10 CFR 50.34(b)(11), and Sections VI.(a)(1) and VI.(a)(2) of Appendix A to 10 CFR part 100, to the extent that these regulations require testing and specific types of analyses to demonstrate that SSCs are designed to withstand the SSE and OBE for those safety-related SSCs categorized as LSS or NRS at STP. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment. This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-19972 Filed 8-8-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No(s). 50-498 and 50-499]

STP Nuclear Operating Company, et al., South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company, et al. (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF-76 and NPF-80, which authorize operation of the South Texas Project, Units 1 and 2 (STP or the facilities). The licenses provide, among other things, that the licensee 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 facilities consist of two pressurized-water reactors located at the licensee's site in Matagorda County, Texas.

2.0 Request/Action

Section 21.3 of Title 10 of the Code of Federal Regulations part 21 (10 CFR 21.3), provides the definition of basic component as it relates to the reporting of defects and nonconformances. By letter dated July 13, 1999, as supplemented, October 14 and 22, 1999, January 26, and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001, (hereinafter, the submittal) the licensee requested an exemption from

the definition of basic component to exclude safety-related structures, systems, or components (SSCs) classified in accordance with its risk-informed categorization process as low safety significant (LSS) or non-risk significant (NRS) from the scope of the definition of basic component. STPNOC proposed that it would not apply procurement, dedication, and reporting requirements in 10 CFR part 21 to safety-related LSS and NRS SSCs. STPNOC stated that 10 CFR Part 21 imposes procurement and dedication requirements and requires the reporting of defects and noncompliances involving basic components whose failure could cause a substantial safety hazard. Also, STPNOC stated that reporting of defects and noncompliance involving safety-related LSS and NRS SSCs is not necessary to meet the purpose of 10 CFR part 21 because failure of such SSCs would not result in a substantial safety hazard.

3.0 Discussion

The Commission, pursuant to 10 CFR 21.7, may grant exemptions from the requirements of 10 CFR Part 21 as 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.

The U.S. Nuclear Regulatory Commission (NRC) has completed its evaluation of STPNOC's request for an exemption from the definition of basic component in 10 CFR 21.3. As it relates to nuclear power plants licensed pursuant to 10 CFR part 50, a basic component is defined as a SSC, or part thereof, that affects its safety function necessary to assure (1) the integrity of the reactor coolant pressure boundary; (2) the capability to shut down the reactor and maintain it in a safe shutdown condition; or (3) the capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in 10 CFR 50.34(a)(1) or 10 CFR 100.11. Further, a basic component is defined as an item designed and manufactured under a quality assurance program complying with 10 CFR part 50, Appendix B, or commercial-grade items which have successfully completed the dedication process. Finally, the definition of basic component includes the safety-related design, analysis, inspection, testing, fabrication, replacement of parts, or consulting services that are associated with the SSC hardware.

In the discussion of the purpose in 10 CFR 21.1, the need to identify the failure of SSCs to satisfy requirements

(e.g., NRC regulations or Atomic Energy Act), or identify SSCs that contain defects, is related to conditions that could result in a substantial safety hazard. A substantial safety hazard is defined in 10 CFR 21.3 as meaning a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety.

In the safety evaluation (SE), dated August 3, 2001, prepared in support of this exemption, the NRC describes its assessment of the attributes of the proposed treatment processes for LSS and NRS SSCs. The NRC determined that the proposed alternative treatment processes, if effectively implemented, will provide reasonable confidence that safety-related LSS and NRS SSCs remain capable of performing their safety functions under design-basis conditions. Also, as discussed in the SE, the NRC determined that the licensee's categorization process provides a reasonable method for determining that safety-related LSS and NRS SSCs have a small contribution to overall safety. Further, the sensitivity study conducted by the licensee demonstrates that for relatively large changes in availability of all of the safety-related LSS SSCs modeled in the probabilistic risk assessment, there is only a small change in the overall plant risk. Therefore, the NRC determined that it is acceptable to exclude LSS and NRS SSCs from the scope of the definition of basic component in 10 CFR 21.3 because the NRC concluded that defects in these components would not result in a substantial safety hazard and thus reporting of such defects is not necessary. On this basis, the NRC finds that the proposed exemption will not endanger life or property or the common defense and security.

The NRC also finds the proposed exemption is otherwise in the public interest since it focuses NRC and licensee attention on the most safety and risk significant SSCs. Further, the NRC finds that the proposed exemption is authorized by law. Thus, the NRC finds that the proposed exemption satisfies the criteria given in 10 CFR 21.7 and should be granted.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 21.7, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby grants, subject to the conditions described below, STPNOC the exemption from the definition of basic

component in (1)(ii) of 10 CFR 21.3 for SSCs at STP categorized as LSS and NRS. As conditions of this exemption:

1. The licensee described the categorization, treatment, and oversight (evaluation and assessment) processes in its submittal dated July 13, 1999, as supplemented October 14 and 22, 1999, January 26 and August 31, 2000, and January 15, 18, 23, March 19, May 8 and 21, 2001. The licensee has documented these processes in a proposed Final Safety Analysis Report (FSAR) submittal dated May 21, 2001, found acceptable by the staff as the regulatory basis for granting this exemption (see the NRC's SE dated August 3, 2001). The licensee shall incorporate this proposed FSAR submittal into the STP FSAR and shall implement the categorization, treatment, and oversight processes consistent with the STP FSAR descriptions.

2. The licensee shall implement a change control process that incorporates the following requirements:

a. Changes to FSAR Section 13.7.2, "Component Categorization Process," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would decrease the effectiveness of the process in identifying high safety significant and medium safety significant components.

b. Changes to FSAR Section 13.7.3, "Treatment of Component Categories," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a reduction in the assurance of component functionality.

c. Changes to FSAR Section 13.7.4, "Continuing Evaluations and Assessments," dated May 21, 2001, and found acceptable by the NRC as described in the NRC's SE dated August 3, 2001, may be made without prior NRC approval, unless the change would result in a decrease in effectiveness of the evaluations and assessments.

d. The licensee shall submit a report, as specified in 10 CFR 50.4, of changes made without prior NRC approval pursuant to these provisions. The report shall identify each change and describe the basis for the conclusion that the change does not involve a decrease in effectiveness or assurance as described above. The report shall be submitted within 60 days of the date of the change.

e. Changes to FSAR Sections 13.7.2, 13.7.3, and 13.7.4 that do not meet the criteria of a through c above shall be submitted to the NRC for prior review and approval.

Pursuant to 10 CFR 51.32, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (66 FR 32397). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon submittal of a FSAR update pursuant to 10 CFR 50.71(e) incorporating the FSAR Sections described in the conditions above.

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

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01-19973 Filed 8-8-01; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 129th meeting on August 28-30, 2001, at 11545 Rockville Pike, Rockville, Maryland, Room T-2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, August 28, 2001

A. 8:30-10:15 A.M.: *Opening Statement/Planning and Procedures (Open)*—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. 10:30-12:00 P.M.: *Status of Sufficiency Review (Open)*—The Committee will receive an information briefing from the NRC staff on the status of their sufficiency comments.

C. 1:30-3:30 P.M.: *DOE's Supplemental Science and Performance Analysis (SSPA) (Open)*—The Committee will hear a status report from DOE on its SSPA.

D. 3:45-7:00 P.M.: *Discussion of Proposed ACNW Reports (Open)*—The Committee will discuss proposed ACNW reports on Sufficiency Comments, Research Plan for Radionuclide Transport: Prioritization Methods, Greater-Than-Class C Waste and Sealed Sources, Yucca Mountain Igneous Activity Analyses and Comments on Regulatory Conservatism.

Wednesday, August 29, 2001

E. 8:30-8:40 A.M.: *Opening Remarks by the ACNW Chairman (Open)*—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. 8:40–10:15 A.M.: *Briefing by Deputy Director, NMSS (Open)*—Ms. Federline will address the Committee on items of mutual interest.

G. 10:30–12:30 P.M.: *Update: Total System Performance Assessment and Integration (TSPA&I) (Open)*—The Committee will hear a presentation by the NRC staff on the TSPA technical exchange and management meeting with DOE held August 6–9, 2001.

H. 2:00–2:30 P.M.: *Research Working Group (Open)*—The Committee will discuss plans for the subject working group which is to be held during the 131st ACNW Meeting.

I. 2:30–4:00 P.M.: *DOE-Yucca Mountain Preclosure Plans (Open)*—The Committee will hear a briefing by and hold discussions with representatives of DOE on its current preclosure plans and activities for the proposed HLW repository at Yucca Mountain.

J. 4:15–7:00 P.M.: *Preparation of ACNW Reports (Open)*—The Committee will discuss proposed reports.

Thursday, August 30, 2001

K. 8:30–8:35 A.M.: *Opening Remarks by the ACNW Chairman (Open)*—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

L. 8:35–9:30 A.M.: *Preparations for October Visit to Nevada (Open)*—The Committee will finalize topics, agenda and public outreach sessions for the trip to Nevada, as well as plans for a visit prior to the October meeting by Members to the Envirocare Facility in Utah.

M. 9:30–2:45 P.M.: *Discussion of Proposed ACNW Reports (Open)*—The Committee will continue its discussion of proposed ACNW reports.

N. 2:45–3:00 P.M.: *Miscellaneous (Open)*—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60475). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made

to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 A.M. and 4:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 3, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–19992 Filed 8–8–01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 5–8, 2001, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, September 5, 2001

8:30 a.m.–8:35 a.m.: *Opening Remarks by the ACRS Vice Chairman (Open)*—The ACRS Vice Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: *Duane Arnold Core Power Uprate (Open)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Alliant Energy regarding the license amendment request submitted by the Alliant Energy to increase the core thermal power by 15.3% above the current licensed value for the Duane Arnold Energy Center and the associated staff's safety evaluation report.

10:20 a.m.–12:00 Noon: *EPRI Report on Resolution of Generic Letter 96–06 Waterhammer Issues (Open)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Electric Power Research Institute (EPRI) regarding the EPRI Report, TR–113594, "Resolution of Generic Letter 96–06 Waterhammer Issues."

1:00 p.m.–2:30 p.m.: *Reactor Oversight Process (Open)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the use of performance indicators in the reactor oversight process, initial implementation of the significance determination process (SDP), and technical adequacy of the SDP to contribute to the reactor oversight process.

2:50 p.m.–4:00 p.m.: *Proposed Update to 10 CFR 52, "Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Plants" (Open)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed update to 10 CFR Part 52.

4:20 p.m.–7:00 p.m.: *Discussion of Proposed ACRS Reports (Open)*—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Thursday, September 6, 2001

8:30 a.m.–8:35 a.m.: *Opening Remarks by the ACRS Chairman (Open)*—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:00 a.m.: *Peer Review of PRA Certification Process (Open)*—The Committee will hear a report from Mr. Markley, ACRS Senior Staff Engineer, regarding the application of the PRA certification process described in NEI 00–02, "Probabilistic Risk Assessment (PRA) Peer Review Process Guidance," for the North Anna Power Station that was conducted by the Westinghouse Owners Group and discussed with the licensee on July 16–20, 2001, in Richmond, Virginia.

9:00 a.m.–10:00 a.m.: *Meeting with the NRC Commissioner Merrifield (Open)*—The Committee will meet with the NRC Commissioner Merrifield to discuss items of mutual interest.

10:20 a.m.–12:00 Noon: *Proposed Resolution of Generic Safety Issue (GSI)–191, "Assessment of Debris Accumulation on PWR Sump Pump Performance" (Open)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed resolution of GSI–191.

1:00 p.m.–2:30 p.m.: *TRACG Best-Estimate Thermal-Hydraulic Code (Open/Closed)*—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the General Electric TRACG best-estimate large-break loss-of-coolant accident code.

Note: A portion of this session may be closed to discuss General Electric Proprietary Information.

2:45 p.m.–3:30 p.m.: *Proposed Final Revision to Regulatory Guide 1.78 (DG-1089), "Main Control Room Habitability During a Postulated Hazardous Chemical Release"* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final revision to Regulatory Guide 1.78.

3:30 p.m.–7:00 p.m.: *Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

Friday, September 7, 2001

8:30 a.m.–8:35 a.m.: *Opening Remarks by the ACRS Chairman* (Open)

8:35 a.m.–9:30 a.m.: *Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS.

9:30 a.m.–9:45 a.m.: *Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:00 a.m.–6:00 p.m.: *Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

Saturday, September 8, 2001

8:30 a.m.–11:30 a.m.: *Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

11:30 a.m.–12:00 Noon: *Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2000 (65 FR 60476). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to

make oral statements should notify Dr. Sher Bahadur, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Dr. Sher Bahadur prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Dr. Sher Bahadur if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss proprietary information per 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur (telephone 301–415–0138), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 3, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–19980 Filed 8–8–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting

September 10–12, 2001—Las Vegas, Nevada: The Nuclear Waste Technical Review Board will hold a meeting to discuss issues related to the characterization of a potential repository site at Yucca Mountain, Nevada. A program overview and status reports on site characterization and evaluation will be presented by the U.S. Department of Energy. Other topics on the agenda

include uncertainty analyses, waste package materials testing, performance assessment, consequences of igneous intrusion, and repository development plans.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, from Monday, September 10, to Wednesday, September 12, 2001, to discuss the status of U.S. Department of Energy (DOE) efforts to characterize a site at Yucca Mountain, Nevada, as the possible location of a permanent repository for spent nuclear fuel and high-level radioactive waste. At the two-and-a-half-day meeting, the DOE and representatives of the Nuclear Regulatory Commission, the Environmental Protection Agency, the State of Nevada, and Nye County, Nevada, will present updates on important issues related to the technical and scientific evaluation of the Yucca Mountain site. The meeting is open to the public, and several opportunities for public comment will be provided.

The Board meeting will be held at the Crowne Plaza Hotel, 4255 South Paradise Road, Las Vegas, Nevada 89109. The telephone number is (702) 369–4400; the fax number is (702) 369–3770. The meeting sessions will start at 8:00 a.m. each day.

The Monday session will begin with a general overview of the DOE program and the Yucca Mountain project, including a DOE perspective on a potential site recommendation and a DOE presentation on long-range decision processes. Additional topics to be discussed on Monday include analyses of uncertainty and activities related to testing waste package materials. The DOE also will discuss its comparison of higher- and lower-temperature operating modes for a potential Yucca Mountain repository. Updates on peer reviews being conducted by the DOE on the biosphere and on performance assessment will complete Monday's agenda.

Tuesday's agenda includes discussions of standards and regulations, the DOE's plans for addressing key technical issues, and a summary of the DOE's preliminary evaluations of site suitability. The DOE will present an update on the science program and a summary of the Supplementary Science and Performance Analyses report. Representatives of the Nye County drilling program will discuss the status of work undertaken by that program. The day will end with a presentation on

structural controls on flow at the site by a contractor for the State of Nevada.

The half-day session on Wednesday will include discussions of repository development plans and of the consequences of igneous activity.

Opportunities for public comment will be provided before adjournment on all 3 days. Those wanting to speak during the public comment periods are encouraged to sign the "Public Comment Register" at the check-in table. Additional comment periods will be provided before lunch on Monday and Tuesday for anyone unable to remain at the meeting until the evening comment periods. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be read during the meeting sessions or during the public comment periods.

A detailed agenda will be available the week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Beginning on October 8, 2001, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved until August 18 at the Crowne Plaza Hotel. When making a reservation, please state that you will be attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB, Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201-3367; (tel) 703-235-4473; (fax) 703-235-4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: August 3, 2001.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 01-19924 Filed 8-08-01; 8:45 am]

BILLING CODE 6820-AM-M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Revision of a Currently Approved Expiring Information Collection: SF 87 and SF 87A

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 revision of a currently approved information collection for Standard Forms 87 and 87A, Fingerprint Charts. These forms are used to obtain fingerprint and other data needed to check the Federal Bureau of Investigation's (FBI) fingerprint files. Such checks are required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, and required or authorized under other authorities, on applicants to and employees of the Federal government. The SF 87 is used by OPM and the SF 87A is used by other agencies having a special agreement with OPM and the FBI.

Approximately 225,000 SF 87 and SF 87A's are completed annually. This is a revised figure which reflects the impact of automation on the processing of fingerprint checks. We estimate that it takes approximately five minutes to complete each form. The annual burden is 18,750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606-2150, FAX (202) 418-3251, or by E-mail at mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before September 10, 2001.

ADDRESSES: Send or deliver written comments to:

Richard A. Ferris, Associate Director, Investigations Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 5416, Washington, DC 20415-4000
and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Rasheedah I. Ahmad, Program Analyst, Investigations Service, Phone: (202)606-7983, FAX: (202)606-2390.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01-19960 Filed 8-8-01; 8:45 am]

BILLING CODE 6325-40-P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

- (1) *Collection title:* Pay Rate Report.
- (2) *Form(s) submitted:* UI-1e.
- (3) *OMB Number:* 3220-0097.
- (4) *Expiration date of current OMB clearance:* 9/30/2001.
- (5) *Type of request:* Extension of a currently approved collection.
- (6) *Respondents:* Individuals or Households.
- (7) *Estimated annual number of respondents:* 750.
- (8) *Total annual responses:* 750.
- (9) *Total annual reporting hours:* 63.
- (10) *Collection description:* Under the Railroad Unemployment Insurance Act, the daily benefit rate for unemployment and sickness benefits depends on the employee's last daily rate of pay. The report obtains information from the employee and verification from the employer of the claimed rate of pay for use in determining whether an increase in the daily benefit rate is due.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB Reviewer, Marcie Brown (202-395-7316), Office of Management and Budget, Room 10230, New

Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 01-19945 Filed 8-8-01; 8:45 am]

BILLING CODE 7905-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

- (1) *Collection title:* Employer Service and Compensation Reports.
- (2) *Form(s) submitted:* UI-41, UI-41a.
- (3) *OMB Number:* 3220-0070.
- (4) *Expiration date of current OMB clearance:* 9/30/2001.
- (5) *Type of request:* Revision of a currently approved collection.
- (6) *Respondents:* Business or other for-profit.
- (7) *Estimated annual number of response:* 3000.
- (8) *Total annual responses:* 0.
- (9) *Total annual reporting hours:* 400.
- (10) *Collection description:* The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312-751-3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611-2092 and the OMB reviewer, Marcie Brown (202-395-7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,
Clearance Officer.

[FR Doc. 01-19946 Filed 8-8-01; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 3a-4, SEC File No. 270-401, OMB Control No. 3235-0459.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 3a-4 under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act") provides a nonexclusive safe harbor from the definition of investment company under the Act for certain investment advisory programs. These programs, which include "wrap fee" and "mutual fund wrap" programs, generally are designed to provide professional portfolio management services to clients who are investing less than the minimum usually required by portfolio managers but more than the minimum account size of most mutual funds. Under wrap fee and similar programs, a client's account is typically managed on a discretionary basis according to pre-selected investment objectives. Clients with similar investment objectives often receive the same investment advice and may hold the same or substantially the same securities in their accounts. Some of these investment advisory programs may meet the definition of investment company under the Act because of the similarity of account management.

In 1997, the Commission adopted rule 3a-4, which clarifies that programs organized and operated in a manner consistent with the conditions of rule 3a-4 are not required to register under the Investment Company Act or comply with the Act's requirements.¹ These programs differ from investment companies because, among other things, they provide individualized investment advice to the client. The rule's

¹ Status of Investment Advisory Programs Under the Investment Company Act of 1940, Investment Company Act Release No. 22579 (Mar. 24, 1997) [62 FR 15098 (Mar. 31, 1997)] ("Adopting Release"). In addition, there are no registration requirements under section 5 of the Securities Act of 1933 for these programs. See 17 CFR 270.3a-4, introductory note.

provisions have the effect of ensuring that clients in a program relying on the rule receive advice tailored to the client's needs.

Rule 3a-4 provides that each client's account must be managed on the basis of the client's financial situation and investment objectives and consistent with any reasonable restrictions the client imposes on managing the account. When an account is opened, the sponsor² (or its designee) must obtain information from each client regarding the client's financial situation and investment objectives, and must allow the client an opportunity to impose reasonable restrictions on managing the account.³ In addition, the sponsor (or its designee) annually must contact the client to determine whether the client's financial situation or investment objectives have changed and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions. The sponsor (or its designee) also must notify the client quarterly, in writing, to contact the sponsor (or the designee) regarding changes to the client's financial situation, investment objectives, or restrictions on the account's management.⁴

The program must provide each client with a quarterly statement describing all activity in the client's account during the previous quarter. The sponsor and personnel of the client's account manager who know about the client's account and its management must be reasonably available to consult with the client. Each client also must retain certain indicia of ownership of all securities and funds in the account.

Rule 3a-4 is intended primarily to provide guidance regarding the status of investment advisory programs under the Investment Company Act. The rule is not intended to create a presumption about a program that is not operated according to the rule's guidelines.

The requirement that the sponsor (or its designee) obtain information about the client's financial situation and investment objectives when the account

² For purposes of rule 3a-4, the term "sponsor" refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program.

³ Clients specifically must be allowed to designate securities that should not be purchased for the account or that should be sold if held in the account. The rule does not require that a client be able to require particular securities be purchased for the account.

⁴ The sponsor also must provide a means by which clients can contact the sponsor (or its designee).

is opened is designed to ensure that the investment adviser has sufficient information regarding the client's unique needs and goals to enable the portfolio manager to provide individualized investment advice. The sponsor is required to contact clients annually and provide them with quarterly notices to ensure that the sponsor has current information about the client's financial status, investment objectives, and restrictions on management of the account.

Maintaining current information enables the portfolio manager to evaluate the client's portfolio in light of the client's changing needs and circumstances. The requirement that clients be provided with quarterly statements of account activity is designed to ensure the client receives an individualized report, which the Commission believes is a key element of individualized advisory services.

The Commission staff estimates that approximately 70 wrap fee and mutual fund wrap programs administered by 56 program sponsors use the procedures under rule 3a-4.⁵ Although it is impossible to determine the exact number of clients that participate in investment advisory programs, as estimate can be made by dividing total assets by the minimum account requirement (\$395.1 billion⁶ divided by \$42,500),⁷ for a total of 9,296,471 clients. Additionally, an average number of new accounts opened each year can be estimated by dividing the average annual increase in account assets in 1996 through 2000, by the minimum account requirement (\$17.4 billion divided by \$42,500), for an average annual number of new accounts of 409,412.⁸

The Commission staff estimates that each program sponsor spends approximately one hour annually in preparing, conducting an/or reviewing annual interviews for each continuing client; and one hour preparing and mailing quarterly account activity statements, including the notice to update information to each client. Based on the foregoing, the Commission staff therefore estimates the total annual burden of the rule's paperwork

requirements for all program sponsors to be 14,149,412.5 hours. This represents an increase of 12,020,746 hours from the prior estimate of 2,128,666.5 hours. The increase results from an increase in the amount of assets managed under investment advisory programs, a reduction in the average minimum account requirement from \$100,000 to \$42,500 and the resulting increase in the estimated number of clients in those programs.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the relying on the rule's safe harbor. Nevertheless, rule 3a-4 is a nonexclusive safe harbor, and a program that does not comply with the rule's collection of information requirements does not necessarily meet the Investment Company Act's definition of investment company. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 31, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-19931 Filed 8-08-01; 8:45 am]

BILLING CODE 8610-01-M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 8c-1, SEC File No. 270-455, OMB Control No. 3235-0514

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 8c-1 generally prohibits a broker-dealer from using its customers' securities as collateral to finance its own trading, speculating, or underwriting transactions. More specifically, the rule states three main principles: first, that a broker-dealer is prohibited from commingling the securities of different customers as collateral for a loan without the consent of each customer; second, that a broker-dealer cannot commingle customers' securities with its own securities under the same pledge; and third, that a broker-dealer can only pledge its customers' securities to the extent that customers are in debt to the broker-dealer. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to rule 8c-1, respondents must collect information necessary to prevent the hypothecation of customer accounts in contravention of the rule, issue and retain copies of notices to the pledgee of hypothecation of customer accounts in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 231 respondents per year (*i.e.*, broker-dealers that conducted business with the public, filed Part II of the FOCUS Report, did not claim an exemption from the Reserve Formula computation, and reported that they had a bank loan during at least one quarter of the current year) that require an aggregate total of 5,198 hours to comply with the rule. Each of these approximately 231 registered broker-dealers makes an estimated 45 annual responses, for an aggregate total of 10,395 responses per year. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 5,198 burden hours. The approximate cost per hour is \$20, resulting in a total cost of compliance for the respondents of \$103,960 (5,198 hour @ \$20 per hour).

The retention period for the recordkeeping requirement under Rule 8c-1 is three years. The recordkeeping requirement under this Rule is

⁵ See the Cerulli Report, The Market Update: The Managed Accounts and Wrap Industry 60 (2000) (statistical information on wrap fee and mutual fund wrap programs).

⁶ See *id.* at 56 (estimating amount of assets in wrap fee and mutual fund wrap programs).

⁷ See *id.* (estimating the average minimum account requirements).

⁸ The requirement for initial client contact and evaluation is not a recurring obligation, but only occurs when the account is opened. The estimated annual hourly burden is based on the average number of new accounts opened each year.

mandatory to ensure that broker-dealers do not commingle their securities or use them to finance the broker-dealers' proprietary business. This rule does not involve the collection of confidential information. Persons should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 1, 2001.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-19932 Filed 8-8-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25099; 812-12084]

The Dreyfus Fund Incorporated, et al.; Notice of Application

August 2, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the act for an exemption from section 17(a) of the Act, and under section 17(d) of the act and rule 17d-1 under the act to permit certain joint transactions.

SUMMARY: Applicants request an order to permit certain registered investment companies (a) to use cash collateral received in connection with a securities lending program and uninvested cash to purchase shares of certain affiliated money market funds and (b) to pay an affiliated lending agent fees based on a share of the revenue generated from securities lending transactions.

APPLICANTS: The Dreyfus Fund Incorporated, Dreyfus Growth and Value Funds, Inc., Dreyfus Life and Annuity

Index Fund, Inc. (d/b/a Dreyfus Stock Index Fund), Dreyfus Index Funds, Inc., Peoples S&P MidCap Index Fund, Inc. (d/b/a Dreyfus MidCap Index Fund), Dreyfus Life Time Portfolios, Inc., Dreyfus Liquid Assets, Inc., Dreyfus Worldwide Dollar Money Market Fund, Inc., Dreyfus Institutional Short Term Treasury Fund, Dreyfus Investment Grade Bond Funds, Inc., Dreyfus Short-Intermediate Municipal Bond Fund, Dreyfus Short-Intermediate Government Fund, Dreyfus Municipal Income, Inc., Dreyfus California Municipal Income, Inc., Dreyfus New York Municipal Income, Inc., Dreyfus California Tax Exempt Money Market Fund, Dreyfus Insured Municipal Bond Fund, Inc., Dreyfus Municipal Money Market Fund, Inc., Dreyfus New Leaders Fund, Inc., Dreyfus Strategic Municipals Inc., Dreyfus Strategic Municipal Bond Fund, Inc., The Dreyfus/Laurel Funds, Inc., The Dreyfus/Laurel Funds Trust, The Dreyfus/Laurel Tax-Free Municipal Funds, Dreyfus High Yield Strategies Fund, Dreyfus BASIC U.S. Government Money Market Fund, Inc., Dreyfus BASIC Money Market Fund, Inc., Dreyfus California Intermediate Municipal Bond Fund, Dreyfus Connecticut Intermediate Municipal Bond Fund, Dreyfus Debt and Equity Funds, Dreyfus Massachusetts Intermediate Municipal Bond Fund, Dreyfus New Jersey Intermediate Municipal Bond Fund, Dreyfus Pennsylvania Intermediate Municipal Bond Fund, Dreyfus Premier Value Equity Funds (collectively, the "Funds"); The Dreyfus Corporation ("Dreyfus"); and Mellon Bank, N.A. ("Mellon").

FILING DATE: The application was filed on April 28, 2000 and amended on May 22, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 27, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants: Funds and Dreyfus, 200 Park Avenue, New York, New York 10166; Mellon, One Mellon Bank Center, Pittsburgh, Pennsylvania 15258.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Staff Attorney, at (202) 942-0553, or Michael W. Mundt, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0101, (202) 942-8090.

Applicant's Representations

1. Each of the Funds is an open-end or closed-end management investment company registered under the Act. Dreyfus is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as the investment adviser to the Funds. Dreyfus is a wholly owned subsidiary of Mellon, a national banking association. Applicants request that the relief apply to any existing or future registered management investment company or series of such registered management investment company for which Dreyfus, or any person controlling by or under common control with Dreyfus (The "Adviser") serves as investment adviser.¹

2. The Funds propose to participate in a securities lending program (the "Lending Program") in which Mellon or any person controlling, controlled by or under common control with Mellon will act as lending agent (the "Lending Agent") and administer the Lending Program pursuant to a securities lending agreement (a "Lending Agreement").² Each of the Funds participating in the Lending Program (the "Lending Funds") will be permitted by its operating policies to lend its portfolio securities,

¹ All existing entities currently intending to rely on the requested order have been named as applicants. Any existing or future entity will rely on such order only in compliance with the representations and conditions contained in the application.

² Personnel of the Lending Agent that provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of the Lending Funds.

and its prospectus or statement of additional information will disclose that it may engage in securities lending.

3. Under the Lending Program, the Lending Agent will enter into agreements to lend securities of the Lending Funds to certain unaffiliated borrowers that have been approved by the respective Lending Funds ("Borrowers"). In exchange for the securities, the Lending Agent will be authorized to accept cash collateral ("Cash Collateral") and, upon consent of the Lending Fund, U.S. Government securities or other collateral. Collateral will have a market value at least equal to the market value of the securities loaned to the Borrower.

4. Each Lending Agreement will authorize and instruct the Lending Agent to invest Cash Collateral on behalf of the respective Lending Fund in accordance with specific written parameters established by the Lending Fund, including a list of eligible investments. Permissible investments will include repurchase agreements or other short-term money market instruments, as well as one or more registered money market funds that comply with rule 2a-7 under the Act and are advised by the Adviser ("Investment Funds").

5. When loans are collateralized by cash, the Borrowers will be entitled to receive a cash collateral fee, and the Lending Fund will be compensated based on the spread between the net amount earned on the investment of the Cash Collateral and the Borrower's fee. In the case of collateral other than cash, the Borrower will pay a loan fee to the Lending Fund. For its services to the Lending Funds, the Lending Agent will receive fees based on a share of the revenue generated from the securities lending transactions.

6. In addition to Cash Collateral, Funds may have uninvested cash ("Uninvested Cash") resulting from a variety of sources including dividends or interest received on portfolio securities, unsettled securities transactions, reserved held for investment strategy purposes, scheduled maturity of investments, liquidation of portfolio securities to meet anticipated redemptions or dividend payments, or from new monies received from investors.

7. Applicants seek an order to permit: (a) Funds to invest Cash Collateral and Uninvested Cash (together, "Cash Balances") in shares of Investment Funds (Funds that purchase shares of the Investment Funds, "Acquiring Funds"); and (b) Lending Funds to pay the Lending Agent fees based on a share of the proceeds derived from securities lending activities.

Applicant's Legal Analysis

A. Investment of Cash Balances in the Investment Funds

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another registered investment company if such securities represent more than 3% of the acquired company's voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(f) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(f) to permit the Acquiring Funds to invest Cash Balances in the Investment Funds in excess of the limits in section 12(d)(1)(A), provided however that in no case will an Acquiring Fund's aggregate investment of Uninvested Cash in shares of the Investment Funds exceed 25% of the Acquiring Fund's total assets. Applicants also request relief to permit the Investment Funds to sell their shares to the Acquiring Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that because all of the Funds are advised by the Adviser, there is no potential for undue influence by an Acquiring Fund over an Investment Fund. Applicants state that the arrangements will not result in layering of fees because no sales load, redemption fee, distribution fee adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules")) will be imposed in connection with the purchase or sale of shares of the Investment Funds. In addition, the Adviser will waive its advisory fee payable by an Acquiring Fund in an

amount that offsets the amount of advisory fees of the Investment Fund incurred by the Acquiring Fund as a result of the investment of Uninvested Cash in the Investment Fund. If an Investment Fund offers more than one class of shares, each Acquiring Fund will invest Cash Balances only in the class with the lowest expense ratio at the time of investment. Applicants also believe that the proposed arrangement will not create an overly complex fund structure because the Investment Funds will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. Sections 17(a)(1) and (2) of the Act make it unlawful for any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of such a person or principal underwriter, acting as principal, to sell any security to, or purchase any security from, such registered investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person directly or indirectly controlling, controlled by, or under common control with, the other person; and in the case of an investment company, its investment adviser.

5. Because the Acquiring Funds and the Investment Funds are advised by a common investment adviser, applicants state that the Acquiring Funds and the Investment Funds may be affiliated persons. In addition, if an Acquiring Fund owns 5% or more of the shares of an Investment Fund, applicants state that the Investment Fund may be deemed to be an affiliated person of the Acquiring Fund. Accordingly, applicants state that section 17(a) would prohibit the sale of shares of an Investment Fund to the Acquiring Funds and the redemption of such shares by the Investment Fund.

6. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and if the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, if such exemption

is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

7. Applicants request an order under sections 6(c) and 17(b) of the Act to permit the Investment Funds to sell shares to, and redeem shares from, the Acquiring Funds in connection with the investment of Cash Balances.

Applicants submit that the terms of the proposed transactions are fair and reasonable and do not involve overreaching. Applicants state that shares of the Investment Funds will be purchased and redeemed at their net asset value. Applicants state that each Acquiring Fund will be treated identically to all other investors in the Investment Funds. Applicants submit that the investment of Cash Balances in the Investment Funds will be consistent with the policies of each Acquiring Fund and each Investment Fund. Applicants state that the investment of the Cash Collateral will be in accordance with the Commission staff's securities lending guidelines.

8. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of or principal underwriter for a registered investment company, or any affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the transaction. Applicants state that by engaging in the proposed transactions, applicants may be deemed to be participants in a joint transaction under section 17(d) of the Act and rule 17d-1 under the Act.

9. Rule 17d-1 permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In considering whether to approve a joint transaction under rule 17d-1, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

Applicants submit that the Acquiring Funds will participate in the proposed transactions on a basis no different from or less advantageous than that of any other participant, and that the transactions will be consistent with the Act.

B. Lending Agent Fees

1. As noted above, section 17(d) of the Act and rule 17d-1 under the Act generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the Commission has approved the transaction. As also noted above, section 2(a)(3) of the Act defines an affiliated person of an investment company to include its investment adviser. Applicants state that the Adviser is an affiliated person of the Lending Funds, and that the Lending Agent, as the parent company of the Adviser, is an affiliated person of an affiliated person of the Lending Funds. Because a fee arrangement between the Lending Agent and a Lending Fund under which compensation is based on a percentage of the revenue generated by securities lending transactions may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d-1, applicants request an order to permit each Lending Fund to pay, and the Lending Agent to accept, such fees in connection with services provided by the Lending Agent to a Lending Fund.

2. Applicants state that each Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and other terms governing the relationship with the Lending Agent will meet the standards of rule 17d-1:

(a) In connection with the approval of a Lending Agent for a Lending Fund and implementation of the proposed fee arrangement, a majority of the board of directors of the Lending Fund ("Board"), including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Disinterested Directors"), will determine that: (i) The contract with the Lending Agent is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the Lending Agent are appropriate for the Lending Fund; (iii) the nature and quality of the services provided by the Lending Agent are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for the Lending Agent's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) The Lending Agreement will be reviewed annually by each Board and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Directors)

makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement under which the Lending Agent will be compensated as lending agent based on a percentage of the revenue generated by a Lending Fund's participation in the Lending Program, the Adviser, on behalf of the Board, will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the Disinterested Directors, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) Each Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Lending Program occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the Borrower, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. General

1. Each Acquiring Fund and Investment Fund that relies on the requested order will be advised by the Adviser.

2. The Lending Program will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

3. Approval of the Fund's board of directors, including a majority of the Disinterested Directors, shall be required for the initial and subsequent approvals of the Lending Agency as lending agent for a Fund, for the institution of all procedures relating to

the Lending Program, and for any periodic review of loan transactions for which the Lending Agent acted as lending agent.

4. Before a Fund may participate in the Lending Program, a majority of its board of directors, including a majority of the Disinterested Directors, will approve the Fund's participation in the Lending Program. The board of directors will evaluate the securities lending arrangement and its results no less frequently than annually and a majority of the board, including a majority of the Disinterested Directors, will determine that any investment of Cash Collateral in the Investment Funds is in the best interests of the shareholders of the Fund.

B. Investment of Cash Balances in the Investment Funds

1. No Investment Fund will acquire securities of any other investment company in excess of the limits in section 12(d)(1)(A) of the Act.

2. Shares of the Investment Funds sold to and redeemed by the Acquiring Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules).

3. Investment in shares of the Investment Funds will be in accordance with each Acquiring Fund's respective investment restrictions and will be consistent with such Acquiring Fund's policies as set forth in its registration statement.

4. Each of the Acquiring Funds will invest Uninvested Cash in, and hold shares of the Investment Funds only to the extent the Acquiring Fund's aggregate investment of Uninvested Cash in the Investment Funds does not exceed 25% of the Acquiring Fund's total assets. For purposes of this limitation, each Acquiring Fund or series thereof will be treated as a separate investment company.

5. The Adviser to the Acquiring Fund will waive its advisory fee payable by the Acquiring Fund in an amount that offsets the amount of advisory fees of the Investment Fund incurred by the Acquiring Fund as a result of the investment of its Uninvested Cash in the Investment Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-19930 Filed 8-8-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25101; 812-11160]

Legg Mason Wood Walker, Inc., et al. Notice of Application

August 3, 2001.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under: (i) Section 6(c) of the Investment Company Act of 1940 ("Act") for exemptions from sections 2(a)(32), 2(a)(35), 12(d)(3), 14(a), 19(b), 22(d), and 26(a)(2) of the Act and from rules 19b-1 and 22c-1 under the Act; (ii) section 11(a) of the Act for an exemption from section 11(c) of the Act; and (iii) sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Application: Applicants request an order to permit certain unit investment trusts to: (i) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (ii) often unitholders certain exchange options; (iii) publicly offer units without requiring the sponsor to take for its own account or place with others \$100,000 worth of units; (iv) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt; (v) sell portfolio securities of a terminating series of the trust to a new series of the trust; and (vi) invest up to 10.5%, and in other cases up to 20.5%, of a series' assets in securities of issuers that derive more than 15% of their gross revenues from securities-related activities.

Applicants: Legg Mason Wood Walker, Incorporated ("Legg Mason" or "Sponsor"); Legg Mason Unit Investment Trust ("Legg Mason Trust"); any future registered unit investment trusts sponsored by the Sponsor (together with the Legg Mason Trust, "Trust"); and the series of each Trust (each a "Series").¹

Filing Dates: The application was filed on May 27, 1998, and was amended on July 24, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

¹ Any future Series that relies on the requested order will comply with the terms and conditions of the application.

by 5:30 p.m. on August 30, 2001 and should be accompanied by proof of service on application in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicants, 100 Light Street, P.O. Box 1476, Baltimore, MD 21203-1476.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at 202-942-0646 or Nadya B. Roytblat, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

Applicant's Representations

1. Each Series will be a series of a Trust and will be a unit investment trust ("UIT") registered under the Act. The Sponsor, a wholly-owned subsidiary of Legg Mason, Inc., will be the sponsor of each Series. Each Series will be created by a trust indenture between the Sponsor and a banking institution or trust company as trustee ("Trustee").

2. The Sponsor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the portfolio ("Units"). The Units are offered to the public by the Sponsor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities plus a front-end sales charge. The Sponsor may reduce the sales charge in compliance with rule 22d-1 under the Act in certain circumstances, which are disclosed in the prospectus.

3. The Sponsor maintains a secondary market for Unit and continually offers to purchase these Units at prices based upon the bid side evaluation of the current public offering price plus a front-end sales charge. If the Sponsor discontinues maintaining such a market at any time for any Series, holders of Units ("Unitholders") of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose sales charges on a deferred basis. For each Series, the Sponsor would set a maximum sales charge per Unit, a portion of which may be collected "up front" (*i.e.*, at the time an investor purchases Units). The deferred portion of the sales charge ("DSC") would be collected subsequently in equal installments ("Installment Payments") from Unitholders' distributions on the Units. The Sponsor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. The Trustee would withdraw the Installment Payment from distribution income and pay the amount directly to the Sponsor. If distribution income is insufficient to pay an Installment Payment or if a Series' portfolio consists of non-income producing securities, the Trustee will have the authority to sell portfolio securities in an amount necessary to pay the Installment Payment.

3. When a Unitholder redeems or sells Units, the Sponsor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Sponsor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Sponsor will assume that Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Sponsor may waive the collection of any unpaid DSC in connection with redemption or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d-1 under the Act.

4. Each Series offering Units subject to a DSC will state the maximum sales charge per Unit in its prospectus. The prospectus also will disclose that portfolio securities may be sold to pay an Installment Payment if distribution income is insufficient, and that the securities will be sold pro rata or a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series ("Exchange Option") and Unitholders of a Series that is terminating ("Rollover Series") to exchange their Units for Units of a new Series of the same type ("Rollover Option"). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or a DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Sponsor and participating underwriters and brokers for their services in providing the DSC program.

3. Pursuant to the Exchange Option, an adjustment would be made if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge ("Five Months Adjustment"). An adjustment also would be made if Units on which a DSC is collected are exchanged for Units of a Series that imposes a front-end sales charge and the exchange occurs before the DSC collected (plus any amount collected up front on the exchanged Units) at least equals the per Unit sales charge on the acquired Units ("DSC Front-end Exchange Adjustment"). If an exchange involves either the Five Months Adjustment or the DSC Front-End Exchange Adjustment, the Unitholder would pay the greater of the reduced sales charge or an amount which, together with the sale charge already paid on the exchanged Units, equals the normal sales charge on the acquired Units on the date of the exchange. With appropriate disclosures, the Sponsor may waive such payment. Further, the Sponsor would reserve the right to vary the sales charge normally applicable to a Series and the charge applicable to exchanges, as well as to modify, suspend, or terminate the Exchange Options set forth in the conditions to the application.

C. Investments in Securities-Related Issuers on Certain Indices

1. Each Rollover Series will hold a portfolio of common stocks that represents a portion of a specific index

("Index"). The investment objective of each Rollover Series is to seek a greater total return than that achieved by the stocks comprising the entire relevant Index over the life of the Series.

2. Certain Rollover Series (each a "Ten Series") will invest approximately 10%, but in no event more than 10.5%, of their total assets in each of the ten common stocks in the Dow Jones Industrial Average ("DJIA"), the Financial Times Industrial Ordinary Share Index ("FT Index"), or the Hang Seng Index having the highest dividend yields no more than three business days prior to the Ten Series' initial date of deposit. Certain other Rollover Series (each a "Five Series") will invest approximately 20%, but in no event more than 20.5%, of their total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the DJIA, the FT Index, or the Hang Seng Index having the highest dividend yields no more than three business days prior to the Five Series' initial date of deposit.²

3. Each of the DJIA, the FT Index, and the Hang Seng Index is a recognized indicator of the stock market in its respective country.³ The publishers of the Indices are not affiliated with any Rollover Series or the Sponsor, and do not participate in any way in the creation of any Rollover Series or the selection of its stocks. The common stocks included in the Indices may include stocks of issuers that derive more than 15% of their gross revenues from securities-related activities, as that term is defined in rule 12d3-1 under the Act ("Securities-Related Issuers"). Applicants accordingly request an order to the extent necessary to permit each Ten Series and Five Series to invest in the stocks of Securities Related Issuers.

4. The securities deposited in each rollover Series will be chosen solely according to the formula described above and will not necessarily reflect

² The Sponsor strives to purchase equal values of each of the common stocks in a Rollover Series' portfolio. However, it is more efficient to purchase securities in 100-share lots and 50-share lots. As a result, applicants may choose to purchase securities of a Securities-Related Issuer (as defined below) that represent more than 10%, but in no event more than 10.5%, of a Ten Series' assets, and more than 20%, but in no event more than 20.5%, of a Five Series' assets, on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

³ The DJIA, which is owned by Dow Jones & Company, Inc., comprises 30 widely-held common stocks listed on the New York Stock Exchange that are chosen by the editors of *The Wall Street Journal*. The FT Index comprises 30 widely-held common stocks listed on the London Stock Exchange that are chosen by the editors of *The Financial Times*. The Hang Seng Index comprises 33 common stocks listed on the Stock Exchange of Hong Kong, Ltd.

the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Rollover Series, and to supervise each Rollover Series' portfolio. The Sponsor will have no discretion as to which securities are purchased.

5. The portfolios of the Rollover Series will not be actively managed. Sales of portfolio securities will be made in connection with redemption of Units, payment of expenses, and the termination of a Rollover Series. The Sponsor has no discretion as to when securities will be sold except that it authorized to sell securities in extremely limited circumstances, such as when an issuer defaults on the payment of any of its outstanding obligations, or when the price of a security has declined to such an extent or other credit factors exist so that, in the opinion of the Sponsor, retaining the securities would be detrimental to the Series. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Rollover Series' portfolio.

D. Purchase and Sale Transactions Between a Rollover Series and a New Series

1. Each Rollover Series will have a date ("Rollover Date") by which Unitholders of that Series may elect to redeem their Units and receive in return Units of a subsequent Series of the same type ("New Series"). The New Series will be created on or after the Rollover Date. The securities in each Rollover Series will be: (a) actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares, with a value equal to at least U.S. \$25,000) on (i) an exchange ("Exchange") that is either a national securities exchange meeting the qualifications of section 6 of the Securities Exchange Act of 1934, or a foreign securities exchange meeting the qualifications set forth in the proposed amendments to rule 12d3-1(d)(6) under the Act⁴ and releasing daily closing

prices or (ii) the Nasdaq-National Market System ("Nasdaq-NMS"); and (b) included in a published Index, including but not limited to the DJIA, and FT Index, or the Hang Seng Index ("Equity Securities").

2. Applicants anticipate that there will be some overlap in the Equity Securities selected for the portfolios of a Rollover Series and the related New Series. Absent the requested relief, a Rollover Series would, upon termination, sell all of its Equity Securities on the applicable Exchange or Nasdaq-NMS. Likewise, a New Series would acquire its Equity Securities on the applicable Exchange or Nasdaq-NMS. This procedure would result in the Unitholders of both the Rollover Series and the New Series incurring brokerage commissions on the same Equity Securities. Applicants accordingly request an order to the extent necessary to permit a Rollover Series to sell its portfolio securities to a New Series and to permit the New Series to purchase those securities.

Applicants' Legal Analysis

A. DSC and Waiver or DSC

1. Section 4(2) of the Act defines a "unit investment trust" as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c-1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption, and repurchase be based on the security's current net asset value ("NAV"). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c-1.

2. Section 22(d) of the Act and rule 22d-1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term "sales load" as the difference between the sales price and the portion invested by the depositor or trustee. Applicants request relief from sections

2(a)(35) and 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (i) riskless trading in investment company securities due to backward pricing, (ii) disruption of orderly distribution by dealers selling shares at a discount, and (iii) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all of the conditions set forth in rule 22d-1.

4. Section 26(a)(2) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Sponsor may be deemed to be an expensed under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Sponsor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

Sections 11(a) and (c) of the Act prohibit any offer or exchange by a UIT for the securities of any other investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under section 11(a) for an exemption from section 11(c) to permit the Exchange Option and the Rollover Option. Applicants state that the Five Months Adjustment and the DSC Front-End Exchange Adjustment in certain circumstances are appropriate in order to maintain the equitable treatment of various investors in each Series.

⁴ Investment Company Rel. No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3-1). The proposed amendment rule defined a "Qualified Foreign Exchange" as a stock exchange in a country other than the United States where: (1) Trading generally occurred at least four days per week, (ii) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange, (iii) the exchange had a trading volume in stocks for the previous year of at least U.S. \$7.5 billion, and (iv) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

C. Investments in Securities-Related Issuers on Certain Indices

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits a registered investment company from acquiring any security issued by a person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act, in relevant part, exempts the purchase of securities of a Securities-Related Issuer, provided that, immediately after the acquisition, the acquiring company has invested not more than 5% of the value of its total assets of the Securities-Related Issuer.

2. As noted above, applicants state that some of the stocks comprising the DJIA, the FT Index, and the Hang Seng Index include securities of Securities-Related Issuers. Applicants assert that, absent the requested relief, each Ten Series and Five Series may be precluded from implementing most effectively the Series' investment objective. Applicants accordingly request an exemption under section 6(c) from section 12(d)(3) to permit each Ten Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of a Securities-Related Issuer, and to permit each Five Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of a Securities-Related Issuer.

3. Applicants state that the proposed transactions satisfy the requirements of section 6(c). Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities-related businesses, to prevent potential conflicts of interest and to eliminate certain reciprocal practices between investment companies and securities-related businesses, and to ensure that investment companies maintain adequate liquidity in their portfolios. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicants state that this concern does not arise in connection with the Ten Series or Five Series because neither the Series nor the Sponsor has discretion in choosing the securities of a Securities-Related Issuer or the amount purchased; rather, the Securities Related Issuer must qualify as either one of the ten highest dividend yielding stocks or one of the five lowest dollar price per share stocks of the ten highest dividend yielding stocks in the relevant Index.

4. Applicants also state that the effect of a Ten Series' or Five Series' purchase of the stock of a Securities-Related Issuer would be de minimis. Applicants assert that the Securities-Related Issuers represented in the DJIA, the FT Index, and the Hang Seng Index are widely held and have active markets, and that potential purchases by any Ten Series or Five Series would represent an insignificant amount of the outstanding common stock and trading volume of any of these Securities-Related Issuers.

5. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker dealer may not offer the best price and execution. To preclude this type of conflict, applicants agree, as a condition to the order, that no company held in the portfolio of a Ten Series or Five Series, nor any affiliate of the company, will act as a broker for any Series in the purchase or sale of any security for the Series' portfolio.

D. Purchase and Sale Transactions Between a Rollover Series and a New Series

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with the other person. Each Series will have a common sponsor. Since the Sponsor of a Series may be deemed to control the Series, all of the Series may be deemed to be affiliated persons of each other.

2. Rule 17a-7 under the Act permits registered investment companies that may be deemed affiliated persons solely by reason of having common investment advisers, directors, and/or officers, to sell securities to, or purchase securities from, one another at an independently determined price, provided certain conditions are met. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor procedures to assure compliance with the rule. Because UITs do not have boards of directors, the Series would be unable to comply with this requirement. Applicants represent that they will comply with all of the provisions of rule 17a-7, other than paragraph (e).

3. Section 17(b) of the Act provides that the Commission will exempt a proposed transaction from section 17(a)

if evidence establishes that: (i) the terms of the transaction are reasonable and fair and do not involve overreaching; (ii) the transaction is consistent with the policies of each registered investment company involved; and (iii) the transaction is consistent with the general purposes of the Act. Applicants request relief under sections 6(c) and 17(b) to permit a Rollover Series to sell Equity Securities to a New Series and to permit the New Series to purchase the Equity Securities.

4. Applicants state that the proposed transactions satisfy the standards of sections 6(b) and 17(b). Applicants represent that purchases and sales between Series will be consistent with the policies of each Series. Applicants further state that permitting the proposed transactions would result in savings on brokerage fees for the Series.

5. Applicants state that the condition that the Equity Securities must be actively traded on an Exchange or the Nasdaq-NMS protects against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Equity Securities from a Rollover Series to a New Series: (i) That the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act; (ii) the date of the transaction; and (iii) the closing sales price on the Exchange or on the Nasdaq-NMS for the sale date of the Equity Securities. The Trustee will then countersign the certificate unless, in the unlikely event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of the Units of the New Series, and the distribution to Unitholders of the Rollover Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

E. Net Worth Requirement

1. Section 14(a) of the Act requires that registered investment companies have \$100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Sponsor will deposit substantially more than \$100,000 of debt and/or equity securities, depending on the objective of the particular Series. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Sponsor's intention to sell all the Units of the Series.

2. Rule 14a-3 under the Act exempts UITs from section 14(a) if certain conditions are met, including the trust invest only in "eligible trust securities," as defined in the rule. Applicants state that they may not rely on rule 14a-3 because certain future Series (collectively, "Equity Series") will invest all or a portion of their assets in equity securities, which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) from section 14(a) to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that they will comply in all respects with rule 14a-3, except that the Equity Series will not restrict their portfolio investments to eligible trust securities.

F. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b-1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b-1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a-3) from the requirements of rule 19b-1. Because the Equity Series do not limit their investments to eligible trust securities, however, such trusts will not qualify for that exemption. Applicants therefore request relief under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b-1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Series' expenses, Installment Payments, or by redemption requests, events over which the Sponsor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

A. DSC and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to make one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated under that section, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination, or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2), and (3) of rule 6c-10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required in Form N-1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

B. Investments in Securities-Related Issuers

No company held in the portfolio of a Ten Series or Five Series, nor any affiliated person thereof, will act as broker for any Ten Series or Five Series in the purchase or sale of any security for the Series' portfolio.

C. Purchase and Sale Transactions Between a Rollover Series and a New Series

1. Each sale of Equity Securities by a Rollover Series to a New Series will be effected at the closing price of the securities sold on the applicable Exchange or the Nasdaq NMS on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors in the appropriate prospectus of each Rollover Series and New Series.

3. The Trustee of each Rollover Series and New Series will (i) review the procedures discussed in the application relating to the sale of securities from a Rollover Series and the purchase of those securities for deposit in a New Series and (ii) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a-7.

4. A written copy of these procedures and a written record of each transaction pursuant to this order will be maintained as provided in rule 17a-7(f).

D. Net Worth Requirement

Applicants will comply in all respects with the requirements of rule 14a-3, except that the Equity Series will not restrict their portfolio investments to "eligible trust securities".

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-19977 Filed 8-8-01; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: August 26, 2001.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Thursday, August 9, 2001 at 11:00 a.m. has been cancelled.

Dated: August 6, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-20065 Filed 8-6-01; 4:42 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44644; File No. SR-NSCC-2001-09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corporation Relating to the Availability of Reports Provided to Members

August 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 1, 2001, National Securities Clearing Corporation ("NSCC") filed a proposed rule change with the Securities and Exchange Commission ("Commission") and on August 1, 2001, amended the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC to furnish its reports to its members only in electronic formats.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.²

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to help support the securities industry's T + 1 initiative and to eliminate redundant processing of reports NSCC makes available to its members. NSCC currently makes reports available to its members in both hard copy and electronic formats. Under the proposed rule filing, effective July 2, 2001, NSCC will no longer make available hard copy reports but will continue to provide such reports to its members electronically. New Section 5 under NSCC Rule 5 will state that all reports made available by NSCC in electronic format shall be deemed delivered to and received by each NSCC member when NSCC makes such reports available for retrieval. Each member shall be obligated to review the reports and to promptly notify NSCC of any errors contained in the reports. In addition, such reports shall be deemed delivered at the time NSCC makes them available for retrieval.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and efficient distribution of reports to members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(4) thereunder because the rule change effects a change of NSCC's existing service of providing reports to its members that does not adversely affect the safeguarding to securities or funds and does not significantly affect the rights and obligations of NSCC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at NSCC's principal office.

All submissions should refer to File No. SR-NSCC-2001-09 and should be submitted by August 30, 2001.

For the Commission by the Division of market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-19976 Filed 8-8-01; 8:45 am]

BILLING CODE 8010-01-M

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by NSCC.

³ 17 CFR 200.30-3(a)(12).

SOCIAL SECURITY ADMINISTRATION**Agency Information Collection
Activities: Proposed Request and
Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer at the following addresses:

(OMB)

Office of Management and Budget, Attn:
Desk Officer for SSA, New Executive
Office Building, Room 10230, 725
17th St., NW, Washington, D.C. 20503
(SSA)

Social Security Administration,
DCFAM, Attn: Frederick W.
Brickenkamp, 1-A-21 Operations
Bldg., 6401 Security Blvd., Baltimore,
MD 21235

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-4145, or by writing to him at the address listed above.

1. Reporting Events, SSI-0960-0128. Supplemental Security Income (SSI) applicants, recipients and their representative payees use Form SSA-8150-EV (or the Spanish version) to report by mail changes in circumstances that could affect eligibility for SSI. The Social Security Administration uses the reported changes on the form to determine eligibility and correct payment amounts for SSI payments, which may include federally, administered State supplementary payments. The respondents are SSI applicants, recipients, and their representative payees.

Number of Respondents: 33,200.
Frequency of Response: 1.
Average Burden Per Response: 5.

Estimated Annual Burden: 2,767 hours.

2. Disability Determination And Transmittal—0960-0437. The information collected on Form SSA-831-U3/C3 is used by SSA to document the State agency determination as to whether an individual who applies for disability benefits is eligible for those benefits based on his/her alleged disability. SSA also uses the form for program management and evaluation. The respondents are State Disability Determination Services (DDS) adjudicating Title II and Title XVI Disability claims.

Number of Respondents: 2,860,859.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 715,215 hours.

3. Cessation or Continuance of Disability or Blindness Determination—0960-0443. The information on Form SSA-832-U3/C3 is used by SSA to document determinations as to whether an individual's disability benefits should be terminated or continued on the basis of his/her impairment. The respondents are State DDS employees adjudicating Title XVI Disability claims.

Number of Respondents: 600,758.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 300,379 hours.

4. Cessation Or Continuance Of Disability Or Blindness Determination And Transmittal—0960-0442. The information on Form SSA-833-U3/C3 is used by SSA to make determinations of whether individuals receiving title II disability benefits should continue to be unable to engage in substantial gainful activity and are still eligible to receive benefits. The respondents are State DDS employees.

Number of Respondents: 466,124.
Frequency of Response: 1.
Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 233,062 hours.

5. Modified Benefit Formula Questionnaire—0960-0395. The information collected on Form SSA-150 is needed by SSA to determine the correct formula to use in computing Social Security benefits for someone who also receives benefits from employment not covered by Social Security. The respondents consist of claimants for Social Security benefits who are also entitled to benefits not covered by Social Security.

Number of Respondents: 90,000.
Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Average Burden: 12,000 hours.

6. Internet Disability Report—0960-NEW. The Social Security Act requires applicants to furnish medical and other evidence and information to prove they are disabled. Applicants for disability benefits will be given the option to provide information needed to help determine they are disabled through the Internet. The Internet Disability Report, which is similar to the form SSA-3368-BK, Disability Report-Adult, will collect allegations of disability and gather information about the disabling condition and sources of medical evidence. Collecting this information is critical to case development and adjudication. The information on the Disability Report, together with other evidence and information, will be used by State DDSs (who make disability decisions on behalf of SSA) to develop medical evidence, assess the alleged disability, and make a determination on whether or not the applicant is disabled under the Act. The respondents are applicants for title II and title XVI disability benefits.

Number of Respondents: 66,000.
Frequency of Response: 1.
Average Burden Per Response: 2 hours.

Estimated annual Burden: 132,000 hours.

6. National Study of Health and Activity (NSHA)—0960-0609. The Social Security Administration is sponsoring the NSHA to serve as the cornerstone of SSA's future disability policy development and research agenda. NSHA is a national disability study that consists of gathering information from interviews, medical examinations and medical records to be used to make simulated Disability Determination Service disability decisions. A pilot study was conducted in 2000 and revisions were made to the study instruments and procedures based on the analysis of the pilot data. To test the usability of the revisions, a pretest of the survey instruments and procedures is necessary prior to beginning the main study. This pretest will be conducted on volunteers obtained from SSA disability rolls and nondisabled individuals recruited from the community. Pretesting activities will encompass all components of the study including screening, interviewing, medical examinations, collection of medical records, and assembling a folder of all data for the study's simulated disability decision process. Once the results from this pretest are available, the NSHA instruments and

procedures will be further refined for the dress rehearsal and main study. Referencing the following table, SSA will screen up to 400 individuals to

obtain 140 volunteers to participate in activities (2) through (5). SSA will contact approximately 420 health care

providers to obtain the medical records of the volunteers (item (6)). The public reporting burden is as follows:

Information collection activity	Number of respondents	Frequency of response	Average hours per response	Estimated annual burden
(1) Recruitment screening	400	1	.17	68
(2) Household screener	140	1	.33	46
(3) Sample person interview	140	1	1.5	210
(4) Respondent medical exam information	140	1	2	280
(5) Comments on pretest materials	140	1	.25	35
(6) Collecting medical evidence of record from healthcare provider	420	1	.5	210
Total				849

7. The Internet Social Security Benefits Application (ISBA)—0960-0618. One of the requirements for obtaining Social Security benefits is the filing of an application so that a determination may be made on the applicant's eligibility for monthly benefits. ISBA, which is available at the Social Security Administration's (SSA) Internet site, is one method that an individual can choose to file an

application for benefits. In order to make a determination on eligibility for benefits, it is necessary to elicit from the applicant information about the date and place of birth, current and recent work, receipt of non-covered pensions etc. Currently, the ISBA can only be used to apply for retirement and spouse's benefits. SSA plans to expand ISBA to encompass Disability Insurance Benefits (DIB). SSA has used

information collected by ISBA to entitle individuals to retirement insurance benefits and/or spouse's benefits. The information collected by the expanded ISBA will be used to entitle individuals to DIB as well. The respondents are applicants for retirement insurance benefits, spouse's benefits and disability benefits. Below is an estimate of the public reporting burden:

Type of benefit	Number of respondents	Frequency of response	Average burden per response (in minutes)	Estimated annual burden (in house)
RIB	130,000	1	20	43,333
DIB	39,000	1	25-30	16,542
Total	169,000			59,875

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965-4145, or by writing to him at the address listed above.

1. Contact with the Representative Payee and Contact with Beneficiary—0960-NEW. SSA will use the SSA-L4945, Contact with the Representative Payee, and SSA-L4947, Contact with Beneficiary, to inform respondents and conduct quality reviews of payments made under the titles II and XVI (Old-Age, Survivors and Disability Insurance/SSI) programs. Cases for the review will be selected randomly and the information solicited will be used for

verification of payment data on record in the claims folder and SSA's Master Beneficiary Record. Form SSA-L4945 will be used to notify Representative Payees who have the responsibility of managing payments for an SSA Beneficiary that the case has been selected for the review process and to request the required information. Form SSA-L4947 will be used to notify beneficiaries that their case has been selected for the review process and request the needed information. Both letters contain information that must be verified and returned to SSA under the review process. The respondents are beneficiaries and representative payees for beneficiaries receiving title II and title XVI benefits.

Number of Respondents: 200.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 50 hours.

2. RSI/DI Quality Review Case Analysis-Sampled Number Holder, Auxiliaries/Survivors-Parent, Stewardship AET Workbook—0960-0189. SSA uses the information collected on forms SSA-2930, 2931 and 2932 to establish a national payment accuracy rate for all cases in payment status; measure the accuracy rate for newly adjudicated claims for beneficiaries receiving old-age, survivors, or disability insurance; and to serve as a source of information regarding problem areas in the RSI/DI programs. Form SSA-4659 is used to evaluate and determine the effectiveness of the annual earnings test and to use the results in developing ongoing improvements in the process. The respondents are beneficiaries and representative payees for beneficiaries receiving old age, survivors, or disability insurance.

	Respondents	Frequency of response	Average burden per response	Estimated annual burden
SSA-2930	3,000	1	30	1,500

	Respondents	Frequency of response	Average burden per response	Estimated annual burden
SSA-2931	1,500	1	30	750
SSA-2932	650	1	20	217
SSA-4659	325	1	10	54
Total burden				2,521

3. Request for Change in Time/Place of Disability Hearing—0960-0348. The information on Form SSA-769 is used by SSA and the State DDSs to provide claimants with a structured format to exercise their right to request a change in the time or place of a scheduled disability hearing. The information is used as a basis for granting or denying requests for changes and for rescheduling hearings. The respondents are claimants who wish to request a change in the time or place of their disability hearing.

Number of Respondents: 7,483.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 998 hours.

4. Request for Reconsideration—Disability Cessation—0960-0349. The information collected on form SSA-789 is used by SSA to schedule hearings, and to develop additional evidence for claimants who have received an initial or revised determination that a disability did not exist or has ceased. The collected information also indicates whether an interpreter is needed. The respondents are disability beneficiaries who file a claim for reconsideration.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 9,800 hours.

5. Agency/Employer Government Pension Offset Questionnaire—0960-0470. The information collected on Form SSA-L4163 will provide SSA with accurate information from the agency paying the pension, for purposes of applying the pension-offset provision. The form will only be used when (1) the claimant does not have the information and (2) the pension-paying agency has not cooperated with the claimant. The respondents are Federal, State, or local government agencies that have information needed by SSA to determine whether the Government Pension Offset provisions apply and the amount of offset.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 50 hours.

6. Child-Care Dropout

Questionnaire—0960-0474. The information collected on Form SSA-4162 is used by SSA to determine whether an individual qualifies for a child care exclusion in computing the individual's disability benefit amount. The respondents are applicants for disability benefits.

Number of Respondents: 2,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 167 hours.

7. Authorization for the Social Security Administration to Obtain Account Records from a Financial Institution—0960-0293. Form SSA-4641-U2 provides financial institutions with the customer's authorization to disclose records, as required by Public Law 95-630. Responses to the questions are used, in part, to determine whether resource requirements are met in the SSI program. The respondents are financial institutions (banks, savings and loans, credit unions, etc.).

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 6 minutes.

Estimated Annual Burden: 50,000 hours.

8. Request for Social Security Earnings Information—0960-0525. The Social Security Act provides that a wage earner, or someone authorized by a wage earner, may request Social Security earnings information from the Social Security Administration, using form SSA-7050. SSA uses the information collected on the form to verify that the requestor is authorized to access the earnings record and to produce the earnings statement. The respondents are wage earners and organizations and legal representatives authorized by the wage earner.

Number of Respondents: 61,494.

Frequency of Response: 1.

Average Burden Per Response: 11 minutes.

Estimated Annual Burden: 11,274 hours.

9. Statement of Household Expenses and Contributions—0960-0456. Eligibility for SSI is based on need. A

factor for determining need is whether an individual receives in-kind support and maintenance in the form of food and shelter provided by other persons. SSA collects information on form SSA-8011-F3 to determine the existence and amount of in-kind support and maintenance received by a claimant/beneficiary of SSI. SSA uses the information to determine eligibility and payment amount under this program. The respondents are members of SSI claimants'/beneficiaries' households.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 100,000 hours.

10. Payment of Certain Travel Expenses—0960-0434. This regulation (20 CFR 404.999 (d) and 416.1499) provides for travel expense reimbursement by the State agency or Federal agency for claimants traveling to a consultative examination, or for claimants, their representative and unsubpoenaed witnesses traveling over 75 miles to appear at a disability hearing. The claimant is required to submit an itemized list of actual travel expenses and supporting receipts which were incurred in order to attend a hearing or medical examination. State and Federal personnel review the listing and the receipts to verify the amount to be reimbursed to the claimant. The respondents are claimants for Title II/XVI benefits.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

Dated: August 6, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01-20030 Filed 8-8-01; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 3738]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Friday, September 28, 2001 at 3:00 p.m. in the Henry Clay Room. The meeting will last until approximately 4:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on March 31, 2001 and the announcement of gifts of furnishings as well as financial contributions from January 1 through August 30, 2001. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by September 17, 2001, telephone (202) 647-1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: July 31, 2001.

Gail F. Serfaty,

*Vice Chairman, Fine Arts Committee,
Department of State.*

[FR Doc. 01-20014 Filed 8-8-01; 8:45 am]

BILLING CODE 4710-38-P

TENNESSEE VALLEY AUTHORITY**Union County Multipurpose Reservoir/ Other Water Supply Alternatives Project**

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. The Union County, Mississippi, Board of Supervisors and the City of New Albany, Mississippi, have decided to adopt Alternative 2: Multipurpose Reservoir, as described in the Final Environmental Impact Statement (EIS) on the Union County Multipurpose Reservoir/Other Water Supply Alternatives Project. This alternative would result in the construction and operation of a multipurpose reservoir on Cane Creek in Union County, Mississippi. Implementing this alternative requires TVA to abandon a portion of an existing electrical transmission line right-of-way and

relocate the existing electrical transmission line from that right-of-way. TVA has decided to relocate the line to the Alternate 1 route. In the Final EIS, Union County and the City of New Albany identified Alternative 2 as their preferred water supply alternative, and TVA identified Alternate 1 as its preferred transmission line route. The Final EIS was made available to the public on June 30, 2000. A Notice of Availability of the Final EIS was published in the **Federal Register** on July 7, 2000.

FOR FURTHER INFORMATION CONTACT:

Charles P. Nicholson, NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902-1499; telephone (423) 632-3582 or e-mail cpnicholson@tva.gov.

SUPPLEMENTARY INFORMATION: In July 1998, TVA was requested by the City of New Albany, Union County, and others to assist in assessing the environmental consequences of alternatives for meeting the future water needs of New Albany and Union County, Mississippi. TVA's assistance was requested because of its expertise in water supply issues, its experience in conducting environmental reviews, and because one of the proposed water supply solutions would require TVA to relocate a portion of an electrical transmission line. TVA responded to this request by preparing a Draft and Final EIS. TVA's action in this project is limited to the relocation of the transmission line. The U.S. Army Corps of Engineers would have actions under at least two of the alternatives.

TVA provided public notice of its intent to prepare an Environmental Impact Statement on water supply alternatives for Union County on December 2, 1998. A public meeting on the proposal was held on December 10, 1998. TVA released its Draft EIS on April 14, 2000, and held a public meeting to receive comments on the document on May 1, 2000. Comments were received from two federal and three state agencies, one university institute, four representatives of local governments or development corporations, and thirteen individuals. After considering all comments, TVA revised the EIS appropriately. The Final EIS was distributed to commenting agencies and the public on June 30, 2000.

Alternatives Considered

The Final EIS evaluated a No Action Alternative and three Action Alternatives for meeting the future water supply needs of the Union County area. The No Action Alternative was

based on a normal growth scenario, i.e., that the local population and their water supply needs will continue to grow at the moderate rate experienced during the 1990s. The Action Alternatives are based on higher growth rate projections, which would result in an additional 0.74 million gallons per day (mgd) of water demand in 2020 and an additional 1.67 mgd in 2050. The Final EIS also evaluated two alternate routes for the relocation of a transmission line that would occur as part of one of the action alternatives.

Under Alternative 1: No Action, Union County and the City of New Albany would continue making incremental improvements to their existing water supply systems. Existing local water supply systems rely on groundwater pumped from several wells.

Under Alternative 2: Multipurpose Reservoir, Union County and the City of New Albany would construct and operate a reservoir on Cane Creek to supply the high growth water demands and provide other benefits such as recreation and flood control. The reservoir would be impounded by a 2,000-foot long earthen dam located northeast of New Albany about 1.75 miles upstream of the junction of Cane Creek and the Little Tallahatchie River. At normal pool level, the reservoir would impound about 960 acres. Associated water supply system components include a water treatment plant immediately downstream of the reservoir and a pipeline connection to the local water distribution system.

As part of this alternative, TVA would relocate a 5.5 mile segment of the Albany-Ripley #2 161-kV transmission line from the reservoir basin to one of two alternate routes north and east of the reservoir. The Alternate 1 route is about 6.4 miles long, and the Alternate 2 route is about 7.5 miles long. About 3.4 miles of both routes share a common corridor. About 1.9 miles of the Alternate 2 route are parallel to an existing 500-kV transmission line; along this segment, the existing right-of-way would be widened from 175 feet to 247.5 feet to accommodate the new line. All of the Alternate 1 route and 5.6 miles of the Alternate 2 route would be built on new 100-foot wide right-of-way. The line would use a combination of single and double pole metal structures with horizontal cross arms.

Under Alternative 3: Pipeline from Existing Water Supply, a pipeline would be constructed, most likely to the Northeast Mississippi Regional Water Supply District at Tupelo. This pipeline would be about 27 miles long and parallel U.S. Highway 78 West. It would

likely be built with 24-inch diameter iron pipe on a 20- to 50-foot wide right-of-way, and require at least one pressure booster station. The Northeast Mississippi district withdraws its water from a diversion of the Tennessee-Tombigbee Waterway, and currently has sufficient capacity to supply Union County/New Albany. The Northeast Mississippi district would eventually have to expand its treatment plant to meet the future needs of Union County/New Albany.

Under Alternative 4: Additional Groundwater Sources, Union County and the City of New Albany would rely on groundwater to meet future demand, and construct additional wells and pipeline connections. The locations of additional wells are unknown at this time; some would likely be in the vicinity of existing wells and others would be likely be near new large water supply users such as industries. If additional well fields were required, they would likely be south and west and New Albany.

Decision

Union County and the City of New Albany have chosen Alternative 2: Multipurpose Reservoir because it would ensure an adequate water supply and provide the greatest range of supplemental benefits, including recreation and limited flood control. TVA has chosen the Alternate 1 route for the transmission line that would be relocated from the reservoir basin area. In the Final EIS, Union County and the City of New Albany identified Alternative 2 as their preferred water supply alternative, and TVA identified Alternate 1 as its preferred transmission line route. TVA will take this action when and if Union County and the City of New Albany obtain funding to complete the reservoir project, obtain necessary permits, and make appropriate financial arrangements with TVA to move the line. In addition, the TVA Board of Directors would have to authorize the abandonment of the existing transmission line right-of-way.

Environmentally Preferred Alternative

Section 2.6 of the Final EIS ranked the alternatives by their potential environmental impacts. Alternative 1: No Action would result in the lowest level of environmental impacts. This alternative would not, however, allow Union County and the City of New Albany to meet their projected water supply needs. Of the two action alternatives that would meet the projected water supply needs without greatly reducing groundwater levels, Alternative 3: Pipeline from Existing

Supply would have fewer environmental impacts than Alternative 2: Multipurpose Reservoir.

Of the alternative actions available to TVA, namely the two alternate routes for the transmission line relocation, the Alternate 1 route is environmentally preferable. It would affect fewer landowners, cross fewer streams, and result in less forest clearing than the Alternate 2 route. The Alternate 2 route, however, would result in less conversion of forest wetlands to scrub-shrub wetlands.

Public Comments on the Final EIS

Comments on the Final EIS were received from the U.S. Environmental Protection Agency, the U.S. Department of Interior, and the Mississippi State Department of Health. Most of the comments addressed issues related to the operation of the reservoir proposed under Alternative 2. At the time the Final EIS was published, detailed information on shoreline ownership and management, water levels, downstream flow, water withdrawals, and other operational characteristics of the reservoir was not available from Union County and the City of New Albany. TVA anticipates these issues will be addressed during the permitting process.

Environmental Consequences and Commitments

The construction and operation of the multipurpose reservoir under Alternative 2 would result in the inundation of 960 acres of land along Cane Creek and changes to stream ecology resulting from impoundment. With the implementation of appropriate mitigation measures, many of which will be developed during the permitting process, the adverse environmental impacts of Alternative 2 are expected to be insignificant.

TVA has adopted the following mitigation measures pertaining to its construction and operation of the transmission line:

- Prior to initiation of construction activities, TVA will conduct an archaeological survey of the right-of-way. Adverse effects to archaeological resources potentially eligible for listing on the National Register of Historic Places would likely be avoided by slight changes in the location of the line or individual structures. If this avoidance is impracticable, adverse effects will be resolved pursuant to regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act.
- All construction and maintenance activities will utilize applicable Best Management Practices. Construction

activities will also adhere to the Right-of-Way Clearing Specifications and Environmental Quality Protection Specifications for Transmission Line Construction listed in Appendix B-1 of the Final EIS. These list requirements for protecting sensitive areas, water and air quality, reducing noise, and disposing of wastes.

- Wetlands will be avoided to the extent practicable. Identified wetlands, streams, and drainage ways will not be modified so as to alter their natural hydrological patterns during transmission line clearing, construction, and maintenance. Hydric soils will not be disturbed or modified in any way that would alter their hydrological properties.

- Initial right-of-way clearing within forested wetlands will be accomplished using accepted silvicultural practices for timber/vegetation harvesting within wetlands.

- Within streams, riparian zones, and wetlands, trees will be cut close to ground level and stumps will not be uprooted or removed.

- Transmission line maintenance using mechanical means in areas surrounding or adjacent to identified wetlands will only be conducted during seasonal dry periods, usually late summer or early fall, and will be accomplished without the use of heavy equipment.

- Any herbicide applications would be by licensed personnel and use EPA-registered herbicides.

Dated: August 2, 2001.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 01-19947 Filed 8-8-01; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Alternate Means of Compliance; JAR 22, Change 5

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This document announces the availability of an alternate means of compliance for glider stall speed requirements. The FAA certifies gliders under 14 CFR part 21, § 21.17. Guidance found in AC 21.17-2A states that one acceptable criterion for glider certification is Joint Airworthiness Regulation (JAR) 22, which is the European standard for gliders. JAR 22, Change 5 (JAR 22.49(b)(2)) defines the

requirements for stall speed. This alternate means of compliance allows the Rollanden-Schneider Flugzeugbau GmbH Model LS-8 glider to be type certificated with a higher stalling speed because the Model LS-8 has compensating features.

Discussion: On July 9, 2001, an alternate means of compliance, Finding No. ACE-01-05, was issued for the Model LS-8 glider. We have determined that this same alternate means would be usable by other glider manufacturers following adequate FAA review. Therefore, we are making this alternate means available to all glider manufacturers for their use.

ADDRESSES: Copies of alternate means of compliance Finding No. ACE-01-05, may be requested from the following: Small Airplane Directorate, Standards Office (ACE-110), Aircraft Certification Office, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106. The alternate means of compliance is also available on the Internet at the following address <http://www.faa.gov/avr/air/ace/acehome.htm>.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Federal Aviation Administration, Small Airplane Directorate, ACE-111, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone (816) 329-4125; fax 816-329-3047; e-mail: Lowell.Foster@faa.gov.

Issued in Kansas City, Missouri, on July 30, 2001.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01-20036 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000-8461; Notice 2]

Continental General Tire, Inc., Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Continental General Tire, Inc., (Continental) has determined that approximately 3,187 P255/70R16 Ameri*660 AS passenger car tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Continental petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and filed an appropriate report

pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on December 15, 2000, in the **Federal Register** (65 FR 78530). NHTSA received two comments on this application, one from General Motors (GM) and one from Advocates for Highway and Auto Safety (Advocates).

FMVSS No. 109, paragraph S4.3 (e), requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different. According to Continental, the noncompliance relates to a specific mold, number 33460, which ran for the production period of June 14, 2000 through July 29, 2000 with an incorrect side plate on the bottom or inboard sidewall. This side plate was not changed from a previous production run in which the tire construction was different. The stamping at the rim line read: Tread 6 plies: 2 Steel + 2 Polyester + 2 Nylon. It should have read: Tread: 4 Plies: 2 Steel + 2 Polyester.

The P255/70R16 General Ameri*660 AS primarily is supplied to General Motors (GM) for original equipment pickup truck application. According to Continental, 1,550 of the 3,187 tires manufactured with this noncompliance were not released, 1,555 were provided to GM for original equipment on pickup trucks, and 82 tires were sold as replacements.

Continental stated in its petition that all molded labeling items on the letter white (LW), outboard sidewall, including the tire construction information, are correct. The incorrect tire construction information would be on the bottom or inboard (non-customer) sidewall. Continental believes that no unsafe conditions would result from the noncompliance.

GM supported granting the petition, stating that it understood that approximately 1,555 of the 3,187 tires manufactured with this noncompliance were shipped to it for installation on pickup trucks. GM repeated the assertion by Continental that the tires would be mounted on the vehicles with the LW or customer side mounted outboard and would likely maintain in that configuration through the life of the tire. GM also stated that all the labeling information required by FMVSS No. 109 is correctly marked on the LW side of the tires.

Advocates commented that, as a result of the events in the summer of 2000 involving tire failure and sport utility vehicles, the agency must view all applications for inconsequential

noncompliance regarding incorrect tire labeling with increased scrutiny.

Advocates further stated that the agency must consider whether these incorrect markings are relied upon by tire dealers or customers in the selling or purchasing of the tires. Additionally, according to Advocates, aftermarket tires may be mounted on rims with the LW side inboard exposing the incorrect tire construction information, which is a potential source of confusion.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act of November 2000 required, among other things, that the agency initiate rulemaking to improve tire label information. In response to section 11 of the TREAD Act, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The ANPRM sought comments on the tire labeling information required by 49 CFR 571.109 and part 119, part 567, part 574, and part 575. The agency received more than 20 comments. Most of the comments were from motor vehicle and tire manufacturers, although several private citizens and consumer interest organizations responded to the ANPRM. With regard to the tire construction labeling requirements of FMVSS 109, S4.3 (d) and (e), most comments indicated that the information was of little or no safety value to consumers. However, the tire construction information is valuable to the tire retread, repair, and recycling industries, according to several trade groups representing tire manufacturing. The International Tire and Rubber Association, Inc. (ITRA) indicated that the tire construction information is used by tire technicians to determine the steel content of a tire and to select proper retread, repair, and recycling procedures.

In addition to the written comments solicited by the ANPRM, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire information beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we concur that it is likely that few consumers are influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) when making a motor vehicle or tire purchase decision.

Actions by the agency since November 2000, in response to Congressional requirements, have addressed most of the concerns raised by Advocates in its docket submission. As previously stated, written comments to the ANPRM on tire labeling issues indicated that the tire construction information molded onto the tire is of little safety value to the general public since most consumers do not understand tire construction technology. Additionally, few consumers use the tire construction information as input to tire or vehicle purchasing decisions, according to the results of focus group surveys sponsored by the agency. However, the tire repair, retread, and recycling industries use the tire construction information and the agency is considering retaining all the current labeling requirements of FMVSS No. 109 in some form.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. The tires have been chosen by GM as original equipment, suited for pickup trucks. Further, the tires are certified to meeting all the performance requirements of FMVSS No. 109. The agency agrees with GM's statement indicating that, in customer use, the LW or outboard side or the tire would likely stay in the original configuration through the life of the tire. Although tire construction affects tire strength and durability, neither the agency nor the tire industry provides information relating the strength and durability of a tire to the number and types of plies in the tread and sidewall. The agency believes the incorrect labeling of the tire construction information will have an inconsequential effect on consumer safety. The agency believes the safety of the GM pickup truck users and the users of these tires as replacements will not be adversely affected by the noncompliance because most consumers do not base tire purchases or vehicle operation parameters on tire construction information. The agency believes the noncompliance will have an inconsequential effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction is the primary safety concern of these industries, according to ITRA. In this case, the steel used in the construction of the tires is properly labeled.

In consideration of the foregoing, NHTSA has decided that the burden of

persuasion has been met and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Continental's application is granted and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 3, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01-20037 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001-10312; Notice 1]

Michelin North America, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Michelin North America, Inc., has determined that approximately 173,800 205/55R16 Michelin Energy MXV4+ tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." FMVSS No. 109 requires that each tire shall have permanently molded into or onto both sidewalls the generic name of each cord material used in the plies of the tire. (S4.3(d)).

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

During the period of the 4th week of 2000 through the 9th week of 2001, the subject tires were produced and cured with erroneous marking. Instead of the required marking of the cord material of Polyester, the tires were marked: Rayon. Of the total, approximately 162,500 tires may have been delivered to customers. The remaining tires have been identified in Michelin's warehouse.

Michelin states that all performance requirements of FMVSS 109 were met or exceeded and that this noncompliance

is inconsequential as it relates to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: (30 days after Publication Date).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 6, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01-20015 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA-01-10293 (PDA-28(R))]

Application by the Town of Smithtown, NY for a Preemption Determination as to Ordinance on Transportation of Liquefied Natural Gas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public Notice and Invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by the Town of Smithtown, New York for an administrative determination whether Federal hazardous material transportation law preempts certain sections of the Town Code that require a permit for any motor vehicle used to deliver liquefied petroleum gas (LPG) within the Town and a "certificate of fitness" for any person who delivers LPG.

DATES: Comments received on or before September 24, 2001, and rebuttal comments received on or before November 7, 2001, will be considered before issuance of an administrative

ruling. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA-01-10293 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at <http://dms.dot.gov>, and click on "Help," "DMS Web Site," or "DMS Frequently Asked Questions" to obtain instructions for filing a document electronically.

A copy of each comment must also be sent to John B. Zollo, Esq., Town Attorney, 99 West Main Street, P.O. Box 575, Smithtown, NY 11787. A certification that a copy has been sent to him must also be included with the comment. (The following format is suggested: "I certify that a copy of this comment have been sent to Mr. Zollo at the address specified in the **Federal Register**.")

A list and subject mater index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "<http://rspa-atty.dot.gov>." A paper copy of this list and index will be provided at no cost upon request to the individual named in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Program Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Tel. No. 202-366-4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The Town of Smithtown (Town), New York has asked RSPA to determine whether Federal hazardous material transportation law preempts sections 164-108 and 164-109 of the Town Code, concerning Fire Prevention Division permits and "certificates of

fitness" for the delivery of LPG within the Town.

In its application, the Town stated that "Section 164-108 is essentially identical" to provisions in Nassau County Ordinance No. 344-1979 that RSPA found are preempted with respect to trucks based outside Nassau County. PD-13(R), Nassau County, New York Ordinance on Transportation of Liquefied Petroleum Gas, 65 FR 60238 (Oct. 10, 2000) (decision on petition for reconsideration), judicial review pending, *Office of the Fire Marshal v. U.S. Dep't of Transportation*, Civil Action No. 00-7200 (E.D.N.Y.). In PD-13(R), RSPA found that, as enforced and applied to vehicles based outside Nassau County, that County's permit requirement is an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the Hazardous Materials Regulations (HMR), 49 CFR parts 171-180, because the County does not appear to be able to schedule and conduct inspections of trucks (required for a permit) without causing unnecessary delays in the transportation of hazardous materials from locations outside the County. 65 FR at 60245.

The Town stated that the relevant provisions of Section 164-108 are as follows:

A. No person, firm or corporation shall use or cause to be used any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer for the transportation of liquefied petroleum gas unless, after complying with these regulations, a permit to operate any such vehicle has first been secured from the Fire Prevention Division. No permit shall be required under this section for any motor vehicle that is used for the transportation of LPG not operated or registered by an authorized dealer, in containers not larger than 10 gallons water capacity each (approximately 34 pounds' propane capacity) with an aggregate water capacity of 25 gallons (approximately 87 pounds) or when used in permanently mounted containers on the vehicle as motor fuel. This section shall not apply to any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer traveling through the town and making no deliveries within the town.

B. Permits shall be issued to a vehicle for the transportation of LPG only after a full safety inspection of the vehicle by the Fire Prevention Division and the Fire Marshal approves of the issuance of the permit.

The Town also stated that, "[i]n practice," its inspection and permit requirement "is distinguishable from the Nassau County Ordinance," because its inspections do not last "several hours"; they "are scheduled in advance and scheduling is flexible." In an affidavit submitted with the application, the Town's Chief Fire Marshal stated that "Appointments are available on a

monthly basis (with the exception of winter months at the request of the LPG companies) and are made one month prior to the expiration of the permit." The permit is valid for one year, and the fee is \$150 for a new permit and \$75 for a renewal.

The Town stated that the relevant provisions of section 164-109, concerning certificates of fitness, are the following:

A. Certificate of fitness required. Any person filling containers at locations where LPG is sold and/or transferred from one vessel into another shall hold a valid certificate of fitness issued by the Fire Prevention Division. Such certificate is subject to revocation by the Fire Prevention Division at any time where the certificate holder displays evidence of noncompliance with the provisions of this chapter.

E. The certificate of fitness shall be given full force and effect for a period of three years.

I. Certificate of fitness issued. A certificate of fitness will be required of any person performing the following activities:

- (1) Filling containers permanently located at consumer sites from a cargo vehicle.
- (2) Selling LPG or transferring LPG from one vessel to another

The Town acknowledged that its certificate of fitness requirement applies to both persons who "handle (fill and sell) LPG at commercial dispensing stations" and "operators of vehicles (bulk and rack type carriers) used for domestic delivery of LPG." The Town referred to RSPA's finding in PD-13(R) that Nassau County's certificate of fitness requirement is preempted insofar as that requirement is applied to a motor vehicle driver who sells or delivers LPG because it imposes more stringent training requirements than provided in the HMR. 63 FR 45283, 45288 (Aug. 25, 1998). The Town did not acknowledge that its own certificate of fitness requirement was found to be preempted with respect to motor vehicle drivers last year, in *People v. Parago Gas Corp.*, No. SMT0 398-99 (Dist. Ct. Suffolk Co., Mar. 20, 2000).

The Town stated that its certificate of fitness requirement "is in no way duplicative of the training requirements" in the HMR and that the Federal Motor Carrier Safety Regulations in 49 CFR parts 390-397 "do not specifically address the safety provisions that are tested for a certificate of fitness." The Town stated that, to obtain a certificate of fitness, an applicant must pay \$150, or \$75 for renewal, and take "a written examination that tests the applicant's knowledge of the required safety standards * * * in the Town's handbook" as well as "a practical test during which a fire marshal observes

the applicant performing the necessary operations." According to the application, these examinations "are scheduled in advance, * * * given on several occasions in order to accommodate the applicant's schedule," and "waived for applicants who possess a valid certificate of fitness from another jurisdiction."

The text of the Town's application is set forth in Appendix A. The following exhibits to the application are not reproduced, but copies will be provided at no cost upon request to the person identified in **FOR FURTHER INFORMATION**

CONTACT:

1. Sections 164–108 and 164–109 of the Code of the Town of Smithtown.
2. Application for LPG Certificate of Fitness form.
3. LPG–Certificate of Fitness Study Guide.
4. Affidavit of Richard L. McKay, Chief Fire Marshal.
5. Application for LPG Motor Vehicle Transportation Permit and Motor Vehicle Inspection for LPG Transportation Permit forms.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to this application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

(1) Complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria that RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines v. Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963); *Ray v. Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the

same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

Subsection g(1) of 49 U.S.C. 5125 provides that a State, political subdivision, or Indian tribe may:

Impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose relating to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and

regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n v. Harmon*, 951 F. 2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision or tribe may apply to the Secretary of Transportation for a determination whether the requirement is preempted. The Secretary of Transportation has delegated authority to RSPA to make determinations of preemption, except for those that concern highway routing, which have been delegated to the Federal Motor Carrier Safety Administration. 49 CFR 1.53(b).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. See 49 CFR 107.209. A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law or whether a fee is "fair" within the meaning of 49 U.S.C. 5125(g)(1). A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n v. Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Public Comments

All comments should address the issue whether Federal hazardous material transportation law preempts the Town's LPG permit and certificate requirements in sections 164–108 and 164–109 of the Town Code. Comments should:

(1) Set forth in detail the manner in which these permit and certificate of fitness requirements are applied and enforced; and

(2) specifically address the preemption criteria detailed in Part II, above.

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on August 6, 2001.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

Appendix A—Application by the Town of Smithtown for Preemption Determination as to Smithtown Town Code on Transportation of Liquefied Petroleum Gases

Submitted to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001

Attention: Hazardous Materials Preemption Docket

Political Subdivision Ordinance: Town of Smithtown, County of Suffolk, State of New York

Argument

The Town of Smithtown applies for an administrative determination that the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101, et seq.) and its regulations, 49 CFR, 107.202: Standards for Determining Preemption, does not preempt Section 164–108 of the code of the Town of Smithtown, Fire Prevention, Transportation, Local Law No. 4–2000, and Section 164–109 of the Code of Town of Smithtown, Fire

Prevention, Certificate of fitness, Local Law No. 4–2000.

Section 164–108/Transportation, Permits

The relevant sections of the Code of the Town of Smithtown (hereinafter, the Town Code) are sections 164–108 (A) and (B). The Town of Smithtown submits that the HMTA does not preempt section 164–108. Sections 164–108 (A) and (B) provides as follows:

A. No person, firm or corporation shall use or cause to be used any motor vehicle, tank truck, tank truck semitrailer or tank truck trailer for the transportation of liquefied petroleum gas unless, after complying with these regulations, a permit to operate any such vehicle has first been secured from the Fire Prevention Division. No permit shall be required under this section for any motor vehicle that is used for the transportation of LPG not operated or registered by an authorized dealer, in containers not larger than 10 gallons' water capacity each (approximately 34 pounds' propane capacity) with an aggregate water capacity of 25 gallons (approximately 87 pounds) or when used in permanently installed containers on the vehicle as motor fuel. This section shall not apply to any motor vehicle, tank truck, tank truck semitrailer, or tank truck trailer traveling through the town and making no deliveries within the town. (Exhibit 1).

In order to obtain a permit, the owner of a vehicle used to deliver LPG must pay a fee of \$150 or \$75 for renewal.

Town Code Section 164–108 is essentially identical to Section 6.7(A) and (B) of Nassau County ordinance No. 344–1979. In its preemption determination in PD–13(R), 63 FR 45283, the Research and Programs Administration (RSPA) determined that the Nassau County ordinance was to be preempted by the HMTA. In doing so, the RSPA concluded that the Nassau County ordinance did not create an obstacle to the transportation of LPG. According to the RSPA, the time necessary to undergo an inspection and pay the permit fee did not create an unnecessary delay in the transportation of hazardous materials as long as "the County does not cause the loaded truck to wait for a permit to be issued". 63 FR at 45286.

On reconsideration, the RSPA considered evidence of significant delays occurring during inspections of trucks based outside the County. The RSPA then determined that the Nassau County Ordinance was preempted with respect to trucks based outside the County, but was not preempted with respect to trucks based in Nassau County. According to the RSPA, "The city or county may not require a permit or inspection for trucks that are not based within the local jurisdiction if the truck must interrupt its transportation of propane for several hours or longer in order for an inspection to be conducted and a permit to be issued." (PD–13(R) Determination on reconsideration.) Still, the RSPA emphasized that the County has an interest the safe delivery and transportation of LPG, whether the transportation companies are based in the County or not. To be clear, the RSPA did not find that all inspections of this nature were preempted by the HMTA. Instead, the reconsideration

decision finding that the Nassau County ordinance was preempted was based on the unreasonable delay incurred by the transporter outside the jurisdiction.

In practice, the Town Code is distinguishable from the Nassau County ordinance. Unlike the case in Nassau County, the Town of Smithtown does not conduct inspections that last several hours. The inspections are scheduled in advance and scheduling is flexible. In addition, steps are implemented that eliminate delay during the actual inspection. (see Exhibit #4) As a result, the town conducts its inspections without transporters having to wait longer than 30 minutes. (Exhibit #4)

Like the permit requirement in Nassau County, in order to obtain a permit, the owner of a vehicle used to deliver LPG must pay a fee of \$150 or \$75 for renewal, and have the vehicle inspected. Once the fees are obtained, they are used to offset the work performed by the Fire Prevention Division. (Exhibit #4) The permit fee is not applied to all trucks that transport the LPG within the Town of Smithtown, but only to those who deliver LPG within the Town. (Exhibit #4) The RSPA previously held that such fees are reasonable. (See Preemption Determination PD–13 (R) and 63 FR at 4587.

Therefore, absent evidence of a significant delay in the actual transportation of LPG, there is not basis for determination finding that the HMTA preempts Town Code Section 164–108.

Section 164–109 (A), (I), and (E)/Certificate of Fitness

The relevant sections of the Town Code regarding Certificate of Fitness are sections 164–109 (A), (I) and (E). (Exhibit 1). The Town of Smithtown submits that the HMTA does not preempt section 164–109. The Town Code at 164–109(A) states in part, "Certificate of fitness required. Any person filling containers at locations where LPG is sold and/or transferred from one vessel into another shall hold a valid certificate of fitness issued by the Fire Prevention Division." Section 164–109(I) states in part, "A certificate of fitness will be required of any person performing the following activities: (1) Filling containers permanently located at consumer sites from a cargo vehicle. (2) Selling LPG or transferring LPG from one vessel to another." Section 164–109(E) gives full force and effect to the certificate of fitness for three years.

It is important to note that the Town of Smithtown offers two types of certificates of fitness. A Type I certificate of fitness allows the holder to handle (fill and sell) LPG at commercial dispensing stations. A Type II certificate of fitness is for operators of vehicles (bulk and rack type carriers) used for domestic delivery of LPG. (see Exhibits 3 and 4). In other words, only the holder of a Type II certificate of fitness may engage in the delivery of LPG within the Town of Smithtown.

Investigation and Exam Requirements

Contrary to the RSPA's finding in 63 FR 45283 with respect to Nassau County's certificate of fitness requirement, the inspection and exam requirements of the

Town Code are consistent with 49 CFR 172.701 which proscribes only "minimum training requirements for the transportation of hazardous materials." Section 164-109 is in no way duplicative of the training requirements proscribed by 49 CFR parts 172, 174, 175, 176, and 177. Furthermore, 49 CFR parts 390 through 397, referenced by 49 CFR 177.804, do not specifically address the safety provisions that are tested for a certificate of fitness under Town Code 164-109. (see Exhibit #5) The federal code of regulations deals primarily with the operation of the transferring vehicle itself, i.e. brakes, lights, windshield wipers, and rules of the road. (see 49 CFR 392) However, the Town Code deals primarily with the handling of LPG, i.e. transporting cylinders and delivering cylinders. (see Exhibit #5) Therefore, no conflict exists between the federal code of regulations and the Town Code.

Section 164-152 lists the applicable fee for the initial certificate of fitness at one hundred fifty dollars and the renewal fee at seventy-five dollars. The applicable fees are payable upon the commencement of the application process. The application itself is a brief form. (Exhibit 2). This is followed by a written examination that tests the applicant's knowledge of the required safety standards, as provided in the Town's handbook. (Exhibit 3). Next, the applicant takes a practical test during which a fire marshal observes the applicant performing the necessary operations. (see Exhibit 4).

The exams are scheduled in advance, and are given on several occasions in order to accommodate the applicant's schedule. Because § 164-109(H) eliminates the investigation phase for the renewal process, applicants applying to renew a certificate of fitness are not required to take the written and practical examinations. Also, examinations are waived for applicants who possess a valid certificate of fitness from another jurisdiction. (see Exhibit 4).

The effect of section 164-109 of the Town Code is to ensure that individuals engaged in the proscribed activity are capable of conducting this activity safely. The certification process generally occurs well in advance of the delivery of LPG and, as such, does not create a delay in delivery. (see Exhibit 4).

The Obstacle Test

Because the HMTA does not address certificates of fitness and certificates of fitness are not included among the enumerated covered subjects in section 49 U.S.C. 5125(b), the "dual compliance test" and the "covered subject test" do not apply here. Therefore, the issue here is whether the submitted statutes pass the "obstacle test".

Town Code section 164-109 passes the obstacle test, as it does not create a significant delay in the transportation of LPG so as to conflict with 49 CFR 177.853(a), which prohibits "unnecessary delays" in the transportation of hazardous materials. First, this requirement does not explicitly pertain to the transporters of LPG, only to those who engage in filling, selling, and transferring LPG. It is true that, in practice, a transporter who delivers LPG must obtain a Type II

Certificate of Fitness; however, this requirement does not create an obstacle to cause a delay in LPG delivery. (see Exhibit 4)

For instance, in *New Hampshire v. Motor Transport Association, et. al. v. Flynn*, 751 F. 2d 43 (1st Cir. 1984), the U.S. Appeals Court considered whether a statute requiring transporters to obtain a license at a twenty-five dollar annual fee created an unnecessary delay in the transportation of hazardous materials. In that case, transporters seeking to obtain a license could only purchase the license during the week. The Court acknowledged that a delay in transportation would result for transporters who need to obtain a license for a weekend delivery. However, the court found that because transporters could anticipate this requirement, no significant delay should result. Therefore, the court held that the license requirement was not preempted by the HMTA.

Here, the extent to which sec. 164-109 is enforced against transporters of LPG is limited to those situations where the transporters of LPG were also engaged in the delivery of LPG. In these situations, transporters can anticipate the need to schedule the certification process in advance. (See Exhibit 4). Therefore, the fact that transporters consequently become involved, should not be a basis for determining that section 164-109 creates an obstacle to the accomplishment of the federal law.

For the foregoing reasons, the HMTA does not preempt Town Code Sections 164-108 and 164-109.

Submitted by:

John B. Zollo,
Town Attorney, Town of Smithtown.
Jennifer Marin,
Assistant Town Attorney, 99 West Main
Street, P.O. Box 575, Smithtown, New York
11787.

For Petitioner:
The Town of Smithtown,
99 West Main Street, P.O. Box 575,
Smithtown, New York 11787.

[FR Doc. 01-20048 Filed 8-8-01; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Denatured Spirits.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8185.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Denatured Spirits.

OMB Number: 1512-0337.

Recordkeeping Requirement ID Number: ATF REC 5150/1.

Abstract: Denatured spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. The records are maintained at the premises of the regulated individual and are routinely inspected by ATF personnel during field tax compliance examinations. These examinations are necessary to verify that all specially denatured spirits can be accounted for and are being used only for purposes authorized by laws and regulations. By ensuring that spirits have not been diverted to beverage use, tax revenue and public safety are protected. There is no additional recordkeeping imposed on the respondent as these requirements are usual and customary business records.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,111.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden

Hours: 1.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01-20007 Filed 8-8-01; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Smith, Office of Firearms, Explosives and Arson, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8481.

SUPPLEMENTARY INFORMATION:

Title: Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.

OMB Number: 1512-0543.

Form Number: ATF F 5300.11A.

Abstract: ATF F 5300.11A is intended to report the number of semiautomatic assault weapons made in the United States and entering into commerce. Since semiautomatic assault weapons may be constructed from foreign firearms and used firearms, the reporting instructions are different from those used in ATF F 5300.11, (Annual Firearms Manufacturing and Exportation Report). Record must be kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government

Estimated Number of Respondents: 1,556.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 156.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity if the information to be collected (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01-20008 Filed 8-8-01; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

OMB Number: 1512-0363.

Recordkeeping Requirement ID Number: ATF REC 5210/6.

Abstract: Tobacco products have historically been a major source of excise tax revenues for the Federal government. In order to safeguard these taxes, tobacco products manufacturers are required to maintain a system of records designed to establish accountability over the tobacco products and cigarette papers and tubes produced. However, these items can be removed without the payment of tax if they are for the use of the United States. Records shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any ATF officer upon his request.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 101.

Estimated Time Per Respondent: 5 hours per year.

Estimated Total Annual Burden Hours: 505.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01-20009 Filed 8-8-01; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is

soliciting comments concerning the Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. chapter 40 (Explosives).

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Guy Hummel, Arson and Explosives Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-7930.

SUPPLEMENTARY INFORMATION:

Title: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 (Explosives).

OMB Number: 1512-0373.

Recordkeeping Requirement ID Number: ATF REC 5400/3.

Abstract: These records show daily activities in the importation, manufacture, receipt, storage and disposition of all explosive materials covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. Licensees and permittees shall keep records on the business premises for 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee or permittee.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10,519.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 132,754.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01-20010 Filed 8-8-01; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco—Record of Disposition of More Than 60,000 Cigarettes in a Single Transaction.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8181.

SUPPLEMENTARY INFORMATION:

Title: Tobacco—Record of Disposition of More Than 60,000 Cigarettes in a Single Transaction.

OMB Number: 1512–0391.

Recordkeeping Requirement ID Number: ATF REC 5210/10.

Abstract: Records must be maintained by tobacco products manufacturers and cigarette distributors showing the details of large cigarette transactions. The records are used to trace the movement of contraband cigarettes and to help curtail the illicit traffic in cigarettes between states. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 9,500.

Estimated Time Per Respondent: 120 hours per respondent to compile and record the required information.

Estimated Total Annual Burden Hours: 1,140,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–20011 Filed 8–8–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Drawback on Beer Exported.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Tom Crone, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8181.

SUPPLEMENTARY INFORMATION:

Title: Drawback on Beer Exported.

OMB Number: 1512–0083.

Form Number: ATF F 1582–B (5130.6).

Abstract: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may receive a refund of Federal taxes paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 5,000.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 27, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–20012 Filed 8–8–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn From the Market.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8185.

SUPPLEMENTARY INFORMATION:

Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn From the Market.

OMB Number: 1512-0164.

Form Number: ATF F 3069 (5200.7).

Abstract: ATF F 3069 (5200.7) is used by persons who intend to withdraw tobacco products from the market for which the tax has already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form also notifies ATF when withdrawal or destruction is to take place, and ATF may elect to supervise withdrawal or destruction.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 119.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,071.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 31, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01-20013 Filed 8-8-01; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service**

[IA-33-92]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA-33-92 (TD 8507), Information Reporting for Reimbursements of Interest on Qualified Mortgages (§ 1.6050H-2).

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting for Reimbursements of Interest on Qualified Mortgages.

OMB Number: 1545-1339.

Regulation Project Number: IA-33-92.

Abstract: Section 6050H of the Internal Revenue Code relates to the information reporting requirements for reimbursements of interest paid in connection with a qualified mortgage. This information is required by the Internal Revenue Service to encourage compliance with the tax laws relating to the deductibility of payments of mortgage interest. The information is used to determine whether mortgage interest reimbursements have been correctly reported on the tax return of the taxpayer who receives the reimbursement.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden of Form 1098, Mortgage Interest Statement.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-20005 Filed 8-8-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Comment Request for Form 4996**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4996, Electronic/Magnetic Media Filing Transmittal for Wage and Withholding Tax Returns.

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Electronic/Magnetic Media Filing Transmittal for Wage and Withholding Tax Returns.

OMB Number: 1545-1463.

Form Number: Form 4996.

Abstract: Form 4996 is required in accordance with regulation section 31.6011(a)-8 as part of a "composite return" when employment tax returns are submitted electronically or on magnetic media. The composite return consists of Form 4996, which identifies the specific transmission or magnetic tape and the type of tax returns being submitted, and an attachment of magnetic tape or approved media. The reporting agent signs Form 4996 and this serves as the legal signature for each return submitted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 1,700.

Estimated Time Per Response: 6 minutes.

Estimated Total Annual Burden Hours: 170.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-20006 Filed 8-8-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Friday, September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Lorenza Wilds, Office of National Public Liaison, CL:NPL:PAC, Room 7565 IR, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202-622-6440 (not a toll-free number). E-mail address: *public_liaison@irs.gov.

SUPPLEMENTARY INFORMATION: By notice herein given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRSAC will be held on Friday, September 21, 2001, from 9:00 a.m. to 4:00 p.m. in Room 3313, main Internal Revenue Service building, 1111 Constitution Avenue, NW., Washington, DC 20224. Issues to be discussed include: competent authority and transfer pricing, comprehensive case resolution, pre-and post-filing agreements, offers-in-

compromise, safe harbors, compliance, filing season readiness, taxpayer education, and communications. Reports from the three IRSAC sub-groups, Wage & Investment, Small Business/Self Employed, and Large and Mid-Size Business will also be presented and discussed. Last minute agenda changes may preclude advance notice. The meeting room accommodates approximately 50 people, IRSAC members and Internal Revenue Service officials inclusive. Due to limited seating and security requirements, please call Lorenza Wilds to confirm your attendance. Ms. Wilds can be reached at (202) 622-6440. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Please use the main entrance at 1111 Constitution Avenue to enter the building. Should you wish the IRSAC to consider a written statement, please call (202) 622-6440, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:PAC, 1111 Constitution Avenue, NW., Room 7565 IR, Washington, DC 20224, or e-mail: *public_liaison@irs.gov.

Dated: August 2, 2001.

Nancy A. Thoma,

Designated Federal Official, Acting Director, National Public Liaison.

[FR Doc. 01-20004 Filed 8-8-01; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Sue Greenstein, 1111 Constitution Avenue, NW, N:ADC:H:S Room 3513, Washington, DC 20224, (202) 622-8514 (not a toll-free number.)

SUPPLEMENTARY INFORMATION: As required by Chapter 43, Subchapter II, Section 43148(4) of Title 5, U.S. Code and Part 430, Subpart C. Section 430.307, the following executives are members of the Internal Revenue Service's Senior Executive Service Performance Review Board (PRB): Robert E. Wenzel Deputy Commissioner and Chairperson, Service-wide Performance Review Board

Robert F. Albicker Deputy Associate
Commissioner, Systems Integration
Tyrone B. Ayers Director,
Communications, Assistance,
Research, and Education
Leonard Baptiste, Jr. Director, Security
and Privacy Oversight
Darlene R. Berthod Deputy
Commissioner Tax Exempt and
Government Entities
Daniel L. Black, Jr. Chief Appeals
Delena D. Bratton Deputy Chief/
National Director, Government
Liaison and Disclosure
Dennis E. Crawford Deputy Chief,
Criminal Investigation
John M. Dalrymple Commissioner, Wage
and Investment
Mary E. Davis Director, Strategy and
Finance
John C. Duder Deputy Commissioner,
Wage and Investment

Dale F. Hart Deputy Commissioner,
Small Business and Self-Employed
Joseph G. Kehoe Commissioner, Small
Business and Self-Employed
Henry O. Lamar, Jr. Deputy National
Taxpayer Advocate
Larry R. Langdon Commissioner, Large
and Mid-Size Business
David A. Mader Assistant Deputy
Commissioner
Richard J. Morgante Director,
Management and Finance
Deborah M. Nolan Deputy
Commissioner, Large and Mid-Size
Business
Evelyn A. Petschek Commissioner, Tax
Exempt and Government Entities
John A. Ressler Director, Customer
Account Services
James J. Rinaldi Director, Information
Technology

Gregory D. Rothwell Deputy Chief,
Agency-Wide Shared Services
Gerald J. Songy Director, Taxpayer
Education and Communication
Linda E. Stiff Director, Compliance
John R. Watson Director, Customer
Account Services
James A. Williams Deputy Associate
Commissioner, Program Management
Toni L. Zimmerman Deputy Director,
Information Technology

This document does not meet the
Department of Treasury's criteria for
significant regulations.

Dated: August 3, 2001.

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 01-20003 Filed 8-8-01; 8:45 am]

BILLING CODE 4830-01-P



Federal Register

Thursday,
August 9, 2001

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 40

Federal Aviation Administration

14 CFR Part 121

Coast Guard

46 CFR Parts 4, 5, and 16

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Motor Carrier Safety Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Parts 653, 654, and 655

**Procedures for Transportation Workplace
Drug and Alcohol Testing Programs;
Antidrug and Alcohol Misuse Prevention
Programs for Personnel Engaged in
Specified Aviation Activities; Final Rules**

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 40**

[Docket OST-99-6578]

RIN 2105-AD02

Procedures for Transportation Workplace Drug and Alcohol Testing Programs; Technical Amendments

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is making a series of technical amendments to its drug and alcohol testing procedural rule, which goes into effect August 1, 2001. The purpose of these technical amendments is to clarify certain provisions of the rule and address omissions or problems which have been called to our attention since the publication of the final rule in December 2000.

DATES: This rule is effective August 1, 2001.

FOR FURTHER INFORMATION CONTACT:

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington, DC 20590, 202-366-9310 (voice), 202-366-9313 (fax), or bob.ashby@ost.dot.gov (e-mail); or Kenneth Edgell, Acting Director, Office of Drug and Alcohol Policy and Compliance (ODAPC), 400 7th Street, SW., Room 10403, Washington, DC, 20590, 202-366-3784 (voice), 202-366-3897 (fax); or kenneth.edgell@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: The Department of Transportation published revised procedures for its drug and alcohol testing program (49 CFR Part 40) on December 19, 2000 (65 FR 79462). This revised rule goes into effect, in its entirety, on August 1, 2001, replacing the previous version of Part 40. The new Part 40 is a comprehensive revision of the Department's testing procedures, making numerous and detailed substantive and organizational changes in the regulation. Not surprisingly for a document of this magnitude, we have noticed—and interested persons have called to our attention—instances in which the text of various sections of the regulation should be clarified or errors, omissions, or problems should be corrected.

This technical amendments document is intended to make these clarifications and corrections. The technical amendments were prepared with the intention of going into effect on August

1, 2001, so that users of the regulation will have the opportunity to use the amended version of the regulation without any delay. In the event that publication of the rule does not occur until after August 1, we request that interested parties be guided by the amended provisions of the rule, which we will have posted on our docket and web site by that date. In particular, we emphasize the Department's intention that validity testing remain voluntary at this time. Because we realize that regulated parties will have had little time to incorporate these technical amendments, the Department, in its implementation and enforcement work, will provide a reasonable time to permit parties to make necessary changes in their procedures to comply with these amendments.

Section 40.3 Definitions

The Department is adding a new definition of "invalid drug test." This term is used in the new Federal Custody and Control Form (CCF) that becomes mandatory on August 1, but was not previously defined in Part 40. This definition is also expected to be included in the forthcoming Department of Health and Human Services (HHS) proposed amendments to their Mandatory Guidelines for drug testing.

In the definition of "designated employer representative (DER)," we are making a clarification by explicitly adding the function of "causing employees to be removed from these [i.e., safety-sensitive] functions." This addition is to cover the situation where the DER does not personally and directly remove the individual from safety-sensitive functions, but, for example, calls the individual's supervisor, who effects the actual removal.

Section 40.27 May an Employer Require an Employee To Sign a Consent or Release in Connection With the DOT Drug and Alcohol Testing Program?

Part 40 states that service agents cannot require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the DOT drug or alcohol testing process. We inadvertently omitted language applying this same prohibition to employers. Lately, we have become aware that some employers and others are forcing employees to sign such documents. We want to clarify that no one can do so either on their own or a service agent's behalf. This new section and a parallel change in § 40.355 provide this clarification.

Section 40.33 What Training Requirements Must a Collector Meet?

In new § 40.208, the Department is changing the procedure for handling a situation in which a collector fails to record the specimen temperature. Since this mistake is no longer one that will require cancellation of a test, error correction training will not apply in that case. The purpose of the amendment to § 40.33(c)(2) is to clarify that we intend all monitors (i.e., persons who make sure that collector trainees successfully complete the mock collections required by the rule) to have successfully completed qualification training for collectors, even if they have had a year's training experience or a train the trainer course.

Section 40.45 What Form Is Used To Document a DOT Urine Collection?

The Department has become aware that employers and collection sites, in some cases, are having a very difficult time obtaining copies of the new CCF that becomes mandatory on August 1, 2001. There may be some confusion among laboratories and other parties concerning whether DOT and HHS really mean that all Federal collections beginning August 1 must be conducted on the new form. The Department has added a paragraph to this section to emphasize that use of the new form is mandatory and that participants must stop using the old form.

This new paragraph provides that participants must not use a non-Federal form or an expired Federal form (like the old CCF) to conduct a DOT urine collection. Laboratories, C/TPAs and other parties that distribute CCFs to employers, collection sites, or other customers must not send any more copies of the old CCF to these participants. Parties who distribute forms must also affirmatively notify other participants that they must not use the expired Federal form.

The Department is also making changes to §§ 40.83, 40.203, and 40.205 concerning the requirement to use the new CCF and corrective action that must be taken if the old CCF is used.

In addition, we are aware that some employers may wish to use C/TPAs to receive and maintain CCFs that come directly from the collection site. When this is the case—and we emphasize that this is the employer's choice, not the C/TPA's—the employer may use the C/TPA's mailing address in place of its own. Other employer information, such as name, telephone, and fax number, must remain on the CCF. The entry would read like this: Joe's Trucking

Company; Phone 202-555-5555; (fax) 202-555-5556; c/o CTPA's name and address.

Section 40.47 May Employers Use the CCF for Non-Federal Collections or Non-Federal Forms for DOT Collections?

We have changed the word "non-DOT" to "non-Federal" to avoid confusion. The CCF is a joint DOT-HHS product that may be used for Federal drug testing programs subject to the HHS Mandatory Guidelines as well as to the DOT drug testing program.

Section 40.65 What Does the Collector Check for When the Employee Presents a Specimen?

Section 40.65 (c)(3) describes a situation where an employee refuses to provide another specimen where required. The current rule requires the collector to first notify the DER and then discard the specimen. This procedure should be reversed, i.e., the collector should discard the specimen first and then notify the DER. Otherwise the collector, who may not be able to get hold of the DER right away, would have to retain the urine specimen until such time that the DER is contacted. Also the reference to § 40.191(a)(3) is inappropriate for this paragraph and has been corrected to refer to § 40.191(a)(4).

Section 40.67 When and How Is a Directly Observed Collection Conducted?

Section 40.67(d)(2) directs the collector to "explain to the employee the reason under this part for a directly observed collection under paragraph (c)(2) through (4) of this section." However, there is no paragraph (4). Additionally, paragraph (c)(1) should be included in the collector's explanation of why an observed collection is being conducted, i.e., because the employer required it; the employee, if not told by the employer, is certainly entitled to know this and the collector would have that information. A corrected reference is needed in paragraph (c)(1). Lastly, the collector will inform the employee of the reason for a direct observation collection if the collector knows the reason. If all the collector knows is that the employer ordered the direct observation collection, then that is all the information that the collector will be able to provide the employee.

When a collector learns that a directly observed test should have occurred, but did not, it is the collector's responsibility to correct the omission. For example, suppose the initial specimen was out of temperature range, but the collector forgot to require a directly observed recollection. When the

laboratory points out this problem to the collector, the collector would contact the employer. The employer, in turn, would contact the employee and direct the employee to undergo an immediate recollection under direct observation, even though some time may have passed since the original collection.

Section 40.69 How Is a Monitored Collection Conducted?

There have been some questions as to whether or not we meant to change the meaning of "medical professional" mentioned at § 40.69 with respect to someone acting as a collection monitor. We did not. We still want doctors, nurses, and licensed medical technicians to be able to be monitors even if not the same gender, and we do not believe secretaries, receptionists, or records clerks are appropriate to perform this function (unless of the same gender as the donor). If there is any doubt about the qualifications of others, such as an Emergency Medical Technician or a phlebotomist, the "litmus test" would be whether or not that individual is licensed or certified to practice as a medical professional in a state (i.e., approved by state action). If they meet that requirement, they would be allowed to be opposite-gender monitors. In paragraph (c), we are correcting the language to refer to the "monitor" rather than the "observer."

Section 40.71 How Does the Collector Prepare the Specimens?

Section 40.71 tells the collector how to prepare the specimen; it does not state what to do with any "left over" urine. There have been questions about the employee being able to take the "excess" urine with him/her, if any adulteration tests could be performed, or if any additional medical tests could be conducted on the excess specimen. This new paragraph clarifies these matters and incorporates an existing DOT interpretation that excess urine can be used in clinical urinalysis (e.g., specific gravity, protein, glucose) if the DOT specimen is collected in conjunction with a physical examination required by a DOT agency.

Section 40.73 How Is the Collection Process Completed?

Paragraph (a)(9) of this section mentions that the collector must fax or otherwise transmit the appropriate CCF copies to the MRO and DER. While we do not believe a regulatory text change is necessary to make the point, we want to clarify that we view documents sent by fax as originals for purposes of this section. For example, the collector may fax the MRO copy of

the CCF to the MRO. Since the MRO now has what we regard as an original, the collector could discard the MRO copy 30 days later.

Section 40.83 How Do Laboratories Process Incoming Specimens?

We have revised this section to clarify the handling of certain problems concerning collections. As provided in new § 40.208 below, we are no longer requiring the cancellation of a test because the collector omitted checking the temperature box and did not include a comment concerning the omission in the remarks section of the CCF. While this error still must be corrected, we do not believe it is necessary to cancel the test, since this is an error that does not diminish the rule's protections for the fairness of the testing process to the employee.

In addition, this section is changed to be consistent with the clarification of the responsibilities of laboratories, C/TPAs and other parties to distribute and use only the new CCF. For three months, until the end of October 2001, use of expired "old" CCF, will not result in cancellation or rejection of a test, even if an appropriate correction is not made. Beginning November 1, the laboratory must report this situation (i.e., expired form used, correction not made) as "rejected for testing" with the appropriate remarks. We note that this change in timing applies only to use of the expired Federal CCF. When a non-Federal form is used at any time, the error must be corrected or the test must be rejected.

Section 40.89 What Is Validity Testing, and Are Laboratories Required To Conduct It?

When the Department published its final rule in December 2000, we anticipated that HHS would amend its Mandatory Guidelines for drug testing establishing final requirements for validity testing by HHS-certified laboratories. HHS is continuing to work on this project, but the HHS amendment will not be published by August 1, 2001. The Department believes that it is advisable to wait until HHS has completed its amendment to make validity testing mandatory for all DOT specimens. Consequently, we are changing the language of paragraph (b) of this section to eliminate the requirement that laboratories conduct validity tests on each DOT specimen. In its place, we are inserting language from our existing regulation providing that laboratories are authorized to conduct validity testing. This means that no change in validity testing will take place on August 1, 2001. We will amend this

section again to mandate validity testing when HHS issues its final amendment.

Section 40.97 What Do Laboratories Report and How Do They Report It?

Current § 40.97(a) limits reporting to one result. We have already seen incidents where multiple results can occur because of adulterants. Recently one laboratory had a confirmed cocaine positive, but an adulterant prevented the laboratory from obtaining a satisfactory result for marijuana (neither negative, positive or adulterated). The final result should have been "positive—cocaine" as well as "invalid—with remark." By adding "or more" to the introductory text of paragraph (a), we are clarifying that it is proper to report such a multiple result.

The changes to paragraph (b)(1)(i) and (2) are designed to clarify the information to be provided on an electronic results report. The MRO needs to know where the test was performed. Since some laboratories have multiple laboratory sites, a name of the laboratory on the electronic report will not suffice to identify where the test was performed. HHS has indicated that the MRO's name and the certifying scientist's name would help laboratory inspectors who will be comparing electronic results with CCFs. The MRO name is also needed to ensure that the report goes to the right person. The Certifying Scientist's name is also needed in case the MRO needs to contact the laboratory for additional information and communication. The collector's name and phone number are needed in case someone needs to contact the collector for information or to take corrective action. Laboratories have been utilizing electronic reports since the outset of the program. Many of these reports contain information that is not contained on the CCF—the "official" report. Since it is likely that the electronic results report will replace the CCF for the majority of negative reports, additional information should no longer appear on the electronic report.

Section 40.121 Who Is Qualified To Act as an MRO?

There have been questions about when the first round of CEU hours and refresher training are required for previously trained MROs and BATs/STTs, respectively. The Department did not intend to have people who had already met qualification training requirements to face an immediate CEU or refresher-training requirement as soon as the regulations went into effect. Therefore, we are clarifying this section to specify that all MROs who were trained and examined before August 1,

2001 have until August 1, 2004 to complete their first round of CEUs. Likewise BATs/STTs who completed qualification training before January 1, 1998 would have until January 1, 2003, to complete refresher training, and we have amended § 40.213 to this effect.

Section 40.127 What Are the MRO's Functions in Reviewing Negative Test Results?

We have corrected paragraph (g) by inserting the word "perform," which had been omitted. We also added a sentence to provide instructions on how to complete the CCF when a negative result is canceled.

Section 40.129 What Are the MRO's Functions in Reviewing Laboratory Confirmed Positive, Adulterated, Substituted, or Invalid Test Results?

The current § 40.129 does not contain instructions on completing the CCF when the MRO cancels a positive, adulterated, substituted, or invalid drug test report. This amendment provides clarified instructions on how the MRO should complete the CCF in this circumstance.

Section 40.131 How Does the MRO or DER Notify an Employee of the Verification Process After a Confirmed Positive, Adulterated, Substituted, or Invalid Test Result?

We have been asked whether § 40.131(d) means that the employee can contact the MRO at his or her leisure, just as long as it is within the next 72 hours. We are clarifying the provision to direct the employer to tell the employee to contact the MRO immediately. The employee would not violate the rule by not doing so, however. Of course, if the employee fails to contact the MRO within 72 hours, the MRO may declare the test a "non-contact positive." This amendment would also direct the employer to warn the employee of this consequence.

Section 40.135 What Does the MRO Tell the Employee at the Beginning of the Verification Interview?

Part 40 requires that MROs must report the use of any legally prescribed medication that could make the employee medically unqualified or pose a significant safety risk. Before doing so, however, this section tells MRO to contact the employee's physician to determine if the medication could be changed to one that does not make the employee unqualified to perform safety sensitive functions. We believe that it is likely to be easier and faster for the employee to contact his or her own physician and instruct that physician to

contact the MRO. This would be more efficient than to require that the MRO repeatedly call the other physician. Employees can greatly assist the likelihood of this conversation by explaining their desire and motivation to their own treatment physician, and instructing that physician to contact the MRO on their behalf.

In addition, because the employee's use of the medication can pose a safety problem immediately, we believe that the contact with the prescribing physician should occur after, rather than before, the provision of information to the employer. To facilitate this process, the revised paragraph (e) of this section gives the employee 5 days to have his or her physician contact the MRO for this purpose. If the prescribing physician comes up with a prescription that will obviate the safety problem, the MRO would so inform the employer.

Section 40.149 May the MRO Change a Verified Positive Test Result or Refusal To Test?

The Department has received a number of questions about the provision of this section, which provides, in its present form, that the MRO is the only person authorized to change a verified test result. Most of the questions concerned the effect of this provision on the authority of arbitrators, grievance examiners, etc. to review test results.

The Department makes the MRO the key person in determining the disposition of a non-negative laboratory result. The MRO is directed to bring his or her professional training and experience to bear on questions such as whether there is a legitimate medical explanation for a positive, adulterated, or substituted test result. The Department believes strongly that the medical judgment of the MRO on these questions should not be overturned by arbitrators, employers, or other participants in the drug testing program. Consequently, we have clarified paragraph (c) to emphasize that MROs have sole authority to make medical judgments about drug test results and that arbitrators and other participants in the system do not have authority to overturn these judgments.

This is not to say that an arbitrator is precluded from requiring a test result to be canceled on other grounds (e.g., a fatal flaw in the chain of custody, the failure of the MRO to provide an opportunity for the employee to present evidence of an alleged legitimate medical explanation, the denial of the right to have a split specimen tested). But an arbitrator could not decide, in the face of an MRO's judgment that

there was not a legitimate medical explanation, that the employee had presented a legitimate medical explanation. This rule is intended to prevent such a substitution of judgment about a matter committed to the expertise of the MRO.

Section 40.151 What Are MROs Prohibited From Doing as Part of the Verification Process?

Despite a clear explanation of the present § 40.151(b) in the preamble, some MROs have misunderstood the present provision to be more sweeping than intended, and to constitute a sort of gag rule on MROs concerning contacts with collectors. The objective of this provision is not to preclude discussions between MROs and collectors. It is to protect MROs from being cast in the role of judge and jury in “he said/she said” disputes between employees about what occurred during the collection.

For example, suppose the employee tells the MRO that the collector left the open collection container unguarded and unobserved in a public space. The collector just as strongly denies the allegation. The MRO is not in a good position to evaluate the facts of the dispute or the credibility of the employee and collector. That is a function best left to other decisionmakers, such as arbitrators or the courts. Based on language in the final rule’s preamble, paragraph (b) has been rewritten to focus on this point. Note that this paragraph focuses on disputes: nothing in the paragraph precludes an MRO from taking corrective action in a situation in which it is undisputed that an error took place (e.g., the collector and employee agree that a mistake requiring correction was made).

Section 40.155 What Does the MRO Do When a Negative or Positive Test Result Is Also Dilute?

The current 40.155(c) instructs MROs in handling dilute test results—both positive and negative. Laboratories are provided instructions for reporting two categories of test results in 40.97—negative results and non-negative results. The requirements of 40.155(c) treat a negative-dilute result as a non-negative result (by requiring that the MRO receive Copy 1 from the laboratory). A negative-dilute result is still a negative result and to change the laboratory reporting requirements may connote undue suspicion on the result. The Department places negative and negative-dilute test results in the negative reporting category. All other results are considered non-negative.

Effective and efficient notification can be made to the employer for a negative-dilute result in the same manner that notification is made for a negative result. Any further action on a negative-dilute (see § 40.197) would be a function of the employer’s policy.

Section 40.163 How Does the MRO Report Drug Test Results?

Commenters on the Part 40 proposed rule advocated greater use of electronic means to transmit negative results from MROs to employers. In the final rule preamble, we said that we agreed. One area in which greater reliance on electronic methods appears workable is the treatment of negative test reporting in this section.

Allowing for electronic reporting of negatives by MROs is consistent with the direction in which we have headed allowing more utilization of electronic capabilities (e.g., 40.97) by laboratories. However, current § 40.163 does not specifically allow anything special for electronic reports for negatives as the preamble suggested we favored; in fact, reporting requirements in current § 40.163 reference all reports being “in writing.” We have modified this section to remove this obstacle to electronic reporting of negatives.

A related change involves duplicate instructions of §§ 40.127 and 40.163. Currently, both require MRO to initial or sign the CCF. The second initial/signing has been removed from § 40.163.

Section 40.167 How Are MRO Reports of Drug Results Transmitted to Employers?

The Department is revising paragraph (c) of this section to clarify reporting requirements in view of the greater authorization for electronic reporting of negative results. In addition, we are adding a new paragraph (e) to parallel the prohibition of reversals of MROs medical judgments as provided in § 40.149(c).

Section 40.187 What Does the MRO Do With Split Specimen Laboratory Results?

The Department is adding two new paragraphs to this section to fill gaps that have been called to our attention since we published the final rule. The first is a situation in which, for example, the primary specimen tests positive for a drug but the split specimen test is invalid (see new paragraph (e)). In this case (parallel to the situation in which the split specimen is unavailable for testing) the test is cancelled and the employer must require the employee to undergo an immediate recollection under direct observation.

The second is a hopefully rare situation in which the primary specimen tests positive for a drug, and the split specimen does not reconfirm the presence of the drug but the laboratory determines that an adulterant is present (see new paragraph (f)). In this case, we do not have a reconfirmed positive drug test. On the other hand, we do have a laboratory finding that, were it made with respect to the primary specimen, would be the basis of a refusal result.

We do not believe it is sound policy, and consistent with our safety objectives, to ignore this adulteration result. On the other hand, we believe it is important to provide appropriate due process protections for employees in this situation. Consequently, the MRO will contact the employee and ask whether there is any legitimate medical explanation for the presence of the adulterant in the split specimen. If there is a legitimate medical explanation, the entire test is cancelled. If not, the MRO reports the test to the employee and DER as a refusal. The employee will have 72 hours to request a test of the primary specimen to determine if the adulterant is present there as well. Except that this is a test of the primary specimen, taking place at the laboratory that originally tested the primary specimen, this test is intended to parallel the testing of the split specimen in the more usual type of case. If the test of the primary specimen reconfirms the presence of the adulterant found in the split specimen, then the refusal result is reconfirmed. If not, then the test is cancelled and the “split invalid” procedure of paragraph (e) applies.

Section 40.191 What Is a Refusal To Take a DOT Drug Test, and What Are the Consequences?

In paragraph (a) of this section, we are making a number of changes to clarify the application of the refusal provisions of the rule to pre-employment testing. In the case of pre-employment testing, it is very possible for applicants to fail to appear for a test for a number of legitimate reasons (e.g., took another job, decided they did not want to change their present job, decided they didn’t want to work for a particular employer). In this situation, we believe it would be unfair to visit the consequences of a refusal (e.g., having to complete the return-to-duty process, certificate actions under some DOT agency regulations) on the applicant (§ 40.191(a)(1)).

For example, suppose someone has applied to both Company A and Company B for a job. Both companies tell him that they want to offer him a

job, but that he will have to have a pre-employment test before they can actually hire him. Each company schedules the employee for a pre-employment test. Before the tests occur, the employee decides that since Company A will pay him more, he prefers to work for Company A. He takes the pre-employment test scheduled by Company A, but not the one scheduled by Company B, since he is no longer interested in working for Company B. In this situation, we would not view the individual as having refused a test by not having attended Company B's scheduled test. In addition, in the pre-employment test context, there can be situations in which an employee could legitimately leave a collection site before the test actually commences (e.g., there is a long wait for the test and the employee has another obligation). By the commencement of the test, we mean the actions listed in § 40.63(c), in which the collector or employee selects a collection container. Once the collection has commenced, the donor has committed to the process, and must complete it. If the employee then leaves before the process is complete, or takes another action listed in this section as a refusal, the consequences of a refusal attach. However, if the employee leaves the site before the test commences, then the employee is in the same situation as someone who does not appear at all for the pre-employment test. The consequences of a refusal do not attach in this situation (§ 40.191(a)(2) and (3)).

If a medical evaluation or examination is required as part of a pre-employment drug test process, the requirement could raise questions of consistency with the employment provisions of the Americans with Disabilities Act, as implemented by Equal Employment Opportunity Commission (EEOC) regulations and guidance. It is not the drug test itself that raises these issues, only the medical examination or evaluation that follows it (e.g., in the context of a "shy bladder" situation). To avoid raising ADA issues, we have added a sentence providing that an employee is deemed to have refused to test on the basis of not undergoing such an examination only if the pre-employment test is conducted following a contingent offer of employment (§ 40.191(a)(7)).

We are also making two minor changes to this section. In paragraph (a)(1), we are adding a reference to consistency with DOT agency drug regulations, which may establish time frames for sending employees for random or other tests. In paragraph (d), we have deleted a potentially confusing reference to use of a separate document

and clarify that the employee's name should be entered on Copy 2 of the CCF.

We also note that there may be a few situations in which an employee may legitimately not go the collection site for a pre-employment test.

Section 40.193 What Happens When an Employee Does Not Provide a Sufficient Amount of Urine for a Drug Test?

For consistency with other parts of the rule, we have deleted the word "working" from the phrase "five working days." We have also added a requirement to document on the CCF the time at which the three-hour period to drink fluids begins and ends in a "shy bladder" situation. The intent of this requirement is to avoid questions about whether the proper amount of time was given to the employee. If the collector omits this information, it does not result in the cancellation of the test (see § 40.209). We have also clarified the rule by saying that an employee who leaves the collection site before the "shy bladder" collection process is complete has refused to test.

Section 40.195 What Happens When an Individual Is Unable To Provide a Sufficient Amount of Urine for a Pre-Employment, Follow-Up, or Return-to-Duty Test Because of a Permanent or Long-term Medical Condition?

We have added follow-up tests to this provision since they, like pre-employment and return-to-duty tests, require employees to have a negative test result in order to meet regulatory requirements for safety-sensitive employment.

Section 40.203 What Problems Cause a Drug Test To Be Cancelled Unless They Are Corrected?

There are two changes to this section. We are no longer treating the failure of the collector to check the temperature box and to annotate the remarks section concerning temperature as a flaw that results in cancellation unless it is corrected. This is still an error in the collection that needs to be corrected (see § 40.208 below), but it is not a mistake that undermines the protections afforded the employee. Checking the temperature is important as a means of detecting attempts to adulterate or substitute the specimen, but omitting this step does not make the process less fair for the employee.

The second change underlines the importance of using the new CCF, which becomes mandatory on August 1, 2001. Beginning on that date, the old Federal CCF will have expired, and its use is no longer authorized. It will have

the same status as a non-Federal form. That is, if a non-Federal or expired Federal form is used for a test, the test must be cancelled unless the error is corrected as provided in § 40.205. We are concerned about reports that, almost a year after use of the new form was authorized, many employers and collection sites are having difficulty obtaining copies of the new CCF from their laboratories and/or C/TPAs. We are providing a 90-day grace period during which the failure to correct the use of an obsolete Federal form will not result in the cancellation of a test. After that, participants who fail to correct the use of the expired Federal form will bear the consequences of a cancelled test.

Section 40.205 How Are Drug Test Problems Corrected?

We have amended paragraph (b)(2) to specify that this correction procedure applies to the use of expired Federal forms as well as to non-Federal forms. The content of the correction document has also been clarified.

Section 40.208 What Problem Requires Corrective Action But Does Not Result in the Cancellation of a Test?

This is a new section focusing on the temperature box checkoff issue described in connection with § 40.203 above. This section requires correction of the error (i.e., through an MFR). However, the error does not result in the cancellation of a test. When a collector makes this error, the collector is not required to undergo error correction training. However, the employer, C/TPA, collection site, etc. responsible for the collector should take appropriate steps to ensure that the collector does not repeat the mistake.

Section 40.209 What Procedural Problems Do Not Result in the Cancellation of a Test and Do Not Require Corrective Action?

We have modified the title of this section to avoid confusion with the title of new § 40.208. We also have added reference to service agents as a party who are subject to potential consequences for errors that do not result in the cancellation of tests, through the "PIE" provisions of Subpart R of the rule.

Section 40.213 What Training Requirements Must STTs and BATs Meet?

The final rule inadvertently changed the number of mock tests BAT and STT trainees had to complete. We have amended this section to maintain the status quo with respect to the testing

requirements established by the DOT Model Course. In addition, to avoid requiring some previously trained BATs and STTs to complete refresher training too quickly, we have added a sentence saying individuals trained before January 1, 1998, have until January 1, 2003, to get refresher training.

Section 40.225 What Form Is Used for an Alcohol Test?

To make the transition to use of the new alcohol testing form easier, we are making use of the new ATF mandatory as of February 1, 2002. Use of the new form is authorized now. To maintain consistency between use of the old form and the instructions in new Part 40, employees should be asked to sign Statement 4 only if their test result is .02 or higher. We have also modified paragraph (b)(4) to clarify that there are a number of options for the coloring of ATFs.

Section 40.229 What Devices Are Used To Conduct Alcohol Screening Tests?

Only alcohol screening devices (ASDs) on the National Highway Traffic Safety Administration's Conforming Products List (CPL) may be used for DOT alcohol screening tests. This is a necessary, but not sufficient, condition for using an ASD. It is possible that there may be devices added to the CPL that do not have instructions for their use incorporated in Part 40. Until and unless instructions for properly using the device in the context of DOT alcohol testing appear in Part 40, it is not permissible to use such a device for DOT alcohol tests. The Department is adding a sentence to this section making this point explicit.

Section 40.253 What Are the Procedures for Conducting an Alcohol Confirmation Test?

We have substituted the word "unique" for the word "sequential" to avoid any unnecessary conflict with EBTs that may not, as such, provide sequential numbers. Unique numbers for each test, even if not sequential, provide sufficient identification of the test.

Section 40.261 What Is Refusal To Take an Alcohol Test, and What Are the Consequences?

We have modified § 40.261(a)(1)–(3) to be consistent with § 40.191, with respect to refusals of pre-employment tests.

Section 40.281 Who Is Qualified To Act as a SAP?

In the final rule's preamble discussion concerning qualification training for

substance abuse professionals (SAPs), the Department commented that "* * * the Department does not believe that this examination needs to be a formally designed and validated examination," suggesting that the examination could be simpler than the examinations administered by existing MRO training groups (65 FR 79507). In discussions with participants in the drug and alcohol testing program, this approach has been questioned. As a result of this discussion, we have re-thought this position. No regulatory text changes are needed as a result of this change in our thinking.

It is now the Department's policy that a nationally-recognized SAP training organization that constructs an examination should have the examination validated by an outside test evaluation organization (as MRO groups have done for their tests) or by an effective peer review. The validation process would include a discussion of test items, areas of knowledge tested, and the effectiveness with which the test items measure the areas of knowledge involved. It should also include a psychometric review that evaluates how the items and questions are structured. The review should suggest modifications to the examination, if needed, to improve its quality.

We emphasize that we are not requiring that an outside organization actually develop, administer, score, or grade the test, but simply review and evaluate the examination to make sure it was a good measure of what SAP trainees are supposed to learn. For this reason, we believe the cost of the process is modest. The information we have learned from sources in the testing business suggests that one could expect a review of the kind we envision for around \$10,000.

Section 40.329 What Information Must Laboratories, MROs, and Other Service Agents Release to Employees?

Part 40 requires a Substance Abuse Professional (SAP) to provide an employee, upon request, a copy of SAP reports. We have heard concerns expressed by SAPs and employers that providing a report containing the follow-up testing plan will give the employee the number and frequency of follow-up testing. We do not believe that an employee returning to duty following a rule violation should have access to the follow-up testing plan, which could lessen the deterrent effect of follow-up tests. Therefore, we are directing SAPs to remove follow-up

testing information from SAP reports they provide to employees.

Section 40.331 To What Additional Parties Must Employers and Service Agents Release Information?

The Department is concerned that DOT agency representatives may not be able to effectively inspect or audit electronically stored records, data, and information. Therefore, the Department will require that all records and data be presented in such a way that they can be easily reviewed. If electronic records do not meet this "auditable" standard, the electronic documentation must be changed into printed format. This is a reasonable requirement to impose on employers and other parties who take advantage of the greater flexibility and cost savings provided by opportunities for electronic data management permitted under Part 40. In addition, to avoid any possible confusion, we have specifically directed both employers and service agents to meet DOT agency timing requirements for production of records to inspectors or other DOT officials (e.g., two business days for FMCSA).

Section 40.333 What Records Must Employers Keep?

We have received questions asking whether the regulation is intended to require the retention of information concerning blind as well as employee specimens. We do intend for blind specimen records to be retained. To avoid potential uncertainty on this point, we have removed the word "employee" from paragraphs (a)(1)(i) and (ii) of this section, so that the language refers to all specimens. We have also added a new paragraph (e), which parallels the language discussed under § 40.331 above concerning "auditable" electronic records.

Section 40.349 What Records May a Service Agent Receive and Maintain?

We made this change for terminological consistency with § 40.333(d).

Section 40.355 What Limitations Apply to the Activities of Service Agents?

One of the limitations on service agent activities is a prohibition on requiring employees to sign consents, waivers etc. We have added a sentence to this paragraph to specify that no one else (e.g., an employer) can do so for the service agent. In addition, in response to comments on the DOT agency

conforming rules, we have deleted the requirement for DOT agency rule authorization for C/TPAs to declare a refusal in the case of an owner-operator who fails to appear for a test.

Section 40.403 Must a Service Agent Notify Its Clients When the Department Issues a PIE?

We made this change for terminological consistency with other provisions of the rule.

Appendix F

We have added a few sections to the drug testing information list in this appendix to correspond to other changes we have made in Part 40 or to correct earlier omissions.

Regulatory Notices and Analyses

This rule is a non-significant rule both for purposes of Executive Order 12886 and the Department of Transportation's Regulatory Policies and Procedures. The Department certifies that it will not have a significant economic effect on a substantial number of small entities, for purposes of the Regulatory Flexibility Act. The Department makes these statements on the basis that, as a series of technical amendments that correct or clarify existing regulatory provisions, this rule will not impose any significant costs on anyone. The costs of the underlying Part 40 final rule were analyzed in connection with its issuance in December 2000. Therefore, it has not been necessary for the Department to conduct a regulatory evaluation or Regulatory Flexibility Analysis for this final rule.

This rule imposes no information collection requirements for which Paperwork Reduction Act approval is needed. It has no Federalism impacts that would warrant a Federalism assessment. The amendments made in this rule are technical, corrective, and clarifying changes to an existing rule that went through an extensive public notice and comment process. The amendments do not make significant substantive changes to Part 40, and we would not anticipate the receipt of meaningful comments on them. However, it is essential that these technical amendments take effect on August 1, 2001, with the rest of the new Part 40. Delaying these amendments for a prior comment period would be unnecessary and contrary to the public interest, as it would result in participants having to implement an uncorrected version of the rule and then make changes in the midst of implementing the new rule. For the same reasons, the Department has good

cause to make the changes effective in less than 30 days.

List of Subjects in 49 CFR Part 40

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 24th day of July, 2001, at Washington, DC.

Norman Y. Mineta, Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR Part 40 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for 49 CFR Part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 et seq.

2. Amend § 40.3 as follows:

a. In the definition of "Designated employer representative (DER)", add the words ", or cause employees to be removed from these covered duties," after the word "duties";

b. Add a definition of "Invalid drug test" in alphabetical order to read as follows:

§ 40.3 What do the terms used in this regulation mean?

* * * * *

Invalid drug test. The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

* * * * *

3. In subpart B, redesignate § 40.27 as § 40.29, and add a new § 40.27, to read as follows:

§ 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?

No, as an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

§ 40.33 [Amended]

4. Amend § 40.33 (c)(2) introductory test, in the second sentence, to remove the words "an individual" and add in their place the words "a qualified collector".

5. Amend § 40.45 as follows:

a. In paragraph (a), revise the HHS web site address "(http://www.health.org/workpl.htm)" to read "(http://www.workplace.samhsa.gov)".

b. Redesignate paragraphs (b), (c), and (d), as paragraphs (c), (d), and (e), respectively.

c. Add a new paragraph (b).

d. Add a sentence at the end of newly redesignated paragraph (c)(2) to read as follows:

§ 40.45 What form is used to document a DOT urine collection?

* * * * *

(b) You must not use a non-Federal form or an expired Federal form to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired Federal form to these participants. You must also affirmatively notify these participants that they must not use an expired Federal form (e.g., that beginning August 1, 2001, they may not use the old 7-part Federal CCF for DOT urine collections).

(c) * * *

(2) * * * The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone number, and fax number.

* * * * *

§ 40.47 [Amended]

6. Amend § 40.47 by removing the word "non-DOT" and adding in its place the word "non-Federal" in the heading of the section, in paragraph (a), and in paragraph (b)(2).

7. Amend § 40.65 by revising paragraph (c)(3) to read as follows:

§ 40.65 What does the collector check for when the employee presents a specimen?

* * * * *

(c) * * *

(3) In a case where the employee refuses to provide a specimen under direct observation (see § 40.191(a)(4)), you must discard any specimen the employee provided previously during the collection procedure. Then you must notify the DER as soon as practicable.

8. Amend § 40.67 by revising paragraphs (c)(1) and (d)(2) and adding a new paragraph (m), to read as follows:

§ 40.67 When and how is a directly observed collection conducted?

* * * * *

(c) * * *

(1) You are directed by the DER to do so (see paragraphs (a) and (b) of this section); or

* * * * *

(d) * * *

(2) As the collector, you must explain to the employee the reason, if known, under this part for a directly observed collection under paragraphs (c)(1) through (3) of this section.

* * * * *

(m) As the collector, when you learn that a directly observed collection should have been collected but was not, you must inform the employer that it must direct the employee to have an immediate recollection under direct observation.

9. Amend § 40.69 by revising paragraphs (b) and (c) to read as follows:

§ 40.69 How is a monitored collection conducted?

* * * * *

(b) As the collector, you must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The monitor can be a different person from the collector and need not be a qualified collector.

(c) As the collector, if someone else is to monitor the collection (e.g., in order to ensure a same-gender monitor), you must verbally instruct that person to follow the procedures of paragraphs (d) and (e) of this section. If you, the collector, are the monitor, you must follow these procedures.

* * * * *

10. Amend § 40.71 by adding a new paragraph (b)(8), to read as follows:

§ 40.71 How does the collector prepare the specimens?

* * * * *

(b) * * *

(8) You must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: you may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither you nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to

demand that the excess urine be turned over to the employee.

11. Amend § 40.83 by revising paragraphs (e) and (f); redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively; and adding a new paragraph (g) to read as follows:

§ 40.83 How do laboratories process incoming specimens?

* * * * *

(e) You must inspect each CCF for the presence of the collector's signature on the certification statement in Step 4 of the CCF. Upon finding that the signature is omitted, document the flaw and continue the testing process.

(1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the flaw.

(2) You must then attempt to correct the flaw by following the procedures of § 40.205(b)(1).

(3) If the flaw is not corrected, report the result as rejected for testing in accordance with § 40.97(a)(3).

(f) If you determine that the specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being outside of range, you must then attempt to correct the problem by following the procedures of § 40.208.

(1) In such a case, you must continue your efforts to correct the problem for five business days, before you report the result.

(2) When you have obtained the correction, or five business days have elapsed, report the result in accordance with § 40.97(a).

(g) If you determine that a CCF that fails to meet the requirements of § 40.45(a) (e.g., a non-Federal form or an expired Federal form was used for the collection), you must attempt to correct the use of the improper form by following the procedures of § 40.205(b)(2).

(1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the problem.

(2) During the period August 1–October 31, 2001, you are not required to reject a test conducted on an expired Federal CCF because this problem is not corrected. Beginning November 1, 2001, if the problem(s) is not corrected, you must reject the test and report the result in accordance with § 40.97(a)(3).

* * * * *

§ 40.89 [Amended]

12. Amend § 40.89(b) by removing the word "must" and adding in its place the words "are authorized to".

13. Amend § 40.97 by revising the introductory text of paragraph (a) and paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 40.97 What do laboratories report and how do they report it?

(a) As a laboratory, you must report the results for each primary specimen tested as one or more of the following:

* * * * *

(b) * * *

(1) * * *

(i) If you elect to provide the laboratory results report, you must include the following elements, as a minimum, in the report format:

(A) Laboratory name and address;

(B) Employer's name (you may include I.D. or account number);

(C) Medical review officer's name;

(D) Specimen I.D. number;

(E) Donor's SSN or employee I.D.

number, if provided;

(F) Reason for test, if provided;

(G) Collector's name and telephone number;

(H) Date of the collection;

(I) Date received at the laboratory;

(J) Date certifying scientist released the results;

(K) Certifying scientist's name;

(L) Results (e.g., positive, adulterated) as listed in paragraph (a) of this section; and

(M) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.

(ii) You may release the laboratory results report only after review and approval by the certifying scientist. It must reflect the same test result information as contained on the CCF signed by the certifying scientist. The information contained in the laboratory results report may not contain information that does not appear on the CCF.

* * * * *

14. Amend § 40.121 by adding a new paragraph (d)(3), to read as follows:

§ 40.121 Who is qualified to act as an MRO?

* * * * *

(d) * * *

(3) If you are an MRO who completed the qualification training and examination requirements prior to August 1, 2001, you must complete your first increment of 12 CEU hours before August 1, 2004.

* * * * *

15. Amend § 40.127 by revising the introductory text of paragraph (g) to read as follows:

§ 40.127 What are the MRO's functions in reviewing negative test results?

* * * * *

(g) Staff under your direct, personal supervision may perform the administrative functions of this section for you, but only you can cancel a test. If you cancel a laboratory-confirmed negative result, check the "Test Cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, provide your name, and sign, initial or stamp and date the verification statement.

* * * * *

16. Amend § 40.129 by redesignating paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g) respectively, and by adding a new paragraph (d), to read as follows:

§ 40.129 What are the MRO's functions in reviewing laboratory confirmed positive, adulterated, substituted, or invalid test results?

* * * * *

(d) If you cancel a laboratory confirmed positive, adulterated, substituted, or invalid drug test report, check the "test cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, sign, provide your name, and date the verification statement.

* * * * *

17. Amend § 40.131 by revising the introductory text of paragraph (d) to read as follows:

§ 40.131 How does the MRO or DER notify an employee of the verification process after a confirmed positive, adulterated, substituted, or invalid test result?

* * * * *

(d) As the DER, you must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If you successfully contact the employee (i.e., actually talk to the employee), you must document the date and time of the contact, and inform the MRO. You must inform the employee that he or she should contact the MRO immediately. You must also inform the employee of the consequences of failing to contact the MRO within the next 72 hours (see § 40.133(a)(2)).

* * * * *

18. Amend § 40.135 by revising paragraph (e) to read as follows:

§ 40.135 What does the MRO tell the employee at the beginning of the verification interview?

* * * * *

(e) You must also advise the employee that, after informing any third party about any medication the employee is using pursuant to a legally valid

prescription under the Controlled Substances Act, you will allow 5 days for the employee to have the prescribing physician contact you to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If, as an MRO, you receive such information from the prescribing physician, you must transmit this information to any third party to whom you previously provided information about the safety risks of the employee's other medication.

19. Amend § 40.149 by revising paragraph (c) to read as follows:

§ 40.149 May the MRO change a verified positive test result or refusal to test?

* * * * *

(c) You are the only person permitted to change a verified test result, such as a verified positive test result or a determination that an individual has refused to test because of adulteration or substitution. This is because, as the MRO, you have the sole authority under this part to make medical determinations leading to a verified test (e.g., a determination that there was or was not a legitimate medical explanation for a laboratory test result). For example, an arbitrator is not permitted to overturn the medical judgment of the MRO that the employee failed to present a legitimate medical explanation for a positive, adulterated, or substituted test result of his or her specimen.

20. Amend § 40.151 by revising paragraph (b) to read as follows:

§ 40.151 What are MROs prohibited from doing as part of the verification process?

* * * * *

(b) It is not your function to make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (e.g., concerning allegations that the collector left the area or left open urine containers where other people could access them).

* * * * *

§ 40.155 [Amended]

21. Amend § 40.155 by removing paragraph (c) and redesignating paragraph (d) as new paragraph (c).

22. Revise § 40.163 to read as follows:

§ 40.163 How does the MRO report drug test results?

(a) As the MRO, it is your responsibility to report all drug test results to the employer.

(b) You may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.

(c) If you do not report test results using Copy 2 of the CCF for this purpose, you must provide a written report (e.g., a letter) for each test result. This report must, as a minimum, include the following information:

- (1) Full name, as indicated on the CCF, of the employee tested;
- (2) Specimen ID number from the CCF and the donor SSN or employee ID number;
- (3) Reason for the test, if indicated on the CCF (e.g., random, post-accident);
- (4) Date of the collection;
- (5) Date you received Copy 2 of the CCF;

(6) Result of the test (i.e., positive, negative, dilute, refusal to test, test cancelled) and the date the result was verified by the MRO;

(7) For verified positive tests, the drug(s)/metabolite(s) for which the test was positive;

(8) For cancelled tests, the reason for cancellation; and

(9) For refusals to test, the reason for the refusal determination (e.g., in the case of an adulterated test result, the name of the adulterant).

(d) As an exception to the reporting requirements of paragraph (b) and (c) of this section, the MRO may report negative results using an electronic data file.

(1) If you report negatives using an electronic data file, the report must contain, as a minimum, the information specified in paragraph (c) of this section, as applicable for negative test results.

(2) In addition, the report must contain your name, address, and phone number, the name of any person other than you reporting the results, and the date the electronic results report is released.

(e) You must retain a signed or stamped and dated copy of Copy 2 of the CCF in your records. If you do not use Copy 2 for reporting results, you must maintain a copy of the signed or stamped and dated letter in addition to the signed or stamped and dated Copy 2. If you use the electronic data file to report negatives, you must maintain a retrievable copy of that report in a format suitable for inspection and auditing by a DOT representative.

(f) You must not use Copy 1 of the CCF to report drug test results.

(g) You must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, you must provide the test information in your possession to a SAP who consults with you (see § 40.293(g)).

23. Amend § 40.167 by revising the section heading and paragraph (c), and adding a new paragraph (e), to read as follows:

§ 40.167 How are MRO reports of drug results transmitted to the employer?

* * * * *

(c) You must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.

(1) You must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see § 40.163(b) and (c)).

(2) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report.

* * * * *

(e) MRO reports are not subject to modification or change by anyone other than the MRO, as provided in § 40.149(c).

24. Amend § 40.187 by redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and adding new paragraphs (e) and (f), to read as follows:

§ 40.187 What does the MRO do with split specimen laboratory results?

* * * * *

(e) *Failed to Reconfirm: Specimen Results Invalid.* (1) Report to the DER and the employee that both tests must be cancelled and the reason for cancellation.

(2) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.

(3) Using the format in Appendix D to this part, notify ODAPC of the failure to reconfirm.

(f) *Failed to Reconfirm: Split Specimen Adulterated.* (1) Contact the employee and inform the employee that the laboratory has determined that his or her split specimen is adulterated.

(2) Follow the procedures of § 40.145 to determine if there is a legitimate medical explanation for the laboratory finding of adulteration.

(3) If you determine that there is a legitimate medical explanation for the adulterated test result, report to the DER and the employee that the test is cancelled. Using the format in Appendix D to this part, notify ODAPC of the result.

(4) If you determine that there is not a legitimate medical explanation for the adulterated test result, take the following steps:

(i) Report the test to the DER and the employee as a verified refusal to test. Inform the employee that he or she has 72 hours to request a test of the primary specimen to determine if the adulterant found in the split specimen also is present in the primary specimen.

(ii) Except that the request is for a test of the primary specimen and is being made to the laboratory that tested the primary specimen, follow the procedures of §§ 40.153, 40.171, 40.173, 40.179, and 40.185.

(iii) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen, report your result to the MRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.

(iv) If the test of the primary specimen reconfirms the adulteration finding of the split specimen, as the MRO you must report the test result as a refusal as provided in § 40.187(a)(2).

(v) If the test of the primary specimen fails to reconfirm the adulteration finding of the split specimen, as the MRO you cancel the test. Follow the procedures of paragraph (e) of this section in this situation.

* * * * *

25. Amend § 40.191 by revising paragraphs (a)(1), (2), (3), and (7) and the introductory text of paragraph (d), to read as follows as follows:

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) * * *

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a));

(2) *Fail to remain at the testing site until the testing process is complete; Provided,* That an employee who leaves the testing site before the testing process commences (see § 40.63 (c)) for a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; *Provided,* That an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see § 40.63 (c)) for a pre-employment test is not deemed to have refused to test;

* * * * *

(7) Fail to undergo a medical examination or evaluation, as directed

by the MRO as part of the verification process, or as directed by the DER under § 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment; or

* * * * *

(d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.

* * * * *

26. Amend § 40.193 as follows:

a. Revise paragraphs (b)(2) and (b)(3)

b. In paragraph (c) introductory text, remove the word "working" before the word "days".

c. Add and reserve paragraph (c)(2). The revisions read as follows:

§ 40.193 What happens when an employee does not provide a sufficient amount of urine for a drug test?

* * * * *

(b) * * *

(2) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCF (Step 2), and inform the employee of, the time at which the three-hour period begins and ends.

(3) If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. This is a refusal to test.

* * * * *

§ 40.195 [Amended]

27. Amend § 40.195 by adding, in the section heading and in the introductory text of paragraph (a), after the word

“pre-employment”, the words “, follow-up,”.

28. Amend § 40.203 by revising paragraphs (b) and (d)(3) to read as follows:

§ 40.203 What problems cause a drug test to be cancelled unless they are corrected?

* * * * *

(b) The following is a “correctable flaw” that laboratories must attempt to correct: The collector’s signature is omitted on the certification statement on the CCF.

* * * * *

(d) * * *

(3) The collector uses a non-Federal form or an expired Federal form for the test. This flaw may be corrected through the procedure set forth in § 40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures of this part in an HHS-certified laboratory. During the period August 1–October 31, 2001, you are not required to cancel a test because of the use of an expired Federal form. Beginning November 1, 2001, if the problem is not corrected, you must cancel the test.

29. Amend § 40.205 by revising paragraph (b)(2) to read as follows:

§ 40.205 How are drug test problems corrected?

* * * * *

(b) * * *

(2) If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e., a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

* * * * *

30. Add a new § 40.208, to read as follows:

§ 40.208 What problem requires corrective action but does not result in the cancellation of a test?

(a) If, as a laboratory, collector, employer, or other person implementing

the DOT drug testing program, you become aware that the specimen temperature on the CCF was not checked and the “Remarks” line did not contain an entry regarding the temperature being out of range, you must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure that the problem does not recur.

(b) This error does not result in the cancellation of the test.

(c) As an employer or service agent, this error, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or Subpart R of this part.

31. Amend § 40.209 as follows:

a. Revise the heading of the section.
b. In paragraph (c), after the word “employer” add the words “or service agent”.

c. In paragraph (c), after the word “regulations” add the words “or action under Subpart R of this part”.

The revision reads as follows:

§ 40.209 What procedural problems do not result in the cancellation of a test and do not require correction?

* * * * *

32. Amend § 40.213 as follows:

a. Amend the introductory text of paragraph (c) by removing the words “three consecutive error-free mock tests” and adding in their place the words “seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs)”.

b. Amend paragraph (e) by adding a sentence at the end of the paragraph, to read as follows:

§ 40.213 What training requirements must STTs and BATs meet?

* * * * *

(e) * * * If you are a BAT or STT who completed qualification training before January 1, 1998, you are not required to complete refresher training until January 1, 2003.

* * * * *

33. Amend § 40.225 as follows:

a. In paragraph (a), after the word “test” add the words “beginning February 1, 2002”.

b. Revise paragraph (b)(4) to read as follows:

§ 40.225 What form is used for an alcohol test?

* * * * *

(b) * * *

(4) You may use an ATF in which all pages are printed on white paper. You may modify the ATF by using colored paper, or have clearly discernable

borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and blue for Copy 3.

* * * * *

34. Amend § 40.229 by adding a new sentence after the first sentence to read as follows:

§ 40.229 What devices are used to conduct alcohol screening tests?

* * * You may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in this part. * * *

§ 40.253 [Amended]

35. Amend § 40.253(c) by removing the word “sequential” and adding in its place the word “unique”.

36. Amend § 40.261 as follows:

a. Revise paragraphs (a)(1) through (a)(3).

b. In paragraph (a)(6), remove the words “§ 40.241(b)(7);” and add, in their place, the words “§§ 40.241(g) and 40.251(d);”

The revisions read as follows:

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

(a) * * *

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.241(a));

(2) Fail to remain at the testing site until the testing process is complete; *Provided*, That an employee who leaves the testing site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test;

(3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; *Provided*, That an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test;

* * * * *

37. Amend § 40.329 by revising paragraph (c) to read as follows:

§ 40.329 What information must laboratories, MROs, and other service agents release to employees?

* * * * *

(c) As a SAP, you must make available to an employee, on request, a copy of all SAP reports (see § 40.311). However, you must redact follow-up testing information from the report before providing it to the employee.

38. Amend § 40.331 by revising paragraphs (b)(2) and (c)(2), and adding new paragraphs (b)(3) and (c)(3), to read as follows:

§ 40.331 To what additional parties must employers and service agents release information?

* * * * *

(b) * * *

(2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.

(3) All items in paragraph (b)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.

(c) * * *

(2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.

(3) All items in paragraph (c)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.

* * * * *

39. Amend § 40.333 as follows:

a. In paragraphs (a)(1)(i) and (a)(1)(ii), remove the word “employee”.

b. In paragraph (d), remove the word “working” and add in its place the word “business”.

c. Add a new paragraph (e), to read as follows:

§ 40.333 What records must employers keep?

* * * * *

(e) If you store records electronically, where permitted by this part, you must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

§ 40.349 [Amended]

40. Amend § 40.349(e) by adding the word “business” after the word “two”.

41. Amend § 40.355 as follows:

a. Add a sentence at the end of paragraph (a).

b. In paragraph (j)(1), remove the words “You are authorized by a DOT agency regulation to do so, you” and add the word “You” in their place. The addition reads as follows:

§ 40.355 What limitations apply to the activities of service agents?

* * * * *

(a) * * * No one may do so on behalf of a service agent.

* * * * *

§ 40.403 [Amended]

42. Amend § 40.403(a) by removing the word “working” and adding in its place the word “business”.

43. Amend Appendix F to Part 40 by revising the list entitled “Drug Testing Information, to read as follows:

Appendix F to Part 40—Drug and Alcohol Testing Information That C/TPAs May Transmit to Employers

* * * * *

Drug Testing Information

- § 40.25: Previous two years’ test results
- § 40.35: Notice to collectors of contact information for DER
- § 40.61(a): Notification to DER that an employee is a “no show” for a drug test
- § 40.63(e): Notification to DER of a collection under direct observation
- § 40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen
- § 40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.)
- § 40.111(a): Transmission of laboratory statistical report to employer
- § 40.127(f): Report of test results to DER
- §§ 40.127(g), 40.129(d), 40.159(a)(4)(ii); 40.161(b): Reports to DER that test is cancelled
- § 40.129 (d): Report of test results to DER
- § 40.129(g)(1): Report to DER of confirmed positive test in stand-down situation
- §§ 40.149(b): Report to DER of changed test result
- § 40.155(a): Report to DER of dilute specimen

- § 40.167(b) and (c): Reports of test results to DER
- § 40.187(a)–(f) Reports to DER concerning the reconfirmation of tests
- § 40.191(d): Notice to DER concerning refusals to test
- § 40.193(b)(3): Notification to DER of refusal in shy bladder situation
- § 40.193(b)(4): Notification to DER of insufficient specimen
- § 40.193(b)(5): Transmission of CCF copies to DER (not to MRO)
- § 40.199: Report to DER of cancelled test and direction to DER for additional collection
- § 40.201: Report to DER of cancelled test

* * * * *

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

Federal Aviation Administration

14 CFR Part 121

Coast Guard

46 CFR Parts 4, 5, and 16

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Motor Carrier Safety Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Parts 653, 654, and 655

[Docket OST–99–6578]

RIN 2105–AD02, 2120–AH15, 2115–AG00, 2137–AD55, 2130–AB43, 2126–AA58, 2132–AA71

Transportation Workplace Drug and Alcohol Testing Programs: Response to Comments on Pre-Employment Inquiry Requirement; Common Preamble for DOT Agency Conforming Rules

AGENCY: Office of the Secretary, DOT.

SUMMARY: This document does two things. First, it responds to comments by maritime industry groups and others concerning the pre-employment inquiry provision of the Department-wide

regulations on transportation workplace drug and alcohol testing procedures (Part 40 rule). The Department recently opened a 30-day comment period on that issue. Second, this document serves as a "common preamble" discussing issues raised with respect to the Part 40 rule in comments to DOT agency proposals to amend their drug and alcohol testing rules to conform to the Part 40 rule.

ADDRESSES: The public may also review the docketed material referred to in this document electronically. The following web address provides instructions and access to the DOT electronic docket: <http://dms.dot.gov/search/>.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Comments on § 40.25

The Department included a provision (§ 40.25) in the final 49 CFR Part 40 rule that requires employers in all covered industries to seek information about the DOT-mandated drug and alcohol testing history of applicants for safety-sensitive work. We did so because it is very important, as a matter of safety, for employers to know whether new employees they are hiring have complied with drug and alcohol testing requirements, especially return-to-duty requirements (see 65 FR 79486; December 19, 2000). In the absence of this information, employers cannot know whether an individual is eligible, under DOT rules, to perform safety-sensitive functions. Employers cannot know whether they have an obligation to perform additional follow-up tests.

In industries that often have high employee turnover, such as some parts of the motor carrier and maritime industries, having this information is particularly important. If an employee tests positive for Employer A, quits or is fired, and then applies for work with Employer B, without having completed the mandatory return-to-duty process, Employer B could unknowingly allow the employee to perform safety-sensitive functions despite being prohibited from doing so by DOT rules. This is a situation in which ignorance, far from

being bliss, becomes a threat to transportation safety. It also places Employer B in noncompliance with DOT rules.

Several months after the publication of the final rule, in June 2001, the Department received a letter from several maritime industry organizations objecting to the application of this requirement to the maritime industry. Because the text of § 40.25 had not been part of the December 1999 notice of proposed rulemaking for Part 40, the organizations requested a comment period on the section. While the Department believes that the adoption of this provision met all rulemaking process requirements, we decided, in the interest of responsiveness to the concerns of the maritime industry organizations, to open a 30-day comment period on the issue (66 FR 32248; June 14, 2001). By the July 16, 2001, comment closing date, we had received 48 comments on the section. This includes a number of comments to the Coast Guard's proposed conforming rule that also mentioned this issue, which we have added to this docket. All but four of these letters were from employers and other organizations in the maritime industry.

Generally, maritime industry commenters opposed the provision because, in their view, it created too heavy an administrative and cost burden for them. They said that the requirement was incompatible with the circumstances under which small maritime businesses operate. In particular, commenters said, their businesses have high employee turnover, and must often replace employees on very short notice. Commenters expressed the concern that the rule would delay hiring of workers while pre-employment inquiries were being made, resulting in vessels being shorthanded. In addition, some comments mentioned that they get employees through union hiring halls. If the hiring halls were unable to have performed the pre-employment inquiries on behalf of the employers, this would also lead to untenable delays in bringing new employees on board.

Fortunately, the Department's rule, as presently written, accommodates both these concerns. Section 40.25(c) provides that "if feasible," the employer must obtain the information before the employee begins performance of safety-sensitive functions. If this is not feasible—as it may well not be in the rapid replacement scenario mentioned in comments—then the employer may use the employee for 30 days in safety-sensitive functions before obtaining either the information concerning the

employee or documenting the employer's good faith effort to obtain it. This requirement does not, in any way, delay bringing new employees on board when needed, even in a situation where the employee must be used quickly.

One comment suggested that, even given this 30-day window, the provision could be troublesome if a company found out, 30 days after bringing an employee on board a vessel, that the individual was out of compliance and had to replace him or her. We suggest that it would be even more troublesome for the employer to learn this information and not replace such an individual. Deliberately avoiding steps that could bring this information to the attention of the employer would be irresponsible from a safety point of view.

The commenters' concerns about the role of hiring halls and other third parties involved in the drug and alcohol testing program (e.g., consortia and third party administrators (C/TPAs)) are also answered by the existing rule. Under the final Part 40 rule, C/TPAs are already permitted to perform the pre-employment inquiry function (see Appendix F). In the maritime and motor carrier industries, hiring halls already perform a number of drug and alcohol testing functions for employers (e.g., pre-employment testing). In the Department's view, hiring halls that perform drug and alcohol testing functions are properly viewed as C/TPAs. Consequently, if a hiring hall or other C/TPA has an arrangement that will ensure compliance with § 40.25, then it is consistent with Part 40 for the C/TPA or hiring hall to perform this function on behalf of the individual employers. In such a situation, the third party could make the inquiries and maintain the needed documentation, on which employers could rely when they obtain employees covered by the third party's § 40.25 program.

With respect to costs and administrative burdens, some comments asserted that the Department had failed to analyze the cost or paperwork burdens of the pre-employment inquiry requirement. This assertion is incorrect. The Department's Paperwork Reduction Act analysis of the December 2000 final rule, which the Office of Management and Budget approved and which we have placed in the docket for the public's information, specifically considered the costs and paperwork provisions of applying this provision to all covered transportation industries. (Previously, this requirement had applied only in the motor carrier industry.) The cost and burden information pertaining to the maritime

industry is the following: An estimated 69,600 new employees each year would be subject to the pre-employment inquiry requirement. This figure is derived from Coast Guard data about the employment practices of the maritime industry, and includes both licensed and unlicensed personnel. Given this number of employees that would be subject in a year, the Department calculated that the combined paperwork burden for new employers and previous employers in the maritime industry would be 12,821 annual burden hours. Using guidelines developed by the Association of Records Managers and Administrators and employee compensation hourly costs developed by the Department of Labor's Bureau of Labor Statistics, this would lead to an added annual cost of \$256,430 to the maritime industry.

These costs and burdens are not, in the Department's view, unreasonably high. Even if the cost of implementing the provision were a number of times higher than this estimate, it would still be within reasonable bounds. The motor carrier industry, like the maritime industry, has many small businesses and high employee turnover, and it has implemented this provision for a number of years without suffering the dire consequences envisioned in some maritime industry comments.

Many comments made general assertions that the costs and burdens of carrying out § 40.25 would be too high. For the most part, however, commenters did not provide data from which either they or the Department could quantify this asserted burden. Two comments made high estimates of the costs of the provision based on numbers apparently reflecting costs of background checks performed by professional background check companies. Section 40.25 requires neither "background checks" nor the services of such companies. It simply requires employers to seek information about previous DOT drug and alcohol test results.

Two comments asserted that the provision should not be adopted because the motor carrier industry has not fully complied with the similar FMCSA provision. In the large, diverse industries that the Department regulates for safety, there is doubtless less than perfect compliance with this and other regulatory requirements. That is why FMCSA, the Coast Guard, and other DOT agencies have inspectors who check to see if employers are meeting their obligations. The potential for some noncompliance does not invalidate the rationale for a requirement, however.

Commenters also suggested that the Coast Guard could develop a system for

responding to inquiries about previous positive tests, based on test result information required to be submitted to the Coast Guard. The decision on whether it would be feasible to develop such a system rests with the Coast Guard. However, the Department does not regard it as essential for the Coast Guard to have such a system now, or in the future, in order for § 40.25 to apply to the maritime industry.

Some industry comments argued that the pre-employment inquiries requirement is illegal, a violation of the Americans with Disabilities Act (ADA), unconstitutional, discriminatory (because it seeks information only about prior DOT-mandated drug and alcohol tests), or a draconian invasion of privacy. We would point out that inquiries under this provision are made only on the basis of the employee's written consent, which goes far to obviate privacy concerns. Obtaining employees' consent to gather information about whether employees have complied with DOT safety rules in no way violates the ADA. In its comment, the Equal Employment Opportunity Commission, the Federal agency charged with implementing the ADA in employment matters, agrees that the provision is consistent with the ADA.

Only DOT drug and alcohol tests have consequences for regulated employers (such as the required completion of the return-to-duty process before further performance of safety-sensitive functions); it is, therefore, rational to request only information concerning these tests. To the best of the Department's knowledge, this provision has never been legally challenged in the several years it has applied to the motor carrier industry, including on the ground that the consequence of an employee's decision to decline to provide consent to the inquiry is the employer's inability to use the employee for safety-sensitive functions.

One commenter said that it should be sufficient to have a new hire pass a pre-employment test and expressed doubt about the value of the return-to-duty process. The Department is convinced of the safety necessity of a strong return-to-duty process, including evaluation by a substance abuse professional (SAP), education or treatment, reevaluation by the SAP, a return-to-duty test, and follow-up tests. Permitting an employee to test positive one day, ignore return-to-duty requirements, apply for a job with another company the next day, and pass a pre-employment test the day after and start work in a safety-sensitive position, undermines not only the Department's drug testing program but,

more importantly, transportation safety. It is for these safety reasons—and not, as some comments asserted, a mere desire for uniformity among transportation industries—that the Department views the pre-employment inquiry requirement as vital.

For these reasons, the Department concludes that the comments on this provision do not justify any change in § 40.25, which will go into effect as scheduled for all the transportation industries. We would also point out that we received a few comments from non-maritime industry sources that supported the provision and suggested that the cost impacts were minimal.

“Common Preamble”: Comments to DOT Agency Conforming Rules

At the time the Department's agencies published their proposals to make their rules consistent with the new Part 40, the Department published a common preamble discussing certain common issues (66 FR 21492, April 30, 2001). For the most part, the individual DOT agency preambles to their final “conforming rules” address the issues mentioned in this common preamble. However, comments to operating administration dockets raised some issues that cut across DOT agency lines or are otherwise pertinent to Part 40 itself. The Department is responding to these comments in this portion of the preamble.

The Department had hoped to publish the six conforming rules together, on or before August 1, 2001. However, some of the operating administration rules remain in the final stages of coordination. We expect to publish them very shortly. However, with respect to any of DOT agencies whose rules have not been published by this date, the Department intends that new Part 40 control in the event of any inconsistency between Part 40 and the unmodified DOT agency rules during the brief time between August 1 and the effective dates of the amended DOT agency rules.

One testing industry association requested that each of the six DOT agency regulations authorize service agents to make refusal determinations when owner-operators fail to appear for a test (see § 40.355(j)(1)). The Department believes it is reasonable for service agents to make refusal determinations in this instance. For simplicity's sake, we are amending Part 40 to make this change, rather than amending six modal regulations. The amendment (published with the Department's technical amendments to Part 40) will remove the language making authorization by a DOT agency

regulation a prerequisite to a service agent's refusal determination in this case. This means that § 40.355(j)(1) will authorize service agents to make refusal determinations with respect to owner-operators and other self-employed individuals when the service agent has scheduled the test and the individual fails to appear for it without a legitimate reason.

This commenter also asked that all DOT agencies require violations of DOT agency drug and alcohol testing rules to be reported to the DOT agency in question. While this may be feasible for some modes (e.g., the Coast Guard, which has adopted such a provision), it may be more difficult for others (e.g., FMCSA, given the very large size of the industry and work force involved). The Department is not adopting an across-the-board response to this comment, but individual operating administrations will continue to consider if and when it is appropriate to adopt such a requirement.

This commenter also suggested that where the same individual acts as both an medical review officer (MRO) and substance abuse professional (SAP), he or she meet the training requirements for both professions. This is, indeed, the effect of the training requirements in the revised Part 40, and no regulatory change is needed on this point.

The same commenter also recommended that all DOT agency rules require proof of having met pre-employment testing requirements before an individual is enrolled in a random testing program. The mandate of DOT rules is that someone meet applicable pre-employment testing requirements before he or she begins performing safety-sensitive functions. As long as employers meet this requirement, the Department's safety objectives for pre-employment testing have been met. An employer does not violate our rules if an employee is part of a random testing pool without proof of having complied with pre-employment requirements, as long as the employee does not perform safety-sensitive functions without having complied. Of course, employers must be able to document that employees whom they use for safety-sensitive functions in fact have met applicable pre-employment testing requirements. We do not believe that any further across-the-board action is needed in this area at this time.

Many of the same maritime industry commenters who objected to § 40.25 in their comments to the Coast Guard NPRM also objected to the collector training requirements of § 40.33. As noted, these comments have been placed in the Department's Part 40

docket. Generally, they said that the requirements were too burdensome and costly for the maritime industry, especially small employers. Unlike § 40.25, however, these training requirements of Part 40 were not the subject of a comment period at this time. Many commenters did speak to these provisions in response to the Department's December 1999 Part 40 NPRM, and the Department responded to these comments in the December 2000 final rule. The Department is not considering further changes to § 40.33 at present. Indeed, we believe that, in the maritime industry, as elsewhere, well-trained collectors are essential for the operation of a fair and accurate drug testing program, which in turn is a key part of the Department's safety efforts.

Old Part 40 required that a laboratory must have qualified personnel available to testify in an administrative or disciplinary proceeding based on a positive test of the employee's specimen [see former § 40.29(n)(6)]. The Department never interpreted this provision as permitting a party to a proceeding to require the personal attendance at a hearing of one or more laboratory personnel or that the laboratory or employer must pay for the time or transportation of laboratory personnel involved in proceedings.

When the Department revised Part 40, we deleted this provision, in the belief that the discovery process in administrative and judicial proceedings was sufficient to obtain all needed relevant testimony. One comment from a union docket raised the issue of this deletion, advocating that the deleted language should be put back into the rule and that laboratories and employers should have to produce and pay for laboratory witnesses in proceedings. A comment from another union raised a broader, but related, issue. It said that, based on experience gained in litigation concerning errors in the validity testing process at one laboratory, it believed that employees should always have access to all relevant documentation about laboratory procedures. According to the comment,

Such relevant evidence includes but is not limited to: Laboratory quality control records, laboratory performance records on proficiency testing, results of laboratory inspections and critiques, all laboratory internal and external quality control data, instrument maintenance and corrective action documentation, instrument and software instruction manuals, as well as laboratory Standard Operating Procedures.

The commenter stressed that this information should be available to all employees subject to testing under DOT regulations, regardless of whether the

employee had access to specific administrative adjudication proceedings (e.g., grievance procedures, certificate actions). The commenter believes that at least some of this information should be made available to unions as organizations, as distinct from individual employees.

As noted above, many employees have access to discovery proceedings, through which they can gain access to a wide variety of information. As the union making the comment noted, it had conducted extensive discovery in one prominent substitution case. Nothing in the Department's rules protects laboratory data from such discovery. Even where administrative proceedings like FAA certificate actions or FRA locomotive engineer proceedings are not involved in a case, individuals who file cases in state or Federal court also have access to discovery. However, where an employee may not have ready access to discovery rules, access to potentially relevant laboratory data does potentially raise issues of fairness.

Compiling and copying the often voluminous information involved (which in some cases can run into thousands of pages) can be a significant cost and administrative burden. It could also be burdensome for laboratory personnel to be compelled to give testimony in a wide variety of proceedings. Who should bear these costs and burdens (e.g., the requester, as is common in Federal freedom of information actions)? Laboratories may regard some of this information as proprietary business information (e.g., portions of Standard Operating Procedures). In the absence of a court or administrative decisionmaker (as is involved in a discovery proceeding), who determines the scope of relevance for the requested information or testimony, and by what standards?

The Department would have to consider these and other matters before deciding on the shape of a regulatory requirement of the kind the commenters requested. We believe that, if we propose provisions of the kind requested by the commenter, they would properly reside in Part 40, rather than in the DOT agency regulations. In the near future, we anticipate publishing a document requesting further comment on these issues.

Issued this 24th day of July, 2001, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 01-19230 Filed 8-2-01; 4:41 pm]

BILLING CODE 4910-62-U

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121**

[Docket No. FAA-2000-8431; Amendment No. 121-285]

RIN 2120-AH15

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is revising its drug and alcohol regulations. This final rule incorporates changes in the Department of Transportation (DOT) final rule, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," published December 19, 2000. In addition, this rule changes the drug testing program and alcohol misuse prevention program regulations in light of the amendments that have been made to the medical standards and certification requirements. Certain requirements under reasonable suspicion and post-accident alcohol testing have been eliminated because these requirements are outdated and no longer valid. Finally, this rule eliminates the approval process for consortia to be consistent with the other DOT Modal Administrations and the DOT Procedures for Transportation Workplace Drug and Alcohol Testing Programs. The effect of these changes is to update and clarify the regulations based on DOT's revisions and previous FAA rulemakings.

DATES: This final rule is effective August 1, 2001.

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, Drug Abatement Division, AAM-800, Office of Aviation Medicine, Federal Aviation Administration, Washington, DC 20591, telephone number (202) 267-8442.

SUPPLEMENTARY INFORMATION:*Availability of Rulemaking Documents*

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last four digits of the Docket number shown

at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at <http://www.faa.gov/avr/armhome.htm/nprm/nprm.htm> or the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, <http://www.faa.gov/avr/arm/sbrefa.htm>. For more information on SBREFA, e-mail us at 9-AWA-SBREFA@faa.gov.

Background*General*

On April 29, 1996, the Department of Transportation (DOT) published an advance notice of proposed rulemaking (ANPRM) (61 FR 18713) asking for suggestions to change 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Subsequently, on December 9, 1999, a notice of proposed rulemaking (NPRM) (64 FR 69076) was published proposing a comprehensive revision to 49 CFR part 40. The DOT published its final rule on December 19, 2000 (65 FR 79462). As a consequence of the DOT's final rule, on April 30, 2001, the FAA published an NPRM (66 FR 21494) proposing to revise its drug and alcohol testing regulations to integrate, as appropriate, the new DOT procedures. Also to conform with the DOT procedures and the practices of the other DOT Modal Administrations, the

FAA proposed elimination of its approval of consortia.

In addition, on March 19, 1996, the FAA published a final rule, Revision of Airman's Medical Standards and Certification Procedures and Duration of Medical Certificates (54 FR 11238). This final rule amended requirements for 14 CFR part 67 medical certificate holders. Since the publication of the 14 CFR part 67 final rule, the FAA has identified some inconsistencies between 14 CFR part 121 and 14 CFR part 67 that require modification. In revising 14 CFR part 121 in response to the DOT final rule, the FAA was revising the same sections affected by the 14 CFR part 67 final rule changes. Therefore, rather than reissuing inconsistent provisions, the FAA has taken this opportunity to address these inconsistencies. Also, two sections of 14 CFR part 121, appendix J, refer to a requirement for employers to submit information to the FAA on March 15, 1996, 1997, and 1998. Specifically, 14 CFR part 121, appendix J, sections III.B.2(b) and III.D.4(b) require employers to submit to the FAA notice of any post-accident test or reasonable suspicion test that was not completed within the eight hour period required for such tests. The reporting requirements were imposed only for the first three years after the final rule on alcohol misuse prevention became effective. Those requirements have expired, and therefore have been removed.

Consortia

In Notice No. 00-14, the FAA proposed eliminating consortia "approvals." We received three comments on the consortium issue. For more information on the comments received, see "Discussion of Comments" below.

The FAA has eliminated consortia "approvals." The FAA has been the only DOT Modal Administration that has issued "approvals" to consortia. In light of the changes to 49 CFR part 40 and in recognition of the practices of the other DOT Modal Administrations, the FAA will no longer "approve" consortia, and it will not review consortium plans submitted. There will no longer be any "FAA-approved" consortia. All FAA approvals are rescinded by this final rule. Therefore, no entity can hold itself out as "FAA-approved" after the effective date of this final rule.

In the past, only FAA-approved consortia could combine the employee random testing pools of different employers. Now, that benefit is conferred to all Consortia/Third-party administrators (C/TPA). We have

replaced "consortium" with C/TPA as appropriate throughout appendices I and J.

DOT Discussion of Intermodal Issues

In a document published concurrently with this final rule, the DOT discusses intermodal issues concerning all of the modal final rules amending the drug and alcohol testing rules.

Discussion of Comments

General Overview

The comment period for the NPRM closed June 14, 2001. The FAA received four comments in response to the NPRM before the comment period closed. One comment was a joint filing of the Air Line Pilots Association (ALPA) and Transportation Trades Department (TTD), AFL-CIO. Two comments were from FAA-approved consortia. One comment was from the Drug and Alcohol Testing Industry Association (DATIA).

One of the commenters requested clarification regarding operators as defined by 14 CFR 135.1(c). This issue is outside the scope of this rulemaking and will not be addressed on its merits at this time.

In its comment, DATIA proposes that the FAA require managers of random testing pools, including C/TPAs and MROs, to receive written proof of an individual's pre-employment result before putting that individual into a random testing pool. Also, DATIA proposes that the FAA require that the MRO or C/TPA report a positive test result concurrently to the FAA in writing, whenever an employer is notified that test result is positive. These changes proposed in DATIA's comments are outside the scope of what was proposed in Notice No. 00-14. Therefore, the FAA will not consider these recommendations on their merits at this time.

The ALPA and TTD comment and the DATIA comment both focus on some issues from 49 CFR part 40, which were outside the scope of the FAA's rulemaking. We have forwarded these comments to the DOT for consideration in future revisions to 49 CFR part 40.

In addition, two commenters requested guidance on the interface between the requirements of the FAA's regulations and 49 CFR part 40. The FAA intends to conduct industry training in the future to address such issues.

For ease and clarity, we have categorized the comment discussion by rule section.

Appendix I

I. General

In Notice No. 00-14, the FAA proposed revising section I and renaming it "General." Also, the FAA proposed adding paragraph A. "Purpose" to section I for clarity and organizational purposes. We proposed moving and revising the language in the existing section I into a new paragraph B. "DOT Procedures" and adding paragraph C. "Employer Responsibility." These changes are necessary to clarify the responsibility of employers to follow the requirements and procedures of this appendix and 49 CFR part 40. These changes also reinforce that employers are responsible for all actions of their officials, representatives, and service agents in carrying out the requirements of 14 CFR part 121, appendix I and 49 CFR part 40.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

II. Definitions

Notice No. 00-14 proposed to change the definition of "prohibited drug" to limit the definition to the five drugs that are prohibited under 49 CFR 40.85. The current language in 14 CFR part 121, appendix I, could be misread to mean that the use of certain prohibited drugs is permitted if authorized under state law (such as medical use of marijuana that may be recommended or prescribed by physicians in certain states that have legalized its use for the treatment of some conditions). We expect that the changes will eliminate any such confusion.

We also proposed changing the definition of "refusal to submit" to refer to 49 CFR part 40. This is a clarifying change.

In addition, Notice No. 00-14 proposed changing the definitions of "verified negative test result" and "verified positive test result." These definitions are necessary because these terms are used in this appendix. The definitions are consistent with the broader language for verified tests used in 49 CFR 40.3.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

IV. Substances for Which Testing Must Be Conducted

Notice No. 00-14 proposed to eliminate the second sentence of this section that allowed the employer to test for drugs in addition to those specified in 14 CFR part 121, appendix I, with

approval of the FAA under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol. This action is necessary because 49 CFR 40.85 prohibits testing for additional drugs.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed.

V. Types of Drug Testing

C. Random Testing. In Notice No. 00-14, we proposed changing all sections referring to FAA-approved consortia. We received one comment on the issue of renaming "consortium" to "C/TPA." The commenter supports the proposal.

Therefore, in this section, we revised the language to permit Consortia/Third-party administrators (C/TPA) to combine the employee random testing pools of different employers. In the past, only FAA-approved consortia could combine the employee random testing pools of different employers. This change conforms to 49 CFR part 40.

F. Return to Duty Testing. In Notice No. 00-14, we proposed changing the requirements of return to duty testing to conform with 49 CFR part 40. We also proposed clarifying that an employee must undergo a return to duty drug test before resuming the performance of a safety-sensitive function. In accordance with 49 CFR part 40, we proposed requiring that the test not occur until the Substance Abuse Professional (SAP) not the Medical Review Officer (MRO), has determined that the employee has successfully complied with the prescribed education and/or treatment.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

G. Follow-up Testing. In Notice No. 00-14, we proposed changing the requirements of follow-up testing to conform with 49 CFR part 40, which requires the SAP, instead of the MRO, to determine the number of follow-up tests an employee should have. We also proposed to change language to conform with the 49 CFR part 40 requirement that an employee who tests positive is subject to at least six follow-up tests after returning to duty. Furthermore, we proposed to clarify that the alcohol test permitted under paragraph 3 needs to be performed in accordance with 14 CFR part 121, appendix J.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

VI. Administrative and Other Matters

Notice No. 00-14 proposed to refer to 49 CFR part 40 for documents that an employer must maintain. We preserved the requirement for FAA-specific documents already in 14 CFR part 121, appendix I, that were not referenced into 49 CFR part 40. In particular, we proposed deleting current paragraphs A. and B. titled "Collection, Testing, and Rehabilitation Records" and "Laboratory Inspections" respectively because these requirements are now addressed in 49 CFR part 40. We also proposed eliminating parts of paragraph C. "Employee Request for Test of a Split Specimen" because 49 CFR part 40 sets out these requirements for split specimens. We proposed moving current paragraph C.3. to the new MRO section, 14 CFR part 121, appendix I, section VII.A., because it is an MRO responsibility.

In Notice No. 00-14, we proposed to add a new paragraph A. "MRO Record Retention Requirements." Specifically, we consolidated language concerning MRO contracting services and transfer of records from current section VII.C. because these records were not included in 49 CFR part 40. These are not new record retention requirements. In the proposal, we inadvertently omitted some language that appeared in current section VII.C. when we transferred the language to paragraph A. We have restored the original language in this final rule.

We proposed to add a new paragraph B. "Access to Records." These requirements are currently in section VII.C.4 and are being moved to consolidate the record requirements into one section.

The FAA did not receive any comments on the proposed changes described above, which are adopted as proposed, with minor editorial changes.

In Notice No. 00-14, we proposed to add a new paragraph C. "Service Agent." One commenter raises questions about the timeframes specified in this provision. We reconsidered paragraph C. and determined that the provisions in 49 CFR 40.333(d) and 40.349(e) are sufficient. Therefore, we are eliminating proposed paragraph C from the final rule.

Also, we proposed to revise paragraph D. "Release of Drug Testing Information." This change conforms to 49 CFR part 40. Because we are deleting proposed paragraph C., proposed paragraph D. is now relettered as paragraph C. We received one comment from ALPA and TTD on this paragraph. The comment states that we should not

delete this provision. The FAA has reviewed the proposal and determined that this provision was not deleted in appendix I. However, the commenter was correct in pointing out that this provision was omitted from appendix J in the NPRM, and we have made the appropriate corrections in appendix J. For a further discussion of the issue see appendix J, section IV.C.2.

In addition, one comment was received regarding the requirement in paragraph A. for MROs to transfer records to a new MRO within 10 days of the employer's notification that a new MRO has been hired. The commenter states that 30 days would be a more appropriate timeframe.

In the future, the FAA may consider the expanded timeframe that the commenter suggests. However, the FAA is not making the suggested change at this time because it is outside the scope of this rulemaking and notice and opportunity for public comment have not been provided for changing the existing 10-day requirement. Instead, we are moving the language from paragraph VII.C. to paragraph A. as proposed.

Furthermore, Notice No. 00-14 proposed to change "consortium" to "C/TPA," as appropriate. We received one comment on this issue, which supports the change. Therefore, the FAA revised paragraph A.3 to use the term "C/TPA."

VII. Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities

In Notice No. 00-14, we proposed renaming this section from "MRO and Substance Abuse Professional" to "Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities." We also proposed renaming paragraph A. from "MRO and Substance Abuse Professional Duties" to "Medical Review Officer" and renaming paragraph B. from "MRO Determinations" to "Substance Abuse Professional." These changes will better organize the information and conform to changes to 49 CFR part 40.

We proposed to delete the majority of MRO and SAP responsibilities in this appendix and instead refer the reader to 49 CFR part 40. Specifically, in Notice No. 00-14, we proposed: (1) Retaining the MRO and employer responsibilities for 14 CFR part 67 airman medical certificate holders because these requirements are specific to the FAA; (2) moving some responsibilities from the MRO to the SAP because 49 CFR part 40 has given SAPs return to work duties that formerly belonged to the MROs; (3) moving the provision from section VI.C.3 that prohibits the MRO from delaying the verification of the primary

test result pending the outcome of the split-specimen test; (4) combining the MRO, SAP, and Employer Responsibilities regarding 14 CFR part 67 airman certificate holders under paragraph C. "Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders."

Notice No. 00-14 proposed to change paragraph B. "MRO Determinations" to reflect the 1996 final rule that amended 14 CFR part 67. Prior to the 1996 final rule, the MRO was required to evaluate whether a 14 CFR part 67 airman medical certificate holder was dependent on drugs following a verified positive drug test result. Since the 1996 final rule, MROs have not been permitted to "make a determination of probable drug dependence or nondependence as specified in 14 CFR part 67." Therefore, in Notice No. 00-14 we proposed to: (1) Delete any reference to the MRO determining dependency for a person holding an FAA medical certificate; (2) require the employer, and not the MRO, to forward the SAP evaluation to the Federal Air Surgeon.

In Notice No. 00-14, we proposed to revise paragraph C.2 to restrict the SAP's ability to return a 14 CFR part 67 medical certificate holder to a safety-sensitive function if that medical certificate is necessary for the performance of the safety-sensitive function. Currently, the ability of the MRO to return an individual to duty is restricted if that individual is a 14 CFR part 67 medical certificate holder. Because the changes to 49 CFR part 40 gave the SAP the return to duty role, paragraph C.2 was revised accordingly.

If an individual is not required to hold a 14 CFR part 67 medical certificate to perform safety-sensitive functions, the SAP may return the individual to duty. Although the individual's medical certificate is subject to review by the Federal Air Surgeon, this review will not affect the SAP's ability to return the individual to duty as long as the individual did not need a medical certificate to perform his/her duties. For example, a flight attendant may hold a medical certificate because he or she is also a private pilot. In such a case, the person's positive test result would be reported to the Federal Air Surgeon, but the SAP could recommend that the individual return to duty as a flight attendant. The Federal Air Surgeon would act independently on the medical certificate. The Federal Air Surgeon's actions on the flight attendant's medical certificate would

have no bearing on his or her ability to return to work as a flight attendant.

One minor change was made to the proposed language for this section. The minor change adds the option for the Federal Air Surgeon to issue a medical certificate without a "special issuance" stipulation on the certificate. The reason for this is so that, in rare circumstances, the Federal Air Surgeon could determine that a "special issuance" is not necessary. Without the change to the rule language, a person granted a medical certificate without a "special issuance" could not return to work.

The FAA received one comment from the ALPA and TTD on the proposed changes regarding 14 CFR part 67. The comment supports the proposed revisions and clarifications that make the drug testing and alcohol misuse prevention regulations consistent with the prior changes to 14 CFR part 67. Therefore, the changes are adopted as proposed, with minor editorial changes.

Additionally, in Notice No. 00-14, the FAA requested comment on whether the requirements to follow both 14 CFR part 67 and 49 CFR part 40 should be made explicit for clarity purposes, or whether the concepts are clear enough as implied by 49 CFR part 40 and this appendix. Specifically, we discussed that the employer must ensure the employee who is required to hold a medical certificate meets the return to duty and follow-up testing requirements in accordance with 49 CFR part 40, after the Federal Air Surgeon has recommended that such an employee be permitted to perform safety-sensitive duties. The FAA did not propose specific language in appendix I, however, we proposed clarifying language on this issue in 14 CFR 121, appendix J, section V.C.5.

One commenter states that the SAP's duties are clear with respect to 14 CFR part 67; another commenter states that the FAA should clarify this issue. The FAA has determined that the provision merits clarification. Therefore, the FAA has adopted the language proposed to 14 CFR 121, appendix J, section V.C.5 and inserted it into 14 CFR part 121, appendix I, section VII.C.4.

IX. Employer's Antidrug Program

Notice No. 00-14 proposed to eliminate the requirement for an entity seeking to operate as a consortium to first seek the approval of the FAA because, as noted in the common preamble to the NPRM, the terms upon which the FAA granted its approval to consortia have now been changed by the requirements of 49 CFR part 40.

The FAA received three comments on the C/TPA issue. DATIA supports the

elimination of FAA's approval of consortia, saying that removal of the FAA approval process will emphasize that C/TPA operations are regulated by 49 CFR part 40 and will promote continuity of services by C/TPAs. Two of the commenters do not favor the elimination of FAA approval for consortia because they believe that such elimination may result in additional confusion and exposure to less than competent service providers for aviation employers. One commenter states that FAA-approved consortia are needed because many aviation employers do not have the knowledge, time, and personnel required to understand and implement an effective drug and alcohol testing program. Furthermore, two commenters believe that FAA-approved consortia fill a critical void. Moreover, one commenter favors extending approval beyond consortia to third party administrators throughout DOT modal administrations.

The FAA disagrees with the comments opposing the elimination of the FAA approval process because experience has shown that some consortia and employers have misunderstood the term "FAA-approved consortium" as meaning that the consortium operates in accordance with the appropriate regulations. In fact, FAA "approval" of a consortium has never been a measure of the consortium's actual ability or compliance. Employers have always been and will remain responsible for ensuring that their testing programs are in compliance with the regulations. Since this misunderstanding of the term "approval" has contributed to significant violations of the regulations, removing "approval" for consortia makes that point clear.

Therefore, paragraph A.4 has been revised to eliminate the requirement for a consortium to apply for the FAA's approval. Paragraph A.6 has been revised to eliminate the word "consortium" to conform to 49 CFR part 40. Also, since consortium approvals have been eliminated within this appendix, all references to an "FAA-approved consortium" or "consortium" have been replaced with "C/TPA" as defined by 49 CFR part 40.

One commenter inquires about the administrative processes that will be applied if the proposed changes to eliminate FAA-approved consortia are adopted. Specifically, the commenter asks what the ramifications of the proposed change to the employer's policy and program will be.

First, employers can continue to contract with consortia and third party administrators as they always have. The

employer's FAA-approved plan has always been signed and certified by the employer, regardless of the employer's membership in a consortium. C/TPAs may continue to prepare and forward the employer's plan submissions to the FAA, as long as the employer signs and certifies the document. Second, it will not be necessary for employers who are consortium members to resubmit their plans. The consortium antidrug plan format, "CONSORTIUM MEMBER ANTIDRUG PLAN/AMPP CERTIFICATION STATEMENT," is substantively the same as the individual antidrug plan format, "ANTIDRUG PLAN/ALCOHOL MISUSE PREVENTATION PROGRAM CERTIFICATION STATEMENT." Since both formats are substantively the same, previously submitted consortium member plans will be treated as independent plans. Third, at this time we are not eliminating the requirement for aviation employers to file and receive approval of drug and alcohol program plans.

After consideration of the comments discussed above, we are eliminating the "FAA approval" of consortia as discussed in the NPRM.

X. Reporting of Antidrug Program Results

In Notice No. 00-14 we proposed changing the term "FAA-approved consortia" to "C/TPA." We received one comment on this issue, which supported the change. Therefore, in the final rule we have revised paragraph F to permit C/TPAs to prepare reports on behalf of individual employers, whereas only FAA-approved consortia were permitted to do this in the past.

An additional minor change is being made to this paragraph to clarify that C/TPAs are not permitted to sign the annual antidrug program results reports for the employer. This minor change is necessary because an FAA-approved consortium was not permitted to sign its client's annual antidrug program results report in the past, therefore, we are clarifying that the same restriction applies to C/TPAs.

XII. Testing Outside the Territory of the United States

In Notice No. 00-14, the FAA proposed changing the title of this section from "Employees Located Outside the Territory of the United States" to "Testing Outside the Territory of the United States." While 49 CFR part 40 authorizes laboratory and MRO functions to occur outside the United States in Canada and Mexico, we proposed clarifying that this authorization does not apply to entities

regulated by this appendix. We proposed changing paragraph A. to explicitly state that no part of the testing process, including specimen collection, laboratory processing, and MRO actions, shall be conducted outside the territory of the United States.

It is important to note that, unlike DOT agencies that require drug testing by entities outside the United States, the FAA's regulations apply only to United States' entities and testing is confined to the soil of the United States and its territories. The FAA has consistently declined to take a unilateral approach to testing outside the United States, and instead has been working productively with the International Civil Aviation Organization (ICAO) to develop a multilateral approach to drug and alcohol testing consistent with the Chicago Convention. The FAA's efforts through ICAO have been successful in the past, and we are continuing to work with ICAO in supporting an aviation environment free of substance abuse. However, if the threat to aviation safety posed by substance abuse increases, or requires additional efforts and the international community has not adequately responded, the FAA will consider taking appropriate rulemaking action. The change conforms to past FAA guidance on this section, to past practice, and to our commitment to continue to work with ICAO to address all aspects of international substance abuse testing.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed.

XIII. Waivers from 49 CFR 40.21

As proposed in Notice No. 00-14, this new provision addresses waivers described in 49 CFR 40.21. Under 49 CFR 40.21, an employer is prohibited from temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or a drug metabolite, an adulterated test, or a substituted test before the MRO has completed verification of the test result. This practice is described in 49 CFR 40.21 as "stand down." However, 49 CFR 40.21(b) permits an employer to seek a waiver from 49 CFR 40.21(a), thereby permitting the employer to stand down its employees.

In order to implement the waiver provision of 49 CFR 40.21, the FAA proposed adding a new section to this appendix. There has been no past practice of granting waivers to the FAA's drug testing regulations. Therefore, this provision will create a process to address requests for waivers

from the stand down provisions of 49 CFR 40.21. Consistent with the requirements for seeking a waiver under 49 CFR 40.21(b), we proposed placing the responsibility on the applicant to provide sufficient factual information, analysis and justification to obtain a waiver from the stand down provision. The FAA is given discretion, by 49 CFR 40.21(b), to grant, deny, grant with conditions, modify, and revoke waivers. Because this is detailed in 49 CFR 40.21(b), the proposed language did not address the FAA's discretion on these matters.

The FAA will not consider the grant of such waivers lightly. There are strong privacy concerns that surround an unverified positive test result. Waiver applications must address all of the concerns detailed in 49 CFR 40.21(b) and must show that the individual's privacy concerns are being properly protected by the aviation entity. If a waiver application fails to address the criteria in 49 CFR 40.21(b), it is likely to be denied without detailed analysis. In addition, if the FAA grants a waiver, as stated in 49 CFR 40.21(d)(2), "The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that you have failed to protect effectively the interests of employees in fairness and confidentiality, that you have failed to comply with the requirements of this section, or that you have failed to comply with any other conditions the DOT agency has attached to the waiver."

The FAA did not receive any comments on the proposed changes, which are adopted as proposed.

Appendix J

I. General

In Notice No. 00-14, we proposed to add paragraph C. "Employer Responsibility" to ensure that employers understand that they are responsible for all applicable requirements and procedures of this appendix and 49 CFR part 40. This change also reinforces that employers are responsible for all actions of their officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

In addition, we proposed to:

- Reletter paragraph C. "Definitions" to paragraph D. "Definitions."
- Delete the definition of "Consortium" because the definition is provided in 49 CFR part 40.
- Delete the definition of "Confirmation Test" because the definition is provided in 49 CFR part 40.
- Change the term from "refuse to submit (to an alcohol test)" to "refusal

to submit", and change the definition to refer to 49 CFR part 40.261.

- Delete the definition of "Screening Test" since the definition is provided in 49 CFR part 40.

- Reletter the remaining paragraphs accordingly.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

III. Tests Required

A. Pre-employment Testing. In order to standardize the pre-employment alcohol testing requirements, all of the Department of Transportation modal administrations proposed the same rule language. This was discussed in the Department of Transportation's common preamble published on April 30, 2001 (66 FR 21492). We proposed the standardized language in Notice No. 00-14, and we added the word "testing" to the heading of the section for consistency with the other paragraphs in this section.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed.

B. Post-accident Testing. In Notice No. 00-14, we proposed to eliminate paragraph 2(b), which required specific data to be submitted to the FAA by March 15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required. Also, we proposed adding the word "testing" to the heading for consistency with the other paragraphs in this section.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed.

C. Random Testing. In Notice No. 00-14, we proposed changing all sections referring to FAA-approved consortia. We received one comment on the issue of renaming "consortium" to "C/TPA." The commenter supports the proposal.

Therefore, we revised paragraph C. 6 to permit C/TPAs to combine the employee random testing pools of different employers. In the past, only FAA-approved consortia could combine the employee random testing pools of different employers. This change conforms to 49 CFR part 40.

D. Reasonable Suspicion Testing. We proposed eliminating paragraph 4(b), which required specific data to be submitted to the FAA by March 15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required. Also, we proposed eliminating in paragraph 4(c) (formerly 4(d) in the current rule) the words "Except as provided in paragraph (b)" since paragraph (b) has been eliminated.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed.

E. Return to Duty Testing. We proposed changing the requirements of return to duty testing to conform with 49 CFR part 40, which now requires the SAP to determine that the employee has successfully complied with the prescribed education and/or treatment prior to allowing the person to perform safety-sensitive functions.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

F. Follow-up Testing. We proposed changing the requirements of follow-up testing to conform with 49 CFR part 40, which now requires the SAP to determine the number of follow-up tests for an employee and to ensure that any employee who receives an alcohol violation is subject to at least six follow-up tests after returning to duty. In addition, we proposed revising this paragraph for clarity.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

IV. Handling of Test Results, Record Retention and Confidentiality

A. Retention of Records. In Notice No. 00-14, the FAA proposed to specify which records employers must continue to retain in addition to the records required by 49 CFR part 40. Specifically, we eliminated the reference to recordkeeping requirements, except annual reports submitted to the FAA, because these recordkeeping requirements are included in 49 CFR part 40. For clarity, we moved all existing record requirements throughout paragraphs 2 and 3 into the appropriate sections of paragraph 2 and noted the specific retention period for the records. We eliminated paragraph 2(c) because all of the 1-year requirements are included in 49 CFR part 40.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed.

B. Reporting of Results in a Management Information System. In Notice No. 00-14 we proposed changing the term "FAA-approved consortia" to "C/TPA." We received one comment on this issue, which supported the change. Therefore, in the final rule we have revised paragraph B.8 to permit C/TPAs to prepare reports on behalf of individual employers, whereas only FAA-approved consortia were permitted to do this in the past.

An additional minor change is being made to this paragraph to clarify that C/

TPAs are not permitted to sign the annual antidrug program results reports for the employer. This minor change is necessary because an FAA-approved consortium was not permitted to sign its client's annual antidrug program results report in the past, therefore, we are clarifying that the same restriction applies to C/TPAs.

C. Access to Records and Facilities. In Notice No. 00-14, the FAA proposed to eliminate most of this section because 49 CFR part 40 sets out confidentiality and release of information requirements. Also, we proposed to retain language from current paragraph C.8, because it reinforces to the employer the requirement to comply with this appendix regarding access to all facilities.

We received one comment from ALPA and TTD stating that we should not eliminate current paragraph C.2, which entitles employees to obtain, and requires employers to provide, records relevant to charges that an employee violated the alcohol misuse prevention provisions. The FAA did not intend to eliminate this provision, and we proposed to keep a similar provision in appendix I (now paragraph VI.C. in appendix I). The FAA agrees with the comment, and therefore, we are not eliminating current paragraph C.2 in appendix J. We will retain paragraph C.2 with a minor change to reference 49 CFR part 40. In addition, because we are retaining current paragraph C.2, we have renumbered proposed paragraph C.2 to a new paragraph C.3 in this final rule.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

C. Notice to Federal Air Surgeon. In Notice No. 00-14, we proposed changing paragraph C.4 in light of the changes to 49 CFR part 40 and the changes that arose from the 1996 amendment to 14 CFR part 67. In addition, we proposed adding a new paragraph C.5, clarifying the employer's obligation to ensure that the employee met the return to duty requirements following the recommendation of the Federal Air Surgeon.

The FAA received one comment from the ALPA and TTD on the proposed changes regarding 14 CFR part 67. The comment supports the proposed revisions and clarifications that make the drug testing and alcohol misuse prevention regulations consistent with the prior changes to 14 CFR part 67. Therefore, the changes are adopted as proposed, with minor editorial changes.

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

In Notice No. 00-14, the FAA proposed to change the title of this section from "Alcohol Misuse Information, Training, and Referral" to "Alcohol Misuse Information, Training, and Substance Abuse Professional" for clarity and organizational purposes. The FAA also proposed to change the title of paragraph C. from "Referral, Evaluation, and Treatment" to "Substance Abuse Professional (SAP) Duties" for clarity purposes and to conform to 49 CFR part 40. In addition, we proposed eliminating the majority of this paragraph because the SAP requirements are detailed in 49 CFR part 40, Subpart O. This paragraph now refers the reader to 49 CFR part 40 for SAP requirements.

The FAA did not receive any comments on the proposed changes, which are adopted as proposed, with minor editorial changes.

VII. Employer's Alcohol Misuse Prevention Program

In Notice No. 00-14, the FAA proposed eliminating the requirement for an entity seeking to operate as a consortium to first submit to the FAA an alcohol misuse prevention program (AMPP) certification statement. For the same reasons we have eliminated consortium approvals in section IX of appendix I, we have eliminated the requirement for a consortium to submit an AMPP to the FAA. Similarly, we have removed the requirement for a consortium to notify the FAA of membership changes.

Also as proposed, we have removed any references to an "FAA-approved consortium" or "consortium" in paragraphs A.6 and A.7 because consortia are no longer required to submit AMPPs. We have eliminated paragraphs A.3 and A.8 and renumbered the remaining paragraphs accordingly.

In addition, as proposed in Notice No. 00-14, in paragraph B. we removed the requirement for employers and contractors to name their consortium in their AMPP certification statement. Furthermore, we eliminated the provisions allowing consortia to submit AMPP certification statements. Therefore, the FAA will not accept C/TPA's own AMPP certification statements, however, C/TPAs can continue to prepare and forward AMPP certification statements on behalf of their clients as long as the employer signs the AMPP certification statement.

For a discussion of the comments received on the issue of consortium approvals, see appendix I, section IX.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Good Cause for Immediate Adoption

Generally, final rules must be published at least 30 days before their effective dates. However, the Administrative Procedure Act (5 U.S.C. sec. 553(d)(3)) creates an exception to this general rule on the basis of good cause found by the agency and published rule. The FAA is making this rule effective August 1, 2001, rather than 30 days from now. The good cause supporting this action is that the purpose of this rule is to ensure that the FAA's drug and alcohol testing regulations are consistent with the Department-wide 49 CFR part 40, which goes into effect on August 1, 2001. Unless the FAA's final rule becomes effective August 1, 2001, there may be overlap, conflict, duplication, or confusion between different DOT drug and alcohol testing regulations. The new 49 CFR part 40 was published over seven months ago, therefore affected parties have had ample time to prepare to implement the new regulations. The FAA's final rule merely implements the changes made by 49 CFR part 40, and additionally implements the 1996 final rule that changed 14 CFR part 67.

Executive Order 12866 and DOT Regulatory Policies and Procedures

The DOT prepared a regulatory analysis indicating that the modal proposals due to the changes in 49 CFR part 40 do not have any incremental economic impacts on their own. DOT also indicated that the modal proposed rules have been designated as non-significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. For the regulatory evaluation of the actions that the FAA is making due to 49 CFR part 40, see the Department of Transportation's discussion in the preamble published concurrently with this final rule. In addition to the FAA's changes that are directly due to changes in 49 CFR part 40, the FAA is making certain clarifying changes to 14 CFR part

121, appendices I and J that are not directly due to 49 CFR part 40.

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless a reasoned determination is made that the benefits of the intended regulation justify the costs. The FAA's assessment of this Final Rule is that its economic impact is minimal. Since the costs and benefits of this rule do not make it a "significant regulatory action" as defined in the Order, the FAA has not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of a proposal is minimal. These FAA amendments are being made because of DOT changes to 49 CFR part 40 and have no incremental economic impacts on their own, and the additional clarifying changes that are being made impose no new requirements; they merely clarify existing requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The changes in this action make the FAA regulations consistent with the new requirements of 49 CFR part 40. In its rulemaking, the DOT performed an economic analysis of the changes made to 49 CFR part 40 and the impact of the changes on the modal industries. In addition to the changes being made because of the new 49 CFR part 40, the FAA is making revisions to conform to the current 14 CFR part 67. None of these changes, on their own, have incremental economic impacts. The FAA certifies that the rule does not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this rule and has determined that it has no effect on any trade-sensitive activity.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action does 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, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA order 1050.1d defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1d, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 121 of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C.106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 45101-45105, 46105.

2. Amend appendix I to part 121 as follows:

- A. Revise section I;
B. In section II, revise the definitions of "Prohibited drug", "Refusal to submit", "Verified negative drug test result", and "Verified positive drug test result";
C. Revise section IV;

D. In section V, revise paragraphs C. 6, F., G.2., G3., and G.4;

E. In section VI, revise paragraphs A. and B., remove paragraph C., redesignate paragraphs D., E., and F. as paragraphs C., D., and E., respectively, and revise newly redesignated paragraph C;

F. In section VII, revise the heading of the section, revise paragraphs A, B, and C, and remove paragraph D;

G. In section IX, revise the introductory text in paragraph 4, remove paragraph 4(b), redesignate paragraph 4(c) as paragraph 4(b) and revise it, revise paragraph 6;

H. In section X, revise paragraph F;

I. In section XII, revise the heading of the section and the introductory text in paragraph A; and

J. Add section XIII.

The revisions and additions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

I. General

A. Purpose. The purpose of this appendix is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform safety-sensitive functions.

B. DOT Procedures. Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 121, and 135 comply with the requirements of this appendix and the "Procedures for Transportation Workplace Drug Testing Programs" published by the Department of Transportation (DOT) (49 CFR part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program.

C. Employer Responsibility. As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of this appendix and 49 CFR part 40.

II. Definitions. * * *

* * * * *

Prohibited drug means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, as specified in 49 CFR 40.85.

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.191.

* * * * *

Verified negative drug test result means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a negative result.

Verified positive drug test result means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a positive result.

* * * * *

IV. Substances for Which Testing Must Be Conducted. Each employer shall test each

employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V. of this appendix.

V. Types of Drug Testing Required. * * *

C. Random Testing.

6. The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the employer conducts random drug testing through a Consortium/Third-party administrator (C/TPA), the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the C/TPA who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT drug testing rule.

* * * * *

F. Return to Duty Testing. Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this appendix or receiving a verified positive drug test result on a test conducted under this appendix the individual shall undergo a return to duty drug test. No employer shall allow an individual required to undergo return to duty testing to perform a safety-sensitive function unless the employer has received a verified negative drug test result for the individual. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

G. Follow-up Testing. * * *

2. The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional conducted in accordance with the provisions of 49 CFR part 40, but shall consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for alcohol in accordance with appendix J of this part, in addition to drugs, if the Substance Abuse Professional determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the Substance Abuse Professional determines that such testing is no longer necessary.

VI. Administrative and Other Matters. A. MRO Record Retention Requirements. 1. Records concerning drug tests confirmed positive by the laboratory shall be maintained by the MRO for 5 years. Such

records include the MRO copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, any other documentation concerning the MRO's verification process.

2. Should the employer change MROs for any reason, the employer shall ensure that the former MRO forwards all records maintained pursuant to this rule to the new MRO within ten working days of receiving notice from the employer of the new MRO's name and address.

3. Any employer obtaining MRO services by contract, including a contract through a C/TPA, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

B. Access to Records. The employer and the MRO shall permit the Administrator or the Administrator's representative to examine records required to be kept under this appendix and 49 CFR part 40. The Administrator or the Administrator's representative may require that all records maintained by the service agent for the employer must be produced at the employer's place of business.

C. Release of Drug Testing Information. An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with 49 CFR part 40. Except as required by law, this appendix, or 49 CFR part 40, no employer shall release employee information.

* * * * *

VII. Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities. * * *

A. Medical Review Officer (MRO). The MRO must perform the functions set forth in 49 CFR part 40, Subpart G, and this appendix. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the fact that the split specimen test result is pending. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

B. Substance Abuse Professional (SAP). The SAP must perform the functions set forth in 49 CFR part 40, Subpart O.

C. Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders. 1. As part of verifying a confirmed positive test result, the MRO shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the negative, the MRO shall then inquire, and the individual shall disclose, whether the individual currently holds a medical certificate issued under 14 CFR part 67. If the individual answers in the

affirmative to either question, in addition to notifying the employer in accordance with 49 CFR part 40, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph 4, the name of the individual, along with identifying information and supporting documentation, within 12 working days after verifying a positive drug test result.

2. The SAP shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the affirmative, the SAP cannot recommend that the individual be returned to a safety-sensitive function that requires the individual to hold a 14 CFR part 67 medical certificate unless and until such individual has received a medical certificate or a special issuance medical certificate from the Federal Air Surgeon. The receipt of a medical certificate or a special issuance medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this appendix.

3. The employer must forward to the Federal Air Surgeon a copy of any report provided by the SAP, if available, regarding an individual for whom the MRO has provided a report to the Federal Air Surgeon under section VII.C.1 of this appendix, within 12 working days of the employer's receipt of the report.

4. The employer cannot permit an employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty to resume that duty until the employee has received a medical certificate or a special issuance medical certificate from the Federal Air Surgeon unless and until the employer has ensured that the employee meets the return-to-duty requirements in accordance with 49 CFR part 40.

5. Reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

IX. Employer's Antidrug Program Plan. A. Schedule for Submission of Plans and Implementation. * * *

* * * * *

4. Any entity or individual whose employees perform safety-sensitive functions pursuant to a contract with an employer (as defined in section II of this appendix), may submit an antidrug program plan to the FAA for approval on a form and in a manner prescribed by the Administrator.

* * * * *

(b) Each contractor shall implement its antidrug program in accordance with the terms of its approved plan.

* * * * *

6. Each employer, or contractor company that has submitted an antidrug plan directly to the FAA, shall obtain appropriate approval from the FAA prior to changing programs.

* * * * *

X. Reporting of Antidrug Program Results.

* * * * *

F. A C/TPA may prepare reports on behalf of individual aviation employers for purposes of compliance with this reporting requirement. However, the aviation employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a C/TPA. A C/TPA must not sign the form.

* * * * *

XII. Testing Outside the Territory of the United States. A. No part of the testing process (including specimen collection, laboratory processing, and MRO actions) shall be conducted outside the territory of the United States.

* * * * *

XIII. Waivers from 49 CFR 40.21. An employer subject to this part may petition the Drug Abatement Division, Office of Aviation Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

A. Each petition for a waiver must be in writing and include substantial facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR 40.21.

B. Each petition for a waiver must be submitted to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

C. The Administrator may grant a waiver subject to 49 CFR 40.21(d).

3. Amend appendix J to part 121 as follows:

A. In section I, redesignate paragraphs C through F as paragraphs D through G, add new paragraph C, and amend newly redesignated paragraph D to remove the definitions for "Confirmation Test", "Consortium", and "Screening Test", to remove the definition of "Refuse to submit (to an alcohol test)" and to add the definition "Refusal to submit" in alphabetical order;

B. In section III, revise paragraph A, revise the heading of paragraph B, and revise paragraphs B.2 and C.6; remove paragraph D.4.(b); redesignate paragraphs D.4.(c) and D.4.(d) as paragraphs D.4.(b) and D.4.(c); revise newly redesignated paragraph D.4.(c); and revise paragraphs E and F;

C. In section IV, revise paragraphs A., B.8, C.2 and C.3, and remove paragraphs C.4 through C.8;

D. In section V, revise paragraph C.4 and add paragraph C.5;

E. In section VI, revise the section heading and paragraph C; and

F. In section VII, remove paragraphs A.3 and A.8; redesignate paragraphs A.4 through A.7 as paragraphs A.3 through

A.6, respectively, revise newly redesignated paragraph A.6, redesignate paragraph A.9 as paragraph A.7 and revise it; remove paragraph B.1(d); redesignate paragraph B.1(e) as paragraph B.1(d); remove paragraph B.2.

The revisions and additions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

I. General

C. Employer Responsibility. As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

D. Definitions

* * * * *

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.261.

* * * * *

III. Tests Required

A. Pre-employment testing

As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

1. You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
2. You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).
3. You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
4. You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR Part 40.
5. You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

B. Post-Accident Testing

* * * * *

2. If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon

request of the Administrator or his or her designee.

* * * * *

C. Random Testing

* * * * *

6. The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the employer conducts random testing through a Consortium/Third-party administrator (C/TPA), the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees who are subject to random alcohol testing at the same minimum annual percentage rate under this appendix or any DOT alcohol testing rule.

* * * * *

D. Reasonable Suspicion Testing

* * * * *

4. * * *

(c) No employer shall take any action under this appendix against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this appendix from taking any action otherwise consistent with law.

E. Return to Duty Testing

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in § 65.46a, § 121.458, or § 135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

F. Follow-up Testing

1. Each employer shall ensure that the employee who engages in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter is subject to unannounced follow-up alcohol testing as directed by a SAP.
2. The number and frequency of such testing shall be determined by the employer's SAP, but must consist of at least six tests in the first 12 months following the employee's return to duty.
3. The employer may direct the employee to undergo testing for drugs, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.
4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the SAP determines that such testing is no longer necessary.
5. A covered employee shall be tested for alcohol under this paragraph only while the

employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

* * * * *

IV. Handling of Test Results, Record Retention, and Confidentiality

A. Retention of Records

1. *General Requirement.* In addition to the records required to be maintained under 49 CFR part 40, employers must maintain records required by this appendix in a secure location with controlled access.

2. *Period of retention.*

(a) *Five years.*

(1) Copies of any annual reports submitted to the FAA under this appendix for a minimum of 5 years.

(2) Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(3) Documents presented by a covered employee to dispute the result of an alcohol test administered under this appendix.

(4) Records related to other violations of § 65.46a, § 121.458, or § 135.253 of this chapter.

(b) *Two years.* Records related to the testing process and training required under this appendix.

(1) Documents related to the random selection process.

(2) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(3) Documents generated in connection with decisions on post-accident tests.

(4) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(5) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(6) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.

(7) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(8) Certification that any training conducted under this appendix complies with the requirements for such training.

B. Reporting of Results in a Management Information System

* * * * *

8. A C/TPA may prepare reports on behalf of individual aviation employers for purposes of compliance with this reporting requirement. However, the aviation employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a C/TPA. A C/TPA must not sign the form.

C. Access to Records and Facilities

* * * * *

2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests in accordance with 49 CFR part 40. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

3. Each employer shall permit access to all facilities utilized in complying with the requirements of this appendix to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

* * * * *

C. Notice to the Federal Air Surgeon

* * * * *

4. No covered employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty shall perform that duty following a violation of this appendix until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

5. Once the Federal Air Surgeon has recommended under paragraph C.4. of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return to duty requirements in accordance with 49 CFR part 40.

* * * * *

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

* * * * *

C. Substance Abuse Professional (SAP) Duties

The SAP must perform the functions set forth in 49 CFR part 40, Subpart O, and this appendix.

VII. Employer's Alcohol Misuse Prevention Program

A. Schedule for Submission of Certification Statements and Implementation

* * * * *

6. The duplicate certification statement shall be annotated indicating receipt by the FAA and returned to the employer or contractor company.

7. Each employer, and each contractor company that submits a certification statement directly to the FAA, shall notify the FAA of any proposed change in status, (e.g., join another carrier's program) prior to the effective date of such change. The employer or contractor company must ensure that it is continuously covered by an FAA-mandated alcohol misuse prevention program.

* * * * *

Issued in Washington, DC on July 17, 2001.

Jane F. Garvey,
Administrator.

[FR Doc. 01-19231 Filed 8-2-01; 4:41 pm]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA 2000-8583 (Formerly FRA Docket No. RSOR-6); Notice No. 49]

RIN 2130-AB43

Control of Alcohol and Drug Use: Changes To Conform to New DOT Transportation Workplace Testing Procedures

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

ACTION: Final rule.

SUMMARY: FRA is publishing a final rule conforming its drug and alcohol testing regulation to the December 19, 2000 revision of DOT's transportation workplace testing procedures. Consistency between the FRA's rule and DOT's revision is important in order to avoid overlap, conflict, duplication, or confusion among DOT drug and alcohol testing regulations.

DATES: This rule becomes effective August 1, 2001.

ADDRESSES: The Department of Transportation's Docket Management System allows the public access through the internet to all documents filed in a particular proceeding. The April 30, 2001 NPRM (formerly FRA Docket RSOR-6, Notice No. 48) and the comments to it, may be found with this rule under Docket No. FRA 2000-8583. Docket No. FRA 2000-8583 may be accessed through the Department's Docket Management System website at <http://dms.dot.gov>.

For instructions on how to use this system, visit the Docket Management System Web Site and click on the "Help" menu. This docket is also available for inspection or copying at room PL-401 on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590-0001, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS-11, 1120 Vermont Avenue, N.W., Mail Stop 25, Washington, D.C. 20590 (telephone 202-493-6313); or Patricia V. Sun, Trial Attorney, Office of the Chief Counsel,

RCC-11, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone 202-493-6038).

SUPPLEMENTARY INFORMATION:

Background

In this rule FRA finalizes changes to conform its drug and alcohol testing regulation (49 CFR Part 219) to the recently published revision of DOT's procedures for transportation workplace drug and alcohol testing programs (49 CFR Part 40) (December 19, 2000, 65 FR 79462). These changes were proposed in an NPRM that FRA published (April 30, 2001, 66 FR 21511) concurrently with NPRMs from the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, the Research and Special Programs Administration, and the United States Coast Guard.

FRA adopts the proposals in the NPRM without change (with the exceptions of the penalty schedule published in Appendix A, which is slightly different from the one contained in the NPRM as discussed below; and, to be more consistent with Part 40 terminology, the substitution of "specimen" for "sample" wherever that term appeared in this rule). FRA received four comments to the NPRM, each of which is discussed in detail below. The majority of the comments concerned Department-wide issues, which are more properly addressed in Part 40 rather than individual modal rules, or raised issues beyond the scope of the NPRM's proposed conforming changes, technical amendments, and corrections.

In addition to conforming Part 219 with the new Part 40, FRA makes corrections to comply with **Federal Register** format requirements and delete outdated rule text references. FRA also makes technical changes to its statutory citations by replacing citations to the Federal Railroad Safety Act of 1970 and the Hours of Service Act (which were repealed in 1994) with references to the proper sections or chapters in title 49 of the United States Code. See Public Law 103-272.

Generally, final rules must be published at least 30 days before their effective dates. However, the Administrative Procedure Act (5 U.S.C. 553(d)(3)) creates an exception to this general rule on the basis of good cause found by the agency. FRA is making this conforming rule effective immediately upon publication, rather than 30 days from now to ensure that FRA's drug and alcohol testing regulation is consistent with the Department's Part 40 testing procedures, which become effective on

August 1, 2001. Unless this rule goes into effect immediately, there would be a 30-day period in which Part 40 would be in effect without FRA's conforming changes to Part 219. Since the new Part 40 was published over seven months ago, affected parties have had ample time to prepare to implement the changes in Part 40 which this rule conforms to Part 219.

For ease of reference, FRA is publishing Part 219 in its entirety with these conforming changes, technical amendments, and corrections.

Comments to the NPRM

Summaries of the four comments appear below. FRA will also discuss comments addressed to specific sections of the NPRM in the section-by-section analysis.

(1) The United Transportation Union-Nebraska State Legislative Board (UTU-Nebraska) approved of the proposed changes to conform Part 219 to Part 40. Most of the UTU's comments would require major substantive changes that are beyond the scope of the NPRM (e.g., requiring non-Federal testing to comply with Part 219; excluding accidents wholly attributable to pedestrians from post-accident testing), or are more properly directed to a Part 40 rulemaking since they have intermodal application (e.g., requiring employers to provide and pay for the testimony of laboratory personnel if requested by an employee). FRA invites the UTU-Nebraska to resubmit these comments in future rulemakings when FRA proposes major revisions to Part 219.

In its comments, the UTU alleged that it is an "everyday practice" for a railroad to permit a crew who has been drug and/or alcohol tested after a derailment to return to covered service until the completion of their duty tour. In these circumstances, the UTU states that a railroad should not immediately return the crew to covered service after testing since the basis for the tests was the railroad's reasonable belief that the crew's actions might have adversely affected safety by contributing to the occurrence or severity of the derailment. This scenario may arise under FRA-mandated or company testing programs. FRA has previously noted that not every "testable" event should give rise to a presumption that the employee is unfit because of alcohol or drug use. To the contrary, the employee's status should normally be determined without regard to the conduct of a test. To withdraw a person from service solely because a specimen has been collected would attach an unwarranted stigma. Rather, employees should be returned to or placed in service wholly on the basis of

their documented conduct until such time as a fully reviewed, positive test result is reported by the MRO. Accordingly, the issue of handling employees who have been involved in events calling into question their willingness or ability to work safely should be handled outside the context of this rulemaking.

(2) The Brotherhood of Locomotive Engineers (BLE) also supported the conforming changes to Part 219 and the recent changes to Part 40. In addition, the BLE submitted comments specific to sections of the NPRM, which are discussed in the section-by-section analysis.

(3) The Airline Pilots Association and Transportation Trades Department, AFL-CIO raised concerns about DOT's validity testing procedures. FRA will not separately discuss these comments, since this Part 40 issue is addressed in the Common Preamble.

(4) The Drug & Alcohol Testing Industry Association recommended six provisions for adoption in all of the modal rules. FRA will also not separately discuss these comments, since they raise Part 40 issues which are addressed in the Common Preamble.

Section-by-Section Analysis

Subpart A—General

Section 219.5 Definitions

As proposed, FRA deletes from Part 219 those definitions that can now be found in § 40.3: *Alcohol, Alcohol concentration, Alcohol use, Consortium, DOT agency, Drug(s), and Medical Review Officer*; as well as *Refuse to submit* (to a drug test) and *Refuse to submit* (to an alcohol test), which are defined in §§ 40.191 and 40.261, respectively. Definitions specific to Part 219, the rail industry, or both, such as *Covered employee* and *Railroad*, remain in this rule.

Also as proposed, the definitions of *Class I, Class II, and Class III* have been revised by deleting "as those regulations may be revised and applied by order of the Board (including modifications in class thresholds based on revenue deflator adjustments)." The purpose of this change is to conform to Federal Register requirements; no substantive change is intended.

FRA also deletes the outdated references to the 1991 through 1999 accident reporting thresholds from these definitions: *Impact accident, Reporting threshold, and Train accident*. See the discussion of § 219.201 for a further discussion of the changes to these definitions.

Section 219.7 Waivers

Paragraph (b)

As proposed, FRA's Railroad Safety Board will determine each petition for stand down in accordance with § 40.21 and Subpart C of 49 CFR Part 211, which contains the rules of practice governing petitions for waiver of FRA safety rules, regulations or standards. Section 40.21 maintains the Departmental policy of prohibiting employers from standing employees down unless the concerned DOT agency grants a waiver to this prohibition.

The BLE, concerned that allowing stand down may result in unfair damage to employee reputations, stressed that FRA should grant waivers only if a railroad can demonstrate that the strict standards of § 40.21 will be met, and should immediately suspend or revoke that waiver if the railroad should fail to effectively protect employee interests in fairness and confidentiality. FRA agrees with the BLE's concerns and recommendations, and will carefully examine petitions for stand down waivers; when a waiver is granted, FRA will monitor the stand down program to ensure continuing compliance with section 40.21.

For an additional discussion of the BLE's comments on stand down, see the analysis of section 219.23 below.

Section 219.11 General Conditions for Chemical Tests

Paragraph (b)

FRA deletes the last two sentences of § 219.11(b)(2), which addresses the use of catheterization to obtain urine specimens for testing, and subparagraph (b)(4), which makes tampering with a specimen through adulteration, dilution, or substitution a refusal to provide a specimen. In Part 40, DOT addresses the use of catheterization in § 40.61(b)(3), what constitutes a refusal to provide a specimen in § 40.191, and what an employer must do following a verified adulterated or substituted test result in § 40.23.

Section 219.21 Information Collection

FRA updates the list of information collection requirements in this section by adding §§ 219.801, 219.803, 219.901, and 219.903 from the annual report and recordkeeping requirements found in Subparts I and J, respectively, of this part; which were approved by the Office of Management and Budget before their implementation in 1994. FRA also adds an information collection requirement for § 219.502, which authorizes pre-employment alcohol testing, and deletes the information collection requirements

for §§ 219.307, 219.309, 219.703, 219.705, 219.707, 219.709, 219.711, and 219.713, all of which have been deleted from Part 219.

Section 219.23 Railroad Policies

Paragraph (b)

FRA adds new language reiterating the prohibition in § 40.47 against the use of DOT custody and control forms for non-DOT testing. Section 219.23 is otherwise unchanged.

The BLE requested that FRA require a railroad to provide the terms of the waiver to the heads of its affected labor organizations if FRA grants the railroad's petition for a waiver from Part 40's stand down prohibition. FRA agrees that this is sound labor-management policy, but adding a new requirement is unnecessary, since this is already covered by § 219.23(d), which requires railroads to provide educational materials explaining the requirements of Part 219 to each of their covered employees, and to "provide written notice to representatives of employee organizations of the availability of this information." The implementation of a new stand down program consistent with the terms of an FRA waiver would be a major modification of the railroad's drug and alcohol program requiring such notification.

Subpart B—Prohibitions

Section 219.102 Prohibitions on Abuse of Controlled Substances

FRA deletes the 1989 implementation date from this section.

Section 219.103 Prescribed and Over-the-Counter Drugs

Although FRA had proposed no changes to the text of this section, the BLE noted that the proposed penalty schedule adds a penalty guideline of \$2,500 for a violation and \$5,000 for a willful violation. The BLE expressed concern that the addition of this guideline could result in "inconsistent or arbitrary" penalties being assessed against individual employees for prescription and over-the-counter drug use. The addition of a penalty guideline for a violation of § 219.103 does not mean that FRA is creating a new basis for railroad or individual liability, since FRA has always had the authority to assess penalties for a violation of this section. As stated below and in the preamble to the NPRM, the guidelines in the penalty schedule are illustrative, not comprehensive, and FRA retains the authority to assess penalties for violations not listed in the penalty schedule. (See footnote 1 to the penalty

schedule, in which the Federal Railroad Administrator reserves the right to assess a penalty of up to \$22,000 for any violation of Part 219).

Section 219.104 Responsive Action

Paragraph (d)

As proposed, FRA deletes its return-to-service and follow-up testing requirements, and its Substance Abuse Professional (SAP) conflict-of-interest prohibitions, and instead references the sections in Part 40 that cover these requirements (§§ 40.305, 40.307, and 40.299, respectively) in amended paragraph (d). FRA also deletes paragraphs (e) and (f) of this section, which are now unnecessary, and paragraph (g) of this section, which mandated a 1995 implementation date for certain requirements in this section.

Subpart C—Post-Accident Toxicological Testing

As stated in § 40.1(c), nothing in Part 40 supersedes or conflicts with FRA's post-accident testing program; Part 40 procedures do not apply to FRA post-accident toxicological testing, which has always followed its own unique procedures. Since Subpart C did not need to be conformed to Part 40, the only changes to this subpart are minor technical ones.

As proposed, FRA is streamlining its procedures for notification after post-accident events. One-stop notification to the National Response Center (NRC) is now sufficient for problems in obtaining specimens from an injured employee (§ 219.203(d)(2)) or an employee fatality (§ 219.207(b)), although FRA still requires railroads to notify both the NRC and FRA whenever post-accident testing is conducted (§ 219.209). The remaining technical changes are discussed below.

Section 219.201 Events for Which Testing Is Required

Paragraph (a)

In its annual adjustment of the accident reporting threshold, FRA decided to leave the \$6,600 accident reporting threshold unchanged for calendar year 2001 (November 21, 2000, 65 FR 69884). The reporting threshold final rule, which became effective January 1, 2001, amends this section and the definitions of *Impact accident*, *Reporting Threshold*, and *Train Accident* found in § 219.5.

FRA removes the outdated references to the accident reporting thresholds listed for the years 1991–1999. To streamline this part, FRA incorporates the accident reporting threshold set annually in § 225.19(e) of its accident reporting rule (49 CFR Part 225) instead

of listing the threshold for each year in this section and in the definitions listed above in § 219.5.

Section 219.211 Analysis and Follow-Up

Paragraph (i)

FRA amends this paragraph, which formerly allowed an employee the right to request a retest of his or her post-accident specimens. This right has not existed since FRA incorporated split specimen testing into its post-accident testing procedures in 1994. The employee still has up to 60 days from the date of the toxicology report (instead of 72 hours from notification by the MRO as in § 40.171) to request that his or her past-accident split specimens be tested.

Subpart D—Testing for Cause

Section 219.300 Mandatory Reasonable Suspicion Testing

Paragraph (a)

FRA removes the 1995 implementation date from this paragraph.

Paragraph (d)(2)

FRA deletes this paragraph which contained reporting requirements that expired on March 15, 1998.

Section 219.303 Alcohol Test Procedures and Safeguards

FRA deletes this section, since alcohol testing conducted under this subpart now follows Part 40 procedures.

Section 219.305 Urine Test Procedures and Safeguards

FRA deletes this section since the revised § 219.701 consolidates the requirements that Subpart B, D, F and G testing be conducted in accordance with Part 40 procedures.

Subpart E—Identification of Troubled Employees

This subpart is unchanged except for the amendment to § 219.403 discussed below.

Section 219.403 Voluntary Referral Policy

Subparagraph (b)(5)

With respect to a certified locomotive engineer and a candidate for certification, Section 240.119(e) of FRA's regulations on qualification and certification of locomotive engineers (49 CFR Part 240) requires the railroad to waive its policy of confidentiality and suspend or revoke the engineer's certificate if the SAP reports that the engineer has failed to cooperate with a

course of recommended treatment. For ease of reference, FRA adds a new subparagraph cross-referencing this requirement, which applies to all voluntary referral policies.

Subpart F—Pre-Employment Tests

Section 219.501 Pre-Employment Drug Testing

FRA revises this subpart to delete an outdated implementation schedule and separately addresses pre-employment drug testing and pre-employment alcohol testing. Section 219.501 now addresses only pre-employment drug testing requirements, which are unchanged.

Section 219.502 Pre-Employment Alcohol Testing

New § 219.502 incorporates the Department's language reauthorizing pre-employment alcohol testing, which had been suspended in May 1995 (May 10, 1995, 60 FR 24766). Pre-employment alcohol testing, unlike pre-employment drug testing, is authorized but not required.

Section 219.503 Notification; Records

FRA removes the references in this section to "urine and breath tests" and replaces these with more generic references to "drug and alcohol tests."

Subpart G—Random Alcohol and Drug Testing Programs

Section 219.601 Railroad Random Drug Testing Programs

Paragraph (a) and Subparagraph (d)(2)

FRA deletes the outdated implementation schedule from this section. New railroads must submit a random testing program for FRA approval within 60 days after commencing operations, and implement the program as approved within 60 days of receiving approval.

Section 219.605 Positive Drug Test Results; Procedures

Paragraph (a) of this section is removed and reserved, since it has been superseded by the MRO verification requirements in § 40.129. FRA also deletes the now unnecessary reference to a "retest" from paragraph (b) of this section.

Section 219.607 Railroad Random Alcohol Testing Programs

Paragraph (a) and Subparagraph (c)(2)

As with § 219.601, FRA deletes the outdated implementation schedule and specifies implementation requirements for new railroads.

Section 219.608 Administrator's Determination of Random Alcohol Testing Rate

Subparagraph (b)(1)(i)

This subparagraph specifies the implementation requirements for new railroads.

Subpart H—Drug and Alcohol Testing Procedures

Section 219.701 Standards for Drug and Alcohol Testing

As discussed above, FRA consolidates in this section the requirement that testing under Subparts B, D, F, and G of this part comply with Part 40 procedures. In new paragraph (c) of this section, FRA expands the requirement (formerly found in § 219.715(a), which has been deleted), that an employee proceed to the testing site immediately upon notification of selection, to apply to random drug testing as well as to random alcohol testing. FRA deletes the rest of this subpart (§§ 219.703–219.715), since it has been superseded by Part 40.

Subpart I—Annual Report

There are no changes to the reporting requirements of FRA's Management Information System (MIS). Concerned about the variability in standards among railroad testing programs, the BLE commented that the MIS should not include data on urine alcohol tests conducted under railroad authority unless the railroad's testing program uses testing procedures that "meet the same level of confidence" as the protocols used in the FRA post-accident testing program. Otherwise, the BLE recommended that such data not be reported until the Department of Health and Human Services develops urine alcohol testing standards. FRA will continue to require urine alcohol testing data to be reported, since FRA uses this data to monitor independent railroad testing programs to ensure that they do not violate Part 219 by conducting urine alcohol testing under Federal authority.

Subpart J—Recordkeeping Requirements

Section 219.901 Retention of Alcohol Testing Records

Section 219.903 Retention of Drug Testing Records

FRA deletes recordkeeping requirements that duplicate those contained in various sections of Part 40. In addition to the employer recordkeeping requirements in § 40.333, Part 40 now requires service agents to maintain copies of records that were formerly required to be kept by

employers, so that some of the recordkeeping responsibilities currently in §§ 219.901 and 219.903 have shifted from railroads to their service agents.

Appendix A to Part 219—Schedule of Civil Penalties

The revised schedule of civil penalties printed below has a slightly different structure and lists more guideline penalty amounts than the schedule in the NPRM. These structural changes and additional examples are intended to make the schedule clearer as a guide to proposed assessments for violations of Part 219. As before, the illustrations provided are illustrative, not comprehensive, and FRA reserves the right to assess a penalty of up to \$22,000 for any violation of this rule, including violations not listed in this penalty schedule.

The additional violations listed have proposed assessments equivalent to violations already listed in the penalty schedule. Penalties listed at the statutory minimum of \$500 (see § 209.409 in FRA's railroad safety enforcement procedures (49 CFR Part 209)), however, are now \$1,000.

Appendix D to Part 219—Management Information System Collection Forms

As proposed, FRA deletes Appendix D, which reprints MIS forms that have been in use since 1994. The BLE commented that it could not find the MIS forms in the Part 40 final rule; this is because the forms for FRA's MIS system are specific to Part 219 only. These forms can now be downloaded from FRA's web site at <http://www.fra.dot.gov/site/index.htm>.

Regulatory Analyses and Notices

This rule has been determined to be nonsignificant, since it makes policy changes only to the extent necessary to conform Part 219 to the changes already made in Part 40. The other purpose of this rule is to update Part 219 by making corrections and deleting outdated references.

This rule has also been determined not to be economically significant since its reworking of existing requirements does not result in significant new costs. FRA did not prepare a Regulatory Evaluation of the costs and benefits of this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, FRA determined that there are no new requirements for information collection associated with this rule.

List of Subjects in 49 CFR Part 219

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

The Rule

For the reasons stated above, FRA revises 49 CFR Part 219 to read as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE**Subpart A—General**

Sec.

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Subpart G—Random Alcohol and Drug Testing Programs

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- 219.701 Standards for drug and alcohol testing.

Subpart I—Annual Report

- 219.801 Reporting alcohol misuse prevention program results in a management information system.
- 219.803 Reporting drug misuse prevention program results in a management information system.

Subpart J—Recordkeeping Requirements

- 219.901 Retention of alcohol testing records.
- 219.903 Retention of drug testing records.
- 219.905 Access to facilities and records.
- Appendix A to Part 219—Schedule of Civil Penalties
- Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing
- Appendix C to Part 219—Post-Accident Testing Specimen Collection

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

Subpart A—General**§ 219.1 Purpose and scope.**

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 219.3 Application.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gauge track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger

service in a metropolitan or suburban area (as described by 49 U.S.C. 20102).

(b)(1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G of this part do not apply to a railroad that employs not more than 15 employees covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(3) Subpart I of this part does not apply to a railroad that has fewer than 400,000 total manhours.

(c) Subparts E, F and G of this part do not apply to operations of a foreign railroad conducted by covered service employees whose primary place of service ("home terminal") for rail transportation services is located outside the United States. Such operations and employees are subject to Subparts A, B, C, and D of this part when operating in United States territory.

§ 219.5 Definitions.

As used in this part—

Class I, *Class II*, and *Class III* have the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1).

Controlled substance has the meaning assigned by 21 U.S.C. 802, and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Parts 1301–1316).

Covered employee means a person who has been assigned to perform service subject to the hours of service laws (49 U.S.C. ch. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term "covered employee" includes a person applying to perform covered service.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent, or officer.

DOT Agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol or

controlled substance testing (14 CFR parts 61, 63, 65, 121 and 135; 49 CFR parts 199, 219, 382 and 655) in accordance with Part 40 of this title.

Drug means any substance (other than alcohol) that has known mind- or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

FRA means the Federal Railroad Administration, United States Department of Transportation.

FRA representative means the Associate Administrator for Safety of FRA, the Associate Administrator's delegate (including a qualified State inspector acting under Part 212 of this chapter), the Chief Counsel of FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as a hazardous material by Part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold (see § 225.19(e) of this chapter)) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

- (1) An accident in which the derailment of equipment causes an impact with other rail equipment;
- (2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and
- (3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

Independent with respect to a medical facility, means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physician's office, or laboratory where toxicological specimens can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or

otherwise authorized to practice by the state.

NTSB means the National Transportation Safety Board.

Passenger train means a train transporting persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes.

Positive rate means the number of positive results for random drug tests conducted under this part plus the number of refusals of random tests required by this part, divided by the total number of random drug tests conducted under this part plus the number of refusals of random tests required by this part.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, and any person providing such transportation, including—

- (1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and
- (2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or *damage to railroad property* refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property must be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See § 225.21 of this chapter.) However, replacement of passenger equipment is calculated based on the cost of acquiring a new unit for comparable service.

Reportable injury means an injury reportable under Part 225 of this chapter.

Reporting threshold means the amount specified in § 225.19(e) of this chapter, as adjusted from time to time in accordance with Appendix B to Part 225 of this chapter.

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a "rail equipment accident" involving damage in excess of the current reporting threshold), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

Violation rate means the number of covered employees (as reported under § 219.801) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

§ 219.7 Waivers.

(a) A person subject to a requirement of this part may petition the FRA for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by Part 211 of this chapter. A petition for waiver of the Part 40 prohibition against stand down of an employee before the Medical Review Officer has completed the verification must also comply with § 40.21 of this title.

(c) If the FRA Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§ 219.9 Responsibility for compliance.

(a) Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad;

a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., § 219.105, which must be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates § 219.101 or § 219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues constitutes a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b)(1) In the case of joint operations, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under Subparts C and D of this part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad consistent with this part. However, nothing in this paragraph (b)(1) restricts the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions of this part against the host railroad, the employing railroad, or both.

(2) Where an employee of one railroad is required to participate in breath or body fluid testing under Subpart C or D of this part and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad must be made available to the employee on a reasonable basis.

(c) Any independent contractor or other entity that performs covered service for a railroad has the same responsibilities as a railroad under this

part, with respect to its employees who perform covered service. The entity's responsibility for compliance with this part may be fulfilled either directly by that entity or by the railroad's treating the entity's employees who perform covered service as if they were its own employees for purposes of this part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of such a clear delineation of responsibility, FRA will hold the railroad and the other entity jointly and severally liable for compliance.

§ 219.11 General conditions for chemical tests.

(a) Any employee who performs covered service for a railroad is deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service.

(b)(1) Each such employee must participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimen(s).

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) is considered a refusal to participate in testing, without regard to any subsequent provision of specimens.

(c) A covered employee who is required to be tested under subpart C or D of this part and who is taken to a medical facility for observation or treatment after an accident or incident is deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid specimen taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such specimen;

(2) The results of any laboratory tests for alcohol or any drug conducted by or for the treating facility on such specimen;

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time specimens were taken by the treating facility or prior to the time specimens were taken in compliance with this part; and

(4) The results of any breath tests for alcohol conducted by or for the treating facility.

(d) An employee required to participate in body fluid testing under subpart C of this part (post-accident toxicological testing) or testing subject to subpart H of this part shall, if requested by the representative of the railroad or the medical facility (including, under subpart H of this part, a non-medical contract collector), evidence consent to taking of specimens, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

(e) Nothing in this part may be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Any railroad employee who performs service for a railroad is deemed to have consented to removal of body fluid and/or tissue specimens necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C of this part as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

(g) Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) must be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the

supervisor in post-accident collections described in subpart C and Appendix C of this part. The duration of such training may not be less than 3 hours.

(h) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood specimens provided under this part. For purposes of this paragraph (h), all urine from a void constitutes a single specimen.

§ 219.13 Preemptive effect.

(a) Under section 20106 of title 49, United States Code, issuance of the regulations in this part preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of the regulations in this part to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 219.15 [Reserved]

§ 219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under sections 20107, 20108, 20111, and 20112 of title 49, United States Code; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from noncompliance with this part.

§ 219.19 [Reserved]

§ 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2130-0526.

(b) The information collection requirements are found in the following sections: 219.7, 219.23, 219.104, 219.201, 219.203, 219.205, 219.207, 219.209, 219.211, 219.213, 219.303, 219.401, 219.403, 219.405, 219.407, 219.501, 219.502, 219.503, 219.601, 219.605, 219.701, 219.801, 219.803, 219.901, and 219.903.

§ 219.23 Railroad policies.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations. Use of the mandated DOT form for drug or alcohol testing satisfies the requirements of this paragraph (a).

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D of this part, random selection, follow-up, etc.). Completion of the DOT alcohol or drug testing form indicating the basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph (b). Use of the DOT form for non-Federal tests is prohibited.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

(d) Each railroad must provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements.

(1) The railroad must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position.

(2) Each railroad must provide written notice to representatives of employee organizations of the availability of this information.

(e) *Required content.* The materials to be made available to employees must include detailed discussion of at least the following:

(1) The identity of the person designated by the railroad to answer employee questions about the materials.

(2) The classes or crafts of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear that the period of the work day the covered employee is required to be in compliance with this part is that period when the employee is on duty and is required to perform or is available to perform covered service.

(4) Specific information concerning employee conduct that is prohibited under subpart B of this part.

(5) In the case of a railroad utilizing the accident/incident and rule violation reasonable cause testing authority provided by this part, prior notice (which may be combined with the notice required by §§ 219.601(d)(1) and 219.607(d)(1)), to covered employees of the circumstances under which they will be subject to testing.

(6) The circumstances under which a covered employee will be tested under this part.

(7) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(8) The requirement that a covered employee submit to alcohol and drug tests administered in accordance with this part.

(9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences.

(10) The consequences for covered employees found to have violated Subpart B of this part, including the requirement that the employee be removed immediately from covered service, and the procedures under § 219.104.

(11) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04.

(12) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol, including utilization of the procedures set forth in subpart E of this part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(f) *Optional provisions.* The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

Subpart B—Prohibitions**§ 219.101 Alcohol and drug use prohibited.**

(a) *Prohibitions.* Except as provided in § 219.103—

(1) No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service.

(2) No employee may report for covered service, or go or remain on duty in covered service while—

(i) Under the influence of or impaired by alcohol;

(ii) Having .04 or more alcohol concentration in the breath or blood; or

(iii) Under the influence of or impaired by any controlled substance.

(3) No employee may use alcohol for whichever is the lesser of the following periods:

(i) Within four hours of reporting for covered service; or

(ii) After receiving notice to report for covered service.

(4) No employee tested under the provisions of this part whose test result indicates an alcohol concentration of .02 or greater but less than .04 may perform or continue to perform covered service functions for a railroad, nor may a railroad permit the employee to perform or continue to perform covered service, until the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(5) If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test must be considered negative and is not evidence of alcohol misuse. A railroad may not use a federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority. A railroad may take further action to compel cooperation in other breath or body fluid testing only if it has an independent basis for doing so.

(b) *Controlled substance.* "Controlled substance" is defined by § 219.5.

Controlled substances are grouped as follows: marijuana, narcotics (such as heroin and codeine), stimulants (such as cocaine and amphetamines), depressants (such as barbiturates and minor tranquilizers), and hallucinogens (such as the drugs known as PCP and LSD). Controlled substances include illicit drugs (Schedule I), drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

(c) *Railroad rules.* Nothing in this section restricts a railroad from imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section may not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor may it be construed to restrict a railroad from prohibiting such presence under its own rules.

§ 219.102 Prohibition on abuse of controlled substances.

No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by § 219.103.

§ 219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedules II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

§ 219.104 Responsive action.

(a) *Removal from covered service.* (1) If the railroad determines that an employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from covered service and the procedures described in

paragraphs (b) through (e) of this section apply.

(2) If an employee refuses to provide breath or a body fluid specimen or specimens when required to by the railroad under a mandatory provision of this part, the railroad must immediately remove the employee from covered service, and the procedures described in paragraphs (b) through (e) of this section apply.

(3)(i) This section does not apply to actions based on breath or body fluid tests for alcohol or drugs that are conducted exclusively under authority other than that provided in this part (e.g., testing under a company medical policy, for-cause testing policy wholly independent of subpart D of this part, or testing under a labor agreement).

(ii) This section and the information requirements listed in § 219.23 do not apply to applicants who refuse to submit to a pre-employment test or who have a pre-employment test with a result indicating the misuse of alcohol or controlled substances.

(b) *Notice.* Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice to the employee of the reason for this action.

(c) *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with §§ 219.101 and 219.102.

(2) The hearing must be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under sec. 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c).

(4) Nothing in this part may be deemed to abridge any additional

procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse action taken as a consequence of a positive test result in a test authorized or required by this part.

(5) Nothing in this part restricts the discretion of the railroad to treat an employee's denial of prohibited alcohol or drug use as a waiver of any privilege the employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) The railroad must comply with the return-to-service and follow-up testing requirements, and the Substance Abuse Professional conflict-of-interest prohibitions, contained in §§ 40.305, 40.307, and 40.299 of this title, respectively.

§ 219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of § 219.101 or § 219.102. As used in this section, the knowledge imputed to the railroad must be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with §§ 219.101 and 219.102 by each covered employee.

§ 219.107 Consequences of unlawful refusal.

(a) An employee who refuses to provide breath or a body fluid specimen or specimens when required to by the railroad under a mandatory provision of this part must be deemed disqualified for a period of nine (9) months.

(b) Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice of the reason for this action, and the procedures described in § 219.104(c) apply.

(c) The disqualification required by this section applies with respect to employment in covered service by any railroad with notice of such disqualification.

(d) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional

sanctions for the same or related conduct.

(e) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in § 219.104(d), and the employee must be subject to follow-up tests, as provided by that section.

Subpart C—Post-Accident Toxicological Testing

§ 219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, post-accident toxicological tests must be conducted after any event that involves one or more of the circumstances described in paragraphs (a)(1) through (4) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:

- (i) A fatality;
- (ii) A release of hazardous material lading from railroad equipment accompanied by—
 - (A) An evacuation; or
 - (B) A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or
- (iii) Damage to railroad property of \$1,000,000 or more.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an "impact accident" in § 219.5) that involves damage in excess of the current reporting threshold, resulting in—

- (i) A reportable injury; or
- (ii) Damage to railroad property of \$150,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(4) *Passenger train accident.* Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

(b) *Exceptions.* No test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and

documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1)(i) The railroad representative responding to the scene of the accident/incident must determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative must consider the need to obtain specimens as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgement in making the required determinations.

(ii) The railroad representative making the determinations required by this section may not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative must make the factual determinations required by this section.

(iii) Upon specific request made to the railroad by the Associate Administrator for Safety, FRA (or the Associate Administrator's delegate), the railroad must provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report must be affirmed by the decision maker and must be provided to FRA within 72 hours of the request. The report must include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

(iv) Any estimates of railroad property damage made by persons not at the scene must be based on descriptions of specific physical damage provided by the on-scene railroad representative.

(v) In the case of an accident involving passenger equipment, a host railroad may rely upon the damage estimates provided by the passenger railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirement that visible physical damage be specifically described.

(2) A railroad must not require an employee to provide blood or urine

specimens under the authority or procedures of this subject unless the railroad has made the determinations required by this section, based upon reasonable inquiry and good faith judgment. A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present. However, this section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in this part).

(3) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of specimen analysis, reporting, and other purposes.

(5) In the event specimens are collected following an event determined by FRA not to be a qualifying event within the meaning of this section, FRA directs its designated laboratory to destroy any specimen material submitted and to refrain from disclosing to any person the results of any analysis conducted.

§ 219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1)(i) Following each accident and incident described in § 219.201, the railroad (or railroads) must take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine specimens for toxicological testing by FRA. Such employees must cooperate in the provision of specimens as described in this part and Appendix C to this part.

(ii) If the conditions for mandatory toxicological testing exist, the railroad may also require employees to provide breath for testing in accordance with the procedures set forth in part 40 of this title and in this part, if such testing does not interfere with timely collection of required specimens.

(2) Such employees must specifically include each and every operating employee assigned as a crew member of any train involved in the accident or

incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees must also be required to provide specimens.

(3) An employee must be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) (an "impact accident"), § 219.201(a)(3) ("fatal train incident"), or § 219.201(a)(4) (a "passenger train accident with injury") if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident. The railroad representative must consider any such information immediately available at the time the qualifying event determination is made under § 219.201.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely specimen collection.* (1) The railroad must make every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident.

(2) This paragraph (b) must not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad must utilize other employees to perform such duties.

(3) In the case of a passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad must consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew must be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart must be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the specimen collection procedure. An employee may not be recalled for testing under this subpart if that employee has been released from

duty under the normal procedures of the railroad, except that an employee may be immediately recalled for testing if—

(i) The employee could not be retained in duty status because the employee went off duty under normal carrier procedures prior to being contacted by a railroad supervisor and instructed to remain on duty pending completion of the required determinations (e.g., in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time the employee went off duty);

(ii) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a major role in the cause or severity of the accident/incident; and

(iii) The accident/incident actually occurred during the employee's duty tour. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of specimen collection.* (1) Employees must be transported to an independent medical facility where the specimens must be obtained. The railroad must pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation must be made on the basis of the willingness of the facility to conduct specimen collection and the ability of the facility to complete specimen collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood may be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad must request the treating medical facility to obtain the specimens.

(d) *Obtaining cooperation of facility.*

(1) In seeking the cooperation of a medical facility in obtaining a specimen under this subpart, the railroad shall, as necessary, make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood specimens after having

been acquainted with the requirements of this subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8801 or (800) 424-8802, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required specimen.

(e) *Discretion of physician.* Nothing in this subpart may be construed to limit the discretion of a physician to determine whether drawing a blood specimen is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

§ 219.205 Specimen collection and handling.

(a) *General.* Urine and blood specimens must be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.

(b) *Information requirements.* In order to process specimens, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the specimens. Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the specimens. The railroad representative must request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74. One Form 6180.73 must be forwarded in the shipping kit with each group of specimens. One Form 6180.74 must be forwarded in the shipping kit for each employee who provides specimens. Forms 6180.73 and 6180.74 may be ordered from the laboratory specified in Appendix B to this part; the forms are also provided to railroads free of charge in the shipping kit. (See paragraph (c) of this section.)

(c) *Shipping kit.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping

kits for the purpose of routine handling of toxicological specimens under this subpart. Whenever possible, specimens must be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and Appendix C to this part.

(2) Kits may be ordered directly from the laboratory designated in Appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA's possession, rather than maintaining such kits on its property.

(d) *Shipment.* Specimens must be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in Appendix B to this part. Where express courier pickup is available, the railroad must request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the specimens are collected or for any other reason prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the specimens to the most expeditious point of shipment via air express, air freight or equivalent means. The railroad must maintain and document secure chain of custody of the kit from release by the medical facility to delivery for transportation, as described in Appendix C to this part.

§ 219.206 FRA access to breath test results.

Documentation of breath test results must be made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.

§ 219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in § 219.201, body fluid and/or tissue specimens must be obtained from the remains of the employee for toxicological testing. To ensure that specimens are timely collected, the railroad must immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue specimens. The railroad must also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary specimens, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8801 or (800) 424-8802 by providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue specimens from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the FRA Administrator under sections 20107 and 20108 of title 49, United States Code (but not the agent of the Secretary for purposes of the Federal Tort Claims Act (chapter 171 of title 28, United States Code)). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under this part.

(d) Appendix C to this part specifies body fluid and tissue specimens required for toxicological analysis in the case of a fatality.

§ 219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which specimens were obtained must provide prompt telephonic notification summarizing such events. Notification must immediately be provided to the duty officer at the National Response Center (NRC) at (800) 424-8802 and to the Office of Safety, FRA, at (202) 493-6313.

(2) Each telephonic report must contain:

(i) Name of railroad;

(ii) Name, title and telephone number of person making the report;

(iii) Time, date and location of the accident/incident;

(iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and

(v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a specimen and cause it to be provided to FRA as required by this subpart, the

railroad must make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under Part 225 of this chapter.

(c) If a test required by this section is not administered within four hours following the accident or incident, the railroad must prepare and maintain on file a record stating the reasons the test was not promptly administered. Records must be submitted to FRA upon request of the FRA Associate Administrator for Safety.

§ 219.211 Analysis and follow-up.

(a) The laboratory designated in Appendix B to this part undertakes prompt analysis of specimens provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Specimens are analyzed for alcohol and controlled substances specified by FRA under protocols specified by FRA, summarized in Appendix C to this part, which have been submitted to Health and Human Services for acceptance. Specimens may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer and the employee. The MRO and the railroad must treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory must be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with § 219.103) that could account for the laboratory findings. The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report must be in writing and must reference the employing railroad, accident/incident date, and location, and the envelope must be marked "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report must state whether the MRO reported the test

result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer may not disclose to FRA the underlying physical condition for which any medication was authorized or administered. The FRA is not bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating medical use of controlled substances consistent with § 219.103 (and other information concerning medically authorized drug use or administration provided incident to such testing) as administratively confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determination of probable cause. (However, as further provided in this section, FRA may provide results of testing under this subpart and supporting documentation to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond may do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, DC 20590 within 45 days of receipt of the test results. Any such submission must refer to the accident date, railroad and location, must state the position occupied by the employee on the date of the accident/incident, and must identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request will be made by the FRA on the basis of controlling law).

(f)(1) The toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of 49

U.S.C. 20903 (prohibiting use of the report for any purpose in a civil action for damages resulting from a matter mentioned in the report).

(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provision of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, may not be deemed to run as to any offense involving the accident or incident (i.e., such periods must be tolled).

(2) This provision may not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to the receipt to toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in § 219.201 (with respect to non-qualifying events), each specimen (including each split specimen) provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a specimen testing positive for alcohol or a controlled substance). Post-mortem specimens may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that his or her split specimen be tested by the designated laboratory or by another laboratory certified by Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in

writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, Federal Railroad Administration, Washington, DC 20590, and be designated "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The expense of any employee-requested split specimen test at a laboratory other than the laboratory designated under this subpart shall be borne by the employee.

§ 219.213 Unlawful refusals; consequences.

(a) *Disqualification.* An employee who refuses to cooperate in providing breath, blood or urine specimens following an accident or incident specified in this subpart must be withdrawn from covered service and must be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in § 219.107.

(b) *Procedures.* Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. The employee is entitled to the procedural protection set out in § 219.104(d).

(c) *Subject of hearing.* The hearing required by this section must determine whether the employee refused to submit to testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

Subpart D—Testing for Cause

§ 219.300 Mandatory reasonable suspicion testing.

(a) *Requirements.* (1) A railroad must require a covered employee to submit to an alcohol test when the railroad has reasonable suspicion to believe that the employee has violated any prohibition of subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to

undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

(2) A railroad must require a covered employee to submit to a drug test when the railroad has reasonable suspicion to believe that the employee has violated the prohibitions of subpart B of this part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(b)(1) With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.

(2) With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with § 219.11(g).

(c) Nothing in this section may be construed to require the conduct of alcohol testing or drug testing when the employee is apparently in need of immediate medical attention.

(d)(1) If a test required by this section is not administered within two hours following the determination under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not properly administered. If a test required by this section is not administered within eight hours of the determination under this section, the railroad must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test. Records must be submitted to FRA upon request of the FRA Administrator.

(2) [Reserved]

§ 219.301 Testing for reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or body fluid testing, or both, to determine compliance with §§ 219.101 and 219.102 or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of

this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid specimen under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

(b) *For cause breath testing.* In addition to reasonable suspicion as described in § 219.300, the following circumstances constitute cause for the administration of alcohol tests under this section:

(1) [Reserved]

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under Part 225 of this chapter, and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this chapter (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *For cause drug testing.* In addition to reasonable suspicion as described in § 219.300, each of the conditions set forth in paragraphs (b)(2) (“accident/incident”) and (b)(3) (“rule violation”) of this section as constituting cause for alcohol testing also constitutes cause with respect to drug testing.

(d) [Reserved]

(e) *Limitation for subpart C events.* The compulsory drug testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by § 219.201. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of specimens under Subpart C of this part.

§ 219.302 Prompt specimen collection; time limitation.

(a) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(b) No employee may be required to participate in alcohol or drug testing under this section after the expiration of an eight-hour period from—

(1) The time of the observations or other events described in this section; or

(2) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(c) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave).

(d) As used in this subpart, a “responsible railroad supervisor” means any responsible line supervisor (e.g., a trainmaster or road foreman of engines)

or superior official in authority over the employee to be tested.

(e) In the case of a drug test, the eight-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the drug testing specimens within that period.

(f) [Reserved]

(g) Section 219.23 prescribes the notice to an employee that is required to provide breath or a body fluid specimen under this part.

Subpart E—Identification of Troubled Employees

§ 219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad must adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter “voluntary referral policy”); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter “co-worker report policy”).

(c) A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §§ 219.403 and 219.405 or by complying with § 219.407.

(d) If a railroad complies with this part by adopting, publishing and implementing policies consistent with §§ 219.403 and 219.405, the railroad must make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart may be construed to—

(1) Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy;

(2) Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable detection of a rule violation by a supervising employee; or

(3) Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or

criminal offenses, except as specifically provided by this subpart.

§ 219.403 Voluntary referral policy.

(a) *Scope.* This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad’s responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Required provisions.* A voluntary referral policy must include the following provisions:

(1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee’s alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee’s collective bargaining unit. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.

(2) Except as may be provided under paragraph (c) of this section, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential.

(3) The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee’s alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the substance abuse professional. Approval to return to service may not be unreasonably withheld.

(5) With respect to a certified locomotive engineer or a candidate for certification, the railroad must meet the requirements of § 240.119(e) of this chapter.

(c) *Optional provisions.* A voluntary referral policy may include any of the following provisions, at the option of the railroad:

(1) The policy may provide that the rule of confidentiality is waived if—

(i) The employee at any time refuses to cooperate in a recommended course of counseling or treatment; and/or

(ii) The employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(2) The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service.

(3) The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under § 219.405 (co-worker report policy).

(4) The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either:

(i) During non-duty hours (i.e., at a time when the employee is off duty); or

(ii) While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§ 219.405 Co-worker report policy.

(a) *Scope.* This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

(b) *Employment relationship.* A co-worker report policy must provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under this part or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

(c) *General conditions and procedures.* (1) The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this part or the railroad's alcohol and drug rules.

(2) If the railroad representative determines that the employee is in violation, the railroad may immediately remove the employee from service in accordance with its existing policies and procedures.

(3) The employee must elect to waive investigation on the rule charge and must contact the substance abuse professional within a reasonable period specified by the policy.

(4) The substance abuse professional must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the professional with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the professional.

(d) *When treatment is required.* If the substance abuse professional determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures apply:

(1) The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

(2) The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the substance abuse professional.

(3) The railroad must promptly return the employee to service, on recommendation of the substance abuse professional, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be unreasonably withheld.

(4) Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed 60 months from the date the employee was originally withdrawn from service.

(e) *When treatment is not required.* If the substance abuse professional determines that the employee is not affected by an identifiable and treatable mental or physical disorder—

(1) The railroad must return the employee to service within 5 days after completion of the evaluation.

(2) During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

(f) *Follow-up tests.* A railroad may conduct return-to-service and/or follow-up tests (as described in § 219.104) of an employee who waives investigation and is determined to be ready to return to service under this section.

§ 219.407 Alternate policies.

(a) In lieu of a policy under § 219.403 (voluntary referral) or § 219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies have the written concurrence of the recognized representatives of such employees.

(b) The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy applies in lieu of the policy required by § 219.403, § 219.405, or both.

(c) The railroad must file the agreement or other document described in paragraph (b) of this section with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad must file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing and implementing the policies required by §§ 219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

Subpart F—Pre-Employment Tests

§ 219.501 Pre-employment drug testing.

(a) Prior to the first time a covered employee performs covered service for a railroad, the employee must undergo testing for drugs. No railroad may allow a covered employee to perform covered service, unless the employee has been administered a test for drugs with a

result that did not indicate the misuse of controlled substances. This requirement applies to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service.

(b) As used in subpart H of this part with respect to a test required under this subpart, the term covered employee includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record may be maintained of the declination.

§ 219.502 Pre-employment alcohol testing.

(a) A railroad may, but is not required to, conduct pre-employment alcohol testing under this part. If a railroad chooses to conduct pre-employment alcohol testing, the railroad must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

(b) As used in subpart H of this part, with respect to a test authorized under this subpart, the term covered employee includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record may be maintained of the declination.

§ 219.503 Notification; records.

The railroad must provide for medical review of drug test results as provided in subpart H of this part. The railroad must notify the applicant of the results of the drug and alcohol tests in the same

manner as provided for employees in subpart H of this part. Records must be maintained confidentially and be retained in the same manner as required under subpart J of this part for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

§ 219.505 Refusals.

An applicant who has refused to submit to pre-employment testing under this section may not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the discretion of the railroad to entertain a subsequent application for employment from the same person.

Subpart G—Random Alcohol and Drug Testing Programs

§ 219.601 Railroad random drug testing programs.

(a) *Submission.* Each railroad must submit for FRA approval a random testing program meeting the requirements of this subpart. A railroad commencing operations must submit such a program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval by the FRA Administrator. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A railroad already subject to this subpart that becomes subject to this subpart with respect to one or more additional employees must amend its program not later than 60 days after these employees become subject to this subpart and file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular specimens were collected.

(2)(i) The program must select for testing a sufficient number of employees so that, during the first 12 months—

(A) The random testing program is spread reasonably through the 12-month period.

(B) [Reserved]

(ii) During the subsequent 12-month period, the program must select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the number of covered employees.

Annualized percentage rates must be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Associate Administrator for Safety, FRA. If the railroad conducts random testing through a consortium, the annual rate may be calculated for each individual employer or for the total number of covered employees subject to random testing by the consortium.

(3) Railroad random testing programs must ensure to the maximum extent practicable that each employee perceives the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection may not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

(5) The program must include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee must be subject to testing only while on duty. Only employees who perform covered service for the railroad are subject to testing under this part. In the case of employees who during some duty tours perform

covered service and during others do not, the railroad program must specify the extent to which, and the circumstances under which they are to be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is notified for random drug testing the employee will be informed that selection was made on a random basis.

(c) *Approval.* The Associate Administrator for Safety, FRA, will notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Associate Administrator for Safety determines that the program does not conform to those criteria, the Associate Administrator for Safety will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad must resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* (1) No later than 45 days prior to commencement of random testing, the railroad must publish to each of its covered employees, individually, a written notice that he or she will be subject to random drug testing under this part. Such notice must state the date for commencement of the program, must state that the selection of employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (d)(1) creates a defense to a violation of § 219.102.

(2) A railroad commencing operations must submit a random testing program 60 days after doing so. The railroad must implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator.

§ 219.602 FRA Administrator's determination of random drug testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing must be 50 percent of covered employees.

(b) The FRA Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from railroads, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.803 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 219.803 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as a result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process.

(f) The railroad must randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate

not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the railroad conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual railroad or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT agency drug testing rule.

(g) Each railroad must ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad, the employee must be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(i) If a railroad is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

§ 219.603 Participation in drug testing.

A railroad shall, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with § 219.102, and the employee must provide the required specimen and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

§ 219.605 Positive drug test results; procedures.

(a) [Reserved]

(b) Procedures for administrative handling by the railroad in the event a specimen provided under this subpart is reported as positive by the MRO are set forth in § 219.104. The responsive action required in § 219.104 is not stayed pending the result of a retest or split specimen test.

§ 219.607 Railroad random alcohol testing programs.

(a) Each railroad must submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A railroad commencing operations must submit a random alcohol testing program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval. If, after approval, a railroad desires to amend the random alcohol testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

(b) *Form of programs.* Random alcohol testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular specimens were collected.

(2) The program must include testing procedures and safeguards, and, consistent with this part, procedures for action based on tests where the employee is found to have violated § 219.101.

(3) The program must ensure that random alcohol tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(4) The program must ensure to the maximum extent practicable that each covered employee perceives the possibility that a random alcohol test may be required at any time the employee reports for work and at any time during the duty tour (except any

period when the employee is expressly relieved of any responsibility for performance of covered service).

(5) An employee may be subject to testing only while on duty. Only employees who perform covered service for the railroad may be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program may specify the extent to which, and the circumstances under which they are subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

(6) Testing must be conducted promptly, as provided in § 219.701(b)(1).

(7) Each time an employee is notified for random alcohol testing the employee must be informed that selection was made on a random basis.

(8) Each railroad must ensure that each covered employee who is notified of selection for random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the railroad must instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(c) *Implementation.* (1) No later than 45 days prior to commencement of random alcohol testing, the railroad must publish to each of its covered employees, individually, a written notice that the employee will be subject to random alcohol testing under this part. Such notice must state the date for commencement of the program, must state that the selection of employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.101 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (c)(1) creates a defense to a violation of § 219.101. This notice may be combined with the notice or policy statement required by § 219.23.

(2) A railroad commencing operations must submit a random testing program 60 days after doing so. The railroad must implement its approved random testing program not later than the

expiration of 60 days from approval by the Administrator.

§ 219.608 FRA Administrator's determination of random alcohol testing rate.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing must be 25 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for the determination is drawn from the alcohol MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 219.801 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 219.801 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 219.801 for any calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The railroad must randomly select and test a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the railroad conducts random alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random testing at the same minimum annual percentage rate under this part or any DOT agency alcohol testing rule.

(f) If a railroad is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

§ 219.609 Participation in alcohol testing.

A railroad must, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in breath testing to determine compliance with § 219.101, and the employee must provide the required breath and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

§ 219.611 Test result indicating prohibited alcohol concentration; procedures.

Procedures for administrative handling by the railroad in the event an employee's confirmation test indicates an alcohol concentration of .04 or greater are set forth in § 219.104.

Subpart H—Drug and Alcohol Testing Procedures

§ 219.701 Standards for drug and alcohol testing.

(a) Drug testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(b) Alcohol testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(c) Each covered employee who is notified of selection for testing and who is not performing covered service at the time of notification must proceed to the testing site immediately. The railroad must ensure that an employee who is performing covered service at the time of notification shall, as soon as possible without affecting safety, cease to perform covered service and proceed to the testing site.

Subpart I—Annual Report

§ 219.801 Reporting alcohol misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA by March 15 of each year a report covering the previous calendar year (January 1—December 31), summarizing the results of its alcohol misuse prevention program.

(b) A railroad that is subject to more than one DOT agency alcohol regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any alcohol test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rule authorizes or requires the test. The test result information must be directed to the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted. The report must be submitted on one of the two forms specified by the FRA.

(d) Each report required by this section that contains information on an alcohol screening test result of .02 or

greater or a violation of the alcohol misuse provisions of subpart B of this part must include the following elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3)(i) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration equal of .02 or greater but less than .04, by type of test and employee category.

(5) Number of confirmation alcohol tests indicating an alcohol concentration of .04 or greater, by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of .04 or greater.

(7) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(8) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(9) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted, the number of confirmation tests conducted, the number of confirmation tests of .02 or greater but less than .04, and the number of confirmation test results of .04 or greater.

(10) Number of covered employees who were found to have violated other provisions of subpart B of this part, and the action taken in response to the violation.

(11) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of .04 or greater.

(12) Number of covered employees who refused to submit to a random alcohol test required under this part.

(13) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(14) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use during the reporting period.

(e) Each report required by this section that contains information on neither a screening test result of 0.02 or greater nor a violation of the alcohol misuse provisions of subpart B of this part must include the following informational elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal, other).

(2) Number of covered employees in each category subject to alcohol testing under the alcohol misuse regulation of another DOT agency, identified by each agency.

(3) Number of screening tests by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up) and employee category.

(4) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of .04 or greater, or who have violations of other alcohol misuse provisions, who were returned to service in covered positions (having complied with the recommendations of a substance abuse professional as described in § 219.104(d)).

(5) For cause breath alcohol testing under railroad authority, by reason for test (accident/injury or rules violation), the number of screening tests conducted.

(6) For cause breath alcohol testing under FRA authority, by reason for test (reasonable suspicion, accident/injury or rules violation), the number of screening tests conducted.

(7) Number of covered employees who refused to submit to a random alcohol test required under this part.

(8) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(9) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral,

and performance indicators of probable alcohol use during the reporting period.

§ 219.803 Reporting drug misuse prevention program results in a management information system.

(a) Each railroad that has 400,000 or more total manhours shall submit to FRA an annual report covering the calendar year, summarizing the results of its drug misuse prevention program.

(b) A railroad that is subject to more than one DOT agency drug regulation must identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered functions. Prior to conducting any drug test on a covered employee subject to the regulations of more than one DOT agency, the railroad must determine which DOT agency regulation or rules authorizes or requires the test. The test result information must be directed to the appropriate DOT agency or agencies.

(c) Each railroad must ensure the accuracy and timeliness of each report submitted by the railroad or a consortium.

(d) Each railroad must submit the required annual reports no later than March 15 of each year. The report must be submitted on one of the forms specified by the FRA. A railroad with no positive test result must submit the "Drug Testing Management Information System Zero Positives Data Collection Form." All other railroads must submit the "Drug Testing Management Information System Data Collection Form."

(e) A railroad submitting the "Drug Testing Management Information System Data Collection Form" must address each of the following data elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency.

(3) Number of specimens collected by type of test (i.e., pre-employment and covered service transfer, random, post-positive return to service, and follow-up), and employee category.

(4) Number of specimens verified negative by a Medical Review Officer (MRO) by type of test, and employee category.

(5) Number of specimens verified positive for one or more of the five drugs by a MRO by type of test, employee category, and type of drug. If a test has been verified positive by a

MRO for multiple drugs, the employer should report the result as a positive for each type of drug.

(6) Number of applicants or transfers denied employment or transfer to a covered service position following a verified positive pre-employment drug test.

(7) Number of employees, currently in or having completed rehabilitation or otherwise qualified to return to duty, who have returned to work in a covered position during the reporting period.

(8) For cause drug testing, the number of specimens collected by reason for test (i.e., accident/injury, rules violation, or reasonable suspicion), type of authority (railroad or FRA), employee category and type of drug, including drugs tested for under railroad authority only.

(9) For cause drug testing, the number of specimens verified negative by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(10) For cause drug testing, the number of specimens verified positive by a MRO by reason for test, type of authority, employee category and type of drug, including drugs tested for under railroad authority only.

(11) For cause breath alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result (i.e., breath alcohol concentration (BAC) = or > .02), and the number of refusals.

(12) For cause urine alcohol testing under railroad authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

(13) For cause breath alcohol testing under FRA authority, by reason for test, the number of tests conducted, the number of tests with a positive result, and the number of refusals.

(14) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(15) Based on the tests and inspections described in paragraph (e)(14) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(16) Based on the tests and inspections described in paragraph (e)(14) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(17) Number of specimens verified positive for more than one drug, by employee category and type of drug.

(18) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(19) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(20) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

(f) A railroad authorized to submit the "Drug Testing Management Information System Zero Positives Data Collection Form" must address each of the following data elements:

(1) Number of covered employees by employee category (i.e., train service, engine service, dispatcher/operator, signal service, other).

(2) Number of covered employees in each category subject to testing under the anti-drug regulations of more than one DOT agency, identified by each agency.

(3) Number of specimens collected and verified negative by type of test (i.e., pre-employment and covered service transfer, random, for cause due to accident/incident, for cause due to rules violation, reasonable suspicion, post-positive return to service, and follow-up), and employee category.

(4) For cause breath alcohol testing under railroad authority, the number of tests conducted by reason for test (i.e., accident/injury, rules violation, or reasonable suspicion).

(5) For cause urine alcohol testing under railroad authority, the number of tests conducted by reason for test.

(6) For cause breath alcohol testing under FRA authority, the number of tests conducted by reason for test.

(7) Total number of covered employees observed in documented operational tests and inspections related to enforcement of the railroad's rules on alcohol and drug use.

(8) Based on the tests and inspections described in paragraph (f)(7) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on drugs.

(9) Based on the tests and inspections described in paragraph (f)(7) of this section, the number of covered employees charged with a violation of the railroad's Rule G or similar rule or policy on alcohol.

(10) Number of covered employees who refused to submit to a random drug test required under FRA authority.

(11) Number of covered employees who refused to submit to a non-random drug test required under FRA authority.

(12) Number of supervisory personnel who have received the required initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use during the reporting period.

Subpart J—Recordkeeping Requirements

§ 219.901 Retention of alcohol testing records.

(a) *General requirement.* In addition to the records required to be kept by part 40 of this title, each railroad must maintain alcohol misuse prevention program records in a secure location with controlled access as set out in this section.

(b) Each railroad must maintain the following records for a minimum of five years:

(1) A summary record of each covered employee's test results; and

(2) A copy of the annual report summarizing the results of its alcohol misuse prevention program (if required to submit the report under § 219.801(a)).

(c) Each railroad must maintain the following records for a minimum of two years:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(iv) Documents generated in connection with decisions on post-accident testing.

(v) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide an adequate specimen.

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training:

(i) Materials on alcohol abuse awareness, including a copy of the railroad's policy on alcohol abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a

determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.903 Retention of drug testing records.

(a) *General requirement.* In addition to the records required to be kept by part 40 of this title, each railroad must maintain drug abuse prevention program records in a secure location with controlled access as set forth in this section.

(b) (1) Each railroad must maintain the following records for a minimum of five years:

(i) A summary record of each covered employee's test results; and

(ii) A copy of the annual report summarizing the results of its drug misuse prevention program (if required to submit under § 219.803(a)).

(2) Each railroad must maintain the following records for a minimum of two years.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process:

(i) Documents relating to the random selection process.

(ii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iii) Documents generated in connection with decisions on post-accident testing.

(iv) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide a specimen.

(2) Records related to test results:

(i) The railroad's copy of the drug test custody and control form, including the results of the test.

(ii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training:

(i) Materials on drug abuse awareness, including a copy of the railroad's policy on drug abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 219.905 Access to facilities and records.

(a) Release of covered employee information contained in records required to be maintained under §§ 219.901 and 219.903 must be in accordance with part 40 of this title and with this section. (For purposes of this section only, urine drug testing records are considered equivalent to breath alcohol testing records.)

(b) Each railroad must permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, United States Department of Transportation, or any DOT agency with regulatory authority over the railroad or any of its covered employees.

(c) Each railroad must make available copies of all results for railroad alcohol and drug testing programs conducted under this part and any other

information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or covered employee.

Appendix A to Part 219—Schedule of Civil Penalties

The following chart lists the schedule of civil penalties:

PENALTY SCHEDULE ¹

Section ²	Violation	Willful violation
Subpart A—General		
219.3 Application:		
Railroad does not have required program	\$5,000	\$7,500
219.11 General conditions for chemical tests:		
(b)(1) Employee unlawfully refuses to participate in testing	2,500	5,000
(b)(2) Employer fails to give priority to medical treatment	3,000	8,000
(b)(3) Employee fails to remain available	2,500	5,000
(b)(4) Employee tampers with specimen	2,500	5,000
(d) Employee unlawfully required to execute a waiver of rights	2,500	5,000
(e) Railroad used or authorized the use of coercion to obtain specimens	2,500	7,500
(g) Failure to meet supervisory training requirements or program of instruction not available or program not complete	2,500	5,000
(h) Urine or blood specimens provided for Federal testing were used for non-authorized testing	2,500	5,000
219.23 Railroad policies:		
(a) Failure to provide written notice of FRA test	1,000	4,000
(b) Failure to provide written notice of basis for FRA test	1,000	4,000
(c) Use of Subpart C form for other test	1,000	4,000
(d) Failure to provide educational materials	1,000	4,000
(e) Educational materials fail to explain requirements of this part and/or include required content	1,000	4,000
(f) Non-Federal provisions are clearly described as independent authority	1,000	4,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use prohibited:		
Employee violates prohibition(s)	10,000	.....
219.103 Prescribed and over-the-counter drugs:		
(a) Failure to train employee properly on requirements	2,500	5,000
219.104 Responsive action:		
(a) Failure to remove employee from covered service immediately	3,000	8,000
(b) Failure to provide notice for removal	1,000	4,000
(c) Failure to provide prompt hearing	2,000	7,000
(d) Employee improperly returned to service	2,000	7,000
219.105 Railroad's duty to prevent violations:		
(a) Employee improperly permitted to remain in covered service	7,000	10,000
(b) Failure to exercise due diligence to assure compliance with prohibition	2,500	5,000
219.107 Consequences of unlawful refusal:		
(a) Failure to disqualify an employee for nine months following a refusal	5,000	7,500
(e) Employee unlawfully returned to service	5,000	7,500
Subpart C—Post-Accident Toxicological Testing		
219.201 Events for which testing is required:		
(a) Failure to test after qualifying event (each employee not tested is a violation)	5,000	7,500
(c)(1)(i) Failure to make good faith determination	2,500	5,000
(c)(1)(ii) Failure to provide requested decision report to FRA	1,000	3,000
(c)(2) Testing performed after non-qualifying event	5,000	10,000
219.203 Responsibilities of railroads and employees:		
(a)(1)(i) and (a)(2)(i) Failure to properly test/exclude from testing	2,500	5,000
(a)(1)(ii) and (a)(2)(ii) Non-covered service employee tested	2,500	5,000
(b)(1) Delay in obtaining specimens due to failure to make every reasonable effort	2,500	5,000
(c) Independent medical facility not utilized	2,500	5,000
(d) Failure to report event or contact FRA when intervention required	1,000	3,000
219.205 Specimen collection and handling:		
(a) Failure to observe requirements with respect to specimen collection, marking and handling	2,500	5,000
(b) Failure to provide properly prepared forms with specimens	2,500	5,000
(d) Failure to promptly or properly forward specimens	2,500	5,000
219.207 Fatality:		
(a) Failure to test	5,000	7,500
(a)(1) Failure to ensure timely collection and shipment of required specimens	2,500	5,000
(b) Failure to request assistance when necessary	2,500	5,000
219.209 Reports of tests and refusals:		

PENALTY SCHEDULE 1—Continued

Section ²	Violation	Willful violation
(a)(1) Failure to provide telephonic report	1,000	2,000
(b) Failure to provide written report of refusal to test	1,000	2,000
(c) Failure to maintain report explaining why test not conducted within 4 hours	1,000	2,000
219.211 Analysis and follow-up:		
(c) Failure of MRO to report review of positive results to FRA	2,500	5,000
Subpart D—Testing for Cause		
219.300 Mandatory reasonable suspicion testing:		
(a)(1) Failure to test when reasonable suspicion criteria met	5,000	7,500
(a)(2) Tested when reasonable suspicion criteria not met	5,000	7,500
219.301 Testing for reasonable cause:		
(a) Event did not occur during daily tour	2,500	5,000
(b)(2) Tested when accident/incident criteria not met	5,000	7,500
(b)(3) Tested when operating rules violation criteria not met	5,000	7,500
219.302 Prompt specimen collection:		
(a) Specimen collection not conducted promptly	2,500	5,000
Subpart E—Identification of Troubled Employees		
219.401 Requirement for policies:		
(b) Failure to publish and/or implement required policy	2,500	5,000
219.407 Alternate policies:		
(c) Failure to file agreement or other document or provide timely notice or revocation	2,500	5,000
Subpart F—Pre-Employment Tests		
219.501 Pre-employment tests:		
(a) Failure to perform pre-employment drug test before first time employee performs covered service	2,500	5,000
Subpart G—Random Testing Programs		
219.601 Railroad random drug programs:		
(a)(1) Failure to file a random program	2,500	5,000
(a)(2) Failure to file amendment to program	2,500	5,000
(b) Failure to meet random testing criteria	2,500	5,000
(b)(1)(i) Failure to use a neutral selection process	2,500	5,000
(b)(2)(i)(B) Testing not spread throughout the year	2,500	5,000
(b)(3) Testing not distributed throughout the day	2,500	5,000
(b)(4) Advance notice provided to employee	2,500	5,000
(b)(6) Testing when employee not on duty	2,500	5,000
219.601A Failure to include covered service employee in pool	2,500	5,000
219.602 Administrator's determination of drug testing rate:		
(f) Total number of tests below minimum random drug testing rate	2,500	5,000
219.603 Participation in drug testing:		
Failure to document reason for not testing selected employee	2,500	5,000
219.607 Railroad random alcohol programs:		
(a)(1) Failure to file a random alcohol program	2,500	5,000
(a)(2) Failure to file amendment to program	2,500	5,000
(b) Failure to meet random testing criteria	2,500	5,000
(b)(1) Failure to use a neutral selection process	2,500	5,000
(b)(5) Testing when employee not on duty	2,500	5,000
(b)(8) Advance notice provided to employee	2,500	5,000
219.607A Failure to include covered service employee in pool	2,500	5,000
219.608 Administrator's determination of random alcohol testing rate:		
(e) Total number of tests below minimum random alcohol testing rate	2,500	5,000
219.609 Participation in alcohol testing:		
Failure to document reason for not testing selected employee	2,500	5,000
Subpart H—Drug and Alcohol Testing Procedures		
219.701 Standards for drug and alcohol testing:		
(a) Failure to comply with Part 40 procedures in Subpart B, D, F, or G testing	-5,000	-7,500
(b) Testing not performed in a timely manner	2,500	5,000
Subpart I—Annual Report		
219.801 Reporting alcohol misuse prevention program results in a management information system:		
(a) Failure to submit MIS report on time	2,500	5,000
(c) Failure to submit accurate MIS report	2,500	5,000
(d) Failure to include required data	2,500	5,000
219.803 Reporting drug misuse prevention program results in a management information system:		
(c) Failure to submit accurate MIS report	2,500	5,000
(d) Failure to submit MIS report on report	2,500	5,000
(e) Failure to include required data	2,500	5,000
Subpart J—Recordkeeping Requirements		
219.901 Retention of Alcohol Testing Records:		
(a) Failure to maintain records required to be kept by Part 40	2,500	5,000
(b) Failure to maintain records required to be kept for five years	2,500	5,000
(c) Failure to maintain records required to be kept for two years	2,500	5,000
219.903 Retention of Drug Testing Records:		

PENALTY SCHEDULE ¹—Continued

Section ²	Violation	Willful violation
(a) Failure to maintain records required to be kept by Part 40	2,500	5,000
(b) Failure to maintain records required to be kept for five years	2,500	5,000
(c) Failure to maintain records required to be kept for two years	2,500	5,000
219.905 Access to facilities and records:		
(a) Failure to release records in this subpart in accordance with Part 40	2,500	5,000
(b) Failure to permit access to facilities	2,500	5,000
(c) Failure to provide access to results of railroad alcohol and drug testing programs	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. The FRA Administrator reserves the right to assess a penalty of up to \$22,000 for any violation, including ones not listed in this penalty schedule, where circumstances warrant. See 49 CFR Part 209, appendix A.

² The penalty schedule uses section numbers from 49 CFR Part 219; and if more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code" (e.g., "A"), which is used to facilitate assessment of civil penalties. For convenience, penalty citations will cite the CFR section and the penalty code, if any (e.g., "Sec. 219.11A") FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation.

Appendix B to Part 219—Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under Subpart C of this part: NWT Inc., 1141 E. 3900 South, Suite A-110, Salt Lake City, UT 84124, Telephone: (801) 268-2431 (Day), (801) 483-3383 (Night/Weekend).

Appendix C to Part 219—Post-Accident Testing Specimen Collection

1.0 *General.*

This appendix prescribes procedures for collection of specimens for mandatory post-accident testing pursuant to Subpart C of this part. Collection of blood and urine specimens is required to be conducted at an independent medical facility. (*Surviving Employees*)

2.0 *Surviving Employees.*

This unit provides detailed procedures for collecting post-accident toxicological specimens from surviving employees involved in train accidents and train incidents, as required by Subpart C of this part. Subpart C specifies qualifying events and employees required to be tested.

2.1 *Collection Procedures; General.*

a. All forms and supplies necessary for collection and transfer of blood and urine specimens for three surviving employees can be found in the FRA post-accident shipping box, which is made available to the collection site by the railroad representative.

b. Each shipping box contains supplies for blood/urine collections from three individuals, including instructions and necessary forms. The railroad is responsible for ensuring that materials are fresh, complete and meet FRA requirements.

2.1.1 *Responsibility of the Railroad Representative.*

a. In the event of an accident/incident for which testing is required under Subpart C of this part, the railroad representative shall follow the designated set of instructions, and, upon arrival at the independent medical facility, promptly present to the collection facility representative a post-accident shipping box or boxes with all remaining sets of instructions. (Each box contains supplies to collect specimens from three employees.)

The railroad representative shall request the collection facility representative to review the instructions provided and, through qualified personnel, provide for collection of the specimens according to the procedures set out.

b. The railroad representative shall undertake the following additional responsibilities—

1. Complete Form FRA 6180.73 (revised), Accident Information Required for Post-Accident Toxicological Testing (49 CFR Part 219), describing the testing event and identifying the employees whose specimens are to be deposited in the shipping box.

2. As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical facility personnel.

3. Consistent with the policy of the collection facility, monitor the progress of the collection procedure.

Warning: Monitor but do not directly observe urination or otherwise disturb the privacy of urine or blood collection. Do not handle specimen containers, bottles or tubes (empty or full). Do not become part of the collection process.

2.1.2 *Employee Responsibility.*

a. An employee who is identified for post-accident toxicological testing shall cooperate in testing as required by the railroad and personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

1. Provide a blood specimen, which a qualified medical professional or technician will draw using a single-use sterile syringe. The employee should be seated for this procedure.

2. Provide, in the privacy of an enclosure, a urine specimen into a plastic collection cup. Deliver the cup to the collector.

3. Do not let the blood and urine specimens that you provided leave your sight until they have been properly sealed and initialed by you.

4. Certify the statement in Step 4 of the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR 219) (Form FRA F 6180.74 (revised)).

5. If required by the medical facility, complete a separate consent form for taking of the specimens and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 *The Collection.*

Exhibit C-1 contains instructions for collection of specimens for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions are also contained in each post-accident shipping box and shall be provided to collection facility personnel involved in the collection and/or packaging of specimens for shipment. (*Post Mortem Collection*)

3.0 *Fatality.*

This unit provides procedures for collecting post-accident body fluid/tissue specimens from the remains of employees killed in train accidents and train incidents, as required by Subpart C of this part. Subpart C specifies qualifying events and employees required to be tested.

3.1 *Collection.*

In the event of a fatality for which testing is required under Subpart C of this part, the railroad shall promptly make available to the custodian of the remains a post-accident shipping box. The railroad representative shall request the custodian to review the instructions contained in the shipping box and, through qualified medical personnel, to provide the specimens as indicated. (*Surviving Employees and Fatalities*)

4.0 *Shipment.*

a. The railroad is responsible for arranging overnight transportation of the sealed shipping box containing the specimens. When possible without incurring delay, the box should be delivered directly from the collection personnel providing the specimens to an overnight express service courier. If it becomes necessary for the railroad to transport the box from point of collection to point of shipment, then—

1. Individual kits and the shipping box shall be sealed by collection personnel before the box is turned over to the railroad representative;

2. The railroad shall limit the number of persons handling the shipping box to the minimum necessary to provide for transportation;

3. If the shipping box cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and

4. The railroad representatives handling the box shall document chain of custody of the shipping box and shall make available such documentation to FRA on request.

Exhibit C-1—Instructions for Collection of Blood and Urine Specimens: Mandatory Post-Accident Toxicological Testing

A. Purpose

These instructions are for the use of personnel of collection facilities conducting collection of blood and urine specimens from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

a. Railroad employees have consented to provision of specimens for analysis by the Federal Railroad Administration as a condition of employment (49 CFR 219.11). A private, controlled area should be designated for collection of specimens and completion of paperwork.

b. Only one specimen should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific specimen has been labeled, sealed and documented.

c. Please remember two critical rules for the collections:

d. All labeling and sealing must be done in the sight of the donor, with the specimen never having left the donor's presence until the specimen has been labeled, sealed and initialed by the donor.

e. Continuous custody and control of blood and urine specimens must be maintained and documented on the forms provided. In order to do this, it is important for the paperwork and the specimens to stay together.

f. To the extent practical, blood collection should take priority over urine collection. To limit steps in the chain of custody, it is best if a single collector handles both collections from a given employee.

g. You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised)), consisting of six Steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

a. The employee donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

b. The donor should remove all unnecessary outer garments such as coats or jackets, but may retain valuables, including a wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

a. Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes and the Control Form.

b. Ask the donor to complete STEP 1 on the Control Form.

c. With the donor seated, draw two (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated gray-top tubes provided).

CAUTION: Do not use alcohol or an alcohol-based swab to cleanse the venipuncture site.

d. Once both tubes are filled and the site of venipuncture is protected, immediately—

1. Seal and label each tube by placing a numbered blood specimen label from the label set on the Control Form over the top of the tube and securing it down the sides.

2. Ask the donor to initial each label. Please check to see that the initials match the employee's name and note any discrepancies in the "Remarks" block of the Control Form.

3. As collector, sign and date each blood tube label at the place provided.

4. Skip to STEP 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood specimens from the donor.

5. Complete STEP 2 on the form.

6. Return the blood tubes into the individual kit. Keep the paperwork and specimens together. If another collector will be collecting the urine specimen from this employee, transfer both the form and the individual kit with blood tubes to that person, showing the transfer of the blood tubes on the second line of STEP 5 (the chain of custody block).

E. Collect Urine

a. The urine collector should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup with temperature device affixed enclosed in a heat-seal bag (with protective seal intact), two 90 ml urine specimen bottles with caps and one biohazard bag (with absorbent) also enclosed in a heat-seal bag (with protective seal intact), and the Control Form. Blood specimens already collected must remain in the collector's custody and control during this procedure.

b. After requiring the employee to wash his/her hands, the collector should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the box) placed in any toilet bowl, tank, or other standing water.

c. The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any material (soap, etc.) that could be used to adulterate the specimen, the collector should monitor the provision of the specimen from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form.

d. The collector should then proceed as follows:

e. Unwrap the collection cup in the employee's presence and hand it to the

employee (or allow the employee to unwrap it).

f. Ask the employee to void at least 60 ml into the collection cup (at least to the line marked).

g. Leave the private enclosure.

IF THERE IS A PROBLEM WITH URINATION OR Specimen QUANTITY, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS.

h. Once the void is complete, the employee should exit the private enclosure and deliver the specimen to the collector. Both the collector and the employee must proceed immediately to the labeling/sealing area, with the specimen never leaving the sight of the employee before being sealed and labeled.

i. Upon receipt of the specimen, proceed as follows:

1. In the full view of the employee, remove the wrapper from the two urine specimen bottles. Transfer the urine from the collection cup into the specimen bottles (at least 30 ml in bottle A and at least 15 ml in bottle B).

2. As you pour the specimen into the specimen bottles, please inspect for any unusual signs indicating possible adulteration or dilution. Carefully secure the tops. Note any unusual signs under "Remarks" at STEP 3 of the Control Form.

3. Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at STEP 3 of the Control Form.

IF THERE IS A PROBLEM WITH THE URINE Specimen, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS.

4. Remove the urine bottle labels from the Control Form. The labels are marked "A" and "B." Place each label as marked over the top of its corresponding bottle, and secure the label to the sides of the bottle.

5. Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of STEP 3.

6. As collector, sign and date each urine label.

7. Skip to STEP 5 and initiate chain-of-custody by showing receipt of the urine specimens from the donor. (If you collected the blood, a check under "urine" will suffice. If someone else collected the blood, first make sure transfer of the blood to you is documented. Then, using the next available line, show "Provide specimens" under purpose, "Donor" under "released by," check under "urine" and place your name, signature and date in the space provided.)

8. Complete the remainder of STEP 3 on the Control Form.

9. Have the employee complete STEP 4 on the Control Form.

10. Place the filled urine bottles in the individual employee kit. Keep the paperwork and specimens together. If another collector will be collecting the blood specimen from this employee, transfer both the form and the kit to that person, showing the transfer of the urine specimens on the next available line of STEP 5 (the chain of custody block).

F. Seal the Individual Employee Kit

a. The blood and urine specimens have now been collected for this employee. The

blood/urine specimens will now be sealed into the individual employee kit, while all paperwork will be retained for further completion. After rechecking to see that each specimen is properly labeled and initialed, close the plastic bag to contain any leakage in transportation, and apply the kit security seal to the small individual kit. As collector, sign and date the kit seal.

b. Before collecting specimens from the next employee, complete the next line on the chain-of-custody block showing release of the blood and urine by yourself for the purpose of "Shipment" and receipt by the courier service or railroad representative that will provide transportation of the box, together with the date.

G. Complete Treatment Information

Complete STEP 6 of the Control Form. Mark the box if a breath alcohol test was conducted under FRA authority.

H. Prepare the Box for Shipment

a. Sealed individual employee kits should be retained in secure storage if there will be a delay in preparation of the shipping box. The shipping box shall be prepared and sealed by a collection facility representative as follows:

1. Inspect STEP 5 of each Control Form to ensure chain-of-custody is continuous and complete for each fluid (showing specimens released for shipment). Retain the medical facility copy of each Control Form and the Accident Information form for your records.

2. Place sealed individual employee kits in the shipping box. Place all forms in zip-lock bag and seal securely. Place bag with forms and unused supplies in shipping box.

3. Affix the mailing label provided to the outside of the shipping box.

I. Ship the Box

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. Whenever possible without incurring delay, the collector should deliver the box directly into the hands of the express courier or air freight representative.

b. Where courier pickup is not immediately available at the collection facility where the specimens are taken, the railroad is required to transport the shipping box for expeditious shipment by air express, air freight or equivalent means.

c. If the railroad is given custody of the box to arrange shipment, please record the name of the railroad official taking custody on the copy of Form 6180.73 retained by the collection site.

"TROUBLE BOX"

1. Problem: *The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.*

Action: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood specimens should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. Problem: *The employee cannot provide approximately 60 ml. of specimen.*

Action: The Employee should remain at the collection facility until as much as possible of the required amount can be given (up to 4 hours). The employee should be offered moderate quantities of liquids to aid urination. The first bottle, if it contains any quantity of urine, should be sealed and securely stored with the blood tubes and Control Form pending shipment. A second bottle should then be used for the subsequent void (using a second Control Form with the words "SECOND VOID—FIRST Specimen INSUFFICIENT" in the remarks block and labels from that form). However, if after 4 hours the donor's second void is also insufficient or contains no more than the first insufficient void, discard the second void and send the first void to the laboratory.

3. Problem: *The urine temperature is outside the normal range of 32 deg. – 38 deg.C/90 deg. – 100 deg.F, and a suitable medical explanation cannot be provided by an oral temperature or other means; or*

4. Problem: *The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the specimen (e.g., substitute urine in plain view, blue dye in specimen presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the specimen.*

Action (for either Problem No. 3 or Problem No. 4): Document the problem on the Control Form.

i. If the collection site supervisor or railroad representative concurs that the temperature of the specimen, or other clear and unequivocal evidence, indicates a possible attempt to substitute or alter the specimen, another void must be taken under direct observation by a collector of the same gender.

ii. If a collector of the same sex is not available, do NOT proceed with this step.

iii. If a collector of the same gender is available, proceed as follows: A new Control Form must be initiated for the second void. The original suspect specimen should be marked "Void" and the follow-up void should be marked "Void 2," with both voids being sent to the laboratory and the incident clearly detailed on the Control Form.

Exhibit C-2—Instructions for Collection of Post Mortem Specimens: Employee Killed in a Railroad Accident/Incident

To the Medical Examiner, Coroner, or Pathologist:

a. In compliance with Federal safety regulations (49 CFR Part 219), a railroad representative has requested that you obtain specimens for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such specimens, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11(f)).

b. Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

A. Materials:

The railroad will provide you a post-accident shipping box that contains necessary supplies. If the box is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

B. Specimens requested, in order of preference:

a. Blood—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix specimen and preservative.

Note: If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of specimen on label of tube.

b. Urine—as much as 100 milliliters, if available. Deposit into plastic bottles provided.

c. Vitreous fluid—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix specimen and preservative.

d. If available at autopsy, organs—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic specimens.

e. If vitreous or urine is not available, please provide—

1. Spinal fluid—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

2. Gastric content—up to 100 milliliters, as available, into plastic bottle.

C. Specimen collection:

a. Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.

b. Blood specimens should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of specimen or dissipation of volatiles (ethyl alcohol).

Note: If only cavity fluid is available, please open cavity to collect specimen. Note condition of cavity.

c. Please use smallest tubes available to accommodate available quantity of fluid specimen (with 1% sodium fluoride).

D. Specimen identification, sealing:

a. As each specimen is collected, seal each blood tube and each urine bottle using the respective blood tube or urine bottle using the identifier labels from the set provided with the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR part 219) (Form FRA F 6180.74 (revised)). Make sure the unique identification number on the labels match the pre-printed number on the Control Form. Please label other specimens

with name and specimen set identification numbers. You may use labels and seals from any of the extra forms, but annotate them accordingly.

b. Annotate each label with specimen description and source (as appropriate) (e.g., blood, femoral vein).

c. Please provide copy of any written documentation regarding condition of body and/or sampling procedure that is available at the time specimens are shipped.

E. Handling:

a. If specimens cannot be shipped immediately as provided below, specimens other than blood may be immediately frozen. Blood specimens should be refrigerated, but not frozen.

b. All specimens and documentation should be secured from unauthorized access pending delivery for transportation.

F. Information:

a. If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY," listing the specimens provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the box for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

b. The railroad representative will also provide Accident Information Required for Post-Accident Toxicological Testing (49 CFR Part 219), Form FRA 6180.73 (revised). Both forms should be placed in the shipping box when completed; but you may retain the designated medical facility copy of each form for your records.

G. Packing the shipping box:

a. Place urine bottles and blood tubes in the sponge liner in the individual kit, close the biohazard bag zipper, close the kit and apply the kit custody seal to the kit. You may use additional kits for each tissue specimen, being careful to identify specimen by tissue, name of deceased, and specimen set identification number. Apply kit security seals to individual kits and initial across all seals. Place all forms in the zip-lock bag and seal securely.

b. Place the bag in the shipping box. Do not put forms in with the specimens. Seal the shipping box with the seal provided and initial and date across the seal.

c. Affix the mailing label to the outside of the box.

H. Shipping the box:

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible, but without incurring delay, deliver the sealed shipping box directly to the express courier or the air freight representative.

b. If courier pickup is not immediately available at your facility, the railroad is required to transport the sealed shipping box

to the nearest point of shipment via air express, air freight or equivalent means.

c. If the railroad receives the sealed shipping box to arrange shipment, please record under "Supplemental Information" on the Control Form, the name of the railroad official taking custody.

I. Other:

FRA requests that the person taking the specimens annotate the Control Form under "Supplemental Information" if additional toxicological analysis will be undertaken with respect to the fatality. FRA reports are available to the coroner or medical examiner on request.

Issued in Washington, D.C., on July 26, 2001.

Betty Monro,

Deputy Federal Railroad Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Parts 653, 654, and 655

[Docket No. FTA-2000-8513]

RIN 2132-AA71

Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

AGENCY: Federal Transit Administration, Department of Transportation

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) has combined its drug and alcohol testing regulations. This final rule incorporates guidance that FTA has issued in the past several years in letters of interpretation, audit findings, newsletters, training classes, safety seminars, and public speaking engagements. In addition, this final rule conforms FTA's rule to the Department of Transportation's (DOT) revised drug and alcohol testing rule published on December 19, 2000.

DATES: The effective date of this final rule is August 1, 2001.

FOR FURTHER INFORMATION CONTACT: For program issues, Mark Snider, Office of Safety and Security, FTA, (202) 366-2896 (telephone); (202) 366-7951 (fax); or mark.snider@fta.dot.gov (e-mail). For legal issues, Bruce Walker, Office of the Chief Counsel, FTA, (202) 366-4011 (telephone); (202) 366-3809 (fax); or Bruce.Walker@fta.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Electronic Access

Electronic access to this rule and other safety rules may be obtained

through the FTA Office of Safety and Security home page at <http://transit-safety.volpe.dot.gov>.

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the Government Printing Office's (GPO) Electronic Bulletin Board Service at (202) 512-1661. Internet users may download this document from the Office of the Federal Register's homepage at <http://www.nara.gov/fedreg> and from the GPO database at <http://www.access.gpo.gov/nara>.

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, via the Dockets Management System (DMS) on the DOT home page at <http://dms.dot.gov>. The DMS is available 24 hours each day, 365 days each year. Please follow the online instructions for more information and help.

Regulatory Information

On April 30, 2001, FTA published a notice of proposed rulemaking (NPRM) proposing changes to conform its drug and alcohol testing regulation (49 CFR Part 655) to the December 19, 2000 revision of DOT's transportation workplace testing procedures at 49 CFR Part 40. (66 FR 21551). While several of the amendments to Part 40 became effective on January 18, 2001, the entire revised Part 40 will become effective on August 1, 2001.

Generally, final rules must be published at least 30 days before their effective dates. However, the Administrative Procedure Act (5 U.S.C. sec. 553(d)(3)) creates an exception to this general rule on the basis of good cause found by the agency. FTA is making this conforming rule effective immediately, rather than 30 days from the date of publication in the **Federal Register** to ensure that FTA's drug and alcohol testing regulation is consistent with the Department's Part 40 testing procedures, which are effective on August 1, 2001. This consistency is necessary in order to avoid overlap, conflict, duplication, or confusion among DOT drug and alcohol testing regulations. Unless this rule goes into effect immediately, there would be a 30-day period in which Part 40 would be in effect without FTA's conforming amended final rule. Since the new Part 40 was published over seven months ago, affected parties have had ample time to prepare to implement the changes in Part 40 to which this rule conforms.

I. Background

The Omnibus Transportation Employee Testing Act of 1991 (the Act)

mandated the Secretary of Transportation to issue regulations to combat prohibited drug use and alcohol misuse in the transportation industry. (Pub. L. 102-143, October 28, 1991, FTA sections codified at 49 U.S.C. 5331). In December 1992, FTA issued two NPRMs to prevent prohibited drug use and alcohol misuse by "safety-sensitive" employees in the transit industry. In February 1994, FTA adopted drug and alcohol testing rules, which were promulgated at 49 CFR Parts 653 and 654.

Omnibus Transportation Employee Testing Act of 1991

The Act requires FTA to issue regulations requiring recipients of Federal transit funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4) to test safety-sensitive employees for the use of alcohol or drugs in violation of law or federal regulation. With respect to railroad operations, the Act allows FTA to defer to regulations issued by the Federal Railroad Administration (FRA).

As a condition of FTA funding, the Act requires recipients to establish alcohol and drug testing programs. The Act mandates four types of testing: pre-employment, random, reasonable suspicion, and post-accident. In addition, the Act permits return-to-duty and follow-up testing under specific circumstances. The Act requires that recipients follow the testing procedures set out by the Department of Health and Human Services (DHHS).

The Act does not require recipients to follow a particular course of action when they learn that a safety-sensitive employee has violated a law or Federal regulation concerning alcohol or drug use. Rather, the Act directs FTA to issue regulations establishing consequences for the use of alcohol or prohibited drugs by individuals performing safety-sensitive functions in the transit industry. Possible consequences include education, counseling, rehabilitation programs, and suspension or termination from employment.

In authorizing this regulatory scheme, the Act has pre-empted inconsistent State or local laws, rules, regulations, ordinances, standards, or orders. However, provisions of State criminal law, which impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, are not pre-empted by the Act.

Previous Action by FTA

On December 15, 1992, FTA issued two notices of proposed rule making to prevent prohibited drug use and alcohol misuse (49 CFR Parts 653 and 654). (57

FR 59646 and 57 FR 59660). The rules established a process whereby safety-sensitive employees would be tested on a pre-employment, random, reasonable suspicion, post-accident, return-to-duty, and follow-up basis.

In the December 1992 **Federal Register** notice, FTA stated that it was "considering combining the final FTA alcohol and drug testing regulations into one part in the Code of Federal Regulations." At that time, FTA noted that while the drug and alcohol testing rules shared many similarities, there were still enough differences to warrant two distinct CFR Parts. On February 15, 1994, FTA adopted two separate rules: The drug testing rule, 49 CFR Part 653, and the alcohol testing rule, 49 CFR Part 654. (59 FR 7549 and 59 FR 7572).

Since the rules were first published, there have been two notable amendments as well as several minor (technical) amendments. In December 1998, FTA amended its post-accident regulation to allow an employer to seek post-accident test results from law enforcement agencies where the employer has been unable to timely perform such a test. (63 FR 67612). FTA has stressed the limited applicability of this amendment.

In January 1999, FTA amended its definition of "[m]aintaining a revenue service vehicle or equipment," located under safety-sensitive function (§ 653.7 and § 654.7). (64 FR 425). The amended definition included covered employees of both recipients and contractors performing overhaul and rebuilding services of engines, parts, and vehicles. Previously, employees of contractors who were performing safety-sensitive functions did not have to comply with FTA drug and alcohol testing.

In issuing the amended definition, FTA noted that it would be unduly burdensome to subject the covered employees of contractors to the drug and alcohol regulations if the overhaul/rebuilding work was done on an ad hoc or one-time basis where no long-term contract between the grantee and its contractor existed. (64 FR 426). FTA will continue to exclude the covered employees of contractors who perform safety-sensitive functions on an ad hoc or one-time basis.

When the drug and alcohol rules initially became effective, FTA began an aggressive outreach effort to assist affected entities in complying with the new rules. FTA offered numerous courses throughout the country on implementation. Additionally, in April 1994, FTA published Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit and made them available to anyone seeking help

implementing the rules. The guidelines were published in the **Federal Register** several months prior to the effective date of the rules. They provided step-by-step instructions on how to most effectively comply with Parts 653 and 654. FTA will issue updated guidelines to assist with the implementation of Part 655.

Additionally, FTA has issued numerous letters of interpretation on the rules. Public response to these letters, especially since they became available on FTA's external Web page, has been highly favorable. Employers and employees found that the letters were very helpful in explaining the rules. FTA will continue to offer interpretive guidance with respect to Part 655.

To determine compliance with the rules, FTA's Office of Safety and Security began auditing grantee drug and alcohol testing programs in March 1997. The audits quickly evolved into opportunities for FTA to provide extensive technical assistance. Through the audits, FTA has gained a better understanding of the difficulties that grantees encounter when implementing the rules. In addition, audits have shown FTA where the rules can be strengthened and improved. The impetus to combine Parts 653 and 654 is due, in no small part, to the audit program.

II. Overview of Rule

This rule combines the drug and alcohol testing rules, found at 49 CFR Parts 653 and 654, and conforms these rules to the Department's drug and alcohol testing procedures at 49 CFR Part 40. FTA believes this change will allow the program to be implemented more efficiently and will bring FTA into line with the other operating administrations that fall under the Omnibus Transportation Employee Testing Act of 1991, (Federal Aviation Administration, Federal Railroad Administration, and Federal Motor Carrier Safety Administration), as well as the two other operating administrations that have drug and alcohol testing regulations (Research and Special Programs Administration and U.S. Coast Guard).

The rule applies to direct and indirect recipients of funds under 49 U.S.C. 5307, 5309, 5311, and 23 U.S.C. 103(e)(4). It requires transit operators (employers) who receive these funds to establish and conduct a multifaceted anti-drug and alcohol misuse testing program. The regulation conditions financial assistance on the implementation of a program. Failure of an employer to develop and implement a program in compliance with this

regulation may result in the suspension of Federal transit funding.

The regulation requires the testing of safety-sensitive employees for the use of controlled substances and the misuse of alcohol; however the regulation also requires education and awareness about the problems associated with prohibited drug use and alcohol misuse. In addition, the regulation mandates that each employer have a policy statement describing its program policies and procedures. The statement must include the consequences for prohibited drug use and alcohol misuse.

The regulation specifies that safety-sensitive employees are prohibited from using five illegal substances (marijuana, cocaine, opiates, amphetamines, and phencyclidine). Safety-sensitive employees are also prohibited from misusing alcohol. The rule requires testing of safety-sensitive employees in five situations: (1) Pre-employment (including transfer to a safety-sensitive position within the organization); (2) Reasonable suspicion; (3) Random; (4) Post-accident; and (5) Return-to-duty/follow-up (periodic). Drug testing is required in all five situations. Alcohol testing is required for all situations except for pre-employment.

The rule requires the use of the Department-wide drug and alcohol testing procedures contained in 49 CFR Part 40. If a covered employee tests positive for illegal drug use or alcohol misuse or otherwise violates the rule, the employee must be removed from his or her safety-sensitive position. The employee must then be informed about education and rehabilitation programs. Should the employer decide to retain a covered employee whose test result has been verified positive, the employee must be evaluated by a substance abuse professional. Prior to returning an employee to a safety-sensitive function, the employer must ensure that the employee has successfully completed rehabilitation; the rule does not require the employer to pay for rehabilitation.

Any action on the part of FTA for noncompliance is against recipients of Federal transit funds, i.e., transit systems, metropolitan planning organizations (MPOs), states, and third party contractors that perform safety-sensitive functions. MPOs and states are affected by this regulation if they receive Federal transit funds and (1) they provide transit service or they provide funding to a subrecipient. MPOs or states that fund or manage transit providers, but do not provide transit service, must ensure that transit provider employers provide a certification of compliance.

FTA's relationship is with its grantees. Many grantees that receive transit funds operate mass transit services. Typical among these are large transit entities that receive funds under sections 49 U.S.C. 5307, 5309, and 5311. In addition, some grantees (typically states) pass Federal transit funds to smaller subrecipients within the state.

This rule eliminates the distinction between large and small operators. The term "employer" is now used to include both small and large operators, as well as entities providing service under contract or other arrangement with the transit operator.

III. Section-by-Section Discussion of the Comments

In this section, FTA will discuss the differences between the rules in Parts 653 and 654 and the final rule in Part 655. The responses to comments on each section are also included herein. There is no discussion for sections that have remained substantially the same. FTA also did not discuss comments that addressed Department-wide issues, which are more properly addressed in Part 40, or issues that were beyond the scope of the NPRM.

FTA received 84 comments in response to the NPRM. The breakdown among commenter categories follows:

Nonprofits, and special transit providers: 10
City and County transit providers: 19
State agencies: 20
Labor unions: 3
Trade associations: 9
Individual citizens: 12
Private businesses: 11.

FTA considered all comments filed in a timely manner, as well as all statements and material presented at the public meetings on the NPRM.

Subpart A—General

A. Definitions (§ 655.4)

Employer: In the NPRM, FTA proposed that, in addition to direct recipients of FTA funding, the term "employer" include state recipients that pass the money to subrecipients and grantees that have contractors performing transit operations. The definition change was proposed to provide states and grantees access to covered employees' drug and alcohol test records in order to certify compliance with FTA drug and alcohol testing rules by subrecipients and contractors.

FTA received a significant number of comments regarding the designation of states as employers. Several states were concerned that being named an employer in order to access drug and

alcohol records would have legal and technical implications that may expose the state to potential litigation. States were also concerned that they may become the warehouse of records and be responsible for responding to potential employers requesting information that is required under 49 CFR 40.25. Grantees that utilize contractors to provide transit services offered similar concerns. Regardless, a significant number of commenters acknowledged the necessity of having access to test results of covered employees since Subpart I requires recipients to certify that their contractors and/or subrecipients are complying with the drug and alcohol testing program. Numerous commenters stated that this objective could be accomplished by amending 49 CFR 655.73—Access to Facilities and Records.

FTA Response. FTA agrees with the commenters and has remedied this situation with the addition of paragraph 49 CFR 655.73 (i). An employer may disclose drug and alcohol testing information required to be maintained under this part only to the state oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures at 49 CFR Parts 40 and 655.

Although several commenters indicated that law enforcement agencies should have access to records maintained under this part upon request, FTA recognizes that individual privacy rights require limited dissemination of this information. This section does not authorize release of information maintained under this part to a law enforcement agency based solely on the request of the law enforcement agency.

Second chance policy: FTA proposed adding this definition to the rule with the understanding that grantees have the discretion to adopt a second chance policy, i.e., a policy allowing an employee (who has previously violated the Federal drug and/or alcohol regulations) to return to a safety-sensitive position after completing rehabilitation.

FTA received a limited number of comments on this subject. A few commenters expressed appreciation for the definition while most questioned the necessity for its inclusion since it is the employer's discretion to implement a "second chance policy".

FTA Response. FTA opts not to include "second chance policy" under definitions at this time. Since the decision to retain a covered employee is within the discretion of the employer, the phrase will not be defined in the final rule.

Taxi cab drivers and other transportation providers: FTA requested comments regarding its guidance and policy relating to this category of contractors. According to FTA policy, drug and alcohol testing rules do not apply to taxi cab drivers when patrons (using publicly subsidized vouchers) or transportation providers can choose from a variety of taxicab operators.

A number of commenters on this subject expressed concern that many rural and small urban communities have limited availability of taxi service. One commenter questioned FTA's regulatory authority to include taxi operators under the drug and alcohol testing rule. Other commenters indicated that a taxi operator is performing a safety-sensitive function whether the patron or the provider selects the taxi service and should be subject to the rule.

FTA Response. The intent of FTA's regulatory scheme is not to impose Federal regulations on the taxi industry; however, taxi companies that contract with transportation service providers receiving Federal transit funds are subject to compliance with the drug and alcohol rules. FTA policy continues to recognize the practical difficulty of administering a drug and alcohol testing program to taxi companies that only incidentally provide transit service. Therefore, the drug and alcohol testing rules apply when the transit provider enters into a contract with one or more entities to provide taxi service. The rules do not apply when the patron (using subsidized vouchers) selects the taxi company that provides the transit service. This guidance reflects the FTA Master Agreement, which requires recipients to include appropriate clauses in third party contracts requiring contractors to comply with applicable Federal requirements. It also recognizes the practical difficulty of administering a drug and alcohol testing program to entities that only incidentally provide taxi service on behalf of a transportation service provider.

Dispatchers. FTA requested comments on the duties and responsibilities of dispatchers in the different transit systems. The objective was to determine whether the duties and responsibilities vary significantly enough to warrant modification of the current rule.

A significant number of commenters indicated that bus dispatchers whose duties are of an administrative nature and primarily communicate directions to a bus operator do not perform a safety-sensitive function. Other commenters indicated that their dispatchers did indeed perform safety-

sensitive functions, including but not limited to responding to emergency situations and should remain subject to the rules. The majority of the commenters in rural and small urban areas indicated that their dispatchers did not perform safety-sensitive functions.

FTA Response. The comments confirm that bus dispatchers perform a myriad of duties depending on the employer. FTA's rules apply to anyone who performs a safety-sensitive function, which includes the control of the "dispatch or movement of a revenue service vehicle."

Since each employer uses its own terminology to describe job categories that involve safety-sensitive functions, each employer must continue to decide whether a particular employee performs any of the functions listed in the definition of "safety-sensitive function," including bus dispatchers. As noted in previous guidance, the key consideration remains the type of work performed rather than any particular job title. Based on the comments received, FTA will not attempt a universal definition of "dispatchers" at this time. Instead, FTA will allow each employer to determine whether a particular dispatcher performs or may perform a safety-sensitive function.

Maintenance contractors. In the NPRM, FTA reiterated that maintenance contractors that perform safety-sensitive functions are subject to the drug and alcohol testing rules, for the reasons noted in the preamble to the 1999 rule change, i.e., fairness and safety (64 FR 425, January 5, 1999). Most comments on this subject concerned the difficulty employers have in requiring maintenance contractors to implement a drug and alcohol program. Much of the discussion related to the difficulty in finding maintenance contractors willing to comply with the drug and alcohol testing requirements, particularly where the maintenance contractor provides service on an occasional basis. A number of commenters offered that maintenance shops cannot afford to implement an ongoing program for the amount of transit-related business generated. As a result, this would severely restrict the grantee/subrecipient's ability to properly maintain FTA-funded vehicles. The majority of comments urged the FTA to completely exempt maintenance contractors from the drug and alcohol testing regulations.

Several urban grantees commented on the fact that the type of work they are contracting out is often performed by small shops focusing on a very narrow repair area. These maintenance

contractors have limited administrative staff, which causes them difficulty in administering a drug and alcohol program.

FTA Response. FTA recognizes these concerns, but also recognizes the public safety interest inherent in testing safety-sensitive employees. FTA has developed a middle ground to alleviate some of the problems associated with this issue. FTA still recognizes that recipients funded with 49 U.S.C. 5311 funds and which contract out maintenance service are excluded from the drug and alcohol testing rules. In addition, recipients of Federal transit funds under 49 U.S.C. 5307 and 5309 in an area less than 200,000 in population and which contract out such services are no longer required to comply with Part 655. Also, maintenance providers of safety-sensitive functions for a grantee on an ad hoc or one-time basis are not required to comply.

Volunteers. FTA proposed to clarify when volunteers are covered employees subject to the drug and alcohol testing rules. Most commenters indicated that the proposed language needed further clarification.

FTA Response. FTA has reviewed the proposed language and amends the definition of covered employee by deleting reference to the volunteers' "expectation of in-kind or tangible benefits." Instead, a volunteer is deemed a covered employee when he or she receives remuneration in excess of their actual personal expenses incurred while performing the volunteer service.

B. Stand-Down Waivers for Drug Testing (655.5)

FTA proposed procedures on stand-down waivers to conform with 49 CFR Part 40.

Most of the commenters to this section expressed support. However, one commenter expressed opposition to the provision claiming that it undercuts the confidentiality principles inherent in the FTA's drug and alcohol testing program. Another commenter indicated that FTA should provide additional criteria not identified in 49 CFR Part 40.

FTA Response. FTA is aware of the confidentiality concerns and will carefully review each petition to determine if the facts and justification warrant a waiver. The requirements for obtaining a waiver are provided in 49 CFR 40.21. The proposed rule will be incorporated in the final rule to conform with 49 CFR Part 40.

Subpart B—Program Requirements

A. Policy Statement Contents (§ 655.15)

FTA proposed limiting information required in a Policy Statement to that

listed in section 655.15. FTA also clarified who must approve the policy. In most instances, a grantee will have a governing board that can adopt the policy. However, where there is no governing board or the governing board does not have approval authority, the highest-ranking official with authority to approve the policy may do so. FTA also noted that employers may incorporate by reference 49 CFR Part 40 in their Policy Statements, provided it is available for review by employees when requested.

Most commenters expressed support for the effort to simplify this requirement. However, one commenter noted that eliminating the requirement to address specific sections of 49 CFR Part 40 and making Part 40 available to the employee creates the potential for misunderstanding by the employee. Another commenter indicated that specific employee rights should be required in this section. A few commenters also recommended that FTA impose schedules for when the employee and supervisor training requirement should occur and the frequency with which it should be scheduled.

FTA Response. FTA believes that simplifying the contents required in the Policy Statement reduces the administrative burden while maintaining an employer's discretion to craft a Policy Statement that includes additional requirements not mandated by FTA. FTA also believes that it would be an undue burden to mandate an industry-wide training schedule. The final rule recognizes the diversity of employee-management relationships within the transit industry and also strikes a reasonable balance with the requirement for employee and supervisor training. However, a grantee may choose to include additional requirements not mandated by FTA, i.e., recurring training and employee rights. If a grantee does so, the grantee's policy shall indicate that those additional requirements are the employer's, and not FTA's. FTA also believes that it is reasonable for employers to incorporate by reference 49 CFR Part 40 in their Policy Statements and make it available for review by employees when requested.

Subpart E—Types of Testing

A. Pre-employment Drug Testing (§ 655.41)

FTA notified the public of the intent to eliminate the phrase "hire" in this provision of the rule. Previously, employers were required to administer

a drug test and receive a negative result before hiring an employee.

FTA also notified the public of its proposal to require a pre-employment test for covered employees who are away from work for more than 90 consecutive calendar days and plan to return to a safety-sensitive function. It is FTA's intent that employers assure themselves that employees can successfully pass a drug test before returning them to safety-sensitive functions.

The majority of commenters support the change in the provision that allows a covered employee to be hired prior to receiving a negative drug test result. These comments indicated that the rule balances the employer's personnel concerns with the public safety interest by ensuring that the new covered employee is not permitted to perform a safety-sensitive function for the first time until a negative drug test result is received. However, one commenter stated that the public safety interest is better served by prohibiting the hiring of a covered employee prior to receiving a drug test result. Another comment indicated that FTA should adopt pre-employment provisions similar to the Federal Motor Carrier Safety Administration (FMCSA).

Many commenters supported clarification of the rule regarding the time required to elapse before an absent covered employee should take another pre-employment drug test. A majority of rural and small urban employers are in favor of this rule because they employ seasonal and temporary workers. A few comments indicated that there is no basis to retest a covered employee after a 90-day absence. However, one employer indicated that a pre-employment test should be administered after 90 days regardless of whether the employee was in the employer's random pool or not. Another commenter indicated that pre-employment testing should be administered following consecutive absences as short as 30 days.

FTA Response. FTA has reviewed the comments and will incorporate the NPRM language into the final rule. FTA believes that deleting the phrase "hire" in this section provides an employer with the discretion to administer a pre-employment drug test anytime before the employee first performs a safety-sensitive function. FTA also believes the 90-day period is reasonable. It gives the employer the discretion to decide whether or not the covered employee is retained in the random pool during his or her absence. If the employee is retained in the random pool, then pre-employment testing is not required. In

determining whether to retain the employee in the random pool, one consideration is the likelihood of the employee's return to perform safety-sensitive functions.

B. Pre-Employment Alcohol Testing (§ 655.42)

FTA noted in the NPRM that its pre-employment alcohol testing requirements were suspended due to a court decision and subsequent legislation. Most commenters indicated that FTA's new rule should also omit the pre-employment alcohol testing provisions, primarily because alcohol consumption is a legal activity. Others indicated that since pre-employment testing would not be conducted under FTA authority, this section should not be included in the final rule.

FTA Response. The NPRM language is included in the final rule to conform with the other DOT agency drug and alcohol testing programs. All six DOT agencies with testing programs are adding this section to their respective rules. This section allows, but does not require, employers to conduct pre-employment alcohol testing. If an employer chooses to conduct pre-employment alcohol testing, the employer must conduct the testing in accordance with all of the requirements of 49 CFR Part 40.

C. Reasonable Suspicion Testing (§ 655.43)

Several commenters responding to this section indicated that FTA should not interfere with an employer's ability to require two or more trained supervisors to participate and/or agree on referring an employee for reasonable suspicion testing. One commenter indicated that employers should be allowed to authorize other personnel to make reasonable suspicion testing observations similar to the FMCSA. Two commenters indicated that this testing requirement should not be required at all because the consumption of alcohol is legal. Other commenters indicated that provisions found in 49 CFR 654.37(c) and (d) should be incorporated in the final rule.

FTA Response. FTA believes that the public safety interest is furthered with the inclusion of this requirement and the final rule is amended to include the language of 49 CFR 654.37(c) and (d). FTA also notes that the proposed bar to an employer requiring two or more trained supervisors to make such referrals is not included in the final rule. FTA also agrees that an employer should be permitted to authorize and train other company officers to make reasonable suspicion observations;

therefore this section and section 655.14 of subpart B are amended accordingly.

D. Post-Accident Testing (§ 655.44)

FTA noted in the NPRM that its post-accident testing regulation was previously amended to allow an employer, in extremely limited circumstances, to use the post-accident test results administered by local law enforcement only when the employer is unable to perform a post-accident test within the required time frame.

Of the few comments received on this section, most indicated support for the limited exception to use post-accident test results from local law enforcement. However, a commenter indicated that the rule does not state that this provision is to be used in limited circumstances. Another commenter stated that the employer should not be permitted to use post-accident test results administered by local law enforcement because the standards for these tests may be less than those imposed by DOT. One commenter stated that FTA should not require post-accident testing when it is also required by FMCSA.

FTA Response. FTA noted that the proposed rule did not state the limited exception under which an employer may use the test results of a law enforcement agency. The final rule is amended to indicate that an employer may use the post-accident test results of a law enforcement agency when the employer is unable to test within the required time frame established by FTA and the test is performed to the applicable standards of the entity authorized to administer the drug or alcohol test. FTA and FMCSA are amending their respective post-accident testing rule to eliminate the requirement for duplicative post-accident testing of operators.

E. Random Testing (§ 655.45)

FTA reiterated in the NPRM that a primary purpose of random testing is deterrence. Deterrence is most effectively achieved with random, unpredictable drug and alcohol testing that is conducted throughout all workdays and hours of service.

Although the majority of commenters supported the concept of random drug testing, a significant number indicated that employers in rural areas have an increased burden complying with this provision. They have difficulty in obtaining testing services after normal business hours within their areas and/or because of distances between testing service providers and the employer. Four commenters also noted that the

NPRM incorrectly stated the current random alcohol testing rate.

FTA Response. The proposed language is incorporated in the final rule with some modification. The concern reflected by employers in rural areas is noted; however, FTA believes that the public safety interest is promoted with random testing that is truly random and unpredictable. However, FTA believes that requiring random testing to be conducted at least quarterly strikes a reasonable balance while considering the rule's impact on employers in rural areas. Additionally, FTA is reviewing the recommendation to allow individual rural transit systems to apply to have its random testing rate based on its individual performance and program instead of industry-wide data.

Paragraph (a) of this section is amended to read 10% instead of 25%. Paragraph (i) of this section is also amended to reflect that random testing for alcohol misuse is subject to safety-sensitive performance limitations while testing for drug use is permitted anytime during the workday.

Subpart H—Administrative Requirements

A. Retention of Records (§ 655.71) and Reporting Results in a Management Information System (§ 655.72)

The NPRM proposed changing FTA's Management Information System (MIS) reporting requirement from census reporting to stratified random sampling because it now has an accurate portrait of the current state of drug and alcohol testing (including positive rates) in the transit industry. Most commenters indicated that FTA's intent to reduce the paperwork requirement is better achieved by using technology (e.g., web based/electronic submission). A few commenters stated that the proposed rule does not reduce their administrative burden. Most commenters indicated that sampling reduces some of the burden on rural transit systems; however, a commenter noted that states are still required to collect subrecipient's data. Other commenters indicated that FTA should have one uniform period for record retention.

FTA Response. FTA believes sampling will reduce the paperwork burden on a portion of the industry while still maintaining a high confidence level in the results. Transit employers are still required to prepare an MIS form annually; however, they will only be required to submit an MIS form when requested by FTA. However, FTA's record retention time periods reflect those of the other DOT modes for

administrative uniformity. FTA will review the feasibility of web-based submission of data and will issue further guidance on this issue.

B. Access to Facilities and Records (§ 655.73)

As previously discussed in section 655.4 of subpart A, FTA received a number of comments indicating that states should not be included under the definition of "employer" in order to gain access to records. Many commenters also objected to state regulatory agencies and law enforcement agencies having independent access to employee records. The majority of comments indicated that only those state agencies and grantees with oversight responsibilities and which are required to certify compliance should have access to the employee's drug and alcohol testing information.

FTA Response. The final rule is amended by adding paragraph (i) to this section. An employer may release information to the state agency or grantee with oversight responsibility of FTA transit funds which is required to certify compliance under this part.

IV. Effect of the Americans With Disabilities Act of 1990 on Alcohol Testing Programs

Title I of the Americans With Disabilities Act of 1990 (ADA) focuses on employers' responsibilities toward employees with disabilities. According to Title I, an employer must provide reasonable accommodations for work for persons with disabilities. Some covered workers are considered persons with disabilities for purposes of protection under the ADA. This issue was treated more fully in the 1994 DOT-wide preamble (59 FR 7302, 7311-7314, February 15, 1994).

V. Regulatory Process Matters

A. Executive Order 12866

FTA has evaluated the industry costs and benefits of this rule, which require that transit industry personnel who perform safety-sensitive functions be covered by a program to control illegal drug abuse and alcohol misuse in mass transportation operations. This rule makes no noteworthy substantive changes. Any incremental costs are negligible, and the policy and economic impact will have no significant effect.

B. Departmental Significance

This rule is a "non-significant regulation" as defined by the Department's Regulatory Policies and Procedures because, while it involves an important Departmental policy that is

likely to generate a great deal of public interest, in the larger scheme, it is simply a combination of two existing regulations (49 CFR Parts 653 and 654). It also conforms FTA's drug and alcohol testing regulations with the Department's drug and alcohol testing regulations (49 CFR Part 40), to which FTA grantees already are subject.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FTA has made a preliminary assessment of the possible effects of the rule on small businesses. To the extent possible, FTA has made efforts to acknowledge the differences between small and large entities, and has endeavored to make accommodations when possible. Experience with Parts 653 and 654 has shown that the rule has had a significant impact on a substantial number of small entities. FTA believes that this new rule will provide greater clarity and ease of implementation for small entities.

D. Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act of 1995 (PWRA) (44 U.S.C. 3501, *et. seq.*) The Office of Management and Budget has approved FTA's PWRA request for Parts 653 and 654. This rule includes the same information collection devices; therefore, FTA believes it already has OMB approval. The Management Information System (MIS) forms currently required by Parts 653 and 654 may be modified in the future, but will continue to be required by FTA, without changes, under Part 655.

E. Executive Order 13132

This action has been reviewed under Executive Order 13132 on Federalism. FTA has determined that this action has significant Federalism implications to warrant a Federalism assessment. However, FTA has limited discretion because this rulemaking is mandated by Congress in the Omnibus Transportation Employee Testing Act of 1991.

The 1991 legislation mandated FTA to issue regulations requiring grantees of funds under 49 U.S.C. 5307, 5309, and 5311, and 23 U.S.C. 103(e)(4) to test their safety-sensitive employees for the use of drugs and the misuse of alcohol in violation of law or Federal regulation.

Before passage of the Omnibus Transportation Employee Testing Act of 1991, safety issues were largely handled as a local matter. This Act clarifies the Federal role by including specific Federal pre-emption language. This Act also makes it clear that, in the area of substance abuse testing, Federal

regulations are to take precedence over any inconsistent State or local specifications.

Although Congress has pre-empted State or local law, FTA has preserved the role of local entities in mass transit safety. This regulation does not disturb testing programs which were created by virtue of a grantee's own authority and which are not inconsistent with this regulation.

F. Other Executive Orders

There are a number of other Executive Orders that can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the content of this rule, and we believe that the rule does not directly affect the matters covered by the Executive Orders.

List of Subjects

49 CFR Part 653

Drug abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 654

Alcohol abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 655

Alcohol abuse, Drug abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 5331, the agency amends Chapter VI of Title 49 of the Code of Federal Regulations as set forth below:

PART 653—[REMOVED]

1. Remove part 653.

PART 654—[REMOVED]

2. Remove part 654.
3. Add part 655 to read as follows:

PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS

Subpart A—General

Sec.

- 655.1 Purpose.
- 655.2 Overview.
- 655.3 Applicability.
- 655.4 Definitions.
- 655.5 Stand-down waivers for drug testing.
- 655.6 Preemption of state and local laws.
- 655.7 Starting date for testing programs.

Subpart B—Program Requirements

- 655.11 Requirement to establish an anti-drug use and alcohol misuse program.
- 655.12 Required elements of an anti-drug use and alcohol misuse program.
- 655.13 [Reserved]
- 655.14 Education and training programs.
- 655.15 Policy statement contents.
- 655.16 Requirement to disseminate policy.
- 655.17 Notice requirement.
- 655.18–655.20 [Reserved]

Subpart C—Prohibited Drug Use

- 655.21 Drug testing.
- 655.22–655.30 [Reserved]

Subpart D—Prohibited Alcohol Use

- 655.31 Alcohol testing.
- 655.32 On duty use.
- 655.33 Pre-duty use.
- 655.34 Use following an accident.
- 655.35 Other alcohol-related conduct.
- 655.36–655.40 [Reserved]

Subpart E—Types of Testing

- 655.41 Pre-employment drug testing.
- 655.42 Pre-employment alcohol testing.
- 655.43 Reasonable suspicion testing.
- 655.44 Post-accident testing.
- 655.45 Random testing.
- 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.
- 655.47 Follow-up testing after returning to duty.
- 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.
- 655.49 Refusal to submit to a drug or alcohol test.
- 655.50 [Reserved]

Subpart F—Drug and Alcohol Testing Procedures

- 655.51 Compliance with testing procedures requirements.
- 655.52 Substance abuse professional (SAP).
- 655.53 Supervisor acting as collection site personnel.
- 655.54–655.60 [Reserved]

Subpart G—Consequences

- 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

655.62 Referral, evaluation, and treatment.
655.63–655.70 [Reserved]

Subpart H—Administrative Requirements

655.71 Retention of records.
655.72 Reporting of results in a management information system.
655.73 Access to facilities and records.
655.74–655.80 [Reserved]

Subpart I—Certifying Compliance

655.81 Grantee oversight responsibility.
655.82 Compliance as a condition of financial assistance.
655.83 Requirement to certify compliance.
Appendix A to Part 655—Drug Testing Management Information System (MIS) Data Collection Form
Appendix B to Part 655—Drug Testing Management Information System (MIS) “EZ” Data Collection Form
Appendix C to Part 655—Alcohol Testing Management Information System (MIS) Data Collection Form
Appendix D to Part 655—Alcohol Testing Management Information System (MIS) “EZ” Data Collection Form

Authority: 49 U.S.C. 5331; 49 CFR 1.51.

Subpart A—General

§ 655.1 Purpose.

The purpose of this part is to establish programs to be implemented by employers that receive financial assistance from the Federal Transit Administration (FTA) and by contractors of those employers, that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by employees who perform safety-sensitive functions.

§ 655.2 Overview.

(a) This part includes nine subparts. Subpart A of this part covers the general requirements of FTA’s drug and alcohol testing programs. Subpart B of this part specifies the basic requirements of each employer’s alcohol misuse and prohibited drug use program, including the elements required to be in each employer’s testing program. Subpart C of this part describes prohibited drug use. Subpart D of this part describes prohibited alcohol use. Subpart E of this part describes the types of alcohol and drug tests to be conducted. Subpart F of this part addresses the testing procedural requirements mandated by the Omnibus Transportation Employee Testing Act of 1991, and as required in 49 CFR Part 40. Subpart G of this part lists the consequences for covered employees who engage in alcohol misuse or prohibited drug use. Subpart H of this part contains administrative matters, such as reports and recordkeeping requirements. Subpart I of this part specifies how a recipient certifies compliance with the rule.

(b) This part must be read in conjunction with 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

§ 655.3 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to:

(1) Each recipient and subrecipient receiving Federal assistance under:

- (i) 49 U.S.C. 5307, 5309, or 5311; or
- (ii) 23 U.S.C. 103(e)(4); and

(2) Any contractor of a recipient or subrecipient of Federal assistance under:

- (i) 49 U.S.C. 5307, 5309, or 5311; or
- (ii) 23 U.S.C. 103(e)(4).

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR Part 219 and § 655.83 for its railroad operations, and shall follow this part for its non-railroad operations, if any.

§ 655.4 Definitions.

For this part, the terms listed in this section have the following definitions. The definitions of additional terms used in this part but not listed in this section can be found in 49 CFR Part 40.

Accident means an occurrence associated with the operation of a vehicle, if as a result:

- (1) An individual dies; or
- (2) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

Administrator means the Administrator of the Federal Transit Administration or the Administrator’s designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Certification means a recipient’s written statement, authorized by the organization’s governing board or other authorizing official that the recipient has complied with the provisions of this part. (See § 655.82 and § 655.83 for certification requirements.)

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part. A volunteer is a covered employee if:

(1) The volunteer is required to hold a commercial driver’s license to operate the vehicle; or

(2) The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

Disabling damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusion*. Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

(2) *Exclusions*. (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or tail light damage.

(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

DOT or *The Department* means the United States Department of Transportation.

DOT agency means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring drug and alcohol testing. See 14 CFR part 121, appendices I and J; 33 CFR part 95; 46 CFR parts 4, 5, and 16; and 49 CFR parts 199, 219, 382, and 655.

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Performing (a safety-sensitive function) means a covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually

performing, ready to perform, or immediately available to perform such functions.

Positive rate means the sum of the annual number of positive results for random drug tests conducted under this part plus the annual number of refusals to submit to a random drug test authorized under this part divided by the sum of the annual number of random drug tests conducted under this part plus the annual number of refusals to submit to a random drug test authorized under this part.

Railroad means:

(1) All forms of non-highway ground transportation that run on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads.

(2) Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311; or under 23 U.S.C. 103(e)(4).

Refuse to submit means any circumstance outlined in 49 CFR 40.191 and 40.261.

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. 5307 or 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. 5311 and contracts out such services;

(5) Carrying a firearm for security purposes.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A mass transit vehicle is

a vehicle used for mass transportation or for ancillary services.

Violation rate means the sum of the annual number of results from random alcohol tests conducted under this part that have alcohol concentrations of .04 or greater plus the annual number of refusals to submit to alcohol tests authorized under this part, divided by the sum of the annual number of random alcohol tests conducted under this part plus the annual number of refusals to submit to a drug test authorized under this part.

§ 655.5 Stand-down waivers for drug testing.

(a) An employer subject to this part may petition the FTA for a waiver allowing the employer to stand down, per 49 CFR Part 40, an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(b) Each petition for a waiver must be in writing and include facts and justification to support the waiver. Each petition must satisfy the requirements for obtaining a waiver, as provided in 49 CFR 40.21.

(c) Each petition for a waiver must be submitted to the Office of Safety and Security, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

(d) The Administrator may grant a waiver subject to 49 CFR 40.21(d).

§ 655.6 Preemption of state and local laws.

(a) Except as provided in paragraph (b) of this section, this part preempts any state or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the state or local requirement and any requirement in this part is not possible; or

(2) Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 655.7 Starting date for testing programs.

An employer must have an anti-drug and alcohol misuse testing program in place by the date the employer begins operations.

Subpart B—Program Requirements

§ 655.11 Requirement to establish an anti-drug use and alcohol misuse program.

Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.

§ 655.12 Required elements of an anti-drug use and alcohol misuse program.

An anti-drug use and alcohol misuse program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use and alcohol misuse in the workplace, including the consequences associated with prohibited drug use and alcohol misuse. This policy statement shall include all of the elements specified in § 655.15. Each employer shall disseminate the policy consistent with the provisions of § 655.16.

(b) An education and training program which meets the requirements of § 655.14.

(c) A testing program, as described in Subparts C and D of this part, which meets the requirements of this part and 49 CFR Part 40.

(d) Procedures for referring a covered employee who has a verified positive drug test result or an alcohol concentration of 0.04 or greater to a Substance Abuse Professional, consistent with 49 CFR Part 40.

§ 655.13 [Reserved]

§ 655.14 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training.* (1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

(2) *Supervisors.* Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 655.15 Policy statement contents.

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

(a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior and conduct prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.

(e) The procedures that will be used to test for the presence of illegal drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.

(h) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.

(i) The consequences, as set forth in § 655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§ 655.16 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee

organizations of the employer's anti-drug and alcohol misuse policies and procedures.

§ 655.17 Notice requirement.

Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.

§§ 655.18–655.20 [Reserved]**Subpart C—Prohibited Drug Use****§ 655.21 Drug testing.**

(a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

(b) When administering a drug test, an employer shall ensure that the following drugs are tested for:

- (1) Marijuana;
- (2) Cocaine;
- (3) Opiates;
- (4) Amphetamines; and
- (5) Phencyclidine.

(c) Consumption of these products is prohibited at all times.

§§ 655.22–655.30 [Reserved]**Subpart D—Prohibited Alcohol Use****§ 655.31 Alcohol testing.**

(a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.

(b) Each employer shall prohibit a covered employee, while having an alcohol concentration of 0.04 or greater, from performing or continuing to perform a safety-sensitive function.

§ 655.32 On duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 655.33 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used

alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 655.34 Use following an accident.

Each employer shall prohibit alcohol use by any covered employee required to take a post-accident alcohol test under § 655.44 for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 655.35 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart E of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

Subpart E—Types of Testing**§ 655.41 Pre-employment drug testing.**

(a)(1) Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the

employee takes a drug test administered under this part with a verified negative result.

(2) When a covered employee or applicant has previously failed or refused a pre-employment drug test administered under this part, the employee must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in § 655.62.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result.

(c) If a pre-employment drug test is canceled, the employer shall require the covered employee or applicant to take another pre-employment drug test administered under this part with a verified negative result.

(d) When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result.

§ 655.42 Pre-employment alcohol testing.

An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, the employer must comply with the following requirements:

(a) The employer must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(b) The employer must treat all covered employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

(c) The employer must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(d) The employer must conduct all pre-employment alcohol tests using the alcohol testing procedures set forth in 49 CFR Part 40.

(e) The employer must not allow a covered employee to begin performing safety-sensitive functions unless the

result of the employee's test indicates an alcohol concentration of less than 0.02.

§ 655.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

(c) Alcohol testing is authorized under this section only if the observations required by paragraph (b) of this section are made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance with this part. An employer may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(d) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (b) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the determination under paragraph (b) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

§ 655.44 Post-accident testing.

(a) Accidents. (1) *Fatal accidents.* (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1).

(ii) The employer shall also drug and alcohol test any other covered employee

whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, the employer shall drug and alcohol test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) If an alcohol test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and maintain the record. Records shall be submitted to FTA upon request of the Administrator.

(b) An employer shall ensure that a covered employee required to be drug tested under this section is tested as soon as practicable but within 32 hours of the accident.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

(d) The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

(e) Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from

leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(f) The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section provided such test conforms to the applicable Federal, State, or local testing requirements, and that the test results are obtained by the employer. Such test results may be used only when the employer is unable to perform a post-accident test within the required period noted in paragraphs (a) and (b) of this section.

§ 655.45 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug and alcohol testing is based, respectively, on the reported positive drug and alcohol violation rates for the entire industry. All information used for this determination is drawn from the drug and alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of the data, the Administrator shall consider the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry's verified positive results and violation rates. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rates for random drug and alcohol testing of covered employees. The new minimum annual percentage rate for random drug and alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) Rates for drug testing. (1) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for the two preceding consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(2) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 655.72 for the calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug or random alcohol testing to 50 percent of all covered employees.

(d) Rates for alcohol testing. (1)(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 655.72 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(2)(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 655.72 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rates for random drug and alcohol testing determined by the Administrator. If the employer conducts random drug and alcohol testing through a consortium, the number of employees to be tested may be calculated for each individual employer or may be based on the total number of covered employees covered by the consortium who are subject to random drug and alcohol testing at the same minimum annual percentage rate under this part.

(g) Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

(h) Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately.

(i) A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

(j) If a given covered employee is subject to random drug and alcohol testing under the testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug and alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(k) If an employer is required to conduct random drug and alcohol testing under the drug and alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40.

§ 655.47 Follow-up testing after returning to duty.

An employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR Part 40, subpart O.

§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

If an employer chooses to permit a covered employee to perform a safety-sensitive function within 8 hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of § 655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

§ 655.49 Refusal to submit to a drug or alcohol test.

(a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

(b) When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in 49 CFR Part 40.

§ 655.50 [Reserved]

Subpart F—Drug and Alcohol Testing Procedures

§ 655.51 Compliance with testing procedures requirements.

The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and

must be read together with this part, unless expressly provided otherwise in this part.

§ 655.52 Substance abuse professional (SAP).

The SAP must perform the functions in 49 CFR Part 40.

§ 655.53 Supervisor acting as collection site personnel.

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

§§ 655.54–655.60 [Reserved]

Subpart G—Consequences

§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.

(a) (1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.

(2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require that the covered employee cease performing a safety-sensitive function.

(3) If an employee refuses to submit to a drug or alcohol test required by this part, the employer shall require that the covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure the employee meets the requirements of 49 CFR Part 40 for returning to duty, including taking a return to duty drug and/or alcohol test.

§ 655.62 Referral, evaluation, and treatment.

If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs.

§§ 655.63–655.70 [Reserved]

Subpart H—Administrative Requirements

§ 655.71 Retention of records.

(a) *General requirement.* An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of covered employee verified positive drug or alcohol test results, documentation of refusals to take required drug or alcohol tests, and covered employee referrals to the substance abuse professional, and copies of annual MIS reports submitted to FTA.

(2) *Two years.* Records related to the collection process and employee training.

(3) *One year.* Records of negative drug or alcohol test results.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process:

- (i) Collection logbooks, if used.
- (ii) Documents relating to the random selection process.
- (iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests.

(iv) Documents generated in connection with decisions on post-accident drug and alcohol testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine or breathe sample.

(2) Records related to test results:

(i) The employer's copy of the custody and control form.

(ii) Documents related to the refusal of any covered employee to submit to a test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a test administered under this part.

(3) Records related to referral and return to duty and follow-up testing: Records concerning a covered employee's entry into and completion of the treatment program recommended by the substance abuse professional.

(4) Records related to employee training:

(i) Training materials on drug use awareness and alcohol misuse, including a copy of the employer's policy on prohibited drug use and alcohol misuse.

(ii) Names of covered employees attending training on prohibited drug use and alcohol misuse and the dates and times of such training.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Copies of annual MIS reports submitted to FTA.

§ 655.72 Reporting of results in a management information system.

(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.

(b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.

(c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

(d) *Drug use information: Long Form.* Each report that contains information on verified positive drug test results shall be submitted on the FTA Drug Testing Management Information System (MIS) Data Collection Form (Appendix A of this part) and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2) Number of covered employees subject to testing under the anti-drug regulations of the other DOT operating administrations subject to 49 CFR Part 40.

(3) Number of specimens collected by type of test (i.e., pre-employment, follow-up, random, etc.) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category.

(5) Number of negatives verified by an MRO by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a verified positive drug test.

(7) Number of covered employees verified positive by an MRO or who refused to submit to a drug test, who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 655.61).

(8) Number of employees with tests verified positive by an MRO for multiple drugs.

(9) Number of covered employees who were administered drug and alcohol tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(10) Number of covered employees who refused to submit to a random drug test required under this part.

(11) Number of covered employees who refused to submit to a non-random drug test required under this part.

(12) Number of covered employees and supervisors who received training during the reporting period.

(13) Number of fatal and nonfatal accidents which resulted in a verified positive post-accident drug test.

(14) Number of fatalities resulting from accidents which resulted in a verified positive post-accident drug test.

(15) Identification of FTA funding source(s).

(e) *Drug Use Information: Short Form.* If all drug test results were negative during the reporting period, the employer must use the "EZ form" (Appendix B of this part). It shall contain:

(1) Number of FTA covered employees.

(2) Number of covered employees subject to testing under the anti-drug regulation of the other DOT operating administrations subject to 49 CFR Part 40.

(3) Number of specimens collected and verified negative by type of test and employee category.

(4) Number of covered employees verified positive by an MRO or who refused to submit to a drug test prior to the reporting period and who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 655.62).

(5) Number of covered employees who refused to submit to a non-random drug test required under this part.

(6) Number of covered employees and supervisors who received training during the reporting period.

(7) Identification of FTA funding source(s).

(f) *Alcohol misuse information: Long Form.* Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of this part shall be submitted on the FTA Alcohol Testing Management (MIS) Data Collection Form (Appendix C of this part) and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2) (i) Number of screening tests by type of test and employee category.

(ii) Number of confirmed tests, by type of test and employee category.

(3) Number of confirmed alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test and employee category.

(4) Number of confirmed alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category.

(5) Number of covered employees with a confirmed alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions during the reporting period (having complied with the recommendation of a substance abuse professional as described in § 655.61).

(6) Number of fatal and nonfatal accidents which resulted in a confirmed post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(7) Number of fatalities resulting from accidents which resulted in a confirmed post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of subpart B of this part and the action taken in response to the violation.

(9) Number of covered employees who were administered alcohol and drug tests at the same time, with a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(10) Number of covered employees who refused to submit to a random alcohol test required under this part.

(11) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(12) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(13) Identification of FTA funding source(s).

(g) *Alcohol Misuse Information: Short Form.* If an employer has no screening test results of 0.02 or greater and no violations of the alcohol misuse provisions of this part, the employer must use the "EZ" form (Appendix D of

this part). It shall contain (This report may only be submitted if the program results meet these criteria.):

(1) Number of FTA covered employees.

(2) Number of alcohol tests conducted with results less than 0.02 by type of test and employee category.

(3) Number of employees with confirmed alcohol test results indicating an alcohol concentration of 0.04 or greater prior to the reporting period and who were returned to duty in a covered position during the reporting period.

(4) Number of covered employees who refused to submit to a random alcohol test required under this part.

(5) Number of supervisors who have received training in determining the existence of reasonable suspicion of alcohol misuse during the reporting period.

(6) Identification of FTA funding source(s).

§ 655.73 Access to facilities and records.

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 655.71.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the covered employee's use of prohibited drugs or misuse of alcohol, including any records pertaining to his or her drug or alcohol tests. The employer shall provide promptly the records requested by the employee. Access to a covered employee's records shall not be contingent upon the employer's receipt of payment for the production of those records.

(c) An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug

and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's drug or alcohol testing related to the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from the covered employee. Subsequent disclosure by the employer is permitted only as expressly authorized by the terms of the covered employee's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug or alcohol test under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

(i) An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR parts 40 and 655.

§§ 655.74–655.80 [Reserved]

Subpart I—Certifying Compliance

§ 655.81 Grantee oversight responsibility.

A grantee shall ensure that the recipients of funds under 49 U.S.C.

5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part.

§ 655.82 Compliance as a condition of financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311 or under 23 U.S.C. 103(e)(4), if a recipient fails to establish and implement an anti-drug and alcohol misuse program as required by this part. Failure to certify compliance with these requirements, as specified in § 655.83, may result in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under 18 U.S.C. 1001.

(c) *State's role.* Each State shall certify compliance on behalf of its 49 U.S.C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) subrecipients, as applicable. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 5307, 5309, 5311 or 103(e)(4) subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 655.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall annually certify compliance, as set forth in § 655.82, to the applicable FTA Regional Office.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so.

(c) A recipient will be ineligible for further FTA financial assistance if the recipient fails to establish and implement an anti-drug and alcohol misuse program in accordance with this part.

Appendixes to Part 655

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**APPENDIX A TO PART 655 – DRUG TESTING MANAGEMENT INFORMATION SYSTEM
(MIS) DATA COLLECTION FORM**

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Transit Administration (FTA) **Drug Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-v as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

<u>Section</u>	<u>Instructions Page</u>	<u>Reporting Form Page</u>
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. DRUG TESTING INFORMATION	ii-v	3-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	v	5
E. DRUG TRAINING/EDUCATION	vi	5
F. FTA FUNDING SOURCES	vi	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the name of the employer for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

Section C is used to summarize the drug testing results for applicants and covered employees. There are six categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following five parts are for entering drug testing data on random, post-accident, reasonable suspicion, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

- 1) the number of specimens collected in each employee category;
- 2) the number of specimens tested which were verified negative and verified positive for any drug(s);
and
- 3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, PRE-EMPLOYMENT testing information. The format and explanations used for the sample apply to all six parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of both pages. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Page 3

DRUG TESTING INFORMATION (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" require a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading **“NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,”** refers to the number of specimens provided by applicants or employees that were verified positive. “Verified positive” means the results were verified by your MRO.

The right hand portion of this table, with the heading **“NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,”** requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, “verified positive” refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person’s positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked: **“TOTAL”**.

A sample table is provided on page iv with example numbers.

Page 3

Below the part of the table containing pre-employment testing information is a box with the heading **“Number of persons denied a position as a covered employee following a verified positive drug test”**. This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories “Revenue Vehicle Operation” and “Armed Security Personnel” to illustrate the procedures for completing the form.

- A Urine specimens were collected for 157 applicants for revenue service vehicle operation positions during the reporting year. This information is entered in the first blank column of the table in the row marked “Revenue Vehicle Operation”.
- B The Medical Review Officer (MRO) for the employer reported that 153 of those 157 specimens from applicants for revenue service vehicle operation positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked “Revenue Vehicle Operations”.
- C The MRO for the employer reported that 4 of those 157 specimens from applicants for revenue service vehicle operation positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked “Revenue Vehicle Operation”.

D With the 4 specimens that tested positive, the following drugs were detected:

<u>Specimen</u>	<u>Drugs</u>
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, **OTHER DRUG TESTING/PROGRAM INFORMATION**, on page 5 of the reporting form.

Please note that the sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue service vehicle operation should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives – 1 for marijuana and 1 for opiates. This information is entered in the row marked "Armed Security Personnel".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for revenue service vehicle operation positions were collected and 107 for applicants for armed security personnel positions. The total for that columns would be 264 (i.e., 157 + 107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				MARIJUANA (THC)	COCAINE	PHENCYCLIDINE (PC)	OPIATES	AMPHETAMINES
REVENUE VEHICLE OPERATION	157	153	4	3	1	0	0	1
ARMED SECURITY PERSONNEL	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1

A
B
C
D
E

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

- Page 4 Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide counts of fatal and non-fatal accidents and fatalities which resulted in positive post-accident drug tests for any employee involved in the accident. This information should be available from the safety program manager or the drug program manager.
- Page 4 Also following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule. This information should be available from the personnel office and/or drug program manager.
- Page 5 **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug, employees testing positive for both drugs and alcohol, and a table dealing with employees who refused to submit to a drug test.
- Page 5 **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".
- Page 5 Next you must provide a count of **employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.**
- Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.
- Page 5 **DRUG TRAINING/EDUCATION** (Section E) requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.
- Page 5 **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS DATA COLLECTION FORM

OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 20 _____

A. EMPLOYER INFORMATION

Name _____

Address _____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature

Date of Signature

Title

<p>Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.</p>
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<p>The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TPM-30), Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.</p>
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B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 – December 31, 1994)
2. This report is only for testing **REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**.
 - Results should be reported only for employees in **COVERED POSITIONS** as defined by the FTA drug testing regulation.
 - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in Section D ["OTHER DRUG TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.
4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.
5. Complete all items; **DO NOT LEAVE ANY ITEM BLANK**. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Mar-juana (THC)	Cocaine	Phency-clidine (PC)	Opiates	Amphet-amines
PRE-EMPLOYMENT								
Revenue Vehicle Operations								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RANDOM								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
POST-ACCIDENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
Number of persons denied a position as a covered employee following a verified positive drug test:								

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marjuana (THC)	Cocaine	Phencyclidine (PC)	Opiates	Amphetamines
REASONABLE SUSPICION								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RETURN TO DUTY								
Revenue Vehicle Operations								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
FOLLOW-UP								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
Number of accidents, as defined by the FTA drug testing regulation, which resulted in a positive post-accident drug test:				FATAL		NON-FATAL		
Number of fatalities resulting from accidents which resulted in a positive post-accident drug test:								
Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:								

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
Number of employees administered drug <u>and</u> alcohol tests at the same time resulting in a verified positive drug test <u>and</u> an alcohol test indicating an alcohol concentration of 0.04 or greater:						
EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST						Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:						
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:						

E. DRUG TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

**APPENDIX B TO PART 655 – DRUG TESTING MANAGEMENT INFORMATION SYSTEM
(MIS) “EZ” DATA COLLECTION FORM**

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Drug Testing MIS “EZ” Data Collection Form**. This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations.

SECTION A – EMPLOYER INFORMATION requires the company name for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Also indicate the year covered by this report. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

SECTION B – COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The TOTAL is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG**, requires that you identify the number of employees in each employee category.

SECTION C – DRUG TESTING INFORMATION requires information for drug testing, refusal for testing, and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. **“COLL”** requires the number of specimens collected in each employee category for each category of testing. **“NEG”** requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added and the answer entered in the row marked **“TOTAL”**.

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of **employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule**. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

SECTION D – FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS "EZ" DATA COLLECTION FORMOMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 20 _____

A. EMPLOYER INFORMATION

Company Name _____

Address _____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Drug Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature

Date of Signature

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TPM-30), Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
Total		

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE											
	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Revenue Vehicle Operations												
Revenue Vehicle and Equipment Maintenance												
Revenue Vehicle Control/Dispatch												
CDL/Non-Revenue Vehicle												
Armed Security Personnel												
Total												
Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:												
EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST											Number	
Covered employees who refused to submit to a random drug test required under the FTA regulation:												
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:												
DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD											Number	
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:												
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:												

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

**APPENDIX C TO PART 655 – ALCOHOL TESTING MANAGEMENT INFORMATION
SYSTEM (MIS) DATA COLLECTION FORM**

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information in the Federal Transit Administration (FTA) **Alcohol Testing MIS Data Collection Form**. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

<u>Section</u>	<u>Instructions Page</u>	<u>Reporting Form Page</u>
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. ALCOHOL TESTING INFORMATION	ii-iv	3-4
D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION	v	5
E. ALCOHOL TRAINING/EDUCATION	v	5
F. FTA FUNDING SOURCES	v	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the year covered by this report, the agency name for which the report is done, a current address, a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Page 3

ALCOHOL TESTING INFORMATION (Section C) requires information for alcohol testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Four types of information are necessary to complete this table. The first blank column with the heading "**NUMBER OF SCREENING TESTS,**" requires a count for all screening tests conducted for each employee category. The second blank column with the heading "**NUMBER OF CONFIRMATION TESTS,**" requires a count for all confirmation alcohol tests performed for each employee category.

The third blank column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO 0.02, BUT LESS THAN 0.04,**" requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.02, but less than 0.04.

The fourth blank column with the heading "**NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04,**" requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.04. **Note: For return to duty testing, a confirmation result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

Each column in the table should be added and the answer entered in the row marked "**TOTAL**".

A sample table is provided on page iv with example numbers.

Page 3

Below the part of the table containing pre-employment testing information are three boxes. This information should be available from the safety program manager or the alcohol program manager.

1) "**Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater**". This is a count of those persons who were not placed in a covered position because they took a breath test that resulted in an alcohol concentration of 0.04 or higher.

2) "Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol testing indicating an alcohol concentration of 0.04 or greater". This is a count of fatal and non-fatal accidents which resulted in post-accident breath alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the accident.

3) "Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater". This is a count of fatalities in accidents which resulted in post-accident alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the fatal accidents.

Page 4

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide the **number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations)**. This information should be available from the personnel office and/or alcohol program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing the form.

A Screening tests were performed on 157 job applicants for revenue vehicle operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B Confirmation tests were necessary for 6 of the 157 applicants for revenue vehicle operator positions. Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation". The confirmation test results for these 6 applicants were the following:

<u>Applicant</u>	<u>Confirmation Result</u>
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmation test results for 2 of the applicants for revenue vehicle operator positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Revenue Vehicle Operation".

- D** The confirmation test results for 3 of the applicants for revenue vehicle operator positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".
- E** The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for revenue vehicle operator positions and 107 applicants for armed security personnel positions were subjected to screening tests. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

Please note that our sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue vehicle operators should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 screening tests conducted resulting in 3 confirmation tests. No confirmation results were equal to or greater than 0.02, but less than 0.04; and the confirmation test result for 1 of the armed security personnel applicants was equal to or greater than 0.04. This information is entered in the row marked "Armed Security Personnel".

PRE-EMPLOYMENT				
EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
REVENUE VEHICLE OPERATION	157	6	2	3
ARMED SECURITY PERSONNEL	107	3	8	1
TOTAL	264	5	2	4

A
B
C
D
E

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

- Page 5 **OTHER ALCOHOL TESTING/PROGRAM INFORMATION** (Section D) requires information on employees tested for drugs and alcohol at the same time and that you complete a table dealing with violations of other alcohol provisions/prohibitions of the regulation and a table dealing with employees who refused to submit to an alcohol test.
- Page 5 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater**, requires that a count of all such employees be entered in the indicated box.
- Page 5 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION** requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these FTA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.
- Page 5 **EMPLOYEE WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.
- Page 5 **ALCOHOL TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.
- Page 5 **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

FTA ALCOHOL TESTING MIS DATA COLLECTION FORM

OMB No. 2132-0557

YEAR COVERED BY THIS REPORT: 20 _____

A. EMPLOYER INFORMATION

Name _____

Address _____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature

Date of Signature

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TPM-30), Federal Transit Administration; 400 7 th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.
--

B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
Total	

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 – December 31, 1994).
2. This report is only for testing **REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT)**:
 - Results should be reported only for employees in **COVERED POSITIONS** as defined by the FTA alcohol testing regulation.
 - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.
3. Information on refusals for testing should only be reported in Section D ["OTHER ALCOHOL TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.
5. Complete all items; **DO NOT LEAVE ANY ITEM BLANK**. If the value for an item is zero (0), place a zero (0) on the form.

C. ALCOHOL TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
Revenue Vehicle Operations				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RANDOM				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
POST-ACCIDENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater.				
Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:			FATAL	NON-FATAL
Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.				

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
REASONABLE SUSPICION				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RETURN TO DUTY				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
FOLLOW-UP				
Revenue Vehicle Operations				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
Number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations):				

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

Number of employees administered drug <u>and</u> alcohol tests at the same time resulting in a verified positive drug test <u>and</u> an alcohol test indicating an alcohol concentration of 0.04 or greater:	
---	--

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function.	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function.	
	Covered employee used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	

E. ALCOHOL TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

E. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

**APPENDIX D TO PART 655 – ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM
(MIS) “EZ” DATA COLLECTION FORM**

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Alcohol Testing MIS “EZ” Data Collection Form**. This form should only be used if there is **no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations.

SECTION A – EMPLOYER INFORMATION requires the year covered by this report, the agency name for which the report is done, a current address, and a person’s name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

SECTION B – COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer’s personnel department. These counts should be based on the recipient’s or contractor’s records for the reported year. The TOTAL is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

SECTION C – ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusal for testing, and training/education. The first table requests information on the **NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Enter the number of alcohol screening tests conducted by employee category for each category of testing. Testing categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. Each column in the table should be added and the answer entered in the row marked **“TOTAL”**.

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of **employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation)**. This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

SECTION D – FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

**FTA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0557
(No Alcohol Misuse)**

YEAR COVERED BY THIS REPORT: 20 _____

A. EMPLOYER INFORMATION

Company Name _____

Address _____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Alcohol Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

Signature

Date of Signature

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

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B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
Total	

C. ALCOHOL TESTING INFORMATION

NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED						
EMPLOYEE CATEGORY	PRE-EMPLOYMENT	RANDOM	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Revenue Vehicle Operation						
Revenue Vehicle and Equipment Maintenance						
Revenue Vehicle Control/Dispatch						
CDL/Non-Revenue Vehicle						
Armed Security Personnel						
Total						
Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation):						

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	
ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	5307	5309	5310	5311

Issued on: July 27, 2001.

Jennifer L. Dorn,
 Administrator, Federal Transit
 Administration.

[FR Doc. 01-19234 Filed 8-2-01; 4:41 pm]

BILLING CODE 4910-57-C



Federal Register

**Thursday,
August 9, 2001**

Part III

Department of Health and Human Services

**Health Resources and Services
Administration**

**Availability of Funds Announced in the
HRSA Preview; Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview

AGENCY: Health Resources and Services Administration.

ACTION: General notice.

SUMMARY: HRSA announces the availability of funds in the HRSA Preview for Summer 2001. This edition of the HRSA Preview is a comprehensive review of HRSA's Fiscal Year 2002 competitive grant programs.

The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to

replace the multiple **Federal Register** notices which traditionally advertised the availability of HRSA's discretionary funds for its various programs. It should be noted that additional program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the HRSA Preview may be announced through the **Federal Register** from time to time. Requirements appearing elsewhere in the **Federal Register** are not changed by this notice.

This notice contains nearly all of the content of the HRSA Preview. The HRSA Preview contains a description of competitive and other grant programs scheduled for awards in Fiscal Year 2002, and includes instructions on how to contact the Agency for information and receive application kits for all programs. Specifically, the following information is included in the HRSA

Preview: (1) Program title; (2) legislative authority; (3) purpose; (4) eligibility; (5) funding priorities and/or preferences; (6) estimated dollar amount of competition; (7) estimated number of awards; (8) estimated project period; (9) Catalog of Federal Domestic Assistance (CFDA) identification number; (10) application availability date; (11) letter of intent deadline (if any); (12) application deadline; (13) projected award date; and (14) programmatic contact, with telephone and e-mail addresses. Certain other information, including how to obtain and use the HRSA Preview and grant terminology, can also be found in the HRSA Preview.

Dated: July 31, 2001.

Elizabeth M. Duke,
Acting Administrator.

This notice describes funding for the following HRSA discretionary authorities and programs (receipt deadlines are also provided):

Health Professions Programs:

Advanced Education Nursing Grants	12/3/2001
Advanced Education Nursing—Nurse Anesthetist Traineeship Grants	11/19/2001
Advanced Education Nursing Traineeship Grants	11/19/2001
Basic Nurse Education and Practice Grants	1/28/2002
Nursing Faculty Development in Geriatrics	11/09/2001
Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students	11/19/2001
Nursing Workforce Diversity Grants	12/07/2001
Health Careers Opportunity Program	1/10/2002
Centers of Excellence	12/03/2001
Minority Faculty Fellowship Program	10/05/2001
Basic/Core Area Health Education Centers	12/18/2001
Model State-Supported Area Health Education Centers	12/18/2001
Scholarships For Disadvantaged Students	12/17/2001
Faculty Loan Repayment Program	5/31/2002

Special Populations Programs:

Model Interventions to Increase Organ and Tissue Donation	6/04/2002
State Planning Grant Program	3/01/2002

HIV/AIDS Programs:

AIDS Education and Training Centers Program	3/15/2002
National Training and Technical Assistance Cooperative Agreement Program	8/08/2002
Ryan White Title IV: Grants for Coordinated HIV Services and Access to Research for Children, Youth, Women, and Families	4/01/2002
Funding for Early Intervention Services Planning and Capacity Building Grants: Competing	5/31/2002
Special Projects of National Significance	3/29/2002

Maternal and Child Health Programs:

Genetic Services—Evaluation of the Use of New and Evolving Technology within Newborn Screening Programs	3/01/2002
Genetic Services—Improving Health of Children: Implementation of the State Grants for the Integration of Programs and Their Information Systems	2/28/2002
Genetic Resources and Services Information Center	2/28/2002
National Newborn Screening and Genetics Resource Center	2/28/2002
National Blood Lead Proficiency Testing Program	11/15/2001
Comprehensive Hemophilia Diagnostic and Treatment Centers	3/01/2002
Bright Futures Grant Health Promotion/Prevention Education Center	10/15/2001
Bright Futures Pediatric Implementation Cooperative Agreement	10/15/2001
Oral Health Integrated Systems Development Grants	3/08/2002
Integrated Health and Behavioral Health Care for Children, Adolescents, and their Families—Implementation Grants ...	2/15/2002
Maternal and Child Health Library Services	10/01/2001
Health Insurance for Children with Special Health Care Needs (CSHCN)	2/15/2002
Healthy and Ready to Work (HRTW) National Center	2/22/2002
Integrated Community Systems	2/15/2002
Statewide Medical Home Development Grants	11/15/2001
Partnership for Information and Communication MCH Cooperative Agreements	2/22/2002
Partners in Program Planning for Adolescent Health	4/22/2002
SPRANS Community-Based Abstinence Education Project Grants	1/22/2002
National Sudden Infant Death Syndrome/Infant Death Program Support Center	5/17/2002
Program to Enhance Performance of Sudden Infant Death Syndrome (SIDS) and Other Infant Death Initiatives	5/17/2002

Maternal and Child Health Research Program	8/01/2001
Health Care Information and Education for Families of Children with Special Health Care Needs (CSHCN)	3/01/2002
Public Policy Analysis and Education Center for Infant and Early Childhood Health	1/02/2002
Graduate Medical Education: Reducing Health Status Disparities through Mentoring Training for Residents in OB/ GYN, Pediatrics, and Family Practice	2/22/2002
Long Term Training in Adolescent Health	10/15/2001
Long Term Training in Pediatric Dentistry	1/25/2002
Continuing Education and Development	11/02/2001
Continuing Education/Distance Learning	1/18/2002
Healthy Tomorrows Partnership for Children Program	1/18/2002
Emergency Medical Services for Children Development Grants	10/01/2001
Emergency Medical Services for Children Partnerships Demonstration Grants	11/05/2001
Emergency Medical Services for Children Regional Symposium Supplemental Grants	11/05/2001
Emergency Medical Services for Children Targeted Demonstration Grants	11/05/2001
Clinical Practice Guidelines for Emergency Care of Children	11/05/2001
National Emergency Medical Services for Children Data Analysis Resource Center (NADARC) Demonstration Grant	11/05/2001
Trauma/EMS Program	4/01/2002
Traumatic Brain Injury (TBI) State Implementation Grants	12/03/2001
Traumatic Brain Injury (TBI) State Planning Grants	12/03/2001
Traumatic Brain Injury (TBI) Post-Demonstration	12/03/2001
Developing a System of Care to Address Family Violence During or Around the Time of Pregnancy	1/04/2002
Rural Health Policy Programs:	
Rural Health Network Development	10/15/2001
Rural Health Outreach Grant	9/21/2002
Rural Health Outreach Grant	9/28/2001
Rural Health Outreach Grant	9/13/2002
Primary Health Care Programs:	
Community and Migrant Health Centers	(1)
Health Care for the Homeless	(1)
Public Housing Primary Care	10/1/2001
Healthy Schools, Healthy Communities Program	(1)
New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act	(2)
Increase in Medical Capacity in Programs Funded Under the Health Centers Consolidation Act of 1996	10/01/2001
Healthy Schools, Healthy Communities Planning and Capacity Development Grants	3/20/2002
Grants to States for Loan Repayment Programs	5/15/2002
Black Lung Clinics	(1)
National Health Center Technical Assistance Cooperative Agreement	10/01/2001

¹ Varies.

² Continuous.

Individuals may obtain the HRSA Preview by calling the toll free number at 1-877-477-2123 (1-877-HRSA-123). The HRSA Preview may also be accessed on HRSA's web site at <http://www.hrsa.gov/grants.htm>.

How To Use and Obtain Copies of the HRSA Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the toll-free number: 1-877-477-2123 (1-877-HRSA-123). Likewise, we urge applicants to fully assess their eligibility for grants before requesting kits. As a general rule, no more than one kit per category will be mailed to applicants.

To Obtain a Copy of the HRSA Preview

To have your name and address added to or deleted from the HRSA Preview mailing list, call the toll free number above or send a message by e-mail to hrsagac@hrsa.gov.

To Obtain an Application Kit

Applications kits differ depending on the grant program. Determine which kit(s) you wish to receive and call 1-

877-477-2123 to be placed on the mailing list. Be sure to provide the information specialist with both the CFDA number and the title of the grant program. You may also request application kits using the e-mail address above. Application kits are generally available 60 days prior to application deadline. If kits are available earlier, they will be mailed immediately. The guidance contained in the various kits contains detailed instructions, background on the grant program, and other information, such as the applicability of Executive Order 12372 and 45 CFR Part 100, and additional information pertinent to the intergovernmental review process, as appropriate.

World Wide Web Access

The HRSA Preview is available on the HRSA homepage via the World Wide Web at: <http://www.hrsa.gov/grants.htm>. You can download this issue in Adobe Acrobat format.

Application materials are also available for downloading for some HRSA programs. HRSA's goal is to post application forms and materials for all programs in future cycles.

You can register online to be sent grant application materials by following the instructions on the web page. Your mailing information will be added to our database and materials will be sent to you as they become available.

Grant Terminology

Application Deadlines

Applications will be considered on time if they are received on or before the established deadline, or postmarked on or before the deadline given in the program announcement or in the application kit materials. Applications sent to any address other than that specified in the application guidance are subject to being returned.

Authorization

The citation of the law authorizing the various grant programs is provided immediately following the title of the programs.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities which

provide assistance. Programs listed therein are given a CFDA Number. Be sure to use both the CFDA number and the title of the grant program when requesting an application kit. Note that CFDA numbers with alpha suffixes have different titles than the same CFDA numbers without suffixes.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project. The nature of that involvement will always be specified in the offering or application guidance materials.

Eligibility

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs, and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations and institutions, State and local governments and their agencies, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation. Under the President's initiative, faith-based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are urged to consider these grant offerings.

Funding Availability and Estimated Amount of Competition

The funding level listed is provided only as an estimate, and is subject to the availability of funds, congressional action, and changing program priorities.

Funding Priorities and/or Preferences

Funding preferences, priorities, and special considerations may come from legislation, regulations, or HRSA program leadership decisions. They are not the same as review criteria. Funding preferences are any objective factors that would be used to place a grant application ahead of others without the preference on a list of applicants recommended for funding by a review committee. Some programs give preference to organizations which have specific capabilities such as telemedicine networking, or have established relationships with managed care organizations. Funding priorities are factors that cause a grant application to receive a fixed amount of extra rating points—which may similarly affect the order of applicants on a funding list.

Special considerations are other factors considered in making funding decisions that are neither review criteria, preferences, or priorities, e.g., ensuring that there is an equitable geographic distribution of grant recipients, or meeting requirements for urban and rural proportions.

Key Offices

The Grants Management Office serves as the focal point for questions concerning business matters. In the HRSA Preview, the highlighted section at the head of each program indicates the appropriate grants management office for each program area and the main telephone number for the office.

Letter of Intent

To help in planning the application review process, many HRSA programs request a letter of intent from the applicant in advance of the application deadline. Letters of intent are neither binding nor mandatory. Details on where to send letters can be found in the guidance materials contained in the application kit.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching or other cost-sharing requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Project Period

The total time for which support of a discretionary project has been programmatically approved. The project period usually consists of a series of budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability of funds, and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

- That the estimated costs to the Government of the project are reasonable considering the level and complexity of activity and the anticipated results.
- That project personnel or prospective fellows are well qualified by training and/or experience for the support sought, and the applicant organization or the organization to

provide training to a fellow have adequate facilities and manpower.

- That, insofar as practical, the proposed activities (scientific or other), if well executed, are capable of attaining project objectives.

- That the project objectives are capable of achieving the specific program objectives defined in the program announcement and the proposed results are measurable.

- That the method for evaluating proposed results includes criteria for determining the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program.

- That, in so far as practical, the proposed activities, when accomplished, are replicable, national in scope and include plans for broad dissemination.

The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged by the reviewers.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls as indicated in the HRSA Preview. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA web site at <http://www.hrsa.gov/> for the latest technical assistance information.

Frequently Asked Questions

1. Where Do I Submit Grant Applications?

The address for submitting your grant application will be shown in the guidance document included in the application kit.

2. How Do I Learn More About a Particular Grant Program?

If you want to know more about a program before you request an application kit, an e-mail/telephone contact is listed. This contact person can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive, and accurate

information available to you. When requesting application materials, you must state the CFDA Number and title of the program. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide information about your program of interest if you are unable to find the information within the written materials provided.

In general, the program contact person provides information about the specific grant offering and its purpose, and the grants management specialist provides information about the grant mechanism and business matters, though their responsibilities often overlap.

Information specialists at the toll-free number administer mailings and provide only basic information.

3. The Dates Listed in the HRSA Preview and the Dates in the Application Kit Do Not Agree. How Do I Know Which Is Correct?

HRSA Preview dates for application kit availability and application receipt deadlines are based upon the best known information at the time of publication, often nine months in advance of the competitive cycle. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is generally correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit, and also posted on the HRSA home page.

4. Are Programs Announced in the HRSA Preview Ever Canceled?

Infrequently, announced programs may be withdrawn from competition. If this occurs, a cancellation notice will be provided through the HRSA Preview at the HRSA homepage at <http://www.hrsa.dhhs.gov>. If practicable, an attempt will be made to notify those who have requested a kit for the canceled program by mail.

If you have questions, please contact Jeanne Conley of the Grants Policy Branch at (301) 443-4972 (jconley@hrsa.gov).

Health Professions Programs

Funding Availability

The Bureau of Health Professions programs listed below are proposed in the President's Fiscal Year 2002 budget for reduction.

Health Careers Opportunity Program
Centers of Excellence
Minority Faculty Fellowship Program
Basic/Core Area Health Education
Centers

Model State-Supported Area Health
Education Centers
Scholarships For Disadvantaged
Students
Faculty Loan Repayment Program
Kids Into Health Careers Initiative

The Bureau of Health Professions announces a new initiative to increase diversity and cultural competency of the health professions workforce. The Kids Into Health Careers initiative is designed to expand the pool of qualified and interested applicants from minority and disadvantaged populations. The Bureau encourages applicants to participate in the Kids Into Health Careers initiative by working with primary and secondary schools that have a high percentage of minority and disadvantaged students. Participation would include establishing linkages with one or more elementary, middle, or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits.

All recipients of Bureau of Health Professions grants will receive a packet of information and guidance materials that can be used in working with local school systems. Kids Into Health Careers Initiative information may also be obtained on the Bureau of Health Professions website at <http://www.hrsa.gov/bhpr/>.

Advanced Education Nursing Grants 93.247

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support the enhancement of advanced nursing education and practice. For the purpose of this section, advanced education nurses means individuals trained in advanced degree programs include these: individuals in combined RN to Master's degree programs; post-nursing Master's certificate programs; or in the case of nurse midwives, in certificate programs in existence on November 12, 1998. This program will enable graduates to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators, or public health nurses.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and appropriate public or private nonprofit entities, as appropriate for the category of assistance under section 811.

Funding Priorities and/or Preferences: As provided in Section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$10,800,000.

Estimated Number of Awards: 43.

Estimated or Average Size of Each Award: \$249,000.

Estimated Project Period: 3 years.

CFDA Number: 93.247.

Application Availability Date: July 16, 2001.

Application Deadline: December 3, 2001.

Projected Award Date: June 28, 2002.

Program Contact Person: Irene Sandvold, DrPH, CNM, RN.

Phone Number: (301) 443-6333.

E-mail: isandvold@hrsa.gov.

Advanced Education Nursing—Nurse Anesthetist Traineeship Grants 93.124

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support traineeships for licensed registered nurses enrolled as full-time students beyond the twelfth month of study in a Master's nurse anesthesia program. The traineeship program is a formula program and all eligible entities will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other public and private nonprofit institutions which provide registered nurses with full-time nurse anesthetist education and have evidence of earned pre-accreditation or accreditation status from the American Association of Nurse Anesthetists (AANA) Council on Accreditation of Nurse Anesthesia Educational Programs.

Funding Priorities and/or Preferences: As provided in Section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Considerations: A statutory special consideration, as provided for in

Section 811(f)(3) of the PHS Act, will be given to eligible entities that agree to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$1,000,000.

Estimated Number of Awards: 68.

Estimated or Average Size of Each Award: \$14,000.

Estimated Project Period: 1 year.

CFDA Number: 93.124.

Application Availability Date: July 16, 2001.

Application Deadline: November 19, 2001.

Projected Award Date: March 29, 2002.

Program Contact Person: Marcia Starbecker, MSN, RN.

Phone Number: (301) 443-6193.

E-mail: mstarbecker@hrsa.gov.

Advanced Education Nursing Traineeship Grants 93.358

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions to meet the cost of traineeships for individuals in advanced nursing education programs. Traineeships are awarded to individuals by participating educational institutions offering Master's and doctoral degree programs, combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, certificate programs in existence on November 12, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses. The traineeship program is a formula program and all eligible schools will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, and other appropriate public or private nonprofit entities.

Funding Priorities and/or Preferences: As provided in Section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Special Considerations: A statutory special consideration, as provided for in Section 811(f)(3) of the PHS Act, will be given to eligible entities that agree to expend the award to train advanced

education nurses who will practice in health professional shortage areas designated under Section 332 of the PHS Act.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$18,600,000.

Estimated Number of Awards: 316.

Estimated Project Period: 1 year.

CFDA Number: 93.358.

Application Availability Date: July 16, 2001.

Application Deadline: November 19, 2001.

Projected Award Date: March 31, 2002.

Program Contact Person: Marjorie Hamilton.

Phone Number: (301) 443-6193.

Email: mhamilton@hrsa.gov.

Basic Nurse Education and Practice Grants 93.359.

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: Grants are awarded to enhance the educational mix and utilization of the basic nursing workforce by strengthening programs that provide basic nurse education, such as through: (1) Establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities; (2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, the homeless, and victims of domestic violence; (3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; (4) developing cultural competencies among nurses; (5) expanding the enrollment in baccalaureate nursing programs; (6) promoting career mobility for nursing personnel in a variety of training settings and cross-training or specialty training among diverse population groups; or (7) providing education for informatics, including distance learning methodologies.

Eligibility: Regular eligible applicants for purposes one and five are schools of nursing. Eligible applicants for purposes two, three, four, six, and seven are schools of nursing, nursing centers, academic health centers, State or local governments, and other appropriate public or private nonprofit entities.

Funding Priorities and/or Preferences: As provided in Section 805 of the Public Health Service Act, preference will be

given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Special Considerations: In making awards under Purpose 1 (establishing or expanding nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities) a funding priority will be given to those schools of nursing who have not received support for Nurse Practice Arrangements under 1992 legislation or the 1998 legislation.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$5,060,000.

Estimated Number of Awards: 22.

Estimated or Average Size of Each Award: \$230,000.

Estimated Project Period: 3 years.

CFDA Number: 93.359.

Application Availability Date: July 16, 2001.

Application Deadline: January 28, 2002.

Projected Award Date: June 28, 2002.

Program Contact Person: Madeline Turkeltaub, PhD, CRNP, RN.

Phone Number: (301) 443-6193.

E-mail: mturkeltaub@hrsa.gov.

Nursing Faculty Development in Geriatrics 93.359B

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: The purpose of this program is to provide support for eligible entities to provide nursing faculty development in geriatrics to strengthen the geriatric nursing didactic content and clinical components of baccalaureate and higher degree nursing education programs. Funds will be used to assist the applicant to plan, implement, and evaluate continuing education programs that will: (1) Provide knowledge and skills in core geriatric content; (2) develop specific teaching and learning resources to use in improving geriatric care education and practice; (3) promote learning communities; and (4) increase the capacity of nurses to provide effective geriatric care.

Eligibility: Eligible entities are schools of nursing, nursing centers, academic health centers, State or local governments, and other appropriate public or private nonprofit entities.

Funding Priorities or Preferences: As provided in Section 805 of the Public Health Service Act, preference will be given to applicants with projects that

will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$690,000.

Estimated Number of Awards: 3.
Estimated or Average Size of Each Award: \$230,000.

Estimated Project Period: 3 years.
CFDA Number: 93.359B.

Application Availability Date: July 16, 2001.

Application Deadline: November 9, 2001.

Projected Award Date: March 30, 2002.

Program Contact Person: Patricia A. Calico, DNS, RN.

Phone Number: (301) 443-6333.

E-mail: pcalico@hrsa.gov.

Geriatric Nursing Knowledge and Experiences in Long Term Care Facilities for Baccalaureate Nursing Students 93.359A

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: The purpose of this initiative is to assist eligible entities to strengthen the geriatric nursing didactic content and clinical components of their baccalaureate nursing program. Funds will be used to assist entities plan, implement, and evaluate a geriatric nursing experience that will expose senior nursing students to: (1) Increased course content in geriatric nursing and concepts of age-sensitive care; (2) application of this content to geriatric patients with chronic illness residing in long term care, including assisted living facilities; and (3) use of assessment skills in the setting selected in order to accurately complete appropriate assessments using standardized tools such as the Minimum Data Set (MDS) required by Medicare regulations. This project should be implemented through a planned partnership with a geriatric long-term care or assisted living facility.

Eligibility: Schools of nursing are eligible. Applications from schools of nursing with currently funded projects will not be accepted for review.

Funding Priorities and/or Preferences: As provided in Section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$250,000.

Estimated Number of Awards: 10.

Average Size of Each Award: \$25,000.

Estimated Project Period: 1 year.

CFDA Number: 93.359A.

Application Availability Date: July 16, 2001.

Application Deadline: November 19, 2001.

Projected Award Date: March 31, 2002.

Program Contact Person: Madeline Turkeltaub, PhD, CRNP, RN.

Phone Number: (301) 443-6193.

E-mail: mturkeltaub@hrsa.gov.

Nursing Workforce Diversity Grants 93.178

Legislative Authority: Public Health Service Act, Title VIII, Section 821, 42 U.S.C. 296m.

Purpose: Grants are awarded to increase nursing education opportunities for individuals from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among registered nurses) by providing student scholarships or stipends, pre-entry preparation, and retention activities.

Eligibility: Eligible applicants are schools of nursing, nursing centers, academic health centers, State or local governments, and other public or private nonprofit entities.

Funding Priorities and/or Preferences: As provided in section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$3,150,000.

Estimated Number of Awards: 14.

Estimated or Average Size of Each Award: \$225,000.

Estimated Project Period: 3 years.

CFDA Number: 93.178.

Application Availability Date: July 16, 2001.

Application Deadline: December 7, 2001.

Projected Award Date: June 28, 2002.

Program Contact Person: Barbara Easterling, MS, RN.

Phone Number: (301) 443-5763.

E-mail: beasterling@hrsa.gov.

Health Careers Opportunity Program 93.822

Legislative Authority: Public Health Service Act, Title VII, Section 739, 42 U.S.C. 293c.

Purpose: The goal of the Health Careers Opportunity Program (HCOP) is to assist individuals from disadvantaged backgrounds to undertake education to enter a health profession. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to develop the skills needed to successfully compete, enter, and graduate from health professions schools. The legislative purposes for which HCOP funds may be awarded are: (1) Identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession; (2) facilitating the entry of such individuals into such a school; (3) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school; (4) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; (5) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program; (6) paying scholarships, as the Secretary may determine, for such individuals for any period of health professions education at a health professions school; (7) paying such stipends for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months; (8) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; and (9) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

Eligibility: Eligible applicants include schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine, public or nonprofit private schools that offer graduate programs in behavioral and mental health, programs for the training of

physician assistants, and other public or private nonprofit health or educational entities.

Funding Preferences and/or Priorities: Funding preference will be given to approved applications for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to establish, enhance, and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers. A comprehensive approach means a network of entities which are formally linked programmatically. The network must include a minimum of four entities: A health professions school, an undergraduate institution, a school district, and a community-based entity.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of this Competition: Up to \$13,752,000 is available under the President's FY 2002 Budget.

Estimated Number of Awards: 36.

Estimated or Average Size of Each Award: \$367,000.

Estimated Project Period: 3 years.

CFDA Number: 93.822.

Application Availability Date: July 16, 2001.

Application Deadline: January 10, 2002.

Project Award Date: August 1, 2002.

Contact Person: CDR Sheila K. Norris.

Phone Number: (301) 443-2100.

E-mail: snorris@hrsa.gov.

Centers of Excellence 93.157

Legislative Authority: Section 736 of The Public Health Service Act, 42 U.S.C. 293.

Purpose: The goal of this program is to assist eligible schools in supporting programs of excellence in health professions education for underrepresented minority individuals. The grantee is required to use the funds awarded: (1) To develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community-based entities and establish an education pipeline for health professions careers; (2) to establish, strengthen, or expand programs to enhance the academic performance of underrepresented minority students attending the school; (3) to improve the capacity of such a school to train, recruit, and retain underrepresented minority faculty including the payment of stipends and fellowships; (4) to carry out activities to improve the information resources,

clinical education, curricula, and cultural competence of the graduates of the school as it relates to minority health issues; (5) to facilitate faculty and student research on health issues particularly affecting underrepresented minority groups, including research on issues relating to the delivery of health care; (6) to carry out a program to train students of the school in providing health services to a significant number of underrepresented minority individuals through training provided to such students at community-based health facilities that provide such health services and are located at a site remote from the main site of the teaching facilities of the school; and (7) to provide stipends as appropriate.

Eligibility: Eligible applicants are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, graduate programs in behavioral or mental health, or other public and private nonprofit health or educational entities that meet requirements of section 736(c). Historically Black Colleges and Universities as described in section 736(c)(2)(A) and which received a contract under section 788B of the Public Health Service Act (Advanced Financial Distress Assistance) for FY 1987 may apply for Centers of Excellence (COE) grants under section 736 of the Act.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of this

Competition: up to \$12,847,000 is available under the President's FY 2002 Budget.

Estimated Number of Awards: 16.

Estimated or Average Size of Each Award: \$785,000.

Estimated Project Period: 3 years.

CFDA Number: 93.157.

Application Availability Date: July 16, 2001.

Application Deadline: December 3, 2001.

Project Award Date: June 28, 2002.

Program Contact Person: Karen L. Smith.

Phone Number: (301) 443-2100.

E-mail: ksmith1@hrsa.gov.

Minority Faculty Fellowship Program 93.923

Legislative Authority: Public Health Service Act, Title VII, Section 738(b), 42 U.S.C. 293b.

Purpose: The purpose of the Minority Faculty Fellowship Program is to increase the number of underrepresented minority individuals who are members of the faculty in health professions schools. Eligible

applicants must demonstrate that they have or will have the ability to: (1) Identify, recruit, and select underrepresented minority individuals who have the potential for teaching, administration, or conducting research at a health professions institution; (2) provide such individuals with the skills necessary to enable them to secure a tenured faculty position at such institution, which may include training with respect to pedagogical skills, program administration, the design and conduct of research, grant writing, and the preparation of articles suitable for publication in peer reviewed journals; (3) provide services designed to assist individuals in their preparation for an academic career, including the provision of counselors; and (4) provide health services to rural or medically underserved populations.

Matching or Cost Sharing

Requirement: Applicant schools must match dollar for every dollar of Federal funds received for the fellowship. Further, the applicant school must provide assurance that the school's support will be provided for the individual for the second and third years at a level equal to the total amount of Federal and school funds provided the year in which the grant or contract was awarded.

Eligibility: Eligible applicants are schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, allied health, podiatric medicine, optometry, veterinary medicine, public health, or schools offering graduate programs in behavioral and mental health.

Special Consideration: In determining awards, the Secretary will also take into consideration equity among health disciplines and geographic distribution.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: Up to \$200,000 is available under the President's FY 2002 Budget.

Estimated Number of Awards: 3.

Estimated or Average Size of Each Award: \$75,000.

Estimated Project Period: Not to exceed 3 years.

CFDA Number: 93.923.

Application Availability: July 16, 2001.

Application Deadline: October 5, 2001.

Projected Award Date: March 29, 2002.

Program Contact Person: Armando Pollack.

Phone Number: (301) 443-2100.

E-mail: apollack@hrsa.gov

Basic/Core Area Health Education Centers 93.824

Legislative Authority: *Public Health Service Act, Title VII, Section 751, 42 U.S.C. 294a.*

Purpose: Cooperative agreements are awarded to assist schools to improve the distribution, supply, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the planning, development, and operation of AHECs to initiate education system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health sciences center with local planning, educational, and clinical resources, the AHEC program establishes a network of community-based training sites to provide educational services to students, faculty, and practitioners in underserved areas, and ultimately to improve the delivery of health care in the service area. The program embraces the goal of increasing the number of health professions graduates who ultimately will practice in underserved areas.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: The types of entities eligible to apply for this program are public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools, or the parent institutions of such schools. Also, in States in which no AHEC program is in operation, an accredited school of nursing is an eligible applicant.

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (1) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds will be awarded to approved applicants in the following order: (1) Competing continuations, (2) new starts in States with no AHEC program, (3)

other new starts, and (4) competing supplementals.

Special Consideration: Special consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle, or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. More information can be found at <http://www.hrsa.gov/bhpr>. Recipients of BHPPr grants will receive a packet of information and guidance materials.

Review Criteria: Final review criteria are included in the application kit.

Matching Requirements: Awardees shall make available (directly through contributions from State, county or municipal government, or the private sector) non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the AHEC Program, except that the Secretary may grant a waiver for up to 75 percent of the amount required in the first 3 years in which an awardee receives funds for this program. These funds must be for the express use of the AHEC Programs and Centers to address AHEC project goals and objectives.

Estimated Amount of this Competition: Up to \$3,778,000 is available under the President's FY 2002 Budget.

Estimated Number of Awards: 4.

Estimated or Average Size of Each Award: \$1,000,000.

Estimated Project Period: 3 years.

Application Availability Date: July 16, 2001.

Application Deadline: December 18, 2001.

Projected Award Date: August 30, 2002.

Program Contact Person: Louis D. Coccodrilli, MPH.

Phone Number: (301) 443-6950.

E-mail: lcoccodrilli@hrsa.gov.

Model State-Supported Area Health Education Centers 93.107.

Legislative Authority: *Public Health Service Act, Title VII, Section 751, 42 U.S.C. 294a.*

Purpose: This program awards funds to schools to improve the distribution, supply, and quality of health personnel in the health services delivery system by

encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers. The Area Health Education Centers (AHEC) program assists schools in the development and operation of AHECs to implement educational system incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational, and clinical resources, the AHEC program establishes a network of health-related institutions to provide educational services to students, faculty, and practitioners, and ultimately to improve the delivery of health care in the service area. These programs are collaborative partnerships which address current health workforce needs within a region of a State or in an entire State.

Matching or Cost Sharing Requirements: Awardees shall make available (directly or through contributions from State, county or municipal governments, or the private sector) recurring non-Federal contributions in cash in an amount not less than 50 percent of the operating costs of the Model State-Supported AHEC program.

Eligibility: The entities eligible to apply for this program are public or private nonprofit accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools or the parent institutions of such schools. Applicants must have previously received funds, but are no longer receiving funds under Section 751(a)(1) of the Public Health Service Act, and be operating an AHEC program.

Statutory Funding Preference: As provided in Section 791(a) of the Public Health Service Act, preference will be given to any qualified applicant that: (1) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

Funds will be awarded to approved applications in the following order: (1) Competing continuations, (2) new starts in States with no current AHEC program, (3) other new starts, and (4) competing supplementals.

Special Consideration: Special consideration will be given to qualified applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle, or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. More information can be found at <http://www.hrsa.gov/bhpr>. Recipients of BHP grants will receive a packet of information and guidance materials.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of this

Competition: Up to \$3,788,000 is available under the President's FY 2002 Budget.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: \$650,000.

Estimated Project Period: 3 years.

CFDA Number: 93.107.

Application Availability Date: July 16, 2001.

Application Deadline: December 18, 2001.

Projected Award Date: August 30, 2002.

Program Contact Person: Louis D. Coccodrilli, MPH.

Phone Number: (301) 443-6950.

E-mail: lcoccodrilli@hrsa.gov.

Scholarships For Disadvantaged Students 93.925

Legislative Authority: Public Health Service Act, Title VII, Section 737, 42 U.S.C. 293a.

Purpose: The Scholarships for Disadvantaged Students (SDS) program contributes to the diversity of the health professions students and practitioners. The program provides funding to eligible health professions and nursing schools to be used for scholarships to students from disadvantaged backgrounds who have financial need for scholarships and are enrolled, or accepted for enrollment, as full-time students at the eligible schools.

Eligibility: The following entities are eligible to apply for this program: (1) Schools of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, nursing, chiropractic, or allied health, graduate programs in behavioral

and mental health practice, or an entity providing programs for the training of physician assistants; and (2) schools with a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of racial and ethnic minority groups.

Funding Priorities and/or Preferences: An applicant must agree to give preference in providing scholarships to students for whom the costs of attending the schools would constitute a severe financial hardship and to former recipients of Exceptional Financial Need and Financial Assistance for Disadvantaged Health Professions Students Scholarships, former section 736 and 740(d)(2)(B).

A priority will be given to eligible entities that are health professions and nursing schools based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: Up to \$18,657,000 is available under the President's FY 2002 Budget.

Estimated Number of Awards: 200.

Estimated or Average Size of Each Award: \$93,255.

Estimated Project Period: 1 year.

CFDA Number: 93.925.

Application Availability Date:

November 1, 2001.

Application Deadline: December 17, 2001.

Projected Award Date: March 15, 2002.

Program Contact Person: Andrea Castle, Pam Wellens.

Phone Number: (301) 443-1701, 301-443-5168.

E-mail: dpolicy@hrsa.gov.

Faculty Loan Repayment Program 93.923

Legislative Authority: Public Health Service Act, Title VII, section 738(a), 42 U.S.C. 293b.

Purpose: The Faculty Loan Repayment Program (FLRP) provides a financial incentive for degree-trained health professions personnel from disadvantaged backgrounds to pursue an academic career. The individuals agree to serve as members of the faculties of health professions schools providing teaching services for a minimum of 2 years. The Federal Government in turn agrees to pay, for each year of service, as much as \$20,000 of the outstanding principal and interest on the individual's education loans.

Matching or Cost Sharing Requirement: The school which has entered into a contractual agreement with a recipient is required, for each year in which the recipient serves as a faculty member under contract with HHS, to make payments of principal and interest in an amount equal to the amount of such quarterly payments made by the HHS Secretary. The payments must be in addition to the faculty salary the recipient would ordinarily receive or the school must request a waiver of its share of cost. The Secretary may waive the school's matching requirement if the Secretary determines it will impose an undue financial hardship on the school. The school must provide supporting documentation such as audit report, budget report, etc. Employment is documented by a copy of the employment contract or the employer letter of intent.

Eligibility: An individual is eligible to apply for loan repayment under FLRP if the individual is from a disadvantaged background, holds a health professions degree, is enrolled in an approved health professions graduate program, or will be enrolled as a full-time student in the final year of health professions training that leads to a degree in one of the following health professions: allopathic medicine, osteopathic medicine, podiatric medicine, veterinary medicine, dentistry, pharmacy, optometry, nursing, public health, dental hygiene, medical laboratory technology, occupational therapy, physical therapy, radiologic technology, speech pathology, audiology, medical nutrition therapy and graduate programs in behavioral health and mental health practice, clinical psychology, clinical social work, and marriage and family therapy.

Funding Priorities and/or Preferences: Preference will be given to applicants who have not previously held a faculty position; been out of school less than 5 years; not previously participated in FLRP; received from the employing institution a commitment to match FLRP funds; and who contribute to geographic distribution across the country and represent diverse health professions disciplines.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: Up to \$357,000 is available under the President's FY 2002 Budget.

Estimated Number of Awards: 11.

Estimated or Average Size of Each Award: \$35,000.

Estimated Project Period: Not less than 2 years.

CFDA Number: 93.923.

Application Availability Date: March 1, 2002.

Application Deadline: May 31, 2002.

Projected Award Date: September 1, 2002.

Program Contact Person: Lorraine Evans.

Phone Number: (301) 443-0785.

Internet Address: <http://bhpr.hrsa.gov/dsa/flrp>.

Special Populations Programs

Model Interventions to Increase Organ and Tissue Donation 93.134

Legislative Authority: Public Health Service Act, 42 U.S.C. 273(a)(3).

Purpose: The purpose of this program is to assist in the evaluation or implementation of highly promising strategies that can serve as model interventions for increasing organ and tissue donation. Interventions must be (1) effective in producing a verifiable and demonstrable impact on donation, (2) replicable, (3) transferable, (4) feasible in practice, and (5) must have rigorous methodology and evaluation components. Applications may propose single-site pilot projects or replications of interventions already shown to be effective in a pilot study.

Eligibility: An applicant organization must be a Federally-designated organ procurement organization or other private not-for-profit organization/institution, and be part of a consortium consisting of at least one transplant-related organization and one organization/institution with demonstrated research experience and expertise.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$6,000,000.

Estimated Number of Awards: 28.

Estimated or Average Size of Each Award: \$215,000.

Estimated Project Period: 3 years.

CFDA Number: 93.134.

Application Availability Date: January 31, 2002.

Letter of Intent Deadline: May 1, 2002.

Application Deadline: June 4, 2002.

Projected Award Date: September 30, 2002.

Program Contact Person: Mary L. Ganikos, PhD.

Phone Number: (301) 443-7577.

E-mail: mganikos@hrsa.gov.

State Planning Grant Program 93.256

Legislative Authority: PHS Act, Section 301.

Purpose: The purpose of this program is to ensure that every citizen in every State has access to affordable health

insurance benefits similar in scope to the Federal Employees Health Benefit Plan, Medicaid, benefits offered to State employees, or other similar quality benchmarks. Each State grantee is to develop a plan or propose options to meet this objective.

Eligibility: The Governor of each State or territory which has not previously received a State Planning Grant is invited to apply. The Governor can designate an individual or agency authorized to prepare the State's application on behalf of the State. Only a State entity can be the official recipient of a grant. Only one application per State is permitted.

Funding Priorities and/or Preferences: Preference will be given to States with a low level of uninsured or the ability to significantly decrease a relatively high level of uninsured.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$13 million.

Estimated Number of Awards: Up to 10 State grants.

Estimated Size of Each Award: \$1.3 million.

Estimated Project Period: 1 year

CFDA Number: 93.256.

Application Availability Date: December 1, 2001.

Application Deadline: March 1, 2002.

Projected Award Date: July 1, 2002.

Program Contact Person: Joyce G. Somsak.

Phone Number: (301) 443-0938.

E-mail: jsomsak@hrsa.gov.

HIV/AIDS Programs

AIDS Education and Training Centers Program 93.145

Legislative Authority: Public Health Service Act As Amended by Public Law 104-146 Ryan White CARE Act of 1990 as Amended by the Ryan White CARE Act Amendments of 1996, 2000.

Purpose: The purpose of this grant program is to improve the quality of HIV/AIDS clinical care through the training of health professionals. The program includes both regional AIDS Education and Training Centers (AETCs) which provide HIV/AIDS clinical training within a defined region, as well as national centers, including but not limited to, the National Resource AETC and the National Minority AETC. Applicants for the regional AETCs must demonstrate the ability to provide expert clinical HIV/AIDS care training, information dissemination, and other information support to health professionals in a defined geographic region. National Centers serve to enhance the work of the

regional AETCs through expert support in specified areas. The National Resource AETC serves as a resource for HIV/AIDS training materials and rapid dissemination of information. The National Minority AETC fosters HIV/AIDS care capacity through training in minority institutions including Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges.

Eligibility: Grants may be awarded to public and nonprofit private entities and schools and academic health sciences centers that can provide expert HIV/AIDS clinical care training to medical professionals.

Funding Priorities or Preferences: Applicants with ability to provide expert clinical training to medical professionals in underserved regions are given special priority.

Special Considerations: The AIDS Education and Training Centers provides national coverage of training through its regional centers. The regions are not predefined, but only one AETC will be funded for each state or region.

Estimated Amount of This Competition: \$29,000,000.

Estimated Number of Awards: 18.

Estimated or Average Size of Each Award: \$1,200,000.

Estimated Project Period: 3 years.

CFDA Number: 93.145.

Application Availability Date: January 2, 2002.

Letter of Intent Deadline: February 1, 2002.

Application Deadline: March 15, 2002.

Projected Award Date: July 1, 2002.

Program Contact Person: Laura W. Cheever, MD.

Phone Number: (301) 443-3067.

E-mail: lcheever@hrsa.gov.

National Training and Technical Assistance Cooperative Agreement Program 93.145A

Legislative Authority: Title XXVI, Part F of the Public Health Service Act [Title 42, USC] as amended by Public Law 106-345 the Ryan White Care Act Amendments of 2000 (dated October 20, 2000).

Purpose: This grant program is designed to transfer knowledge and provide practical help to grantees, providers, planning bodies, and other constituents in their work with CARE Act-funded programs through cooperative agreements. All cooperative agreements will focus on the information and technical assistance needs of programs addressing the needs of HIV-infected women, children, and their families. Training and technical assistance (TA) will be provided to a

diverse group of individuals, including administrative and direct service staff of State/local AIDS programs, State/local health departments, CARE Act grantees and their subcontractors, other AIDS service organizations and community-based organizations, members of CARE Act planning bodies, and consumers.

The cooperative agreements will address the various informational and technical needs through the following general areas: Providing specific training and TA on various fiscal and programmatic topics; promoting best practices for the provision of high quality HIV related services; developing and disseminating publications; and providing opportunities for increased communication and collaboration.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: Eligible applicants are public or private nonprofit organizations with: (1) A service mission to address the needs of children, youth, and women that are living with HIV/AIDS, and (2) a national or regional constituency currently receiving HIV-related information or assistance.

Funding Priorities and/or Preferences: Preference will be given to organizations who can demonstrate familiarity with Ryan White CARE Act programs, especially Title IV programs. Preference will also be given to organizations that have worked directly with CARE Act programs in the last 3 years.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$1,000,000.

Estimated Number of Awards: 3.
Estimated or Average Size of Each Award: \$330,000.

Estimated Project Period: 3 years.
CFDA Number: 93.145A.
Application Availability Date: June 7, 2002.

Application Deadline: August 8, 2002.
Projected Award Date: September 27, 2002.

Program Contact Person: Rene Sterling.

Phone Number: (301) 443-7778.
E-mail: rsterling@hrsa.gov.

Ryan White Title IV: Grants for Coordinated HIV Services and Access to Research for Children, Youth, Women, and Families 93.153A

Legislative Authority: PHS Act, Public Law 106-345, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 2000.

Purpose: The purpose of the Title IV funding is to improve access to primary

medical care, research, and support services for HIV-infected children, youth, and women, and to provide support services for their affected family members. Funded projects will link clinical research and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for children, youth, and women who are HIV-infected. Funds will be used to support programs that: (1) Cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by medically underserved and hard-to-reach populations. Activities under these grants should address the goals of enrolling and maintaining clients in HIV primary care; increasing client access to research by linking development and support of comprehensive, community-based and family-centered care infrastructures; and emphasizing prevention within the care system, particularly the prevention of perinatal HIV transmission.

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care. Applicants are limited to currently funded Title IV programs whose project periods expire in FY 2002 and new organizations proposing to serve the same populations currently being served by these existing projects. These are the areas:

State—Areas

AL—Birmingham, Montgomery and surrounding counties
AR—Pine Bluff and Northeast Arkansas
CA—San Diego and Fresno
CT—Hartford, New Haven, and Fairfield
DC—Citywide
FL—City of Orlando, Orange and surrounding counties, and West Palm Beach
LA—Baton Rouge
MD—Baltimore and Prince Georges Counties
MI—Detroit and surrounding counties
NC—Asheville and Charlotte
NH—Statewide and Southeast Vermont
NY—Elmhurst, Queens, Lower Manhattan and Staten Island, and Stony Brook
PA—Philadelphia
SC—Statewide

Funding Priorities and/or Preferences: Preference for funding will be given to projects that support a comprehensive, coordinated system of HIV care serving HIV-infected children, youth, women, and their families, and are linked with

or have initiated activities to link with clinical trials or other research.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$14,000,000.

Estimated Number of Awards: 20.
Estimated or Average Size of Each Award: \$700,000.

Estimated Project Period: 3 years.
CFDA Number: 93.153A.

Application Availability Date: December 19, 2001.

Application Deadline: April 1, 2002.
Projected Award Date: August 1, 2002.

Program Contact Person: Jose Raphael Morales, MD.

Phone Number: (301) 443-9051.
E-mail: jmorales@hrsa.gov.

Funding for Early Intervention Services Planning and Capacity Building Grants 93.918C

Legislative Authority: PHS Act, Public Law 106-345, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 2000.

Purpose: The purpose of this grant program is to support public and nonprofit entities in their efforts to plan and expand their efforts to provide high quality and broad scope of primary HIV health care services to rural or underserved communities. Planning grants support the planning process and does not fund any service delivery or patient care. Proposed capacity building activities must lead to or expand HIV primary care services.

Eligibility: Eligible applicants must be public or nonprofit private entities that are, or intend to become, eligible to apply for the Title III Early Intervention Services grant. Current Ryan White CARE Act grant recipients (or subcontractors under Title I or II), including Title III providers, are eligible for a capacity building grant.

Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants located in rural or underserved areas where emerging or ongoing HIV primary health care needs have not been adequately met.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$9,295,000.

Estimated Number of Awards: 135.
Estimated or Average Size of Each Award: Up to \$150,000.

Estimated Project Period: 1 to 2 years.
CFDA Number: 93.918; 93.918C.

Application Availability Date: February 1, 2002.

Application Deadline: May 31, 2002.

Projected Award Date: August 30, 2002.

Program Contact Person: Andrew Kruzich.

Phone Number: (301) 443-0759.

E-mail: akruzich@hrsa.gov.

Special Projects of National Significance 93.928

Legislative Authority: PHS, Public Law 104-146, Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 2000, Section 2691, Special Projects of National Significance.

Purpose: This funding initiative will support American Indian/Alaska Native communities in their efforts to increase access to primary care for American Indian/Alaska Native individuals who are living with HIV/AIDS or at risk of HIV infection. Applications must include plans for the integration of existing substance abuse treatment/ services (drug and/or alcohol) and/or mental health services with HIV primary care services. The plan must also include community outreach, HIV testing and counseling, education on risk reduction, and client follow-up. The application must also include a local program evaluation plan. An American Indian/Alaska Native Technical Assistance Center will also be established under this initiative to work with the funded projects.

Eligibility: Eligible applicants are public, nonprofit private, or tribal entities that have experience in the coordination, delivery, or provision of substance abuse services/treatment or mental health care services and primary care services to American Indians/Alaska Natives living with or at risk of HIV infection. Applicants applying as the Technical Assistance Center are considered eligible if they are public, nonprofit private, or tribal entities and have experience in working with the American Indian/Alaska Native community.

Funding Priorities and/or Preferences: In awarding these grants, preference will be given to applicants who address the health care needs of American Indians/Alaska Natives who are HIV-positive or at risk for infection, and have histories of substance abuse, as well as other contributing factors such as mental illness or sexually transmitted diseases. Under the Technical Assistance Center category, preference will be given to entities that can demonstrate their ability to work effectively with the American Indian/Alaska Native community.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$1,500,000.

Estimated Number of Awards: 6.

Estimated or Average Size of Each

Award: 5 sites @ \$200,000; 1 Technical Assistance Center @ \$400,000.

Estimated Project Period: 5 years.

CFDA Number: 93.928.

Application Availability Date: January 7, 2002.

Letter of Intent Deadline: February 1, 2002.

Application Deadline: March 29, 2002.

Projected Award Date: June 1, 2002.

Program Contact Person: Barbara Aranda-Naranjo, PhD, RN, FAAN.

Phone Number: (301) 443-4149.

E-mail: baranda-naranjo@hrsa.gov.

Maternal and Child Health Programs

Genetic Services—Evaluation of the Use of New and Evolving Technology within Newborn Screening Programs 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this grant activity is to fund one project that will address issues confronting newborn genetic screening programs that have emerged from the use of new and evolving technologies such as DNA-based and tandem mass technology within these newborn screening programs. The project will identify models and materials for addressing the clinical validity and utility of these new technologies within such programs. The project must also address the assurance of informed consent, patient privacy rights, and protection against discrimination. It is proposed that the project utilize the recommendations developed by the Newborn Screening Task Force, *Serving the Family: From Birth to the Medical Home, Newborn Screening: A Blueprint for the Future: Recommendations from the Newborn Screening Task Force*. It is expected that the project will develop models and materials for the Genetic Services Branch grantees and for state MCH newborn genetic screening programs.

Eligibility: As cited in 42 CFR Part 51a.3 (b), only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants, contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

Funding Priorities and/or Preferences: Preference will be given to a State Public Health Agency in partnership with academic institutions and coalitions/organizations that represent

public and private community-based providers and consumer organizations and industry.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$300,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

Application Availability Date: December 14, 2001.

Letter of Intent Deadline: January 14, 2002.

Application Deadline: March 1, 2002.

Projected Award Date: August 1, 2002.

Program Contact Person: Marie Mann, MD, MPH.

Phone Number: (301) 443-1080.

E-mail: mmann@hrsa.gov.

Genetic Services—Improving Health of Children: Implementation of the State Grants for the Integration of Programs and Their Information Systems 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this grant activity is to provide support for implementation activities to grantees who participated in the FY 1999, 2000, and 2001 Genetic Service Branch's State planning and development grants for Newborn Screening Efforts and Infrastructure Development. Specifically, the grant activity is to facilitate the integration of newborn genetic screening programs into State systems of care for children with special health care needs. States funded by this initiative must build on their planning grant activity for newborn genetic screening integration and address the technical obstacles, legal barriers, partnerships required for the initiative, sustainability of the projects beyond Federal funding, and a plan for program evaluation.

Eligibility: Eligibility is limited to previous grantees who participated in the FY 1999, 2000, and 2001 Genetic Service Branch's State planning and development grants for Newborn Screening Efforts and Infrastructure Development.

Funding Priorities and/or Preferences: Preference will be given to State health agencies that have previously received funding from the Genetic Services Branch to develop a State plan for State newborn screening efforts and infrastructure development.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$2,100,000.

Estimated Number of Awards: 7.

Estimated or Average Size of Each Award: \$300,000.

Estimated Project Period: 4 years.

CFDA Number: 93.110A.

Application Availability Date:

December 14, 2001.

Letter of Intent Deadline: January 15, 2002.

Application Deadline: February 28, 2002.

Project Award Date: June 1, 2002.

Program Contact Person: Deborah Linzer, MS.

Phone Number: (301) 443-1080.

E-mail: dlinzer@hrsa.gov.

Genetic Resources and Services Information Center 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This competition will fund a cooperative agreement to a national genetics consumer organization to work on consumer issues related to genetics. The national organization will:

- Serve as a forum for emergent consumer groups and consumers to promote genetics literacy;
- Serve as a forum for the family services community and other consumer organizations to promote genetics literacy;
- Provide a mechanism to evaluate issues pertinent to the provision of genetic services, such as transition to adult services for adolescents with genetic disorders, payment for treatment and therapies, workplace discrimination, quality genetic services, understanding genetic diversity, and shared-decision making; and
- Outline national policy issues related to improving the quality, accessibility, and utilization of genetic services at the National, State, and community level.

The successful applicant will have demonstrated partnerships with other local and national consumer organizations around genetic issues, as well as the capacity to address issues of access to genetic services and technology, consumer attitudes, and concerns regarding ethnocultural issues.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Preference will be given to a national genetics organization with special knowledge of genetics and issues important to the provision of genetic services.

Review Criteria: Final review criteria will be included in the application kit.

Estimated Amount of this

Competition: \$200,000.

Estimated Number of Awards: 1.

Estimated Project Period: 5 years.

CFDA Number: 93.110A.

Application Availability Date:

December 14, 2001.

Letter of Intent Deadline: January 15, 2002.

Application Deadline: February 28, 2002.

Projected Award Date: June 1, 2002.

Program Contact Person: Penny Kyler.

Phone Number: (301) 443-1080.

E-mail: pkyler@hrsa.gov.

National Newborn Screening and Genetics Resource Center 93.110A

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This competition will fund a cooperative agreement to support a national newborn screening and genetics resource center. The purpose of this cooperative agreement is to: (1) Provide a forum for policy initiatives and emerging issues in newborn screening and genetic services; (2) provide support, including grant related technical assistance, to Genetic Services Branch grantees and State public health agencies in their newborn screening and genetic activities; (3) establish and implement a dissemination and education strategy to provide educational opportunities and enhance timely interactive communication among key stakeholders such as community leaders, policy makers, consumers, health care providers, government officials, and researchers concerning issues related to newborn screening and genetics; and (4) enhance the capacity to collect, analyze, and use information that will strengthen newborn screening activities and genetics planning at the State and local level. Federal involvement will be specified in the application materials.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Preference will be given to entities that have expertise and a working knowledge of State newborn screening and genetics programs and are able to clearly demonstrate their expertise and capacity to address newborn screening, genetics, and public health policy and issues.

Review Criteria: Final review criteria will be included in the application kit.

Estimated Amount of This

Competition: \$700,000.

Estimated Number of Awards: 1.

Estimated Project Period: 4 years.

CFDA Number: 93.110A.

Application Availability Date:

December 17, 2001.

Letter of Intent Deadline: January 14, 2002.

Application Deadline: February 28, 2002.

Projected Award Date: June 1, 2002.

Program Contact Person: Marie Mann MD, MPH.

Phone Number: (301) 443-1080.

E-mail: mmann@hrsa.gov.

National Blood Lead Proficiency Testing Program 93.110AA

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to improve, nationwide, the performance of laboratories which provide erythrocyte protoporphyrin (EP) screening tests and blood lead determinations for childhood lead poisoning prevention programs, and on request provide technical assistance and consultation to health care programs and providers responsible for the treatment and management of children and maternal health adults with elevated blood lead levels (EBLL). Accurate, timely EP and blood lead testing are critical to the prevention, diagnosis, treatment, and management of children and adults with EBLL. The applicant organization must demonstrate: (1) The capacity to prepare, distribute, and process proficiency testing samples for more than 400 participating laboratories; (2) the ability to remain current and knowledgeable in response to advancements in blood lead collection and testing technology; and (3) competence in the provision, as requested, of consultation and technical assistance nationwide to laboratories, programs, and providers responsible for the delivery of health and health-related services to at-risk populations.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 1 to 3 years.

CFDA Number: 93.110AA.

Application Availability: September 14, 2001.

Application Deadline: November 15, 2001.

Projected Award Date: January 01, 2002.

Program Contact Person: Richard J. Smith III, MS.

Phone Number: (301) 443-0324.

E-mail: rsmith@hrsa.gov.

Comprehensive Hemophilia Diagnostic and Treatment Centers 93.110B

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This program supports the provision of comprehensive care to people with hemophilia and their families through an integrated regional network of centers in the diagnosis and treatment of hemophilia and related bleeding disorders. Grants will be used to promote: (1) Maintenance and enhancement of comprehensive care teams to meet the medical, psychosocial, peer support, genetic counseling, and financial support needs of individuals and their families, throughout their lifetime, including the transition from pediatric to adult care; (2) continued outreach to unserved and underserved people with congenital bleeding disorders; and (3) continued collaboration with hemophilia treatment centers within the defined area and promotion of family-centered care within the client population.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Preference for funding will be given to: (1) Previously funded regional grantees who have developed, maintained, and improved the network of integrated treatment centers within their respective areas; and (2) public and private organizations that can demonstrate the ability to organize and administer a regional network of affiliated treatment centers, meeting the standards and criteria for the care of persons with congenital bleeding disorders issued by the National Hemophilia Foundation (NHF) and the requirements of the MCHB Hemophilia Program Guidance for 2002.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$5,000,000.

Estimated Number of Awards: 12.

Estimated or Average Size of Each Award: \$416,500.

Estimated Project Period: 3 years.

CFDA Number: 93.110B.

Application Availability Date: December 28, 2001.

Application Deadline: March 1, 2002.

Project Award Date: June 1, 2002.

Program Contact Person: Judith Hagopian.

Phone Number: (301) 443-1080.

E-mail: jhagopian@hrsa.gov.

Bright Futures Health Promotion/Prevention Education Center 93.110BF

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of the educational center building upon the foundation of the Bright Futures Guidelines for Infants, Children and Adolescents is to promote and improve the health of infants, children, adolescents, families, and communities through educating and enhancing the way health professionals practice; increasing family's knowledge, skills, and participation in health promotion and prevention activities; educating policy makers to implement community-based health promotion and prevention well child care; and fostering partnerships among health professionals, families, communities, and others.

Eligibility: As cited in 42 CFR part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$700,000.

Estimated Number of Awards: 1.

Estimated Project Period: 5 years.

CFDA Number: 93.110BF.

Application Availability Date: June 1, 2001.

Letter of Intent Deadline: July 2, 2001.

Application Deadline: October 15, 2001.

Projected Award Date: November 30, 2001.

Program Contact Person: Ann Drum, DDS.

Phone Number: (301) 443-2340.

E-mail: adrum@hrsa.gov.

Bright Futures Pediatric Implementation Cooperative Agreement Grant 93.110BI

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to support activities to improve health promotion and prevention practices through the effective implementation of the Bright Futures Guidelines for

Infants, Children and Adolescents among pediatric health providers. Specifically the program is designed to promote problem solving approaches to enhance pediatric provider participation in health promotion and prevention, including the development of practical strategies, tools, and partnerships. Any national membership organization able to demonstrate that it represents a significant group(s) of providers of pediatric services will be considered for funding. Program Requirements include: analysis of obstacles (issues and contributing factors) to pediatric provider participation in providing health promotion/prevention services to children within a medical home, as well as involvement in problem-solving at the system and community levels; development of strategies to improve the implementation of the Bright Futures Guidelines among pediatric providers, encouraging provider participation and encouraging private sector and other support at the community level to improve access to health promotion and prevention services; and dissemination and effective communication of concerns and information pertaining to the issues and strategies employed in promoting Bright Futures health promotion/prevention efforts to their members and other key national organizations and partners.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: As cited in 42 CFR part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in application kit.

Estimated Amount of this Competition: Up to \$300,000.

Estimated Number of Awards: 1.

Estimated Project Period: 5 years.

CFDA Number: 93.110BI.

Application Availability Date: June 1, 2001.

Letter of Intent Deadline: July 2, 2001.

Application Deadline: October 15, 2001.

Projected Award Date: November 30, 2001.

Program Contact Person: Ann Drum, DDS.

Phone Number: (301) 443-2340.

E-mail: adrum@hrsa.gov.

Oral Health Integrated Systems Development Grants 93.110AD

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of these targeted issues grants is to build a service and support system infrastructure at the State and community level to increase access to dental services for State Children's Health Insurance Program (SCHIP) and Medicaid eligible children and to develop and implement comprehensive integrated public and private sector services and support systems to address the unmet oral health needs of this population. The grants will build upon the HRSA/HCFCA sponsored conference, Building Partnerships to Improve Children's Access to Medicaid Oral Health Services, and to address follow up issues and recommendations of HRSA/HFCA supported State Oral Health Summits and the National Governors Association Policy Academies on Improving Oral Health of Children.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Preference will be given to States, or State-approved government or non-government agencies who have never received Oral Health Integrated Systems Development Grant funds.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$400,000.

Estimated Number of Awards: 8.

Estimated Project Period: 3 years.

Estimated or Average Size of Each Award: \$50,000.

CFDA Number: 93.110AD.

Application Availability: January 07, 2002.

Letter of Intent Deadline: February 01, 2002.

Application Deadline: March 08, 2002.

Projected Award Date: June 01, 2002.

Program Contact Person: John P. Rossetti, DDS.

Phone Number: (301) 443-3177.

E-mail: jrossetti@hrsa.gov.

Integrated Health and Behavioral Health Care for Children, Adolescents, and their Families—Implementation Grants 93.110AF

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: These 3-year implementation grants are designed to operationalize the models of service integration established during a 2-year planning process by current grantees of this program. This implementation grant

activity will allow initializing of established formalized working relationships among community resources, specifically the physical and psychosocial primary health care, comprehensive mental health services, and substance abuse prevention and treatment services as required under the previous planning grant announcement. The implementation activities are to include the necessary efforts to initiate and establish the model of integration developed over the 2-year planning time, including but not limited to: integration of clinical/social services, organizational structure, staffing, facilities, information systems including protection of confidentiality, and fiscal arrangements.

Eligibility: Eligibility is limited to grantees completing their second planning year as awarded under CFDA 93.110AF—Integrated Health and Behavioral Health Care for Children, Adolescents, and Their Families—Planning Program.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$400,000.

Estimated Number of Awards: 2.

Estimated or Average Size of Each Award: \$200,000.

Estimated Project Period: 3 years.

CFDA Number: 93.110AF.

Application Availability: December 14, 2001.

Letter of Intent Deadline: January 31, 2002.

Application Deadline: February 15, 2002.

Projected Award Date: April 1, 2002.

Program Contact Person: Sue Martone.

Phone Number: (301) 443-4996.

E-mail: smartone@hrsa.gov.

Maternal and Child Health (MCH) Library Services 93.110AL

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This purpose of the MCH Library Services cooperative agreement is to support a national information and education resource library which provides the information needed by the MCH community to plan and carry out program and policy development and to improve service delivery. The overall goal is to use information sciences and information technology to identify, collect, and organize information from the MCH field that is not readily available from other information sources, such as Healthy Start, infant mortality, oral health, nutrition, mental health, health promotion, women's health, MCH organizations, Medicaid,

research, etc. The MCH Library is expected to conduct activities in the following areas: Collection and management of MCH information, and outreach for awareness and utilization of MCH information, including maintenance of databases, bibliographies, and other information resources on a website which provides national access to key MCH-related data and information.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: As cited in 42 CFR part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$550,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.110AL.

Application Availability Date: August 1, 2001.

Letter of Intent Deadline: September 4, 2001.

Application Deadline: October 1, 2001.

Projected Award Date: December 3, 2001.

Program Contact Person: Carol Galaty or Sharon Adamo.

Phone Number: (301) 443-2778.

E-mail: cgalaty@hrsa.gov or sadamo@hrsa.gov.

Health Insurance for Children With Special Health Care Needs (CSHCN) 93.110C

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This activity will provide assistance to statewide or regional collaborative efforts to assure that all families of children with special health care needs have adequate private and/or public insurance to pay for the services they need. Grants will support partnerships between State agencies, insurance companies, managed care organizations, employers, providers, families and other entities to: (1) Expand public or private insurance to decrease the number of uninsured children with special health care needs; (2) provide comprehensive coverage for children with special health care needs who currently have insurance that does not meet their needs; and (3) strengthen the financing system through demonstration of innovative financing strategies.

Matching or Cost Sharing

Requirement: Twenty percent of annual

grant awards in direct or in-kind contributions (e.g., personnel time, rental space) up to \$50,000 per budget period is required.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$2,000,000.

Estimated Number of Awards: 8.

Estimated or Average Size of Each Award: \$250,000.

Estimated Project Period: 4 years.

CFDA Number: 93.110C.

Application Availability Date:

November 9, 2001.

Letter of Intent Deadline: December 21, 2001.

Application Deadline: February 15, 2002.

Projected Award Date: July 1, 2002.

Program Contact Person: Lynda Honberg.

Phone Number: (301) 443-2370.

E-mail: lhonberg@hrsa.gov.

Healthy and Ready to Work (HRTW) National Center 93.110D

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of the HRTW National Center is to: promote communication among the Healthy and Ready to Work grant projects in the areas of youth transition; collaborate on approaches to address the transition of youth with special health needs from pediatric to adult health care; and provide technical assistance to the State Title V Children with Special Health Needs Programs in improving the health and quality of life of youth and young adults and reducing the disparities that exist for this population compared to youth and young adults in general. The HRTW National Center will serve States; communities and community-based organizations; professional, academic and provider organizations; and the general public. The National Center will focus on resource development, communication, dissemination, and the continuing education of the served populations listed above.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$274,500.

Estimated Number of Awards: 1.

Estimated Project Period: 4 years.

CFDA Number: 93.110D.

Application Availability Date:

December 3, 2001.

Letter of Intent Deadline: January 25, 2002.

Application Deadline: February 22, 2002.

Projected Award Date: June 30, 2002.

Program Contact Person: Thomas L. Gloss.

Phone Number: (301) 443-2370.

E-mail: tgloss@hrsa.gov.

Integrated Community Systems 93.110E

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This activity will support grants to States and/or major community-based development initiatives within the State to promote integrated community-based systems that are inclusive of children with special health care needs and their families. The activity is intended to leverage existing community-based development initiatives within the State targeted toward improving health and developmental outcomes for children. These funds will expand or enhance the capacity of the initiative to address issues related to children with special health care needs in an inclusive manner through: (1) Community planning/governance activities; (2) community leadership; and (3) development of service capacity. Expected outcomes include improved access to comprehensive coordinated community-based services; ongoing health care through a medical home; family/professional partnerships; and family-centered, culturally competent services.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$400,000.

Estimated Number of Awards: 2.

Estimated or Average Size of Each

Award: \$200,000.

Estimated Project Period: 4 years.

CFDA Number: 93.110E.

Application Availability Date:

October 1, 2001.

Letter of Intent Deadline: January 2, 2002.

Application Deadline: February 15, 2002.

Projected Award Date: June 1, 2002.

Program Contact Person: Diana Denboba.

Phone Number: (301) 443-2370.

E-mail: ddenboba@hrsa.gov.

Statewide Medical Home Development Grants 93.110F

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This activity will support grants to promote access to ongoing comprehensive care through a medical home for all children with special health care needs (CSHCN). The grants will assist in the development and implementation of a statewide strategy for medical home implementation for children with special health care needs. These strategies include: (1) Working with primary care providers to implement the medical home concept; (2) incorporating well-defined strategies for coordination of primary care with specialty/subspecialty care; and (3) demonstrating care coordination models that link the medical home to the community-based system of services. These activities will serve as examples within the State and nationally to stimulate the operation of the medical home concept. Activities will coordinate with the Title V needs assessment activities related to medical home, and project outcomes, reporting, and evaluation will be incorporated into ongoing activities of the State Title V Block Grant.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Preference will be given to States and territories without an existing Medical Home Development Grant.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$810,569.

Estimated Number of Awards: 5.

Estimated or Average Size of Each Award: \$162,113.

Estimated Project Period: 3 years.

CFDA Number: 93.110F.

Application Availability Date: August 15, 2001.

Letter of Intent Deadline: October 15, 2001.

Application Deadline: November 15, 2001.

Projected Award Date: March 31, 2002.

Program Contact Person: Tom Castonguay.

Phone Number: (301) 443-2370.

E-mail: tcastonguay@hrsa.gov.

Partnership for Information and Communication MCH Cooperative Agreements 93.110G

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to fund cooperative agreements with governmental, professional, and private organizations represented by leaders concerned with issues related to maternal and child health. Specifically, this program is designed to facilitate the dissemination of new information in a format that will be most useful when developing MCH policies and programs in the private and public sectors at local, State, and national levels. In addition, it will provide those individuals and organizations with a means of communicating issues directly to the Maternal and Child Health program and to each other.

Organizations currently receiving support as part of this cooperative agreement represent State governors and their staff; State legislatures and their staff; State, city and county local health officials; city and county health policymakers; municipal policymakers; private businesses; philanthropic organizations; families of children with special health needs; nonprofit and/or for-profit managed care organizations; coalitions of organizations promoting the health of mothers and infants; and national membership organizations representing survivors of traumatic brain injury (TBI), providing emergency medical care for children, and representing State Emergency Medical Services programs.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: As cited in 42 CFR part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: To ensure continuity, membership for the organizations participating in PIC is rotated so that not all project periods coincide. For this year, national membership organizations representing the following groups will be considered for funding: city and county health policymakers; municipal health policymakers; governors and their staff; State and territorial health officials; nonprofit and/or for-profit managed care organizations, and coalitions of organizations promoting the health of mothers and infants.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$1,400,000.

Estimated Number of Awards: 7.
Estimated or Average Size of Each Award: \$200,000.

Estimated Project Period: 3 years.
CFDA Number: 93.110G.

Application Availability Date: December 21, 2001.

Letter of Intent Deadline: January 10, 2002.

Application Deadline: February 22, 2002.

Projected Award Date: April 1, 2002.
Program Contact Person: Sue Martone.

Phone Number: (301) 443-4996.
Email: smartone@hrsa.gov.

Partners in Program Planning for Adolescent Health 93.110N

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The goal of this partnership with a group of national membership organizations is to promote an adolescent health agenda among key professional disciplines likely to have encounters with adolescents and their families. It promotes the development of an organizational infrastructure at national and State levels that can effectively address adolescent health issues; enhances intra- and inter-disciplinary communication, education and training needs relevant to adolescent health; and encourages the growth of collaborative effort across disciplines and professional organizations on behalf of adolescent health and well-being. In particular, member organizations will be expected to use the 21 critical adolescent health objectives contained in Healthy People 2010 as a framework for addressing selected adolescent health issues, based on the disciplinary expertise of the organization, and to contribute to State's efforts to improve the health status of adolescents. The organizational collaborative will approach its efforts from the perspective of positive youth development.

Eligibility: As cited in 42 CFR part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Funding preference will be given to national membership organizations representing the following disciplines: nursing, health education, law, medicine, nutrition/dietetics, oral health, psychology, psychiatry, social work, and youth services, as well as to organizations representing a coalition of

professional membership organizations affiliated with the specific discipline, if more than one national organization exists.

Special Consideration: Special consideration will also be given to ensure a maximum diversity of professional disciplines represented among grantees. This factor will be considered in making overall funding decisions and may move an applicant out of rank order.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$100,000.

Estimated Number of Awards: 1.
Estimated Project Period: 4 years.
CFDA Number: 93.110N.

Application Availability: January 22, 2002.

Letter of Intent Deadline: February 22, 2002.

Application Deadline: April 22, 2002.
Projected Award Date: August 1, 2002.

Program Contact Person: Audrey Yowell, PhD.

Phone Number: (301) 443-4292.
E-mail: ayowell@hrsa.gov.

SPRANS Community-Based-Abstinence Education Project Grants 93.110NO

Legislative Authority: Section 501(a)(2) of the Social Security Act, 42 U.S.C. 701(a)(2).

Purpose: The purpose of the SPRANS Community-Based Abstinence Education Project Grants is to provide support to public and private entities for the development and implementation of abstinence education programs for adolescents, ages 12 through 18, in communities across the country. Projects funded through the SPRANS Community-Based Abstinence Education grant program must promote abstinence-only education as defined by Section 510 of Title V of the Social Security Act and agree not to provide a participating adolescent any other education regarding sexual conduct in the same setting.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Priority for funding will be given to entities in local communities which demonstrate a strong record of support for abstinence education among adolescents. An approved proposal that reflects this priority will receive a 5-point favorable adjustment in the priority score, before funding decisions are made. Preference will also be given

to FY 2001 planning grantees who are applying for an FY 2002 implementation grant.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$11,500,000

Estimated Number of Awards: Up to 20 planning and 25 implementation project grants.

Estimated or Average Size of Each Award: Estimated range for a planning grant is \$50,000 to \$100,000. Estimated range for an implementation grant is \$250,000 to \$1,000,000 annually.

Estimated Project Period: 1 year for a planning grant and 3 years for an implementation grant.

CFDA Number: 93.110NO.

Application Availability Date: October 15, 2001.

Letter of Intent Deadline: December 3, 2001.

Application Deadline: January 22, 2002.

Projected Award Date: July 1, 2002.

Program Contact Person: Michele Lawler.

Phone Number: (301) 443-2204.

E-mail: mlawler@hrsa.gov.

National Sudden Infant Death Syndrome/Infant Death Program Support Center 93.110O.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This cooperative agreement supports the development of community-based services to reduce the risk of Sudden Infant Death Syndrome/Infant Death (SIDS/ID); to appropriately support families when an infant death occurs; to reach out to underserved populations and analyze standardized information about infant deaths in the hope of discovering factors which can reduce the risk of future infant death.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.110O.

Application Availability Date: February 15, 2002.

Letter of Intent Deadline: March 15, 2002.

Application Deadline: May 17, 2002.

Projected Award Date: August 01, 2002.

Program Contact Person: Paul S. Rusinko.

Phone Number: (301) 443-2115.

E-mail: prusinko@hrsa.gov.

Program to Enhance Performance of Sudden Infant Death Syndrome (SIDS) and Other Infant Death Initiatives 93.110O

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this project is to support and enhance the efforts of MCH program professionals in State/local SIDS and Other Infant Death (ID) programs. This effort is designed to promote professionals as they implement their programs for counseling, education, advocacy, and research to ensure a supportive community response to those impacted by an infant death and to reduce the risk of death for future children. This proposal differs from the continuation of the National SIDS/ID Program Support Center as it focuses more narrowly on SIDS/ID professionals and MCH State/local SIDS/ID programs.

Eligibility: As cited in 42 CFR part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$200,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.110O.

Application Availability Date: February 15, 2002.

Letter of Intent Deadline: March 15, 2002.

Application Deadline: May 17, 2002.

Projected Award Date: August 01, 2002.

Program Contact Person: Paul S. Rusinko.

Phone Number: (301) 443-2115.

E-mail: prusinko@hrsa.gov.

Maternal and Child Health Research Program 93.110RS

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to support applied research relating to maternal and child health services, which shows promise of substantial contribution to the current knowledge pool, and when used in States and communities should result in health and health services improvements.

Eligibility: As cited in 42 CFR 51a.3 (b), only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants, contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

Funding Priorities and/or Preferences: Fifteen priority issues/questions selected from 11 broadly demarcated areas of program concern, and keyed to goals and objectives of the Bureau and HRSA strategic plans, will be given priority for funding. The special consideration consists of a 50-point adjustment to the priority score assigned to an application when recommended for support by the MCH Research Review Committee. Priority scores range from 100 to 500, with 100 representing the best score, and 500 the poorest. The 15 issues/questions selected from the 11 broadly demarcated areas of program concern are detailed in the guidance material contained in the application kit.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$2,200,000.

Estimated Number of Awards: 10.

Estimated or Average Size of Each Award: \$220,000.

Estimated Project Period: 1 to 4 years.

CFDA Number: 93.110RS.

Application Availability Date: Continuous.

Application Deadline: August 1, 2001, and March 1, 2002.

Projected Award Date: January 1, 2002 and August 1, 2002.

Program Contact Person: Kishena Wadhvani, Ph.D.

Phone Number: (301) 443-2927.

E-mail: kwadhvani@hrsa.gov.

Health Care Information and Education for Families of Children With Special Health Care Needs (CSHCN) 93.110S

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this competition is to provide grants to establish statewide family run centers in collaboration with State/Territorial Title V CSHCN programs. Successful applicants will be expected to: (1) Develop and disseminate needed health care information to families and providers; (2) provide education and training opportunities for families; (3) collect and analyze data related to project activities, family and system

impact, and the Healthy People 2010 agenda; (4) work with the National Cooperative Agreement, Health Care Information and Education for Families of CSHCN—Family Voices; (5) contribute funding may including in-kind; and (6) integrate the philosophy and practices of family-centered care, family/professional partnerships, and cultural competence.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Funding preference will be given to collaborative efforts submitted by State/Territorial Title V CSHCN programs and family run organizations.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$357,125.

Estimated Number of Awards: Up to 4.

Estimated or Average Size of Each Award: \$89,280.

Estimated Project Period: 4 years.

CFDA Number: 93.110S.

Application Availability Date: September 28, 2001.

Letter of Intent Deadline: October 30, 2001.

Application Deadline: January 2, 2002.

Projected Award Date: June 1, 2002.

Program Contact Person: Diana Denboba.

Phone Number: (301) 443-2370.

E-mail: ddenboba@hrsa.gov.

Public Policy Analysis and Education Center for Infant and Early Childhood Health 93.110PC

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this Center is to analyze the effects of public policies, regulations, and practices at the community, State, and Federal levels on the health and well-being of infants and young children and their families. The Center's work will include the development of conceptual models for health and related services as well as analysis of the utility of various indicators of health status and well-being for these age groups.

Eligibility: As cited in 42 CFR part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Preference will be given to public or

nonprofit private institutions of higher learning.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of this Competition: \$250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.110PC.

Application Availability Date:

November 19, 2001.

Letter of Intent Deadline: January 22, 2002.

Application Deadline: February 22, 2002.

Projected Award Date: April 1, 2002.

Program Contact Person: Phyllis E.

Stubbs-Wynn, MD.

Phone Number: (301) 443-4489.

E-mail: pstubbs@hrsa.gov.

Graduate Medical Education: Reducing Health Status Disparities through Mentoring Training for Residents in OB/GYN, Pediatrics, and Family Practice 93.110TD

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This program will: (1) Enhance the education and training of residents in obstetrics, adolescent gynecology, family practice, and/or pediatrics in order to help them provide effective primary care for at-risk, underserved populations in community-based settings, and reduce disparities in the health status, and address the special health needs of these populations; and (2) stimulate the interest of high school and undergraduate students from traditionally underserved populations in careers in MCH-related health professions. The aim is to broaden participation in MCHB programs by institutions of higher learning that are uniquely equipped to reduce health status disparities and increase opportunities for all Americans to participate in and benefit from Federal public health programs.

Eligibility: As cited in 42 CFR Part 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$333,000

Estimated Number of Awards: 2.

Estimated or Average Size of Each Award: \$166,500.

Estimated Project Period: 4 years.

CFDA Number: 93.110 TD.

Application Availability Date: August 15, 2001.

Letter of Intent Deadline: September 14, 2001.

Application Deadline: October 15, 2001.

Projected Award Date: March 1, 2002.

Program Contact Person: Aaron Favors, Ph.D..

Phone Number: 301-443-0392.

E-mail: afavors@hrsa.gov.

Long Term Training in Adolescent Health 93.110TA

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to provide interdisciplinary leadership training for several professional disciplines at the graduate and postgraduate levels to prepare them for leadership roles in clinical services, research, training, and development of health services for adolescents. The training is designed to integrate biological, developmental, mental health, social, economic, educational, and environmental issues within a preventive public health framework.

Eligibility: As cited in 42 CFR part 51a.3(b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities and/or Preferences: Preference will be given to departments of pediatrics and internal medicine of accredited U.S. medical schools or from pediatric teaching hospitals having formal affiliations with schools of medicine.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$2,405,650.

Estimated Number of Awards: Up to 7.

Estimated or Average Size of Each Award: \$340,000.

Estimated Project Period: 5 Years.

CFDA Number: 93.110TA.

Application Availability Date:

October 15, 2001.

Letter of Intent Deadline: November 15, 2001.

Application Deadline: January 25, 2002.

Projected Award Date: July 1, 2002.

Program Contact Person: Denise Sofka, MPH.

Phone Number: (301) 443-0344.

E-mail: dsafka@hrsa.gov.

Long Term Training in Pediatric Dentistry 93.110TG

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This program provides leadership training in pediatric dentistry through support of: (1) Postdoctoral training of dentists in the primary care specialty of pediatric

dentistry to assume public health leadership roles related to oral health programs for populations of children, particularly those with special health care needs; (2) development and dissemination of curriculum resources to enhance pediatric content in dentistry training programs; and (3) consultation, technical assistance, and continuing education in pediatric dentistry geared to the needs of the MCH community.

Eligibility: As cited in 42 CFR part 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Funding Priorities and/or Preferences: Preference will be given to advanced education programs in pediatric dentistry accredited by the Commission on Dental Accreditation.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$600,000.

Estimated Number of Awards: 4.

Estimated or Average Size of Each

Award: \$150,000 to \$200,000.

Estimated Project Period: 5 Years.

CFDA Number: 93.110TG.

Application Availability Date: August 30, 2001.

Letter of Intent Deadline: October 1, 2001.

Application Deadline: November 2, 2001.

Projected Award Date: July 1, 2002.

Program Contact Person: Nanette H. Pepper, BSRN, MEd.

Phone Number: (301) 443-6445.

E-mail: npepper@hrsa.gov.

Continuing Education and Development
93.110TO

Legislative Authority: Social Security Act, Title V, Section 502, 42 U.S.C. 702.

Purpose: Continuing Education and Development (CED) focuses on increasing the leadership skills of MCH professionals by facilitating the timely transfer of new information (research findings and technology) related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children. CED programs support the conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes, and distance learning strategies and/or development of curricula, guidelines, standards of practice, and educational tools/strategies intended to assure quality health care for the MCH population.

Eligibility: As cited in 42 CFR Part 51a.3(b), only public or nonprofit private institutions of higher learning may apply for training grants.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$240,000.

Estimated Number of Awards: Up to 8.

Estimated or Average Size of Each

Award: \$30,000.

Estimated Project Period: 1 to 3 years.

CFDA Number: 93.110TO.

Application Availability Date:

November 9, 2001.

Letter of Intent Deadline: December 7, 2001.

Application Deadline: January 18, 2002.

Projected Award Date: June 1, 2002.

Program Contact Person: Diana L.

Rule, MPH.

Phone Number: (301) 443-2190.

E-mail: drule@hrsa.gov

Continuing Education/Distance

Learning 93.110TQ

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This grant program supports the development, implementation, utilization, application, and evaluation of distance education opportunities for MCH health professionals. Projects will not only develop distance learning based curricula, but will also work collaboratively with one another to provide technical assistance in distance education and technology to the MCH community.

Eligibility: As cited in 42 CFR Part 51a.3 (b), only public or nonprofit private institutions of higher learning may apply for training grants.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$517,400.

Estimated Number of Awards: 3 to 4.

Estimated or Average Size of Each

Award: \$172,000.

Estimated Project Period: 3 years.

CFDA Number: 93.110TQ.

Application Availability Date:

November 9, 2001.

Letter of Intent Deadline: December 7, 2001.

Application Deadline: January 18, 2002.

Projected Award Date: June 1, 2002.

Program Contact Person: Aaron

Favors, PhD.

Phone Number: (301) 443-0392.

E-mail: afavors@hrsa.gov.

Healthy Tomorrows Partnership for
Children Program 93.110V

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to support projects for mothers and

children that improve access to health services and utilize preventive strategies. The initiative encourages grantees to develop the ability to seek additional support from the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants, and children.

Matching or Cost Sharing

Requirement: The applicant must demonstrate the capability to meet cost participation goals by securing matching funds for the second through fifth years of the project. The specific requirements are detailed in the application materials.

Eligibility: As cited in 42 CFR Part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Funding Priorities and/or Preferences: Preference will be given to projects from States without a currently funded project in this category. These States are as follows: Alabama, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, South Carolina, Texas, West Virginia, Wisconsin, Wyoming, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and the Virgin Islands.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$600,000.

Estimated Number of Awards: 12.

Estimated or Average Size of Each

Award: \$50,000.

Estimated Project Period: 5 years.

CFDA Number: 93.110V.

Application Availability Date: August 1, 2001.

Letter of Intent Deadline: September 4, 2001.

Application Deadline: October 1, 2001.

Projected Award Date: March 1, 2002.

Program Contact Person: Jose Belardo, MSW, MS.

Phone Number: (301) 443-0757.

E-mail: jbelardo@hrsa.gov.

Emergency Medical Services for
Children Development Demonstration
Grants 93.127A

Legislative Authority: Public Health Service Act, Section 1910, 42 U.S.C. 300w-9.

Purpose: This grant will improve the capacity of a State's EMS program to

address the particular needs of children. The grant will be used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS, MCH, and CSHCN systems, using the experience and products of previous EMSC demonstration grantees. Applicants are encouraged to consider activities that:

- (1) Address identified needs within their State EMS system and that lay the groundwork for permanent changes in that system;
- (2) develop or monitor pediatric EMS capacity; and
- (3) if determined to be effective, will be institutionalized within the State EMS system.

Eligibility: States and accredited schools of medicine are eligible applicants.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$250,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127A.

Application Availability Date: September 4, 2001.

Letter of Intent Deadline: October 1, 2001.

Application Deadline: November 5, 2001.

Projected Award Date: March 1, 2002.

Program Contact Person: Cindy R. Doyle, RN.

Phone Number: (301) 443-3888.

E-mail: cdoyle@hrsa.gov.

Emergency Medical Services for Children Partnerships Demonstration Grants 93.127C

Legislative Authority: Public Health Service Act, Section 1910, 42 U.S.C. 300w-9.

Purpose: State partnership demonstration grants will fund activities that represent the next logical step or steps to take in order to institutionalize EMSC within Emergency Medical Services (EMS) and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities. For example, funding might be used to address problems identified in the course of a previous EMSC grant; to increase the involvement of families in EMSC; to improve linkages between local, regional, or State agencies; to promulgate standards developed for one region of the State under previous funding to include the entire State; to devise a plan for coordinating and funding poison control centers; or to

assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources.

Eligibility: States and accredited schools of medicine are eligible applicants.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$700,000.

Estimated Number of Awards: 7.

Estimated or Average Size of Each Award: \$100,000.

Estimated Project Period: 3 years.

CFDA Number: 93.127C.

Application Availability Date: September 4, 2001.

Letter of Intent Deadline: October 1, 2001.

Application Deadline: November 5, 2001.

Projected Award Date: March 1, 2002.

Program Contact Person: Cindy R. Doyle, RN.

Phone Number: (301) 443-3888.

E-mail: cdoyle@hrsa.gov.

Emergency Medical Services for Children Regional Symposium Supplemental Grants 93.127CS

Legislative Authority: Public Health Service Act, Section 1910, 42 U.S.C. 300w-9.

Purpose: To provide supplemental funds to existing State Partnership Demonstration grantees for regional roundtable meetings that are convened for the purpose of knowledge sharing. The primary goal of the Emergency Medical Services for Children (EMSC) program is to improve the quality of care to children. In collaboration with schools of medicine, regional consortia of State EMS programs will meet annually to develop and evaluate improved procedures and protocols for treating children. Meetings will involve coordinating, exchanging, and demonstrating innovative activities of common interest to participating States, while facilitating a forum for knowledge transfer on EMSC related issues between individual care providers and care providing organizations. The collection, analysis, and dissemination of information and data will be useful to States which have not received EMSC grants.

Eligibility: Eligibility is limited to existing EMSC State Partnership Demonstration grantees.

Special Consideration: One supplement will be awarded per EMSC region. Up to 8 regional consortia are anticipated; some have been established, others are to be formed.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$280,000.

Estimated Number of Awards: Up to 8.

Estimated or Average Size of Each Award: \$30,000 to \$50,000.

Estimated Project Period: 1 year.

CFDA Number: 93.127CS.

Application Availability Date: September 4, 2001.

Letter of Intent Deadline: October 1, 2001.

Application Deadline: November 5, 2001.

Projected Award Date: February 1, 2001.

Program Contact Person: Cindy R. Doyle, RN.

Phone Number: (301) 443-3888.

E-mail: cdoyle@hrsa.gov.

Emergency Medical Services for Children Targeted Demonstration Grants 93.127D

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300w-9.

Purpose: Targeted Issue Demonstration Grants are intended to address specific, focused issues related to the development of EMSC knowledge and capacity with the intent of advancing the state-of-the-art tools, and creating tools or knowledge that will be helpful to the field. Proposals must have well-conceived methodology for analysis and evaluation. Targeted issue priorities have been identified as: cost-benefit analysis related to EMSC; implications of managed care for EMSC; evaluations of EMSC components; models for improving the care of culturally distinct populations; evaluation of systems for provision of emergency health care within day care and/or school settings; and evaluation of family-centered care models. Proposals may be submitted on emerging issues that are not included in the identified priorities. However, any such proposal must demonstrate relevance to the field and must make a persuasive argument that the issue is particularly critical.

Eligibility: States and accredited schools of medicine are eligible applicants.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$1,200,000.

Estimated Number of Awards: 6.

Estimated or Average Size of Each Award: \$200,000.

Estimated Project Period: 2 to 3 years.

CFDA Number: 93.127D.

Application Availability Date: September 4, 2001.

Letter of Intent Deadline: October 1, 2001.

Application Deadline: November 5, 2001.

Projected Award Date: March 1, 2002.

Program Contact Person: Cindy R. Doyle, RN.

Phone Number: (301) 443-3888.

E-mail: cdoyle@hrsa.gov.

Clinical Practice Guidelines for Emergency Care of Children Demonstration Grants 93.127I

Legislative Authority: Public Health Service Act, Title XIX, Section 1910, 42 U.S.C. 300w-9.

Purpose: The purpose of this program is to develop and to demonstrate the usefulness of a set of clinical practice guidelines applicable to all medical personnel who are responsible for treating children's emergency conditions (e.g., pediatricians, family practitioners, nurse practitioners, emergency department physicians, physician associates). These guidelines are intended to improve care for common problems that children present within emergency departments and doctor's offices. They will be based on an assessment of published research and will be used for accumulating valid summary of use to the EMS field.

Eligibility: States and accredited schools of medicine are eligible applicants.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$500,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127I.

Application Availability Date:

September 4, 2001.

Letter of Intent Deadline: October 1, 2001.

Application Deadline: November 5, 2001.

Projected Award Date: February 1, 2002.

Program Contact Person: Cindy R. Doyle, RN.

Phone Number: (301) 443-3888.

E-mail: cdoyle@hrsa.gov.

National Emergency Medical Services for Children Data Analysis Resource Center Demonstration Grant 93.127F

Legislative Authority: Public Health Service Act, Section 1910, 42 U.S.C. 300w-9.

Purpose: This cooperative agreement will focus on demonstrating the uses of collaborative EMSC relationships among State EMS offices in an effort to enhance States' abilities to collect, manage, and analyze data involving the care of acutely ill and injured children. Applicants are encouraged to consider

activities that: (1) Facilitate successful EMS quality improvement plans; and (2) encourage collaboration among MCHB, NHTSA, Federal agencies, and national groups to facilitate planning for successful national EMS data development planning.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: States and accredited schools of medicine are eligible applicants.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$1,000,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

CFDA Number: 93.127F.

Application Availability Date:

September 4, 2001.

Letter of Intent Deadline: October 1, 2001.

Application Deadline: November 5, 2001.

Projected Award Date: March 1, 2002.

Program Contact Person: Cindy R. Doyle, RN.

Phone Number: (301) 443-3888.

E-mail: cdoyle@hrsa.gov.

Trauma/EMS Program 93.952

Legislative Authority: Public Health Service Act, Section 1201, 42 U.S.C. 300d.

Purpose: Implementation grants will build and/or enhance the infrastructure of State's overall emergency medical services and trauma systems. Applicants are encouraged to consider activities that: (1) Emphasize integrating research-based knowledge and state-of-the-art trauma care development into the existing EMS system; (2) address identified and unique needs of rural EMS; (3) emphasize integration of data collection systems that link or incorporate non-trauma/EMS related information, i.e., crash databases, medical examiner's databases, non-trauma center hospital information, etc.; (4) emphasize innovative uses of new and current communications technology; (5) assess and develop training within their State EMS system and/or trauma system; (6) design innovative protocols and agreements increasing access to necessary pre-hospital care and equipment for transporting seriously ill patients to appropriate facilities; and (7) develop or monitor trauma care and EMS system delivery. These projects should lay the groundwork for permanent changes in that system.

Eligibility: State agencies responsible for oversight of emergency medical services or the designee of such agency,

and those agencies that designate trauma care regions and trauma centers in the State are eligible to apply.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This

Competition: \$2,000,000.

Estimated Number of Awards: 20.

Estimated or Average Size of Each

Award: \$100,000.

Estimated Project Period: 3 years.

CFDA Number: 93.952.

Application Availability Date:

February 1, 2002.

Letter of Intent Deadline: March 1, 2002.

Application Deadline: April 1, 2002.

Projected Award Date: August 1, 2002.

Program Contact Person: Richard J. Smith III, MS or Jennifer Riggie.

Phone Number: (301) 443-0324, Rick Smith; (301) 443-7530, Jennifer Riggie.

E-mail: rsmith@hrsa.gov or jriggie@hrsa.gov.

Traumatic Brain Injury (TBI) State Implementation Grants 93.234A

Legislative Authority: Public Health Service Act, Section 1252, 42 U.S.C. 300d-52.

Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Implementation grants provide funding to assist States in moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Matching Requirements: The State agrees to make available non-Federal contributions in an amount that is not less than \$1 for each \$2 of Federal funds provided under the grant. Non-Federal contributions may be cash or in kind.

Eligibility: State governments are eligible to apply. The application for Implementation funds may only come from the State agency designated as the lead for TBI services.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$1,000,000.

Estimated Number of Awards: 5.

Estimated or Average Size of Each

Award: \$200,000.

Estimated Project Period: 3 years.

CFDA Number: 93.234A.

Application Availability Date:

September 4, 2001.

Letter of Intent Deadline: November 1, 2001.

Application Deadline: December 3, 2001.

Projected Award Date: April 1, 2002.

Program Contact Person: Betty Hastings, MSW.

Phone Number: (301) 443-5599.
E-mail: bhastings@hrsa.gov.

Traumatic Brain Injury (TBI) State Planning Grants 93.234B

Legislative Authority: Public Health Service Act, Section 1252, 42 U.S.C. 300d-52.

Purpose: The purpose of this grant program is to improve health and other services for people who have sustained a traumatic brain injury (TBI). Planning grants provide funding to assist States in developing infrastructure. The following are four core capacity components: (1) A lead designated State agency; (2) a statewide advisory board; (3) a statewide resource/needs assessment; and (4) a statewide action plan moving toward statewide systems that assure access to comprehensive and coordinated TBI services.

Matching Requirements: The State agrees to make available non-Federal contributions in an amount that is not less than \$1 for each \$2 of Federal funds provided under the grant. Non-Federal contributions may be cash or in kind.

Eligibility: State governments are eligible to apply.

Review Criteria: Final review criteria are included in the application.

Estimated Amount of This Competition: \$375,000.

Estimated Number of Awards: 5.
Estimated or Average Size of Each Award: \$75,000.

Estimated Project Period: 2 years.
CFDA Number: 93.234B.

Application Availability Date: September 4, 2001.

Letter of Intent Deadline: November 1, 2001.

Application Deadline: December 3, 2001.

Projected Award Date: April 1, 2002.
Program Contact Person: Betty Hastings, MSW.

Phone Number: (301) 443-5599.
E-mail: bhastings@hrsa.gov.

Traumatic Brain Injury (TBI) Post-Demonstration 93.234C

Legislative Authority: Public Health Service Act, Title XII, Section 1252, 42 U.S.C. 300d-52.

Purpose: The program is designed for the continuation of previously awarded demonstration projects. A State that received a grant under this section prior to the date of enactment of the Children's Health Act of 2000 (October 17, 2000) may compete for new project grants under this section.

Matching Requirements: The State agrees to make available non-Federal contributions in an amount that is not less than \$1 for each \$2 of Federal funds

provided under the grant. Non-Federal funds may be cash or in kind.

Eligibility: State governments are the only eligible applicants for funding. The application for a TBI Post Demonstration Grant may only come from the State agency designated as the lead for TBI services.

Funding Priorities and/or Preferences: Preference for TBI Post Demonstration Grants will be given to States who have successfully completed a 3-year TBI State Implementation Grant.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$900,000.

Estimated Number of Awards: 9.
Estimated or Average Size of Each Award: \$100,000.

Estimated Project Period: 1 year.
CFDA Number: 93.234C.

Application Availability Date: September 4, 2001.

Letter of Intent Deadline: November 1, 2001.

Application Deadline: December 3, 2001.

Projected Award Date: April 1, 2002.
Program Contact Person: Betty Hastings, MSW.

Phone Number: (301) 443-5599.
E-mail: bhastings@hrsa.gov.

Developing a System of Care to Address Family Violence During or Around the Time of Pregnancy 93.926J

Legislative Authority: Public Health Service Act, Section 330H, 42 U.S.C. 254C-8.

Purpose: The goal of this program is to develop and/or enhance systems that identify pregnant, pre-conceptional, or postpartum women experiencing family violence and provide appropriate information and linkages to interventions within a clearly defined system of care. The nature of the linkages should be such that barriers to access are significantly reduced and women are actively supported in their desire to utilize services within a coordinated, confidential network of medical and psycho-social providers, women's shelters, legal and law enforcement, and other support services. Funded programs are restricted to those which target a geographic area with high annual rates of infant mortality.

All funded projects must have, or establish for their project areas, community-based consortia of individuals and organizations which provide significant sources of health care services. In addition, they must coordinate their funded activities with the State agency that administers MCH block grant programs under Title V of

the Social Security Act in order to promote cooperation, integration, and dissemination of information with statewide systems and with other community services.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply.

Funding Priorities and/or Preferences: Priority for funding (5 points on a 100-point scale) will be given to applicants who are grantees of Healthy Start service implementation projects. Only one application will be accepted per State/Territory. Applications from States with a current MCHB Perinatal Domestic Violence Grant 93.926J (IL, MD, NY, WA) may apply under this competition for a new community within their State. However, the community must be outside the catchment area currently served by the existing MCHB Perinatal Domestic Violence grant.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: Up to \$600,000.

Estimated Number of Awards: Up to 4.

Estimated or Average Size of Each Award: \$150,000.

Estimated Project Period: 3 years.
CFDA Number: 93.926J.

Application Availability Date: November 2, 2001.

Letter of Intent Deadline: December 3, 2001.

Application Deadline: January 4, 2002.

Projected Award Date: June 1, 2002.
Program Contact Person: Karen Hench.

Phone Number: (301) 443-9708.
E-mail: khench@hrsa.gov.

Rural Health Policy Programs

Rural Health Network Development 93.912B

Legislative Authority: Section 330A of the Public Health Service Act, 42 U.S.C. 254c.

Purpose: The purpose of this program is to support the development of health care networks in rural areas. Project funds are given to develop the organizational capabilities of these networks. The networks, which are tools for overcoming the fragmentation and vulnerability of the health care delivery system in rural areas, must be composed of at least three separately owned health care organizations. As such, the network supports rural health care organizations in a variety of ways, thereby strengthening the local delivery system to meet the health care needs of rural communities.

Eligibility: Rural public or nonprofit private organizations that are part of a network of at least three entities that support the delivery of health care services and will work together to complete the proposed project are eligible. Geographic eligibility requirements are (1) The lead applicant organization must be located in a rural area or in a rural zip code of an urban county (list included in the application materials). If the applicant is owned by or affiliated with an urban entity or health system the rural component may still apply as long the rural entity can directly receive and administer the grant funds in the rural area, be in complete control in the planning, program management and financial management of the project; and, the urban parent organization assures the Office of Rural Health Policy in writing that, for this project, they will exert no control over or demand collaboration with the rural entity; or (2) the organization must be constituted exclusively to provide services to migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act (these organizations are eligible regardless of the urban or rural location of the administrative headquarters); or (3) the project services will be delivered on Federally-designated tribal lands. For all grants, not less than 50 percent of the award must be spent in a rural area or to provide services to residents of rural areas.

Funding Priorities and/or Preferences: Funding preference may be given to applicant networks that include: (1) A majority of the health care providers serving in the area or region to be served by the network; (2) any Federally-qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC), to improve access to and coordination of health care services.

Special Considerations: Applicant organization must be located in a rural area and the proposed project must be directed to and services must remain in the rural area. (A list of eligible rural areas is included in application packet.)

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$6,207,553.

Estimated Number of Awards: 31 for FY 2002 and 33 for FY 2003.

Estimated or Average Size of Each Award: \$182,000.

Estimated Project Period: 3 years.

CFDA Number: 93.912B.

Application Availability Date: 06/15/01 for FY 2002 and 6/17/02 for FY 2003.

Application Deadline: October 5, 2001 for the FY 2002 competition and September 20, 2002 for the FY 2003 competition.

Projected Award Date: 05/01/02 for FY 2002 and 05/01/03 for FY 2003.

Program Contact Person: Lilly Smetana.

Phone Number: (301) 443-0835.

E-mail: lsmetana@hrsa.gov.

Rural Health Outreach Grant 93.912A

Legislative Authority: Section 330A of The Public Health Service Act, 42 U.S.C. 254c.

Purpose: The purpose of this grant program is to expand access to, coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of health care networks in rural areas and regions. Funds are available for projects to support the direct delivery of health care and related services, to expand existing services, or to enhance health service delivery through education, promotion, and prevention programs. The emphasis of this program is on the actual delivery of specific services rather than the development of organizational capabilities. Networks may comprise the same providers (e.g., all hospitals) or more diversified networks.

Eligibility: Rural public or nonprofit private organizations that are part of a network of at least three entities that support the delivery of health care services and will work together to complete the proposed project are eligible. Geographic eligibility requirements are (1) The lead applicant organization must be located in a rural area or in a rural zip code of an urban county (list included in the application materials) and all services must be provided in a rural county. If the applicant is owned by or affiliated with an urban entity or health system the rural component may still apply as long the rural entity can directly receive and administer the grant funds in the rural area, be in complete control in the planning, program management and financial management of the project; and, the urban parent organization assures the Office of Rural Health Policy in writing that, for this project, they will exert no control over or demand collaboration with the rural entity; or (2) the organization must be constituted exclusively to provide services to

migrant and seasonal farm workers in rural areas and supported under Section 330(g) of the Public Health Service Act (these organizations are eligible regardless of the urban or rural location of the administrative headquarters); or (3) the project services will be delivered on Federally-designated tribal lands. For all grants, not less than 50 percent of the award must be spent in a rural area or to provide services to residents of rural areas.

Funding Priorities and/or Preferences: Funding preference may be given to applicant networks that include: (1) A majority of the health care providers serving in the area or region to be served by the network; (2) Federally-qualified health centers, rural health clinics, and local public health departments serving in the area or region; (3) outpatient mental health providers serving in the area or region; or (4) appropriate social service providers, such as agencies on aging, school systems, and providers under the women, infants, and children program (WIC), to improve access to and coordination of health care services.

Special Considerations: Applicant organization must be located in a rural area and the proposed project must be directed to and services must remain in the rural area. (A list of eligible rural areas is included in application packet.)
Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$6,207,553.

Estimated Number of Awards: 31 for FY 2002 and 33 for FY 2003.

Estimated or Average Size of Each Award: \$185,000.

Estimated Project Period: 3 years.

CFDA Number: 93.912A.

Application Availability Date: June 15, 2001 for FY 2002 and June 17, 2002 for FY 2003.

Application Deadline: September 28, 2001 for the FY 2002 competition and September 13, 2002 for the FY 2003 competition.

Projected Award Date: May 01, 2002 for FY 2002 and May 01, 2003 for FY 2003.

Program Contact Person: Lilly Smetana.

Phone Number: (301) 443-0835.

E-mail: lsmetana@hrsa.gov.

Primary Health Care Programs

Community and Migrant Health Centers 93.224 and 93.246

Legislative Authority: Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b.

Purpose: The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote

the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to medically underserved populations. HRSA is committed to 100 percent access to primary care services with zero health disparities for the underserved. HRSA will open competition for awards under Section 330 of the Public Health Service Act for community and migrant centers to support health services in the areas served by these grants. Section 330(g) has additional criteria for migrant health centers. Two-hundred twenty-four C/MHC grantees will reach the end of their project period during FY 2002. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2002 and new organizations proposing to serve the same areas or populations currently being served by these existing programs.

Special Considerations: Communication with field office staff is essential for interested parties in deciding whether to pursue Federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$223,000,000.

Estimated Number of Awards: 224.

Estimated or Average Size of Each Award: \$1,000,000.

Estimated Project Period: 1 to 5 years.

CFDA Number: 93.224 and 93.246.

Application Availability Date:

Continuous.

Application Deadline: Varies.

Projected Award Date: Varies.

Program Contact Person: 93.224,

Cephas Goldman; 93.246, George Ersek.

Phone Number: Goldman, (301) 594-4300; Ersek, (301) 594-4301.

E-mail: rbohrer@hrsa.gov.

City	State	Expiration date	City	State	Expiration date
Allston	MA	1/31/2002	Grafton	WV	5/31/2002
Truro	MA	1/31/2002	Madake	WV	5/31/2002
Hartford	CT	1/31/2002	HRSA Atlanta Field		
Waterbury	CT	2/28/2002	Office—(404) 562-		
Turners Falls	MA	3/31/2002	2996		
Patten	ME	3/31/2002	Dade City	FL	11/30/2001
Harrington	ME	3/31/2002	Snow Hill	NC	11/30/2001
Worcester	MA	3/31/2002	Morgantown	GA	11/30/2001
Peabody	MA	3/31/2002	Mobile	AL	11/30/2001
Augusta	ME	3/31/2002	Fairmont	NC	11/30/2001
New Bedford	MA	5/31/2002	Tylertown	MS	11/30/2001
New Haven	CT	5/31/2002	Makers	NC	11/30/2001
Brockton	MA	6/30/2002	Chapel Hill	NC	11/30/2001
Manchester	NH	6/30/2002	Huntsville	AL	11/30/2001
HRSA New York			Tuscaloosa	AL	11/30/2001
Field Office—(212)			Vanceburg	KY	11/30/2001
264-2664			Mantachie	MS	11/30/2001
Cortland	NY	11/30/2001	Belle Glade	FL	12/31/2001
Newark	NJ	11/30/2001	Coconut Grove	FL	12/31/2001
Brockport	NY	12/31/2001	Stone Mountain	GA	12/31/2001
Rochester	NY	12/31/2001	Miami Beach	FL	12/31/2001
Mt. Vernon	NY	12/31/2001	Miami	FL(2)	1/31/2002
Brooklyn	NY	12/31/2001	Nashville	TN(2)	1/31/2002
Buffalo	NY	12/31/2001	Hattiesburg	MS	1/31/2002
Camden	NJ	12/31/2001	Pompano Beach	FL	1/31/2002
Mayaguez	PR	1/31/2002	Smithville	MS	1/31/2002
New York	NY	1/31/2002	Columbia	SC	1/31/2002
Brooklyn	NY	1/31/2002	Sebastopol	MS	3/31/2002
Camuy	PR	1/31/2002	West Palm Beach	FL	3/31/2002
Hatillo	PR	1/31/2002	Newport	TN	3/31/2002
Morovis	PR	1/31/2002	Gadsden	AL	3/31/2002
Bronx	NY	1/31/2002	Raleigh	NC	3/31/2002
New York	NY	2/28/2002	Maynardville	TN	3/31/2002
St. Thomas	VI	2/28/2002	Whitesburg	KY	3/31/2002
Patillas	PR	3/31/2002	Sumterville	FL	3/31/2002
Arverne	NY	3/31/2002	Colbert	GA	3/31/2002
Brooklyn	NY	3/31/2002	Cookeville	TN	3/31/2002
Santurce	PR	3/31/2002	Linden	TN	3/31/2002
Trenton	NJ	3/31/2002	Tallahassee/	FL	3/31/2002
Loiza	PR	5/31/2002	Wewahitchka.		
West New York	NJ	6/30/2002	Hendersonville	NC	3/31/2002
Brooklyn	NY	6/30/2002	Meridian	MS	3/31/2002
Gurabo	PR	6/30/2002	Conway	SC	3/31/2002
HRSA Philadelphia			Charlotte	NC	3/31/2002
Field Office—(215)			Canton	MS	5/31/2002
861-4422			Port Gibson	MS	5/31/2002
Chambersburg	PA	11/30/2001	Shubuta	MS	5/31/2002
Philadelphia	PA	11/30/2001	Lake City	FL	5/31/2002
Baltimore	MD	11/30/2001	St. Petersburg	FL	5/31/2002
Camden-on-	WV	11/30/2001	Atlanta	GA	5/31/2002
Gauley.			Cumming	GA	5/31/2002
Washington	DC	11/30/2001	Tallahassee	FL	6/30/2002
Boydton	VA	12/31/2001	Wrightsville	GA	6/30/2002
Richmond	VA	12/31/2001	Jacksonville	FL	6/30/2002
Victoria	VA	12/31/2001	Wilmington	NC	6/30/2002
Denton	MD	12/31/2001	HRSA Chicago Field		
Chester	PA	1/31/2002	Office—(312) 353-		
Bastian	VA	1/31/2002	1715		
Wilmington	DE	1/31/2002	Chicago	IL(3)	11/30/2001
Gary	WV	1/31/2002	East Chicago	IL	11/30/2001
Axton	VA	1/31/2002	Akron	OH	11/30/2001
Pittsburgh	PA	1/31/2002	Evansville	IN	12/31/2001
Franklin	WV	2/28/2002	Houghton Lake	MI	12/31/2001
Pittsburgh	PA	2/28/2002	Cincinnati	OH	12/31/2001
Dover	DE	3/31/2002	Marquette	MI	1/31/2002
Susquehanna	PA	3/31/2002	Chicago	IL	1/31/2002
Ivor	WA	3/31/2002	St. Paul	MN	1/31/2002
New Holland	PA	3/31/2002	Jackson	MI	2/28/2002
Princess Anne	MD	5/31/2002	Chicago	IL	2/28/2002
Erie	PA	5/31/2002	Duluth	MN	2/28/2002
Philadelphia	PA(2)	5/31/2002	Muncie	IN	2/28/2002
Williamsburg	WV	5/31/2002	Cleveland	OH	2/28/2002
Blossburg	PA	5/31/2002	Bangor	MI	3/31/2002

City	State	Expiration date
HRSA Boston Field		
Office—(617) 565-		
1482:		
Roxbury	MA	12/31/2001
Williamantic	CT	12/31/2001
Lubec	ME	12/31/2001
Roxbury	MA(2)	1/31/2002
Holyoke	MA	1/31/2002

City	State	Expiration date	City	State	Expiration date
Christopher	IL	3/31/2002	Tulare	CA	2/28/2002
Flint	MI	3/31/2002	Oakland	CA	3/31/2002
Milwaukee	WI	3/31/2002	Honolulu	HI	3/31/2002
Minneapolis	MN	3/31/2002	Nipomo	CA	5/31/2002
Indianapolis	IN	5/31/2002	Irvine	CA	5/31/2002
Chicago	IL	5/31/2002	Berkeley	CA	6/30/2002
Minong	WI	5/31/2002	Flagstaff	AZ	6/30/2002
Ft. Wayne	IN	6/30/2002	Elfrida	AZ	6/30/2002
Muskegon Heights	MI	6/30/2002	Redding	CA	6/30/2002
Lafayette	IN	6/30/2002	HRSA Seattle Field Office—(206) 615-2491		
Battle Creek	MI	6/30/2002	Anchorage	AK	11/30/2001
HRSA Dallas Field Office—(214) 767-3872			Twin Falls	ID	1/31/2002
Uvalde	TX	11/30/2001	Seattle	WA(2)	1/31/2002
Dallas	TX	11/30/2001	Moses Lake	WA	3/31/2002
New Orleans	LA	11/30/2001	Okanogan	WA	3/31/2002
Gonzales	TX	11/30/2001	Pocatello	ID	3/31/2002
West Memphis	AR	11/30/2001	Oregon City	OR	6/30/2002
Houston	TX	12/31/2001	Anchorage	AK	6/30/2002
Albuquerque	NM	12/31/2001	Longview	WA	6/30/2002
Brownsville	TX	1/31/2002			
Tierra Amarillo	NM	1/31/2002			
Portales	NM	1/31/2002			
Natchitoches	LA	1/31/2002			
Crystal City	TX	3/31/2002			
Harlingen	TX	3/31/2002			
Franklin	LA	5/31/2002			
Lake Charles	LA	5/31/2002			
Oklahoma City	OK(2)	6/30/2002			
Shreveport	LA	6/30/2002			
Lubbock	TX	6/30/2002			
Lordsburg	NM	6/30/2002			
El Paso	TX	6/30/2002			
HRSA Kansas City Field Office—(816) 426-5296					
St. Louis	MO	11/30/2001			
Topeka	KS	11/30/2001			
Des Moines	IA	1/31/2002			
Sioux City	IA	1/31/2002			
St. Louis	MO	1/31/2002			
Ottumwa	IA	2/28/2002			
Kirkville	MO	3/31/2002			
Emporia	KS	6/30/2002			
Garden City	KS	6/30/2002			
Gering	NE	6/30/2002			
HRSA Denver Field Office—(303) 844-3203					
Provo	UT	12/31/2001			
Englewood	CO	12/31/2001			
Casper	WY	2/28/2002			
Greeley	CO	3/31/2002			
Laramie	WY	3/31/2002			
Ogden	UT	3/31/2002			
Elk Point	SD	3/31/2002			
Pierre	SD	5/31/2002			
Missoula	MT	6/30/2002			
Livingston	MT	6/30/2002			
HRSA San Francisco Field Office—(415) 437-8090					
Fresno	CA	11/30/2001			
San Mateo	CA	11/30/2001			
San Marcos	CA	12/31/2001			
Watsonville	CA	12/31/2001			
Marana	AZ	12/31/2001			
Bloomington	CA	12/31/2001			
Honolulu	HI	1/31/2002			
Point Reyes	CA	2/28/2002			
Ajo	AZ	2/28/2002			
Greenbrae	CA	2/28/2002			

Estimated Amount of This Competition: \$15,500,000.
Estimated Number of Awards: 31.
Estimated or Average Size of Each Award: \$500,000.
Estimated Project Period: 1 to 5 years.
CFDA Number: 93.151.
Application Availability Date: Continuous.
Application Deadline: Varies.
Projected Award Date: Varies.
Program Contact Person: Monica Toomer.
Phone Number: (301) 594-4430.
E-mail: mtoomerz@hrsa.gov.

City	State	Expiration date
HRSA Boston Field Office—(617) 565-1482:		
Willimantic	CT	12/31/2001
New Haven	CT	5/31/2002
HRSA New York Field Office—(212) 264-2664:		
Newark	NJ	10/31/2001
Mount Vernon	NY	12/31/2001
Jersey City	NJ	3/31/2002
Trenton	NJ	3/31/2002
HRSA Philadelphia Field Office—(215) 861-4422:		
Washington	DC	11/30/2001
Pittsburgh	PA	1/31/2002
Wilmington	DE	1/31/2002
Erie	PA	5/31/2002
HRSA Atlanta Field Office—(404) 562-2996:		
Clearwater	FL	10/31/2001
Nashville	TN	10/31/2001
Mobile	AL	11/30/2001
HRSA Chicago Field Office—(312) 353-1715:		
Detroit	MI	10/31/2001
Battle Creek	MI	10/31/2001
Chicago	IL	11/30/2001
Evansville	IN	12/31/2001
Cincinnati	OH	12/31/2001
St. Paul	MN	1/31/2002
Flint	MI	3/31/2002
Indianapolis	IN	5/31/2002
HRSA Dallas Field Office—(214) 767-3872:		
El Paso	TX	6/30/2002
Lubbock	TX	6/30/2002
HRSA San Francisco Field Office—(415) 437-8090:		
Phoenix	AZ	10/31/2001
Martinez	CA	10/31/2001
Santa Barbara	CA	10/31/2001
Oakland	CA	10/31/2001
Oakland	CA	10/31/2001
Sacramento	CA	10/31/2001
Nipomo	CA	5/31/2002
HRSA Seattle Field Office—(206) 615-2491:		
Anchorage	AK	11/30/2001

Health Care for the Homeless 93.151

Legislative Authority: Public Health Service Act, Title III, Section 330(h), 42 U.S.C. 254b(h).

Purpose: The Health Care for the Homeless (HCH) program is designed to increase the access of homeless populations to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. These organizations are committed to providing or arranging for 100 percent access to comprehensive health care and social services, and to eliminating health disparities for homeless people. It is the intent of HRSA to continue to support health services to the homeless people in these areas/locations given the continued need for cost-effective, community-based primary care services. Thirty-one HCH grantees will reach the end of their project period during FY 2002. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2002 and new organizations proposing to serve the same areas and populations currently being served by these existing programs.

Special Considerations: Communication with field office staff is essential for interested parties in deciding whether to pursue Federal funding as an HCH program. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Review Criteria: Final review criteria are included in the application kit.

Public Housing Primary Care 93.927

Legislative Authority: Section 330(i) of the Public Health Service Act, 42 U.S.C. 254b(i).

Purpose: The mission of the Public Housing Primary Care (PHPC) program is to increase access to comprehensive primary and preventive health care and to improve the physical, mental and economic well-being of public housing residents. It is the intent of HRSA to continue to support health services to residents of public housing. The three priorities for promoting access to primary care and improving the well being of residents of public housing are: (1) Resident involvement and participation in program development and implementation; (2) innovative service delivery systems that address the special health needs of public housing residents; and (3) collaborations with other health, education and community-based organizations. Central to the program's past and future success is the commitment to the provision of health care that emphasizes improving the availability, accessibility, comprehensiveness, continuity, and quality of health service to residents of public housing.

Twelve PHPC grantees will reach the end of their project period during FY 2002. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire in FY 2002 and new organizations proposing to serve the same populations currently being served by these existing programs.

Funding Priorities and/or Preferences: Administrative funding preferences are included in the application materials.

Special Considerations: Communication with field office staff is essential for interested parties in deciding whether to pursue Federal funding as a PHPC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$4,800,000.

Estimated Number of Awards: 12.
Estimated or Average Size of Each Award: \$400,000.

Estimated Project Period: 1 to 5 years.
CFDA Number: 93.927.

Application Availability Date: June 1, 2001.

Application Deadline: October 1, 2001.

Projected Award Date: February 1, 2002.

Program Contact Person: Evan R. Arrindell.

Phone Number: (301) 594-4334.
E-mail: rarrindell@hrsa.gov.

City	State	Expiration date
HRSA Boston Field Office—(617) 565-1482: Roxbury	MA	1/31/2002
New Haven	CT	5/31/2002
HRSA New York Field Office—(212) 264-2664: Brooklyn	NY	3/31/2002
HRSA Philadelphia Field Office—(215) 861-4422: Pittsburgh	PA	1/31/2002
HRSA Atlanta Field Office—(404) 562-2996: Birmingham	AL	10/31/2001
Gadsden	AL	3/31/2002
Atlanta	GA	5/31/2002
HRSA Chicago Field Office—(312) 353-1715: St. Paul	MN	1/31/2002
HRSA Dallas Field Office—(214) 767-3872: Monroe	LA	8/31/2002
HRSA San Francisco Field Office—(415) 437-8090: Honolulu	HI	3/31/2002
San Diego	CA	8/31/2002
HRSA Seattle Field Office—(206) 615-2491: Seattle	WA	1/31/2002

Healthy Schools, Healthy Communities Program—Competing Continuations 93.151A

Legislative Authority: Section 330 of the Public Health Services Act, 42 U.S.C. 254b.

Purpose: The purpose of the Healthy Schools, Healthy Communities (HSHC) program is to increase access to comprehensive primary and preventive health care to underserved children, adolescents, and families. Grants made under the HSHC program are awarded to public and private nonprofit community-based health care entities for the development and operation of school-based health centers (SBHCs). The HSHC programs and other Bureau of Primary Health Care (BPHC)-supported SBHC programs in the school or on school grounds on a full-time basis provide comprehensive primary and preventive health care services including mental health, oral health, ancillary, and enabling services. These services are culturally sensitive, appropriate, family oriented, and tailored to meet the health care needs of

youth, adolescents, and the community. The array of provided services on-site is locally determined by school principals, school boards, parents, and providers, and referral arrangements are provided for services not available on-site. No SBHC services are provided without fully informed parental consent. By supporting educational efforts by making sure that children are ready to learn, SBHCs are (1) Part of an integrated system of care and provide continuity of care to assure after hours and year round coverage, and (2) proven to provide access to confidential and comprehensive preventive and primary health services. The BPHC is opening the competition for Federal funds to provide services through the HSHC Program. The goal of this competition is to provide the best possible health care services to students and families; to ensure that Federal funds are utilized most effectively and efficiently; and to ensure that HSHC grantees are prepared and equipped to handle the challenges of the future. Applications are due 120 days before the expiration date.

Eligibility: Applicants are limited to currently funded programs whose project periods expire in FY 2002 and new organizations proposing to serve the same populations currently being served by these existing programs.

Funding Priorities or Preferences: Final administrative funding preferences are included in the application materials.

Special Considerations: Communication with Field Office staff is essential for interested parties in deciding whether to pursue Federal funding as a HSHC program. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the HRSA Field Office.

Estimated Amount of This Competition: \$2,700,000.

Estimated Number of Awards: 9.

Estimated or Average Size of Each Award: \$300,000.

Estimated Project Period: 3 years.

CFDA Number: 93.151A.

Application Availability Date: Continuous.

Application Deadline: Varies.

Project Award Date: Varies.

Program Contact Person: Darryl Burnett.

Phone: (301) 594-4449.

Email: dburnett@hrsa.gov.

City	State	Expiration date
HRSA Boston Field Office—(617) 565-1482:		

City	State	Expiration date
Boston	MA	6/30/2002
HRSA New York Field Office—(212) 264–2664:		
Bronx	NY	6/30/2002
New York	NY	6/30/2002
HRSA Philadelphia Field Office—(215) 861–4422:		
Denton	MD	12/31/2001
HRSA Atlanta Field Office—(404) 562– 2996:		
Wilmington	NC	6/30/2002
HRSA Chicago Field Office—(312) 353– 1715:		
Milwaukee	WI	6/30/2002
HRSA Dallas Field Office—(214) 767– 3872:		
Albuquerque	NM	6/30/2002
HRSA San Francisco Field Office—(415) 437–8090:		
Campbell	CA	6/30/2002
HRSA Seattle Field Office—(206) 615– 2491:		
Medford	OR	6/30/2002

New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act 93.224, 93.246, 93.151, 93.927, 93.151A

Legislative Authority: Section 330 Public Health Service Act, 42 U.S.C. 254b.

Purpose: The purpose of this program is to support the establishment of new service delivery sites in each of the Health Center programs funded under section 330 of the Public Health Service Act. These programs include: (1) Community Health Centers, section 330(e); (2) Migrant Health Centers, section 330(g); (3) Health Care for the Homeless program, section 330(h); (4) Public Housing Primary Care, section 330(i); and (5) Healthy School, Healthy Communities program, section 330(e). The populations served by these programs are: (1) Medically underserved populations including medically underserved populations in urban and rural areas; (2) migratory and seasonal agricultural workers and their families; (3) homeless people, including children and families; (4) residents of public housing; and (5) students attending schools (K–12) that serve low income and high-risk children. The purpose of the Health Center program is to extend comprehensive preventive and primary health services, (including mental health, substance abuse, and oral health services) and supplemental services to populations currently without access to such services and to improve their

health status. The HRSA will support new service delivery sites operated by existing health centers or through newly established health centers.

Matching or Cost Sharing Requirement: Communities seeking support are strongly encouraged to promote and seek outside funding and are required to maximize third party revenue to establish and maintain new service delivery sites.

Eligibility: Public and private nonprofit entities are eligible to apply.

Funding Priorities and/or Preferences:

Final priorities and/or preferences are included in the application materials.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This

Competition: \$43,000,000.

Estimated Number of Awards: 100.

Estimated or Average Size of Each

Award: \$350,000 to \$650,000.

Estimated Project Period: 2 years or consistent with existing project period for currently funded organizations.

CFDA Number: 93.224, 93.246,

93.151, 93.927, 93.151A.

Application Availability Date: July 2001.

Letter of Intent Deadline: The letter of intent deadline is ongoing. Letters of intent are encouraged for organizations seeking funding for a new delivery site. Letters of intent will be accepted beginning July 31, 2001. The submission of a letter of intent is recommended but not required in order to submit an application to compete for funds in FY 2002. Information requirements to be included in the letter of intent submissions will be available in the application guidance.

Application Deadline: Applications will be accepted beginning October 1, 2001. Applications received by November 15, 2001, will be reviewed with funding decisions announced by February 28, 2002. Applications received by January 31, 2002 will be reviewed with funding decisions announced by April 30, 2002.

Applications received by April 30, 2002 will be reviewed with funding decisions announced by July 31, 2002.

Applications received after April 30, 2002 will be considered for funding in FY 2003, depending on the availability of funds.

Projected Award Date: See above.

Program Contact Person: 93.224, Tonya Bowers; 93.246, George Ersek; 93.151, Jean Hochron; 93.927, Evan R. Arrindell; 93.151A, Sheri Downing-Futrell.

Phone Numbers: (301) 594–4329, Bowers; (301) 594–4303, Ersek; (301) 594–4437, Hochron; (301) 594–4334,

Arrindell; (301) 594–4468, Downing-Futrell.

E-mail: tbowers@hrsa.gov; gersek@hrsa.gov; jhochron@hrsa.gov; earrindell@hrsa.gov; sdowning-futrell@hrsa.gov.

Increase in Medical Capacity in Programs Funded Under the Health Centers Consolidation Act of 1996 93.224, 93.246

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254b.

Purpose: The HRSA is committed to achieving 100 percent access to health care for the underserved and to pledging new funding to strengthen the health care safety net through Community and Migrant Health Centers (C/MHC). C/MHCs extend preventive and primary health services to populations currently without such services and improve the health status of medically underserved individuals. One way of achieving these goals and reaching new users of health centers is to approve funding increases for existing C/MHC grantees who provide a plan for achieving increased medical capacity within their existing C/MHC current service area. Applicants for funding increases will be asked to demonstrate need, present a definitive medical capacity expansion strategy, provide evidence of the organization's readiness and capacity for expansion, and present a sound business plan for accomplishing increases in the number of people served.

Eligibility: Applicants are limited to currently funded community and migrant health centers (i.e., ≤ those organizations funded under sections 330(e) and 330(g).

Funding Priorities or Preferences: Final priorities and/or preferences are included in the application materials.

Estimated Amount of This

Competition: Up to \$40,000,000.

Estimated Number of Awards: 125 to 150.

Estimated or Average Size of Each

Award: \$250,000 to \$350,000

CFDA Number: 93.224, 93.246.

Application Availability Date: 7/20/01.

Application Deadlines: Applications will be accepted from grantees no later than October 1, 2001.

Program Contact Person: 93.224, Janet Wetmore; 93.246, George Ersek.

Phone Numbers: (301) 594–4340, Janet Wetmore; (301) 594–4301, George Ersek.

Email: jwetmore@hrsa.gov; gersek@hrsa.gov.

Healthy Schools, Healthy Communities Planning and Capacity Development Grants

Legislative Authority: Section 330 of the Public Health Service Act, 42 U.S.C. 254.

Purpose: The purpose of this grant program is to support communities and health care service entities through the planning process, to develop full service school-based health centers which will offer comprehensive primary and preventive health care, including mental and oral health services. The Planning and Capacity Development grant is not an operational grant; it will not support any type of service delivery or patient care activities. Applications must propose activities which will lead to the establishment of full service school-based health centers in accordance with community needs and consolidated health center program expectations that improve access to care.

Eligibility: Eligible applicants must currently be funded under section 330 of the Public Health Service Act. Applicants cannot be current Healthy Schools, Healthy Communities grant recipients; have not operated a school-based health center within the last 3 years; and must target medically underserved areas or populations.

Funding Priorities or Preferences: Final administrative preferences are included in the application materials.

Estimated Amount of This Competition: \$700,000.

Estimated Number of Awards: 15.
Estimated or Average Size of Each Award: \$50,000.

Estimated Project Period: 1 year.
CFDA Number: N/A.

Application Availability Date: January 1, 2002.

Letter of Intent Deadline: January 31, 2002.

Application Deadline: March 20, 2002.

Projected Award Date: July 1, 2002.

Program Contact Person: LaVerne M. Green.

Phone Number: (301) 594-4470.
E-mail: lgreen@hrsa.gov.

Grants to States for Loan Repayment Programs 93.165

Legislative Authority: Public Health Service Act, Title III, Section 338I, 42 U.S.C. 254q-1.

Purpose: The purpose of these grant funds is to assist States in operating programs for the repayment of educational loans of health professionals in return for their practice in Federally-designated health professional shortage areas to increase the availability of primary health services in such areas. Of the estimated

36 awards, 5 are project period renewals. Further information about these activities can be obtained from the contact person.

Matching or Cost Sharing Requirement: States seeking support must provide adequate assurances that, with respect to the costs of making loan repayment under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than \$1 for \$1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match.

Eligibility: All States are eligible to apply for funding.

Special Considerations: See matching or Cost Sharing Requirements above.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$1,000,000.

Estimated Number of Awards: 5.
Estimated or Average Size of Each Award: \$200,000.

Estimated Project Period: 3 years.
CFDA Number: 93.165.

Application Availability Date: April 1, 2002.

Application Deadline: May 15, 2002.
Projected Award Date: August 31, 2002.

Program Contact Person: Jackie Brown.

Phone Number: (301) 594-4400.
E-mail: jbrown1@hrsa.gov.

Black Lung Clinics 93.965

Legislative Authority: Section 427(a) of the Black Lung Benefits Reform Act of 1977, 30 U.S.C. 937(a).

Purpose: The primary purpose of the Black Lung Clinics grant program is to provide treatment and rehabilitation for Black Lung patients and others with occupationally-related pulmonary diseases. In addition, individual grantee programs are expected to include case finding and outreach, preventive and health promotion services, education for patients and their families, and testing to determine eligibility for Department of Labor or State benefits. Although the number of active coal miners has decreased substantially because of mechanization, there has been an increase in the number of retired coal miners with the disease and in the number of pulmonary patients from other occupations. A current objective of the program is to expand outreach so that more of the eligible population is made aware of the services offered by the grantee clinics.

Eligibility: Health clinics that provide diagnosis, treatment, and rehabilitation of active and retired coal miners with respiratory and pulmonary impairments are eligible.

Funding Priorities and/or Preferences: Priority will be given to clinics that provide a combination of services, i.e., outreach, testing, treatment, and rehabilitation.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$6,000,000.

Estimated Number of Awards: 13.
Estimated or Average Size of Each Award: \$460,000.

Estimated Project Period: 3 years.
CFDA Number: 93.965.

Application Availability Date: January 07, 2002.

Application Deadline: Varies.
Projected Award Date: Varies.

Program Contact Person: Sharley Chen.

Phone Number: (301) 594-4424.
E-mail: schen@hrsa.gov.

City	State	Expiration date
HRSA Philadelphia Field Office—(215) 861-4422:		
Harrisburg	PA	6/30/2002
Fredericktown ...	PA	6/30/2002
Charleston	WV	8/31/2002
St. Charles	VA	8/31/2002
HRSA Atlanta Field Office—(404) 562-2996:		
Whitesburg	KY	6/30/2002
Birmingham	AL	8/31/2002
Greenville	KY	8/31/2002
HRSA Chicago Field Office—(312) 353-1715:		
Princeton	IN	6/30/2002
Chicago	IL	6/30/2002
Columbus	OH	8/31/2002
Caterville	IL	8/31/2002
HRSA Dallas Field Office—(214) 767-3872:		
Raton	NM	8/31/2002
HRSA Denver Field Office—(303) 844-3203:		
Worland	WY	6/30/2002

National Health Center Technical Assistance Cooperative Agreement 93.130A

Legislative Authority: Public Health Service Act, Title III, Section 330(k), 42 U.S.C. 254b(k).

Purpose: The Health Center programs deliver cost effective, high quality primary health care to underserved, vulnerable, low income, and minority populations. HRSA supports technical

and non-financial assistance to Federally-funded Health Centers to assist in these efforts. This technical assistance announcement is for a participatory evaluation and action project to assess how the nation's Health Centers and other safety net resources are being restructured to deliver 100 percent access to care and zero health disparities; how to improve the operations and management of Federally-funded Health Centers through in this community-by-community restructuring; and how to replicate and accelerate proven best practices for achieving the 100 percent access/zero disparities goals with resources already in place. Further information about this activity will be available in the application guidance.

Federal Involvement: Substantial Federal involvement will be detailed in the application materials.

Eligibility: Public and private nonprofit entities are eligible.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: \$500,000.

Estimated Number of Awards: 1.

Estimated or Average Size of Each Award: \$500,000.

Estimated Project Period: 1 to 5 years.

CFDA Number: 93.130A.

Application Availability Date: August 1, 2001.

Application Deadline: October 1, 2001.

Projected Award Date: December 1, 2001.

Program Contact Person: Dennis Wagner.

Phone Number: (301) 594-4121.

Email: dwagner@hrsa.gov.

Exhibit and Conference/Meeting Information

HRSA's exhibit schedule and HRSA-sponsored conferences and meetings can be accessed online at <http://www.hrsa.gov/newsroom/calendar.htm>. For more information, contact Steve Merrill at smerrill@hrsa.gov.

HRSA's Field Offices

Northeast Cluster

Philadelphia Field Office—Field Director, Vincent C. Rogers—(215) 861-4422
 Boston Field Office—Assistant Field Director, Kenneth Brown—(617) 565-1420
 New York Field Office—Assistant Field Director, Ron Moss—(212) 264-3032

Southeast Cluster

Atlanta Field Office—Field Director, Ketty M. Gonzalez—(404) 562-7972

Midwest Cluster

Chicago Field Office—Field Director, Deborah Willis-Fillinger—(312) 353-6835
 Kansas City Field Office—Assistant Field Director, Hollis Hensley—(816) 426-5226

West Central Cluster

Dallas Field Office—Field Director, Frank Cantu—(214) 767-3872
 Denver Field Office—Assistant Field Director, Jerry Wheeler—(303) 844-3203

Pacific West Cluster

San Francisco Field Office—Field Director, Thomas Kring—(415) 437-8090
 Seattle Field Office—Assistant Field Director, Richard Rysdam (Acting)—(206) 615-2491

Related World Wide Web Addresses

HRSA Preview Online

<http://www.hrsa.gov/grants.htm>

HRSA Home Page

<http://www.hrsa.dhhs.gov>

DHHS Home Page

<http://www.os.dhhs.gov>

Grantsnet

<http://www.hhs.gov/progorg/grantsnet/index.html>

PHS Grants Policy Statement

<http://www.nih.gov/grants/policy/gps>

Catalog of Federal Domestic Assistance (CFDA)

<http://www.gsa.gov/fdac>

Code of Federal Regulations

<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>

OMB Circulars

<http://www.whitehouse.gov/WH/EOP/omb>

<http://www.whitehouse.gov/omb/grants/index.html#circulares>

Federal Register

http://www.access.gpo.gov/su_docs/aces/aces140.html

Healthfinder

<http://www.healthfinder.gov>

Fedworld Information Network

<http://www.fedworld.gov>

State Single Points of Contact (SPOC)

<http://thomas.loc.gov>

[FR Doc. 01-19748 Filed 8-8-01; 8:45 am]

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Federal Register

**Thursday,
August 9, 2001**

Part IV

Department of Defense

**Department of the Army, Corps of
Engineers**

**Proposal To Reissue and Modify
Nationwide Permits; Notice**

DEPARTMENT OF DEFENSE**Department of the Army, Corps of Engineers****Proposal To Reissue and Modify Nationwide Permits; Notice**

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of intent and request for comments.

SUMMARY: The Corps of Engineers is soliciting comments for the reissuance of the existing Nationwide Permits (NWP), General Conditions, and definitions with some modifications. The Corps of Engineers (Corps) reissued NWPs on December 13, 1996, **Federal Register** notice (61 FR 65874–65922). These NWPs will expire February 11, 2002, except as discussed below.

In the December 13, 1996, issue of the **Federal Register**, the Corps announced its intention to replace NWP 26 with activity-specific NWPs before the expiration date of NWP 26. In the March 9, 2000, **Federal Register** notice (65 FR 12818–12899), the Corps published five new NWPs, modified six existing NWPs, modified six General Conditions, and added two new General Conditions to replace NWP 26. The five new NWPs (i.e., 39, 41, 42, 43, 44) and six modified NWPs (i.e., NWPs 3, 7, 12, 14, 27, and 40) will expire five years from their effective date of June 7, 2000. In order to reduce the confusion regarding the expiration of the NWPs and the administrative burden, it is the Corps intent to reissue all NWPs and General Conditions contained within this Notice, including those not scheduled to expire on February 11, 2002. Thus, all issued, reissued and modified NWPs, and General Conditions contained within this notice will become effective and expire on the same date. The reissuance process starts with today's publication of the proposed NWPs in the **Federal Register** and concurrent release of public notices by Corps District offices for a 45-day comment period.

DATES: Comments on the reissuance of the proposed NWPs must be received by September 24, 2001. The public hearing will be held at 1 p.m. on September 12, 2001.

ADDRESSES: Send comments to HQUSACE, ATTN: CECW–OR, 441 "G" Street, NW, Washington, DC 20314–1000. The public hearing will be held at the GAO Building, 441 "G" Street, NW, Washington, DC 20314–1000, 7th floor auditorium.

FOR FURTHER INFORMATION CONTACT: Mr. Rich White or Mr. Sam Collinson, at

(202) 761–4599 or access the U.S. Army Corps of Engineers Regulatory Home Page at: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

SUPPLEMENTARY INFORMATION: In regard to the public hearing referenced, the public should enter on the "G" Street side of the building. All attendees are required to show photo identification and must be escorted to the auditorium by Corps personnel. All attendees arriving between one-half hour before and one-half hour after 1 p.m. will be escorted to the hearing. Those arriving later than the allotted time will be unable to enter the building.

The public is invited to provide comments on this notice to reissue and modify NWPs to the address below. The Corps is also preparing a voluntary Programmatic Environmental Impact Statement (PEIS) on the NWP Program. On July 31, 2001, the PEIS will be announced in the **Federal Register** and available on the Corps Institute for Water Resources (IWR) web page at <http://www.iwr.usace.army.mil/iwr/Regulatory/regulintro.htm>. Comment on the PEIS should be sent to IWR as indicated on the IWR web page or the **Federal Register** notice.

Background

Section 404(e) of the Clean Water Act (CWA) is the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States (US). Such activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal cumulative adverse effect on the aquatic environment. The Nationwide Permit (NWP) Program is designed to provide timely authorization for the regulated public while concurrently protecting the Nation's aquatic resources.

The protection and restoration of the aquatic environment is an integral part of the Corps mission and a primary focus of the Regulatory Program. The NWP Program allows the Corps to maintain protection of the aquatic environment, while allowing the Corps to focus limited resources towards more extensive evaluation of projects with the potential for causing environmentally damaging adverse effects. Impacts to the aquatic environment may also receive additional protection through regional conditions, case-specific special conditions, and case-specific discretionary authority to require standard Individual Permits (i.e. for

higher quality aquatic resource). General Permits, including NWPs, protect the aquatic environment because permit applicants will reduce project impacts to meet the restrictive requirements of the general permit. The NWP Program allows the Corps to authorize activities with minimal adverse environmental impacts in a timely manner and maintain protection of the aquatic environment.

This proposal to reissue existing NWPs is a reflection of the Corps unequivocal commitment to its environmental protection mission and to aquatic resource protection. For example, twenty-one of the NWPs contain provisions within the terms and conditions that establishes a threshold level requiring "notification" to the Corps before a regulated activity is authorized to commence. This provision gives the Corps the opportunity to thoroughly evaluate NWP authorizations to ensure that the activity will have no more than a minimal adverse effect on the aquatic environment, individually and cumulatively. This "notification" includes submitting to the Corps an application containing detailed or conceptual descriptions of proposed activities, and the impacts to aquatic systems. A "notification" to the Corps may be required for filling aquatic areas, such as stream beds (whether perennial, intermittent, or ephemeral) and wetlands. The Corps reviews each "notification" and this case-by-case review typically results in case specific conditions requiring mitigation to ensure that impacts to the aquatic environment are no more than minimal. It may also result in the Corps asserting discretionary authority to require an Individual Permit if the Corps determines, based on the information provided in the notification, that adverse impacts will be more than minimal, either individually or cumulatively. Excavation in waters of the US requires a permit (and may require "notification") if the activity involves a discharge of dredged material resulting in more than "incidental fallback" (66 FR, 4550–4575).

In addition to the "notification" provision, regional conditions may be developed by District Engineers to take into account regional differences in aquatic resource functions and values across the country and to put mechanisms into place to protect them. After identifying the geographic extent of "higher" quality aquatic systems, District Engineers can either change "notification" thresholds, or require "notification" for all activities within a particular watershed or waterbody to

ensure that NWP use and authorization only occurs for activities with minimal adverse effects, individually and cumulatively. Furthermore, Corps Division Engineers can suspend or revoke the use of certain NWPs within the bounds of high value aquatic systems if the use of NWPs would result in more than minimal adverse effects to the aquatic environment, individually or cumulatively.

Although minimal adverse effects are anticipated for the NWP Program, the use of NWPs may still affect the aquatic environment. Therefore, General Condition 19, "Mitigation", describes how District Engineers will require compensatory mitigation with other aquatic resources or vegetated buffers in order to offset the authorized impacts to the extent necessary to ensure minimal adverse effects on the aquatic environment. The purpose of this condition is twofold; one, to maintain national goals of no net loss of functions and values, and two, to offset any cumulative adverse effects to the aquatic environment. The Corps has determined that the NWP authorizations, along with the ability to place regional conditions or case-specific conditions, or require Individual Permits as appropriate, will not cause more than minimal individual or cumulative adverse effects to waters of the US. Compensatory mitigation can be accomplished through the restoration, creation, enhancement, and/or preservation of aquatic resources either by individual projects constructed by the permittee, or the use of mitigation banks, in lieu fee programs, or other consolidated mitigation efforts.

Vegetated Buffers

An important component of compensatory mitigation is the establishment and maintenance of vegetated buffers adjacent to open and flowing waters. Vegetated buffers adjacent to open waters or streams may consist of either uplands or wetlands, both of which help protect and enhance local water quality and aquatic habitat features for a particular waterbody. Vegetated buffers can be established by maintaining an existing vegetated area adjacent to open or flowing waters, or by planting native trees, shrubs, and herbaceous perennials in areas with little existing perennial native vegetation.

The use of vegetated buffers as mitigation for NWP activities is discussed in General Condition 19. Vegetated buffers next to streams and other open waters provide many of the same functions that wetlands provide. In fact, many vegetated buffers will be

wetlands. Due to their proximity to open waters, vegetated buffers are more effective at protecting open waters than wetlands distant from those open waters. The following is a list of the functions provided by vegetated buffers published in the July 21, 1999, **Federal Register** notice to reissue NWPs. In general, vegetated buffers next to streams and open waters provide the following functions: (1) Reduce adverse effects to water quality by removing nutrients and pollutants from surface runoff; (2) reduce concentrations of nutrients and pollutants in subsurface water that flows into streams and other open waters; (3) moderate storm flows to streams, which reduces downstream flooding and degradation of aquatic habitat; (4) stabilize soil (through plant roots), which reduces erosion in the vicinity of the open waterbody; (5) provide shade to the waterbody, which moderates water temperature changes and provides a more stable aquatic habitat for fish and other aquatic organisms; (6) provide detritus, which is a food source for many aquatic organisms; (7) provide large woody debris from riparian zones, which furnishes cover and habitat for aquatic organisms and may cause the formation of pools in the stream channel; (8) provide habitat to a wide variety of aquatic and terrestrial species; (9) trap sediments, thereby reducing degradation of the substrate that provides habitat for fish and other aquatic organisms (e.g., some fish species depend upon gravel stream beds for spawning habitats); and (10) provide corridors for movement and dispersal of many species of wildlife. In addition, vegetated buffers next to streams may provide additional flood storage capacity and groundwater recharge functions.

The Corps statutory authority to require vegetated buffers next to streams and other open waters originates in the goal of the CWA which is to restore and maintain the chemical, physical and biological integrity of Nation's waters. This goal is stated in Section 101 of the CWA and is applicable to all sections of the CWA, including Section 404. The establishment of vegetated buffers next to streams and other open waters helps maintain the chemical, physical, and biological integrity of our waters. The Corps believes that requiring vegetated buffers along flowing streams and other open waters is one of the most important forms of compensatory mitigation. Requiring the establishment of vegetated buffers by the Corps, as mitigation, is one of the best ways that the Corps can ensure the CWA Section

101 goals are met. For all of these reasons, the Corps is proposing to revise General Condition 19 to allow a waiver of the requirement of one-for-one wetlands mitigation, in cases where the Corps determines that some other form of mitigation, such as establishment of vegetated buffers, is more appropriate. The Corps requests comments on this proposed revision.

NEPA Compliance

The Corps recognizes that there has been, and continues to be, substantial interest by the public regarding the potential environmental effects associated with the implementation of the Corps NWP Program. The Corps is committed to ensuring that no more than minimal adverse effects on the aquatic environment, individually and cumulatively, will occur and we will continue to carefully evaluate potential environmental effects of the program as we move to reissue the NWPs. The Corps has prepared Environmental Assessments (EA) for each issued or reissued NWP in the past, including those issued in 1996 and 2000. Those EAs each resulted in a Finding of No Significant Impact (FONSI). The Corps will again prepare EAs for each proposed reissuance of a NWP in this proposal to determine whether an Environmental Impact Statement (EIS) should be prepared. These EAs will consider the environmental effects of each NWP from a national perspective and each Corps District and Division Engineer will supplement the EAs to evaluate regional environmental effects. Where more than minimal adverse effects on the aquatic environment may occur, Corps Division Engineers will establish regional conditions to further protect the aquatic environment and ensure that any adverse effects will be no more than minimal.

We are continuing to improve data collection and monitoring efforts associated with the NWP Program. Our efforts include accumulating information on the verified uses of the NWPs, acreage impacts, affected resource types, the geographic location of the activities, and the type of mitigation provided. This information is important, and was used as the Corps made permitting and policy decisions regarding the continued role of the Corps NWP Program. The objective is to ensure that the NWP Program continues to authorize only those activities with no more than minimal individual and cumulative adverse effects on the aquatic environment.

The Corps determined that preparation of an EIS was not required, in both 1996 and 2000, for issuing any

of the specific NWP. In addition, the Corps made a FONSI on June 23, 1998, for the NWP Program. This finding is determined on the basis that the NWP Program has limitations and procedures that ensure the Corps authorizes only those activities that have no more than minimal adverse effects on the aquatic environment, both individually and cumulatively. This threshold (i.e. no more than minimal adverse effects) is lower than the threshold for requiring an EIS (a copy of the FONSI is available on our web page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/nw98fons.htm>).

The Corps is committed to ensuring and demonstrating that the NWP Program, as a whole, authorizes only those activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Consistent with this commitment, in March of 1999, the Corps began preparation of a PEIS to evaluate procedures and processes, provided information on the overall environmental impacts of the NWP Program using available data from the Corps databases, and evaluate how the Corps uses NWP, Regional General Permits, Letters of Permission, or other mechanisms to authorize projects. Thus, environmental impacts, alternative methods of operating the NWP Program, as well as shifting authorizations that are currently done under the NWP Program to other permitting methods, will be evaluated. The Corps recognizes that the PEIS will provide information useful to those commenting on the proposed reissuance of the NWP, and thus will make the draft PEIS available for comment by July 31, 2001, and will provide for a 30 day overlap in the comment periods of today's NWP package and the draft PEIS. The draft PEIS will be announced in the **Federal Register**, and will be available on the Corps Institute for Water Resources web page <http://www.iwr.usace.army.mil/iwr/Regulatory/regulintro.htm>. We anticipate final PEIS completion by early 2002.

Executive Order 11988—Floodplain Management

The Corps believes that the NWP Program, with its national, regional and case-by-case limitations, procedures and mitigation, fully complies with Executive Order 11988. This includes the "Floodplain Management Guidelines for Implementing Executive Order 11988" issued by the U.S. Water Resources Council, and "Further Advice on Executive Order 11988 Floodplain Management" issued by the Interagency Task Force on Floodplain Management.

"Further Advice on Executive Order 11988 Floodplain Management" states that class review of repetitive actions proposed in 100-year floodplains can be conducted in full compliance with Executive Order 11988. The Corps is currently conducting a formal class review of the NWP and will summarize the results of the review in the preamble to the final rule.

Process for Reissuing the NWP

The Corps is proposing to reissue all NWP, General Conditions, and definitions with some modifications. We are proposing to modify NWP 14, 21, 27, 31, 37, 39, 40, 42, and 43. In addition, we are proposing to modify General Conditions 4, 9, 13, 19, 21, 26, and add a new General Condition 27.

The Corps reissued NWP on December 13, 1996, with most of the NWP contained within that notice set to expire February 11, 2002. On June 7, 2000, the Corps issued five new NWP to replace NWP 26, modified six existing NWP, modified six General Conditions, and added two new General Conditions. The five new and six modified NWP will expire five years from their effective date of June 7, 2000. In order to reduce the confusion regarding when three separate sets of NWP expire, it is the Corps intent to consolidate all issued, reissued and modified NWP, and General Conditions contained within this notice will become effective and expire on the same date.

The reissuance process starts with today's publication of the proposed NWP in the **Federal Register** and concurrent release of public notices by Corps District Offices for a 45-day comment period. There will be a public hearing in Washington, D.C. to solicit comments on the proposed NWP. We will review the comments received in response to this **Federal Register** notice and the public hearing with a task force that includes Corps Regulatory field personnel. This process will take approximately 60-days. Upon completion of our initial review of the comments, we will complete a draft of the final NWP and solicit comments from interested Federal agencies. The final version of the NWP will be published in the **Federal Register** by November 13, 2001. The NWP will then become effective by February 11, 2002. This schedule provides a 90-day period for the state 401/CZM agencies to complete their certification decisions. Also within this 90-day period, the Corps will finalize its regional conditions and certify that the NWP, with any regional conditions or geographic revocations, will only

authorize activities with minimal adverse effects on the aquatic environment, both individually and cumulatively. The NWP will become effective at the end of the 90-day period. The Corps regional conditioning and 401/CZM certification processes are discussed elsewhere in this notice.

Regional Conditioning of Nationwide Permits

The Corps is committed to reissuing NWP that result in no more than minimal adverse effects on the aquatic environment. An important element in achieving this goal is the successful implementation of the regional conditioning process. The coordinated involvement of tribes, state and Federal agencies, Corps Districts, and solicitation of public comments, assist the Corps in identifying appropriate regional conditions on the reissued NWP. Moreover, effective regional conditioning protects aquatic systems at the local level and helps ensure that Corps Districts remain in compliance with statutory requirements that NWP have no more than minimal adverse effects on the aquatic environment, both individually and cumulatively.

There are two types of regional conditions. Conditions added as a result of states Section 401 Water Quality Certification/Coastal Zone Management Act (401/CZM) concurrence. Second, by Corps Divisions, in coordination with Corps Districts, state and Federal agencies, tribes, and the public. In accordance with Corps regulations at 33 CFR 330.5 (c) & (d), any state 401/CZM conditions for an NWP become regional conditions for that NWP. The Corps District public notices concerning the final NWP must include any 401/CZM regional conditions. Division Engineers will add Corps required regional conditions to NWP after a public notice comment period.

Each Corps District will issue a public notice for the proposed reissuance of NWP approximately concurrent with this **Federal Register** notice. The public notice will include (1) Corps proposed regional conditions, if any, that are applicable to any of the proposed NWP; and (2) the existing Corps regional conditions, if any. This initial public notice will also request comments or suggestions for additional Corps regional conditions for the NWP. The initial public notice may also include, for informational purposes only, any state or tribal 401/CZM regional conditions. However, the public does not have the opportunity to comment on the state or tribal 401/CZM regional conditions through the Corps. A separate state or tribal process

involves the public regarding state or tribal 401/CZM certifications, including 401/CZM regional conditions. Each Corp District will announce the final state or tribal 401/CZM determinations, including any 401/CZM regional conditions in the final NWP public notice.

The initial public notices will request that the general public and other agencies submit comments on the NWPs and any regional conditions proposed by the Corps. These comments should suggest additional implementation of Corps regional conditions in specific watersheds or waterbodies, or possibly suspending or revoking NWPs in certain geographic areas, specific watersheds or waterbodies. Comments should have data to support the need to the extent practicable.

Before the effective date of NWPs, each Division Engineer will prepare supplemental decision documents addressing the regional conditions for each NWP. Each decision document will include a statement by the Division Engineer, certifying that any Corps regional conditions imposed on the NWPs will ensure that those NWPs will authorize only activities with minimal adverse effects. After the Division Engineer establishes the Corps regional conditions, each Corps District will issue final public notices announcing the final 401/CZM determinations, including 401/CZM regional conditions and Corps regional conditions. Each Corps District may propose additional Corps regional condition in future public notices, as they determine necessary.

Corps regional conditions can be applied to large geographic areas. Examples include a state or county, particular watersheds or waterbody (e.g. Lower Kaskaskia River basin or Carlyle Lake), or a specific type of water of the US (e.g., Meramec Spring) focusing on issues relating to the aquatic environment within each Corps District. The regional conditions are used to ensure that the effects of the NWP Program on the aquatic environment are minimal, both individually and cumulatively. Examples of Corps regional conditions that may be used by Corps Districts to restrict the use of the NWPs include:

- Restricting the types of waters of the US where the NWPs may be used (e.g., fens, hemi-marshes, bottomland hardwoods, etc.) or prohibiting the use of some or all of the NWPs in those types of waters or in specific watersheds;
- Restricting or prohibiting the use of NWPs in areas covered by a Special Area Management Plan, or an Advanced

Identification study with associated Regional General Permits;

- Adding "notification" requirements to NWPs to require pre-construction notification (PCN) for all work in certain watersheds or certain types of waters of the US, or lowering the PCN threshold;
- Reducing the acreage thresholds in certain types of waters of the US;
- Revoking certain NWPs on a geographic or watershed basis;
- Restricting activities authorized by NWPs to certain times of the year in certain waters of the US, to minimize the adverse effects of those activities on areas used by fish or shellfish for spawning, nesting wildlife, or other ecologically cyclical events.

The Corps regional conditions implemented by each Corps District do not supersede the General Conditions of the NWP Program. The General Conditions address the Endangered Species Act, the National Historic Preservation Act of 1966, the Wild and Scenic Rivers Act, Section 401 Water Quality Certification, Coastal Zone Management, navigation, and other applicable laws. Given the extent of the coordination already mandated by Federal law, the addition of regional conditions at the state, tribal, watershed, or geographic level will help ensure that important public interest factors are considered when evaluating projects for NWP authorization.

Comments on regional issues and regional conditions must be sent to the appropriate District Engineer, as indicated below:

Alabama

Mobile District Engineer, ATTN: CESAM-OP-S, 109 St. Joseph Street, Mobile, AL 36602-3630

Alaska

Alaska District Engineer, ATTN: CEPOA-CO-R, P.O. Box 898, Anchorage, AK 99506-0898

Arizona

Los Angeles District Engineer, ATTN: CESPL-CO-R, P.O. Box 2711, Los Angeles, CA 90053-2325

Arkansas

Little Rock District Engineer, ATTN: CESWL-CO-P, P.O. Box 867, Little Rock, AR 72203-0867

California

Sacramento District Engineer, ATTN: CESPK-CO-O, 1325 J Street, Sacramento, CA 95814-4794

Colorado

Albuquerque District Engineer, ATTN: CESPA-CO-R, 4101 Jefferson Plaza NE, Room 313, Albuquerque, NM 87109

Connecticut

New England District Engineer, ATTN: CENAE-OD-R, 696 Virginia Road, Concord, MA 01742-2751

Delaware

Philadelphia District Engineer, ATTN: CENAP-OP-R, Wannamaker Building, 100 Penn Square East Philadelphia, PA 19107-3390

Florida

Jacksonville District Engineer, ATTN: CESAJ-CO-R, P.O. Box 4970, Jacksonville, FL 32202-4412

Georgia

Savannah District Engineer, ATTN: CESAS-OP-F, P.O. Box 889, Savannah, GA 31402-0889

Hawaii

Honolulu District Engineer, ATTN: CEPOH-ET-PO, Building 230, Fort Shafter, Honolulu, HI 96858-5440

Idaho

Walla Walla District Engineer, ATTN: CENWW-OP-RF, 210 N. Third Street, City-County Airport, Walla Walla, WA 99362-1876

Illinois

Rock Island District Engineer, ATTN: CEMVR-RD, P.O. Box 004, Rock Island, IL 61204-2004

Indiana

Louisville District Engineer, ATTN: CELRL-OR-F, P.O. Box 59, Louisville, KY 40201-0059

Iowa

Rock Island District Engineer, ATTN: CEMVR-RD, P.O. Box 2004, Rock Island, IL 61204-2004

Kansas

Kansas City District Engineer, ATTN: CENWK-OD-P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106-2896

Kentucky

Louisville District Engineer, ATTN: CELRL-OR-F, P.O. Box 59, Louisville, KY 40201-0059

Louisiana

New Orleans District Engineer, ATTN: CEMVN-OD-S, P.O. Box 60267, New Orleans, LA 70160-0267

Maine

New England District Engineer, ATTN: CENAE-OD-R, 696 Virginia Road, Concord, MA 01742-2751

Maryland

Baltimore District Engineer, ATTN: CENAB-OP-R, P.O. Box 1715, Baltimore, MD 21203-1715

Massachusetts

New England District Engineer, ATTN: CENAE-OD-R, 696 Virginia Road, Concord, MA 01742-2751

Michigan

Detroit District Engineer, ATTN: CELRE-CO-L, P.O. Box 1027, Detroit, MI 48231-1027

Minnesota

St. Paul District Engineer, ATTN: CEMVP-CO-R, 190 Fifth Street East, St. Paul, MN 55101-1638

Mississippi

Vicksburg District Engineer, ATTN: CEMVK-OD-F, 4155 Clay Street, Vicksburg, MS 39183-3435

Missouri

Kansas City District Engineer, ATTN: CENWK-OD-P, 700 Federal Building, 601 E. 12th Street, Kansas City, MO 64106-2896

Montana

Omaha District Engineer, ATTN: CENWO-OP-R, 215 N. 17th Street, Omaha, NE 68102-4978

Nebraska

Omaha District Engineer, ATTN: CENWO-OP-R, 215 N. 17th Street, Omaha, NE 68102-4978

Nevada

Sacramento District Engineer, ATTN: CESPK-CO-O, 1325 J Street, Sacramento, CA 95814-2922

New Hampshire

New England District Engineer, ATTN: CENAE-OD-R, 696 Virginia Road, Concord, MA 01742-2751

New Jersey

Philadelphia District Engineer, ATTN: CENAP-OP-R, Wannamaker Building, 100 Penn Square East, Philadelphia, PA 19107-3390

New Mexico

Albuquerque District Engineer, ATTN: CESWA-CO-R, 4101 Jefferson Plaza NE, Room 313, Albuquerque, NM 87109

New York

New York District Engineer, ATTN: CENAN-OP-R, 26 Federal Plaza, New York, NY 10278-9998

North Carolina

Wilmington District Engineer, ATTN: CESAW-CO-R, P.O. Box 1890, Wilmington, NC 28402-1890

North Dakota

Omaha District Engineer, ATTN: CENWO-OP-R, 215 North 17th Street, Omaha, NE 68102-4978

Ohio

Huntington District Engineer, ATTN: CELRH-OR-F, 502 8th Street, Huntington, WV 25701-2070

Oklahoma

Tulsa District Engineer, ATTN: CESWT-OD-R, P.O. Box 61, Tulsa, OK 74121-0061

Oregon

Portland District Engineer, ATTN: CENWP-PE-G, P.O. Box 2946, Portland, OR 97208-2946

Pennsylvania

Baltimore District Engineer, ATTN: CENAB-OP-R, P.O. Box 1715, Baltimore, MD 21203-1715

Rhode Island

New England District Engineer, ATTN: CENAE-OD-R, 696 Virginia Road, Concord, MA 01742-2751

South Carolina

Charleston District Engineer, ATTN: CESAC-CO-P, P.O. Box 919, Charleston, SC 29402-0919

South Dakota

Omaha District Engineer, ATTN: CENWO-OP-R, 215 North 17th Street, Omaha, NE 68102-4978

Tennessee

Nashville District Engineer, ATTN: CELRN-OR-F, P.O. Box 1070, Nashville, TN 37202-1070

Texas

Ft. Worth District Engineer, ATTN: CESWF-OD-R, P.O. Box 17300, Ft. Worth, TX 76102-0300

Utah

Sacramento District Engineer, ATTN: CESPK-CO-O, 1325 J Street, CA 95814-2922

Vermont

New England District Engineer, ATTN: CENAE-OD-R, 696 Virginia Road, Concord, MA 01742-2751

Virginia

Norfolk District Engineer, ATTN: CENAO-OP-R, 803 Front Street, Norfolk, VA 23510-1096

Washington

Seattle District Engineer, ATTN: CENWS-OP-RG, P.O. Box 3755, Seattle, WA 98124-2255

West Virginia

Huntington District Engineer, ATTN: CELRH-OR-F, 502 8th Street, Huntington, WV 25701-2070

Wisconsin

St. Paul District Engineer, ATTN: CEMVP-CO-R, 190 Fifth Street East, St. Paul, MN 55101-1638

Wyoming

Omaha District Engineer, ATTN: CENWO-OP-R, 215 North 17th Street, NE 68102-4978

District of Columbia

Baltimore District Engineer, ATTN: CENAB-OP-R, P.O. Box 1715, Baltimore, MD 21203-1715

Pacific Territories

Honolulu District Engineer, ATTN: CEPOH-ET-PO, Building 230, Fort Shafter, Honolulu, HI 96858-5440

Puerto Rico & Virgin Islands

Jacksonville District Engineer, ATTN: CESAJ-CO-R, P.O. Box 4970, Jacksonville, FL 32202-4412

Tribal, State and CZM Certification of Nationwide Permits

Tribal or state Water Quality Certification pursuant to Section 401 of the CWA, or waiver thereof, is required for activities authorized by NWP's which may result in a discharge into waters of the US. In addition, any state with a Federally approved Coastal Zone Management (CZM) plan must agree with the Corps determination that activities authorized by NWP's which are within, or will affect any land or water uses or natural resources of the state's coastal zone, are consistent with the CZM plan. Section 401 Water Quality Certifications and/or CZM consistency determinations may be conditioned, denied, or issued for parts of the NWP's.

The Corps believes that, in general, the activities authorized by the NWP's will not violate tribal or state water quality standards and will be consistent with state CZM plans. The NWP's are conditioned to ensure that adverse environmental effects will be minimal and are the types of activities that would be routinely authorized, if evaluated under the Individual Permit process. The Corps recognizes that in some tribes or states there will be a need to add regional conditions, or individual tribal or state review for some activities to ensure compliance with water quality standards or consistency with CZM plans. As a practical matter, the Corps intends to work with tribes or states to ensure that NWP's include the necessary conditions so that the tribe or state can issue 401 Water Quality Certifications or CZM consistency agreements. Therefore, each Corps District will initiate discussions with their respective tribe or state, as appropriate, following publication of this proposal to discuss issues of concern and identify regional modification and other approaches to the scope of waters, activities, discharges, and "notification", as appropriate, to resolve these issues. Note some states have adopted State Programmatic General Permits (SPGP) and the NWP's have been wholly or partially revoked. Concurrent with today's proposal, Corps Districts may be proposing modification or revocation of the NWP's in states where SPGP's will be

used in place of some or the entire NWP Program.

Section 401 of the Clean Water Act (CWA)

This **Federal Register** notice serves as the Corps application to the tribes, states, or EPA, where appropriate, for Section 401 Water Quality Certification of the activities authorized by these NWPs. The tribes, states, and EPA, where appropriate, are requested to issue, deny, or waive certification pursuant to 33 CFR 330.4(c) for these NWPs.

If a state denies a Section 401 Water Quality Certification for an NWP within that state, then the Corps will deny NWP authorization for the affected activities within that state without prejudice. However, when applicants request approval of such activities, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any project specific conditions the Corps determines are necessary. The Corps will notify the applicant that they must obtain a project specific Section 401 Water Quality Certification, or waiver thereof, before starting work in waters of the US. Anyone wanting to perform such activities where a "notification" is not required must first obtain a project specific Section 401 Water Quality Certification or waiver thereof from the state before proceeding under the NWP. This requirement is provided at 33 CFR 330.4(c).

Section 307 of the Coastal Zone Management Act (CZMA)

This **Federal Register** notice serves as the Corps determination that the activities authorized by these NWPs are, to the maximum extent practicable, consistent with states' CZM Programs. This determination is contingent upon the addition of state CZM conditions and/or regional conditions, or the issuance by the state of an individual consistency concurrence, where necessary. The states are requested to agree or disagree with the consistency determination following 33 CFR 330.4(d) for these NWPs.

The Corps CZMA consistency determination only applies to NWP authorizations for activities that are within, or affect, any land, water uses or natural resources of a state's coastal zone. NWP authorizations for activities that are not within or would not affect a states' coastal zone are not contingent on such states' agreement or

disagreement with the Corps consistency determinations.

If a state disagrees with the Corps consistency determination for an NWP, then the Corps will deny authorization for the activities within or that would affect the coastal zone without prejudice. However, when applicants request approval of such activities, and the Corps determines that those activities meet the terms and conditions of the NWP, the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any project specific conditions the Corps determines are necessary. The Corps will notify the applicant that they must obtain a project specific CZMA consistency determination before starting work in waters of the US. Anyone wanting to perform such activities where "notification" is not required must present a consistency certification to the appropriate state agency for concurrence. Upon concurrence with such consistency certifications by the state, the activity would be authorized by the NWP. This requirement is provided at 33 CFR 330.4(d).

Discussion for Comment

Nationwide Permits

We are proposing to reissue, without any changes to the terms and conditions, all NWPs and NWP General Conditions not discussed in the following preamble. The following discussion focuses only on specific NWP or NWP General Condition changes or modifications being proposed for the reissued permits.

14. Linear Transportation Projects

The Corps is proposing to simplify NWP 14. We are proposing to simplify the terms and conditions for authorizing discharges of dredged or fill material for public and private projects in tidal and non-tidal waters. We propose to treat both public and private transportation projects the same for tidal and non-tidal waters. We believe that the impacts to the aquatic environment for transportation projects will be essentially the same whether the project is public or private, although on average we would expect the private transportation projects to be smaller. However, we continue to believe that a distinction needs to be made for such projects concerning tidal and non-tidal waters. Therefore, we are proposing to retain the smaller acreage limit in the existing permit for tidal waters. For all linear transportation projects in non-tidal waters, the acreage limit would be

1/2-acre, and for tidal waters, the acreage limit would be 1/3-acre. This change would allow private transportation projects in non-tidal waters to have a maximum acreage of 1/2-acre instead of the current 1/3-acre. Our proposal will simplify three categories of waters (tidal, private, and public non-tidal) into two categories (tidal and non-tidal). There would be no change in acreage limits for other transportation projects.

To eliminate varying interpretations of the 200 linear-foot prohibition, we are proposing to remove this prohibition from the NWP. Although we propose simplifying the basis for use of this permit, we do not anticipate any significant practical effect from this change as the limiting factor contained in the terms and conditions of NWP 14 is generally the acreage limitation. The "notification" threshold (i.e. 1/10-acre for areas without special aquatic sites, and all proposed projects that would involve fill in special aquatic sites) allows the Corps to do a case-by-case review. This will ensure that any NWP 14 activity that exceeds this threshold will have a minimal adverse effect on the aquatic environment. Very few projects exceeding 200 linear-feet would remain below the 1/10-acre "notification" threshold. For example, a 200" by 22" wide transportation crossing would impact 4,400 sq. ft. (i.e., 1/10-acre). Because the Corps will review, case-by-case, every project involving 1/10-acre of impact (and every project of any size involving special aquatic sites), the 200 linear-foot prohibition is largely superfluous. In a few isolated cases, it may preclude use of the permit in situations where impacts are minimal, and for this reason (as well as simplification) we are proposing to remove it.

Some agencies have expressed concern with development pressure in coastal areas, and the importance of the tidal ecosystems. We agree with the importance of tidal ecosystems and we are not proposing to increase acreage thresholds in tidal waters. We do not believe that standardizing acreage limits for public and private projects in non-tidal waters and removing the linear-foot prohibition will cause more than minimal adverse effect when considered in conjunction with the 1/10-acre "notification" provision contained in the terms and conditions of the NWP. We believe that this "notification" requirement and the NWP General Conditions, in addition to other mechanisms such as regional conditions developed by Corps Districts, will ensure that authorized impacts have no more than minimal adverse effect on the aquatic environment.

Features of the proposed work that are integral to the linear transportation project, such as interchanges, stormwater detention basins, rail spurs or water quality enhancement measures, may also be authorized by this permit. This permit may not be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or hangars.

For all linear transportation projects, the Corps has the authority to assert discretionary authority when evaluating the magnitude of adverse effects on the aquatic environment (33 CFR 330.1(d), 330.4(e) & 330.5). The Corps Districts will determine on a case-by-case basis whether this NWP may be used for a single and complete project, or whether an Individual Permit may be required. The definition of the term "single and complete project" for linear projects can be found at 33 CFR 330.2(i). Corps Districts may also exercise discretionary authority over any project that, in the determination of the District Engineer, has the potential to result in more than minimal impact on the aquatic environment, after considering any mitigation. The Corps request comments on raising the acreage threshold to 1/2-acre for private roads in non-tidal waters, and removing the 200 linear-foot prohibition.

21. Surface Coal Mining Activities

The Corps is proposing two changes to this NWP to ensure the proper focus of the NWP and to ensure adequate mitigation will be required resulting in no more than minimal adverse effects on the aquatic environment. Both of these changes will increase protection of the aquatic environment. First, the Corps is proposing to require a specific determination by the District Engineer on a case-by-case basis that the activity complies with the terms and conditions of this NWP and that adverse environmental effects are minimal both individually and cumulatively after consideration of any required mitigation before any project can be authorized. Second, the Corps is also proposing to add clarification to NWP 21 that the Corps will require mitigation when evaluating surface coal mining activities, in accordance with General Condition 19. In addition, the Corps Section 404 review will address the direct and indirect effects to the aquatic environment from the regulated discharge of fill material.

The existing permit relies primarily on any state-required mitigation under the Surface Mining Control and Reclamation Act (SMCRA) to address

impacts to the aquatic environment. The Corps has determined that this is not appropriate, as the requirements of SMCRA differ from those of the CWA and reliance on SMCRA authorization may not result in adequate mitigation of adverse aquatic impacts. Therefore, the reissued permit provides for Corps determination of appropriate mitigation in accordance with General Condition 19. Corps review is limited to the direct, indirect, and cumulative effects of fills in waters of the US. In order to ensure that appropriate mitigation is performed, and that no activities are authorized that result in greater than minimal adverse impacts, either individually or cumulatively, the revised permit also requires not only notification, but also explicit authorization by the Corps before the activity can proceed. The Corps believes that both of these changes will strengthen environmental protection for projects authorized by this permit. The Corps request comments on these proposed changes.

Definition of Fill: On April 20, 2000, the Corps and EPA issued a joint proposal to revise the definition of fill found at 33 CFR 323.2(e) and 40 CFR 232.2. The proposed revision would clarify that fill material means material (including, but not limited to rock, sand and earth) that has the effect of: (i) Replacing any portion of water of the US with dry land; or (ii) Changing the bottom elevation of any portion of a water of the US.

The proposed "Rule" would clarify that placement of coal mining overburden in waters of the US is considered a discharge of fill material. The agencies received approximately seventeen thousand comments on the proposed rule and are still evaluating these comments. Unless and/or until a final "Rule" is issued, the scope of coverage of this permit is determined by the current regulations and any changes to those regulations would affect only the scope of covered discharges, not the terms and conditions of the permit itself.

Bragg Settlement Agreement: On December 23, 1998, a settlement agreement in litigation that challenged the use of NWPs in West Virginia to regulate so-called "valley fills" associated with certain types of coal mining in that state. *Bragg v. Robertson*, Civil Action No. 2:98-0636 (S.D. W.Va.). That agreement was approved by the Court on June 17, 1999. 54F.Supp. 2d 653. While on appeal, the Fourth Circuit Court of Appeals vacated a subsequent decision issued by the District Court addressing SMCRA claims in the case (see 248 F.3d 275), that decision left

intact the 1998 settlement agreement. See 248 F.3d at 288, n.1 (noting District Court's approval of the settlement agreement). A portion of the settlement agreement states that excess rock resulting from a surface coal mining and reclamation operation which would bury a stream segment draining a watershed of 250 acres or more will generally be considered to have more than minimal adverse effects on waters of the US. Consistent with the terms of this agreement, to which the Corps is a party, the Corps will generally use its discretionary authority to require Individual Permits for coal mining activities in West Virginia that exceed the 250-acre watershed threshold. The Corps notes that this agreement was negotiated among various Federal agencies and the State of West Virginia, and relates to certain types of coal mining operations in that state. The Corps believes there are many different types of coal mining operations in other parts of the country and that the conditions of the settlement agreement may not be applicable to many of these other operations. For this reason, the terms of the agreement have not been incorporated into the permit, which by definition is nationwide in scope.

Further, we are gathering data to better understand the effects of valley fills on the aquatic environment. Therefore, at this time we are not adding additional conditions from the agreement to the NWP itself. As additional scientific data is gathered, the terms of the agreement and/or may be revised. Thus, we do not believe that we should add specific conditions from the settlement agreement to this NWP which has a term of five years. However, the Corps wishes to reiterate that it will abide by all terms of the agreement as long as it remains in effect.

It is important to the Corps that surface coal mining activities authorized by this NWP do not cause more than minimal adverse effects to the aquatic environment after considering mitigation. As such, the District Engineer will ensure that the discharge of fill material in waters of the US associated with coal mining activities are having no more than minimal adverse effects on the aquatic environment. The Corps requests comments on the proposal to reissue this NWP with two additional provisions to strengthen environmental protection. The Corps also specifically solicits comment on the appropriate of establishing environmental thresholds for determining the applicability of NWP 21, such as the acres of the watershed impacted, the nature and length of the streams, and the

environmental functions and values of the streams, among other things.

27. Wetland and Riparian Restoration and Creation Activities

The Corps is not proposing any substantive change to the terms and conditions or the types of activities authorized by this NWP; we are only proposing to simplify the four categories of lands covered into three. We are proposing to combine two provisions; (a)(2) Any Federal land and (a)(4) Any private or public land. The two provisions would be listed as provision (a)(3) Any other public, private or tribal land. Initially, these two provisions were meant to cover cases which (a)(1) & (3) did not. The current structure of this NWP resulted when all Federal and privately owned lands were included in the December 13, 1996, **Federal Register** Notice (61 FR 65874–65922). The notice should have combined (a)(2) and (a)(4) at that time. Provision (a)(3) Reclaimed surface coal mine lands will be listed as provision (a)(2). This change will not affect how or if any activities will be authorized by this NWP.

31. Maintenance of Existing Flood Control Facilities

The Corps is proposing to modify NWP 31 to clarify Corps policy and requirements regarding mitigation for maintenance activities. We intend to clarify documentation requirements for the baseline determination, and allow maintenance of areas that are a part of the flood control facility without constructed channels provided that the Corps approves Best Management Practices (BMPs) to ensure that environmental effects are minimal.

The Corps policy is that temporary impacts due to routine maintenance activities generally do not require mitigation to ensure that the impacts will be minimal. Although, in some cases, mitigation for maintenance activities is necessary to ensure that impacts will be minimal. However, it is neither necessary nor appropriate to impose recurring mitigation requirements for discharges of dredged or fill material associated with cyclic maintenance activities in flood control facilities. Cyclic maintenance is inherent in the continued operation of flood control facilities, and regulated discharges of dredged or fill material will inevitably occur as a result of this activity. In recognition of these facts, we propose to revise NWP 31 to explicitly authorize such discharges, and to proactively prescribe mitigation for such reasonably foreseeable, but unspecified, discharges associated with routine maintenance. We propose to accomplish

this by establishing the prerequisite approval of a “maintenance baseline” as a threshold requirement for NWP 31 eligibility in all cases other than emergency situations. The “maintenance baseline” is a description of the physical characteristics (e.g., dimensions, configuration, etc.) of the flood control facility and attendant features, within which regulated discharges associated with maintenance activities that will not increase those physical characteristics are eligible for authorization under NWP 31. The maintenance baseline will include all constructed channels and features, and areas in which no construction has occurred but which have been incorporated, as is, in the design of the flood control facility.

We are proposing to clarify that mitigation requirements should be determined and imposed as part of the approval of the maintenance baseline. Such requirements will be based on the identification and assessment of recurring discharges associated with routine maintenance, and of reasonably foreseeable temporary discharges. Recurring discharges associated with permanent features of a flood control project may only be authorized under this NWP as part of the approval of the original maintenance baseline, or as part of the approval of a revised maintenance baseline. In these cases, mitigation that specifically offsets the adverse effects of the recurring discharge in waters of the US should be required.

In addition, it is possible that future maintenance operations will require non-recurring discharges for temporary features such as staging areas, access fills for maintenance equipment, and interim storage areas for debris and excavated materials. To the extent that the need for such temporary discharges can reasonably be anticipated, a generic assessment of adverse effects should be conducted, and commensurate mitigation should be required as part of the approval of the maintenance baseline. We are proposing that minor discharges associated with such projects, such as drippings and small volume soil disturbances from excavation or earth-moving equipment, or from vehicle tires or tracks, are adequately mitigated by BMPs, and no additional mitigation will be required concerning such discharges. Note that some such discharges may meet the definition of “incidental fallback” and are not regulated under Section 404 of the CWA.

Flood control facilities are, by nature, intended to avoid or reduce the effects of floods on life and property. Thus, we are proposing to revise the permit to

allow the use of this NWP in emergency situations to authorize discharges associated with maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those that would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, we are proposing that the determination of mitigation requirements may be deferred until the emergency maintenance is accomplished. However, in such cases a maintenance baseline will be determined and appropriate mitigation required once the emergency has passed. The emergency exception is not intended to be a substitute for advanced planning of maintenance activities. Such planning generally allows the activities to be conducted in a manner that reflects appropriate flood control needs and eliminates unnecessary adverse impacts to aquatic resources. Factors such as the functions and values of the aquatic resource impacted and the maintenance history of the facility will be considered in determining whether emergency maintenance can be authorized under this NWP. In cases where use of this permit is determined to be inappropriate, the Corps retains discretion to authorize emergency activities through an Individual Permit under its existing regulations.

In proposing these modifications of NWP 31, we are reflecting existing Corps policy regarding the maintenance of Corps-constructed Civil Works flood control projects and ecosystem restoration projects. Two key features of the Corps Civil Works project policy are to acknowledge that routine maintenance activities and resultant discharges are inherent parts of the project operation, and to address all foreseeable adverse effects through the establishment of “one-time” mitigation requirements as part of the initial authorization process. Consistent with this policy, we are proposing to modify NWP 31. We are proposing to require the approval of a maintenance baseline and determine a one-time mitigation requirement as appropriate at the time an original maintenance baseline is approved, or when any revision of the maintenance baseline is approved. In some cases, the District Engineer may determine that mitigation is not necessary for such projects in order to ensure minimal adverse impacts. In situations where mitigation requirements were considered but not

required, the discharges associated with any subsequent maintenance activities, provided they do not exceed the maintenance baseline, will not require mitigation.

The Corps also is proposing to clarify the documentation required for a determination of a maintenance baseline. In the past, our District offices and the flood control agencies have not been certain of the requirements to document the maintenance baseline. We have clarified that the flood control agency needs to document the physical characteristics and design capacity of the existing flood control facility. This can be done by submitting as-built or approved drawings and evidence of the flood control facility design capacities for approval as the maintenance baseline.

The NWP 31 will allow floodways that do not have constructed channels to be maintained. However, the flood control agency would need to establish BMPs to ensure that the adverse effects on the aquatic environment would be minimal. These areas are a part of the overall flood control project and need to be maintained despite the absence of constructed channels or hard surfaces. We believe that by establishing BMPs as part of the maintenance baseline for these areas we can ensure that these maintenance activities have minimal impacts. The Corps requests comments on the proposed changes to this NWP.

This NWP 31 does not establish a need for a Corps permit where a need does not otherwise exist. For example, some flood control projects may qualify for exemptions under Section 404(f)(1)(B) of the CWA. The 404(f)(1)(B) exemption provides for the "maintenance, including the emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, rip rap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures."

37. Emergency Watershed Protection and Rehabilitation

This NWP is limited to Natural Resource Conservation Service (NRCS) and U.S. Forest Service (USFS) Programs. We received a request from the Department of the Interior (DOI) to include the Wildland Fire Management Burned Area Emergency Stabilization and Rehabilitation Program (DOI Manual, Part 620, Ch. 3) to this NWP. Their letter stated, "the Department of the Interior has similar responsibilities as the Forest Service, such as suppression of wildland fires and the rehabilitation of the burned land." The letter went on to also state "that the

Department of the Interior operated both jointly and independently of the Forest Service, concerning emergency rehabilitation of public land."

As such, the Corps is proposing to modify this NWP to authorize work conducted or funded by the DOI emergency wildland fire rehabilitation Program. Including the different bureaus of the DOI that are included in this program (i.e. Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), National Park Service (NPS), US Fish and Wildlife Service (USFWS), Bureau of Reclamation (BOR)) will allow for effective management of public lands when conducting emergency wildland fire rehabilitation work. Including the DOI in this NWP allows the option for authorization of their emergency rehabilitation work that is conducted independently of the existing USFS Program.

In addition, NRCS is currently developing a PEIS which will result in modification of the existing Emergency Watershed Protection Program regulations. At this stage in the PEIS development, specific terminology is not finalized. Therefore, NRCS has recommended that the NWP 37 language be made more general by deleting the term "exigency," which may be changed in the NRCS regulations. This will ensure that the permit language remains consistent with the NRCS terminology and that necessary activities will continue to be authorized during recovery efforts caused by national disasters.

39. Residential, Commercial, and Institutional Developments

The Corps is proposing these changes to this NWP: (1) Simplify the subdivision provision, without substantively changing its effects, (2) delete the one-cfs restriction on stream impacts, and (3) allow a project specific waiver of the 300 linear-foot prohibition following a written determination by the Corps that any adverse environmental effects would be no more than minimal (discussed separately in the context of all affected permits below). We are proposing to reduce confusion associated with the "subdivision" provision by simplifying the language. The current subdivision provision is confusing and difficult to implement. We propose simplifying the language to read, "for residential subdivisions, the aggregate total loss of waters of the US associated with NWP 39 can not exceed 1/2-acre. This includes any loss of waters associated with the development of individual lots within the subdivision."

The impacts and full extent of fill needed for residential subdivisions

including any fill for all the lots within the subdivision will be considered initially to avoid any piecemeal approach by developers. In evaluating proposed residential community developments under NWP 39, the Corps will review the overall development plan. Where the Corps determines that total impact, including all platted lots, would clearly exceed the 1/2-acre limit, the Corps will require an Individual Permit. NWP 39 may be used more than once for a project, but the aggregate total impacts authorized may not exceed 1/2-acre. For example, if NWP 39 were used for the roads, utilities and one lot fill, and the aggregate total impacts were 1/4-acre, then the total of any subsequent use of NWP 39 within that subdivision (e.g. for individual lot fills by a subsequent homeowner) could not exceed 1/4-acre.

If additional land is purchased adjacent to the authorized residential subdivision, and future development is proposed (i.e., an additional phase or unit) then that second phase would be considered a separate project. NWP 39 could be used on this second phase (an additional new subdivision with independent utility from the first subdivision) as it was on phase one (i.e., a maximum of 1/2-acre of impacts could be authorized for phase two). However, if the Corps determines that the "phasing" of a project has been deliberately structured in advance to avoid exceeding the 1/2-acre limit, it will prohibit the use of this NWP for subdivisions that result in the loss of more than 1/2-acre of waters in total.

The Corps believes that a provision of NWP 39 (Part k) regarding stream impacts downstream of the point on a stream where the average annual flow is one-cfs unnecessarily limits the use of this permit in some cases where impacts are still minimal (e.g., a stream that has been severely degraded by livestock grazing). The Corps receives a "notification" for all activities involving 1/10-acre impact, for any project effecting more than 300 linear-feet of stream bed and all projects affecting open waters. Collectively, these provisions make it unlikely that a project affecting a stream with flow exceeding one-cfs will escape notification and individual review. The Corps believes its case-by-case review of these projects will ensure protection of the aquatic environment. As such, we are proposing to remove this provision from NWP 39. The Corps requests comment on the proposed revisions.

42. Recreational Facilities

In addition to the proposed change discussed below regarding this NWP (see next section), we are requesting

suggestions regarding criteria, standards and BMPs that should be applied to this NWP for recreational facilities.

Suggestions that will be considered must ensure that adverse effects on the aquatic environment are minimal and will integrate the recreational facility into the natural landscape. We will consider adopting such criteria, standards, or BMPs, where appropriate into the permit itself or through implementation of guidance. These suggestions may be generic for all recreational facilities or may be for specific types of recreation facilities.

Project Specific Waiver of 300-Linear Feet Prohibition in NWPs 39, 40, 42, and 43

For these four permits, the Corps is proposing to allow a waiver, on a case-by-case basis, of the prohibition on impacts exceeding 300 linear-feet of streambed provided the Corps determines that the impacts to the aquatic environment will be minimal. To understand why, it is important to realize that the CWA's geographic jurisdiction extends to the uppermost portions of tributary systems. Some streams extend for thousands of feet, but are extremely small. For example, a stream may consist of a drainage-way (which may have been straightened in the past by human activity) that is a six-inch wide by one-inch deep area running for several thousand feet throughout a grassy upland field. Such a stream may only have water flowing for a few days after a rain event. In some cases, this type of stream provides few, if any, aquatic functions and loss of more than 300 linear-feet of such a stream would not constitute more than minimal impacts. This is especially true if the District Engineer has reviewed the project and required appropriate mitigation measures, which ensure that the project does not have more than minimal adverse effect on the aquatic environment. In cases where the Corps is aware or becomes aware of areas that provide higher level of aquatic functions, the Corps will ensure proper protection of the aquatic environment.

As a result, the Corps believes the 300 linear-foot prohibition for activities involving residential, commercial, and institutional developments, relocation of existing serviceable drainage ditches constructed in non-tidal streams, recreation facilities, discharges or excavation for the construction of new stormwater management facilities, or for the maintenance of existing stormwater management facilities could in some cases unnecessarily restrict authorization of an otherwise minimal impact activity. Therefore, we are

proposing to allow a waiver of the 300 linear-foot prohibition on a project specific basis.

To make use of this waiver, the applicant must first notify the Corps in accordance with the "notification" General Condition that the applicant would like to exceed the 300 linear-foot limitation on impacts to streambeds. The District Engineer may waive the prohibition and authorize impacts exceeding 300 linear-feet to streams, but only if the District Engineer determines that the activity complies with the other terms and conditions of the NWP, and the adverse environmental effects on the aquatic environment will be minimal both individually and cumulatively. In making this determination, the District Engineer will consider factors such as the length of stream impacted and their water quality conditions, functions, and designations, the size of the watershed drained by those streams, potential impacts to flood retention/desynchronization functions, biological resources, known public concern, and any required mitigation. The Corps believes that Individual Permits will usually be required for projects that exceed the 300-foot limitation, and will track the exercise of the waiver provision. Note that this waiver provision is more restrictive than the notification required in other NWPs, because following notification, the Corps must make a case-specific determination that any impacts will be minimal, and notify the project proponent in writing of this determination. If the written verification by the Corps is not received, the project is not authorized.

Allowing a case-specific waiver of the prohibition provides flexibility where the adverse effects are minimal as discussed above. Given the Corps limited human resources and an increasing demand for aquatic resource protection, this flexibility allows efficiency in processing proposed projects with impacts to aquatic areas that are relatively low value, such as degraded waters of the US. This waiver provision is not intended to "relax" aquatic resource protection. It is intended to allow the Corps to focus limited resources more intensively on areas of higher quality aquatic ecosystems, or areas where impacts are likely to be more than minimal.

Although the Corps is proposing to allow a limited project-specific waiver of the 300 linear-foot prohibition on stream impacts, other conditions restrict some streambed impacts such as, channelization, special aquatic site, and shellfish beds. We continue to discourage extensive channelizing or

relocation of streambeds because of potential adverse effects on the stream and the potential to intensify downstream flooding. The District Engineers will evaluate on a case-by-case basis the need for requested authorizations to channelized or relocate streambeds for extensive lengths. Channelization of streams can have adverse impacts downstream, which under General Condition 21 must be reduced to the minimum necessary and mitigated. If it is determined by the District Engineer that the project will result in more than minimal adverse effect on the aquatic environment, the District Engineer will not grant a waiver and an Individual Permit will be required.

Nationwide Permits General Conditions

4. Aquatic Life Movements

Recently, there has been confusion on the part of some members of the public over the meaning of this General Condition to suggest that if any portion of waters of the US are filled, then that would substantially disrupt the movement of aquatic life. Such an interpretation would have the effect of prohibiting virtually all discharges of dredged or fill material under NWPs. This would defeat the entire purpose of the NWP Program and that has never been our intent. Thus, we propose to clarify this General Condition.

It was not the Corps intent for this condition to be interpreted as prohibiting use of NWPs simply because aquatic life can not move into an area that was filled. Obviously, filled areas will not be used by aquatic life as if they were unfilled areas. Rather, it was always the Corps intent that this General Condition restrict the use of NWPs when the discharge of dredged or fill material into waters of US would prevent the necessary life-cycle movements of aquatic life to remaining waters of the US. For example, fills which block the movement of an anadromous fish species to an area of substantial importance as nursery grounds for juveniles. Under this General Condition, such fills would not be authorized. Our concern is not with preventing any movement within water, but with preventing movement that would substantially effect the life cycle of the aquatic life.

The condition does not automatically restrict all filling (i.e. fill placed in the upper limits of a stream may be authorized when the fill does not interfere with necessary aquatic life movement). Of course, if the loss of such waters of the US would have more than minimal adverse effects on the

aquatic environment, then NWP's could not be used to authorize such fills. However, in such cases, the decision to require an Individual Permit would not be based on this General Condition.

9. Water Quality

The Corps is proposing to clarify this condition as it relates to detailed studies and documentation requirements. The changes will not reduce protection of the aquatic environment. Although the language of this condition could be interpreted to require detailed studies and design to develop water quality plans for every permit action, that was never our intent. While we do believe that inclusion of water quality management measures in project design is very important, we do not believe that comprehensive design and planning should be a requirement of Corps NWP's, except in a few cases.

In most cases, the Corps relies on state or local water quality programs. Where such programs do exist, the Corps will normally review the project to ensure that appropriate water quality features, such as stormwater retention ponds, are designed into the project. In some cases, the Corps may require more extensive design features to ensure that open water and downstream water quality are not substantially degraded. Normally, we believe that the permittee will comply with the requirements of this condition by obtaining state or local water quality approval or complying with state or local water quality practices, where such practices exist. We are proposing to add language that clarifies that permittees may meet the requirement of this condition by complying with state or local water quality practices.

13. Notification

The Corps is proposing, under Contents of Notification, to provide applicants the option to provide drawings, sketches or plans sufficient for Corps review of the project to determine if the project meets the terms of a NWP. We do not intend this supplemental documentation to be detailed engineering drawings or plans. Simply, this additional information is for the Corps to review in order to efficiently determine that the project meets the terms and conditions of the NWP. Often drawings or sketches can be used to more clearly show that the project complies with the terms of an NWP. The Corps expects that most "notifications" will include a sketch that will expedite the Corps review. Applicants are encouraged to supply such drawings, but such drawings are not required for a complete

"notification" unless the Corps determines on a case-by-case basis that a sketch or drawing is necessary to show that the activity complies with the terms of the NWP.

We are proposing to add additional language to the "notification" requirement for NWP's 21, 39, 40, 42, and 43. For all projects using NWP 21, and for projects using NWP's 39, 40, 42, and 43 that propose impacting intermittent or perennial stream beds in excess of 300 linear-feet, the Corps must be notified and explicit authorization obtained before the project can proceed. In the case of NWP 21, this authorization would be based on a determination by the District Engineer that the adverse effects of the project on the aquatic environments were minimal, both individually and cumulatively, after considering mitigation. In the case of NWP's 39, 40, 42, and 43, this authorization would require a waiver of the 300 linear-foot prohibition, again based on a determination by the District Engineer that adverse effects on the aquatic environment are minimal, individually and cumulatively. These regulations are similar to the provision under NWP 13 for Bank Stabilization, in that the District Engineer must verify that the project complies with the terms and conditions of the NWP. The District Engineer must also determine that the adverse environmental effects to the aquatic environment are minimal both individually and cumulatively after considering mitigation. If the applicant has not received an explicit Corps waiver in writing for the activity, then impacts exceeding 300 linear-feet to stream beds are not authorized by NWP's 39, 40, 42, and 43.

Although the Corps is proposing to allow a waiver of the 300 linear-foot prohibition [to a "notification" requirement], we still discourage extensive channelizing or relocation of stream beds because of potential adverse effects on the stream and the potential to intensify downstream flooding. The District Engineers will evaluate on a case-by-case basis the need for requested authorizations to channelize or relocate stream beds for extensive lengths. More than minimal channelization of streams can have adverse impacts downstream and therefore under General Condition 21 the impacts must be reduced to the minimum necessary and mitigated. If the District Engineer determines that the project will result in more than minimal adverse effect on the aquatic environment, the District Engineer will not issue a waiver and an Individual Permit will be required.

We are also proposing to delete for NWP's 12, 14, 29, 39, 40, 42, 43, and 44 the requirement to provide "notification" to the Corps for permanent above grade fills in waters of the US. This change is being proposed to be consistent with the proposed changes to General Condition 26 for "Fills within 100-year Floodplains", as discussed below. This "notification" provision that the Corps is proposing to remove is not needed because of "notification" requirements elsewhere in these NWP's that the Corps is retaining.

19. Mitigation

We are proposing to revise this condition to allow a case-by-case waiver of the requirement of one-for-one mitigation of adverse impacts to wetlands. This change is intended to allow Corps Districts to require the mitigation for project impacts that best protects the aquatic environment. In the case of wetland destruction, one-for-one replacement or restoration is often the most environmentally appropriate form of mitigation, and the Corps will continue to require this form of mitigation in the majority of cases. However, the Corps believes the one-for-one acreage requirement as currently written is too restrictive in that it does not allow the Corps to mitigate aquatic impacts to streams and other non-wetland aquatic resources.

Districts should have flexibility to require mitigation ratios on a case-by-case basis based on the aquatic ecosystem needs of the area. In many cases, authorized impacts may be in relatively low quality wetlands and opportunities may exist for protection, restoration or enhancement of other, higher quality aquatic resources. Districts need the flexibility to determine the best type and location for environmentally effective compensatory mitigation. In order to waive the one-for-one requirement, the District Engineer will need to determine that another form of mitigation is more environmentally appropriate.

The Corps is retaining in the proposed General Condition the preference for restoration of wetlands over preservation, when one-for-one mitigation of wetland losses is required. However, the Corps is aware that some researchers have questioned the premise that restoration is generally preferable to preservation and requests comment on whether this preference should be dropped, in order to further facilitate consideration of the most environmentally appropriate mitigation on a project specific basis.

The aquatic environment must be looked at in a holistic manner. The decision on required mitigation should factor in the total aquatic environmental assets in an area. In many cases, vegetated buffers may be more critical than replacing wetland losses acre for acre for maintaining the integrity of the aquatic environment and addressing water quality concerns. Use of vegetated buffers is an acceptable and often a better approach to protecting the integrity of the overall waters of the US in a particular area, rather than mitigating only for wetland losses in-kind. As discussed earlier in more detail, the use of vegetated buffers may be more beneficial as mitigation for direct or secondary impacts to aquatic resources associated with the regulated activity. In some cases, it may be helpful to evaluate mitigation measures needed to offset the unavoidable impacts of a permitted activity using a habitat functional analysis program, such as the Habitat Evaluation Program (HEP), the hydrogeomorphic method (HGM), or other appropriate model. The results of the functional assessment may then be considered in designing the project mitigation plan. The Corps requests comments on its proposal to allow a case-by-case waiver of the one-for-one wetlands mitigation requirement when the District Engineer determines that some other form of mitigation would be more environmentally appropriate.

21. Management of Water Flows

The Corps is proposing to clarify this condition. Authorized activities or improvements to aquatic systems typically will cause deviation from pre-construction flow conditions. NWP's authorize only those activities that will have minimal adverse effect on the aquatic system including water flows. Typically, well-established design features are included as part of projects without a need for detailed engineering studies. State or local agencies often require these design features. Consequently, we believe that detailed studies and monitoring would not normally be required by this condition.

Where appropriate, the Corps will review projects to ensure that design features that address flows are included, such as limited channelization, proper design for culverts, and retention ponds, but generally will not require detailed studies of post-project flow. However, in some cases, detailed studies may be required where there is a potential for substantial impacts.

26. Fills Within the 100-year Floodplain

The Corps is proposing to modify this condition to require that all projects

authorized by NWP's must comply with any applicable Federal Emergency Management Agency (FEMA) state or local floodplain management requirements. We are also proposing to delete the "notification" requirement and the requirement to document that the project meets FEMA approved requirements. The Corps has found that requiring applicants to document that they have met FEMA approved requirements has done little to change or enhance compliance with these requirements. We believe that a General Condition clearly requiring that permittees comply with FEMA approved requirements will be just as effective. General Condition 26 is applicable only to discharges of dredged or fill material in the mapped FEMA floodway or floodplain (mapping may be by FEMA or a state or local government under FEMA rules). For purposes of this General Condition, 100-year floodplains will be identified through the existing or local Flood Insurance Rate Maps or FEMA-approved state or local floodplain maps.

For NWP's 12, 14 and 29, we believe that compliance with FEMA-approved state or local floodplain management requirements (i.e., part 26(c)), compliance with General Condition 21 which addresses management of flows, and case-by-case review by the Corps of projects through the "notification" process, will ensure that impacts in floodplains are adequately addressed. As such, we propose to remove the prohibitions in 26(a) and 26(b) for these three permits. Condition 26(a) prohibits discharges resulting in above grade fills in the floodplain below the headwaters, and 26(b) prohibit discharges resulting in above grade fills in the floodway (which is narrower than the floodplain). We believe District Engineers need flexibility to address above grade fills in the floodway/ floodplain for projects using these three NWP's on a project-specific basis. The Corps requests comments on its proposed changes to this General Condition.

We have retained the prohibition against using NWP's 39, 40, 42, and 44 in the mapped floodway above the headwaters (26(b)). We have also retained the prohibition against authorizing above grade fills in the mapped floodplains by NWP's 39, 40, 42, 43, and 44 below the headwaters (26(a)). However, we believe that some activities authorized by these NWP's provide additional flood storage inherent in the project design (e.g., golf courses). As such, we believe that for projects increasing flood storage capacity, some discretion should be used in the floodplain below

headwaters. We are requesting comments on allowing projects to proceed under this condition below headwaters where the project provides additional flood storage.

As we have stated earlier in the preamble, we believe the NWP Program, with its national, regional and case-by-case limitations, procedures and mitigation, and the expanded requirements that all projects in the floodplain comply with FEMA approved management requirements, fully complies with Executive Order 11988. This includes the "Floodplain Management Guidelines for Implementing Executive Order 11988" issued by the U.S. Water Resources Council, and "Further Advice on Executive Order 11988 Floodplain Management" issued by the Interagency Task Force on Floodplain Management. "Further Advice on Executive Order 11988 Floodplain Management" states that class review of repetitive actions proposed in 100-year floodplains can be conducted in full compliance with Executive Order 11988. The Corps is currently conducting a formal review of the NWP's, and will summarize the results of this review in the preamble to the final rule.

27. Construction Period

The NWP's authorize many activities that have no more than minimal adverse effects on the aquatic environment and generally involve projects that need a relatively short period for construction. For some projects, obtaining a Corps permit is one of the many steps necessary to complete that project. It may be two, three or more years after obtaining the Corps permit before the work can be completed. Under the existing NWP's, if such projects obtain a Corps NWP verification near the expiration date of the NWP, the permittee can not necessarily rely on that permit to continue in effect through the lengthy and costly process of developing and planning the project. This causes uncertainty regarding the NWP authorization for the project because the construction phase was not completed before the NWP authorization expired. Many logistical issues may delay construction projects sometimes for considerable periods.

Corps regulations at 33 CFR 330.6(b) provide that those construction activities commenced or that are under contract to commence while an NWP is in effect will remain authorized, provided the activity is completed within 12-months from the date the NWP's have expired, been modified, or revoked. This approach was developed for non-reporting NWP activities to

provide a period that permittees could rely on and finish a project that qualified for a NWP without notifying the Corps. It was also developed at a time when NWPs were issued with little or no changes. The Corps believes that this provision does not adequately address NWPs for which the permittee notifies the Corps before project commencement.

We are proposing a new General Condition for activities for which the Corps has received notification and a construction schedule has been reviewed, and verification issued by the Corps. The condition allows the Corps to establish project completion dates beyond the expiration of the NWPs. District Engineers may extend authorization of an activity by a NWP for a reasonable period to allow for project completion, however always maintaining discretionary authority provided in accordance with 33 CFR 330.4(e) and 330.5(c), or (d). If no pre-approved construction period is established then all work must be completed before the NWP expires, or is modified, or revoked, or by 12-months after if project was commenced or under contract to commence by that date.

This condition helps eliminate needless financial or logistical burden to the regulated public. NWP time limits unnecessarily restrict authorization to what may be unreasonable periods for completion of many construction activities near the end of the permit cycle, with no beneficial effects for protecting the aquatic environment. The Corps expects each District Engineer to assess each pre-approved construction period to identify aquatic areas and/or activities where the approval of an extended schedule could lead to substantial impacts with more than minimal adverse effects on the aquatic environment. In cases where approval of an extended schedule would lead to a greater than minimal adverse impacts, an extended schedule will not be approved. The Corps requests comment on this new General Condition.

Executive Order 13212—Actions To Expedite Energy-Related Projects

President George W. Bush signed Executive Order 13212 (66 FR 28357–28358, May 22, 2001) on May 18, 2001, directing new policy actions to expedite the increased supply and availability of energy to our Nation. This policy applies to all executive departments and agencies. The order directs all agencies to take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase energy production, transmission, or conservation of energy, while

maintaining protection of the environment. For energy-related projects, agencies shall expedite their review of permits, or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health and environmental protections. Agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

General Permits, such as NWPs or Regional Permits provide us the opportunity to expeditiously permit activities that have minimal adverse effect, both individually and cumulatively, on the aquatic environment. As such, the Corps is requesting comments to modify or change the proposed NWPs contained within this notice, in reference to Executive Order 13212. We will consider adopting such modifications or changes, where appropriate. These suggestions may be generic to all NWPs, or for a specific NWP.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Statement of Energy Effects)

The NWP Program is designed to regulate certain activities having minimal impacts with little, if any, delay or paperwork. NWPs allow smaller, repetitive, low impact projects with minimal effects on the aquatic environment, to be reviewed and authorized in a shorter period than larger complex projects that require an Individual Permit review. Many energy related projects, such as petroleum pipelines and electric utility lines, are expeditiously authorized by Nationwide Permits. The changes the Corps is proposing to the Nationwide Permits will maintain the expedited process for these energy related projects. Therefore, the Corps concludes that the proposed NWPs will not significantly affect the supply, distribution, and use of energy and fully complies with Executive Order 13211.

Accordingly, the Corps is proposing to reissue the existing Nationwide Permits and general conditions with minimal modifications as follows:

Dated: July 23, 2001.

Hans A. Van Winkle,

Major General, U.S. Army, Director of Civil Works.

Nationwide Permits, Conditions, Further Information, and Definitions:

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A. Nationwide Permits

1. *Aids to Navigation.* The placement of aids to navigation and Regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (USCG) (See 33 CFR chapter I, subchapter C, part 66). (Section 10)

2. *Structures in Artificial Canals.* Structures constructed in artificial canals within principally residential developments where the connection of the canal to navigable water of the US has been previously authorized (see 33 CFR 322.5(g)). (Section 10)

3. *Maintenance.* Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or

current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the US to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure, provided the permittee notifies the District Engineer in accordance with General Condition 13. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the US for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in a water of the US. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original

pre-event location. This NWP is for the activities in waters of the US associated with the replacement of the uplands.) The permittee must notify the District Engineer, in accordance with General Condition 13, within 12-months of the date of the damage and the work must commence, or be under contract to commence, within two years of the date of the damage. The permittee should provide evidence, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed before the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the pre-existing bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes. This permit does not authorize maintenance dredging for the primary purpose of navigation and beach restoration. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance. For example, the repair and maintenance of concrete-lined channels are exempt from Section 404 permit requirements.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water

fish concentrators (sea kites, etc.). This NWP authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the US for the culture or holding of motile species such as lobster or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices, whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. (Sections 10 and 404)

6. *Survey Activities.* Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the CWA. (Sections 10 and 404)

7. *Outfall Structures and Maintenance.* Activities related to:

(i) construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the CWA), and

(ii) maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall

and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided that the activity meets all of the following criteria:

a. The permittee notifies the District Engineer in accordance with General Condition 13;

b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments, and canals to original design capacities and design configurations (i.e., depth and width);

c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and

d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the US.

The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites (e.g., vegetated shallows) in the vicinity of the proposed work. (Sections 10 and 404)

8. *Oil and Gas Structures.* Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the DOI, Minerals Management Service (MMS). Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334; nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10)

9. *Structures in Fleeting and Anchorage Areas.* Structures, buoys,

floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose. (Section 10)

10. *Mooring Buoys.* Non-commercial, single-boat, mooring buoys. (Section 10)

11. *Temporary Recreational Structures.* Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. *Utility Line Activities.* Activities required for the construction, maintenance and repair of utility lines and associated facilities in waters of the US as follows:

(i) *Utility lines:* The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the US, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the US, provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the US through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) *Utility line substations:* The construction, maintenance, or expansion of a substation facility associated with a power line or utility

line in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1/2-acre of non-tidal waters of the US.

(iii) *Foundations for overhead utility line towers, poles, and anchors:* The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the US, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) *Access roads:* The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, provided the discharges do not cause the loss of greater than 1/2-acre of non-tidal waters of the US. Access roads shall be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the US and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the US must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the US, such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this NWP, the loss of waters of the US includes the filled area plus waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraph (i) and (iv) may not exceed a total of 1/2-acre loss of waters of the US. Waters of the US temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the US. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the US are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the US that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the US even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

- (a) Mechanized land clearing in a forested wetland for the utility line right-of-way;
- (b) A Section 10 permit is required;
- (c) The utility line in waters of the US, excluding overhead lines, exceeds 500 feet;
- (d) The utility line is placed within a jurisdictional area (i.e., water of the US), and it runs parallel to a stream bed that is within that jurisdictional area;
- (e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10-acre of waters of the US; or
- (f) Permanent access roads constructed above grade in waters of the US for a distance of more than 500 feet.
- (g) Permanent access roads constructed in waters of the US with impervious materials. (Sections 10 and 404)

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the US, which are considered to be bridges, not utility lines, and may require a permit from the USCG pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours,

elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the US (i.e., Section 10 waters), copies of the PCN and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

13. *Bank Stabilization.* Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

- a. No material is placed more than the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;
- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 and the District Engineer determines the activity complies with the other terms and conditions of the NWP and the adverse environmental effects are minimal both individually and cumulatively. This NWP may not be used for the channelization of waters of the US. (Sections 10 and 404)

14. *Linear Transportation Projects.* Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways, and taxiways) in waters of the US, including wetlands, if the activity meets the following criteria:

- a. This NWP is subject to the following acreage limits:
 - (1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the US;
 - (2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3-acre of waters of the US.

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than $\frac{1}{10}$ -acre of waters of the US; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the US to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing waters of the US. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an Individual Permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

15. *U.S. Coast Guard Approved Bridges.* Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the US, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the USCG as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require an individual or regional Section 404 permit. (Section 404)

16. *Return Water From Upland Contained Disposal Areas.* Return water from upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the US. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This NWP satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures. (Section 404)

17. *Hydropower Projects.* Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 kW; and the permittee notifies the District Engineer in accordance with the "Notification" General Condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. (Section 404)

18. *Minor Discharges.* Minor discharges of dredged or fill material into all waters of the US if the activity meets all of the following criteria:

a. The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

b. The discharge, including any excavated area, will not cause the loss of more than $\frac{1}{10}$ -acre of a special aquatic site, including wetlands. For the purposes of this NWP, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the US as a result of the project;

c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee

notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands (also see 33 CFR 330.1(e)); and

d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

19. *Minor Dredging.* Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the US (i.e., Section 10 waters) as part of a single and complete project. This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the US (see 33 CFR 322.5(g)). (Sections 10 and 404)

20. *Oil Spill Cleanup.* Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR part 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

21. *Surface Coal Mining Activities.* Discharges of dredged or fill material into waters of the US associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the DOI, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. In addition, to be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of

the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands. (also, see 33 CFR 330.1(e))

Mitigation: In determining the need for as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, District Engineers will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining appropriate mitigation under Section 404.

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with the "Historic Properties" General Condition. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the US may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 *et seq.*), that the activity, work, or discharge is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before approval for purposes of this NWP of any agency's categorical exclusions, the Chief of Engineers will solicit public

comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this NWP. (Sections 10 and 404)

24. *State Administered Section 404 Program.* Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. Those activities that do not involve a Section 404 state permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)). (Section 10)

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a Section 10 permit if located in navigable waters of the US. (Section 404)

26. [Reserved]

27. *Stream and Wetland Restoration Activities.* Activities in waters of the US associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

(a) The activity is conducted on:

(1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

(2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or

wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or

(3) Any other public, private or tribal lands;

(b) Notification: For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer in accordance with General Condition 13; and

(c) Planting of only native species should occur on the site.

Activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation; mechanized land clearing to remove undesirable vegetation; and other related activities.

This NWP does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. This NWP does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this NWP may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion. For enhancement, restoration, and creation projects conducted under paragraphs (a)(3), this NWP does not authorize any future discharge of dredged or fill material

associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this NWP expires. This NWP also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this NWP, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This NWP can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer in accordance with General Condition 13, and the project includes compensatory mitigation for impacts to waters of the US caused by the authorized work. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. NWP 27 can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

28. *Modifications of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within

waters of the US is authorized by this NWP. (Section 10)

29. *Single-family Housing:* Discharges of dredged or fill material into non-tidal waters of the US, including non-tidal wetlands for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an Individual Permittee provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of more than 1/4-acre of non-tidal waters of the US, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the US of 1/4-acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14 or NWP 18, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the US includes the filled area previously permitted, the proposed filled area, and any other waters of the US that are adversely affected by flooding, excavation, or drainage as a result of the project. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands

sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership." (Section 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed and state-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: The repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This NWP does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

31. *Maintenance of Existing Flood Control Facilities.* Discharge of dredge or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that (i) were previously authorized by the Corps by Individual Permit, General Permit, by 33 CFR 330.3, or did not require a permit at the time it was constructed, or

(ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Activities including the discharges of dredged or fill materials, associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline, are authorized under this NWP. The NWP does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in

waters of the US, and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2)(ii)).

Notification: After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the District Engineer. The District Engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the design capacities of the flood control facility. The documentation will also include BMPs to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.). Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP can not be used until the District Engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline

will remain valid for any subsequent reissuance of this NWP. This permit does not authorize maintenance of a flood control facility has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

Mitigation: The District Engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the District Engineer will not delay needed maintenance, provided the District Engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the District Engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or BMPs as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate. (Sections 10 and 404)

32. Completed Enforcement Actions. Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation,

restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the CWA, provided that:

a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;

b. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the U.S. under Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899. For either (i) or (ii) above, compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6 (d)(2) and (e). (Sections 10 and 404)

33. Temporary Construction, Access and Dewatering. Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the USCG, or for other construction activities not subject to the Corps or USCG regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer

that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the US (See 33 CFR part 322). The permittee must notify the District Engineer in accordance with the "Notification" General Condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add Special Conditions, where necessary, to ensure environmental adverse effects is minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable.). (Sections 10 and 404)

34. *Cranberry Production Activities.* Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the US, including wetlands;

b. The permittee notifies the District Engineer in accordance with the "Notification" General Condition. The notification must include a delineation of affected special aquatic sites, including wetlands; and,

c. The activity does not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid. (Section 404)

35. *Maintenance Dredging of Existing Basins.* Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips. Additionally, dredging boat slips to

previously authorized depths or dredging to controlling depths for ingress/egress, provided the dredged material is disposed of at an upland site and proper siltation controls are used. (Section 10)

36. *Boat Ramps.* Activities required for the construction of boat ramps provided:

a. The discharge into waters of the US does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);

b. The boat ramp does not exceed 20 feet in width;

c. The base material is crushed stone, gravel or other suitable material;

d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and,

e. No material is placed in special aquatic sites, including wetlands.

Another NWP, Regional General Permit, or Individual Permit may authorize dredging to provide access to the boat ramp after obtaining a Section 10 if located in navigable waters of the US. (Sections 10 and 404)

37. *Emergency Watershed Protection and Rehabilitation.* Work done by or funded by:

a. The NRCS which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624); and

b. Work done or funded by the USFS under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or

c. Work done or funded by the DOI for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual Part 620, Ch. 3);

For all of the above provisions, the District Engineer must be notified in accordance with the General Condition 13. (Also, see 33 CFR 330.1(e)). (Sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action

plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the CWA or Section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

39. *Residential, Commercial, and Institutional Developments.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial, and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this NWP.

Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than $\frac{1}{10}$ -acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer in accordance with General Condition 13, if any of the following criteria are met:

(1) The discharge causes the loss of greater than $\frac{1}{10}$ -acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters; or

(2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note, below); or

(3) The discharge causes the loss of greater than 300 linear feet of perennial or intermittent stream bed. In such case, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the US were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the US. (See General Condition 19.) The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the US. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this NWP is used in conjunction with any other NWP, any combined total permanent loss of waters of the US exceeding $\frac{1}{10}$ -acre requires that the permittee notify the District Engineer in accordance with General Condition 13;

h. Any work authorized by this NWP must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream (see General Conditions 9 and 21);

i. For discharges causing the loss of $\frac{1}{10}$ -acre or less of waters of the US, the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work;

(3) A description of the work; (4) The type and acreage of the loss of waters of the US (e.g., $\frac{1}{12}$ -acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the US (e.g., $\frac{1}{12}$ -acre of emergent wetlands created on-site); and

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams consistent with General Condition 19. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site.

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this NWP. The compensatory mitigation proposal that is required in paragraph (e) of this NWP may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (i) of this NWP will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns. The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this NWP. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the US to increase production or construct farm buildings, NWP 39 cannot be used by the developer to authorize additional activities. This is more than the acreage limit for NWP 39 impacts to waters of the US (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed $\frac{1}{2}$ -acre, see General Condition 15).

SUBDIVISIONS: For residential subdivisions, the aggregate total loss of waters of US authorized by NWP 39 can not exceed $\frac{1}{2}$ -acre. This includes any loss of waters associated with development of individual subdivision lots. (Sections 10 and 404)

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the US based on this criterion would require a PCN although water is infrequently present in the stream channel (except for ephemeral waters, which do not require PCNs).

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal

wetlands adjacent to tidal waters, for improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the US; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is an United States Department of Agriculture (USDA) Program participant:

(1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 *et seq.*);

(2) The discharge into non-tidal wetlands does not result in the loss of greater than $\frac{1}{2}$ -acre of non-tidal wetlands on a farm tract;

(3) The permittee must have NRCS-certified wetland delineation;

(4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and

(5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., $\frac{1}{3}$ -acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g. $\frac{1}{3}$ -acre of emergent wetland on farm tract; credits purchased from a mitigation bank); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA Program participant (or a USDA Program participant for which the proposed work does not qualify for authorization under paragraph (a) of this NWP):

(1) The discharge into non-tidal wetlands does not result in the loss of greater than $\frac{1}{2}$ -acre of non-tidal wetlands on a farm tract;

(2) The permittee must notify the District Engineer in accordance with General Condition 13, if the discharge results in the loss of greater than $\frac{1}{10}$ -acre of non-tidal wetlands;

(3) The notification must include a delineation of affected wetlands; and

(4) The notification must include a compensatory mitigation proposal to offset losses of waters of the US; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1/2-acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer in accordance with General Condition 13; and

d. Any activity in other waters of the US is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively. For impacts exceeding 300-linear feet of impacts to existing serviceable ditches, the permittee must notify the District Engineer in accordance with the "Notification" General Condition 13; and

e. The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the US on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph a. of this NWP, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs b., c., and/or d. of this NWP. USDA Program participants requesting authorization for discharges of dredged or fill material into waters of the US authorized by paragraphs (c) or (d) of this NWP, in addition to paragraph (a), must notify the District Engineer in accordance with General Condition 13 and the District Engineer will determine if the entire single and complete project is authorized by this NWP. Discharges of dredged or fill material into waters of the US associated with completing required compensatory mitigation are authorized by this NWP. However, total impacts, including other authorized impacts under this NWP, may not exceed the 1/2-acre limit of this NWP. This NWP does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption

under Section 404(f) of the CWA, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs a. through d. may not exceed a total of 1/2-acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs a., b., or c. of this NWP to authorize activities in waters of the US to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the US on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed 1/2-acre (see General Condition 15). (Section 404)

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the US. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity. Nor can it expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the US). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.).

Notification: The permittee must notify the District Engineer in accordance with General Condition 13 if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the US, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. This NWP does not apply to reshaping drainage ditches constructed in uplands, since these areas are not waters of the US, and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration,

which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This NWP does not authorize the relocation of drainage ditches constructed in waters of the US; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than 1/2-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee notifies the District Engineer in accordance with the "Notification" General Condition 13 for discharges exceeding 300 linear feet of impact to perennial or intermittent stream beds. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. For discharges causing the loss of greater than 1/10-acre of non-tidal waters of the US, the permittee notifies the District Engineer in accordance with General Condition 13;

e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

f. The discharge is part of a single and complete project; and

g. Compensatory mitigation will normally be required to offset the losses of waters of the US. The notification must also include a compensatory mitigation proposal to offset authorized losses of waters of the US.

For the purposes of this NWP, the term "recreational facility" is defined as a recreational activity that is integrated into the natural landscape and does not

substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this NWP include hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). This NWP may authorize the construction or expansion of golf courses and the expansion of ski areas, provided the golf course or ski area does not substantially deviate from natural landscape contours. Additionally, these activities are designed to minimize adverse effects to waters of the US and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have an adequate water quality management plan in accordance with General Condition 9, such as a stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity. This NWP does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this NWP. (Section 404)

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than 1/2-acre of non-tidal waters of the US, excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear-feet of a stream bed, unless this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this NWP and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. For discharges causing the loss of greater than 300 linear feet of perennial or intermittent stream beds, the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

d. The discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;

e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 1/10-acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer in accordance with the "Notification" General Condition 13. In addition, the notification must include:

(1) A maintenance plan. The maintenance plan should be in accordance with state and local requirements, if any such requirements exist;

(2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and

(3) A compensatory mitigation proposal that offsets the loss of waters of the US. Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities that are exempt from Section 404 permit requirements);

f. The permittee must avoid and minimize discharges into waters of the

US at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e. why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

g. The stormwater management facility must comply with General Condition 21 and be designed using BMPs and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

i. The discharge is part of a single and complete project. (Section 404)

44. Mining Activities. Discharges of dredged or fill material into:

(i) Isolated waters; streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (i.e., sand, gravel, and crushed and broken stone) and associated support activities;

(ii) Lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this NWP); and/or

(iii) Isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the US, plus the acreage loss of waters of the US resulting from support activities, cannot exceed 1/2-acre;

b. The permittee must avoid and minimize discharges into waters of the US at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this

condition (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved);

c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the mandated water quality management plan should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the US;

f. The permittee must use measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a CWA Section 402 permit may be required;

i. All activities authorized must comply with General Conditions 9 and 21. Further, the District Engineer may require modifications to the required water quality management plan to ensure that the authorized work results in minimal adverse effects to water quality;

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within stream beds where the average annual flow is greater than 1 cubic foot per second or in waters of the US within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. Single and complete project: The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the US for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this NWP provided the ½-acre limit is not exceeded; and

l. Notification: The permittee must notify the District Engineer in accordance with General Condition 13. The notification must include: (1) A description of waters of the US adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the US and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This NWP does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the US within 100 feet of the ordinary high water mark of headwater streams. The term's "headwaters" and "isolated waters" are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this NWP, the term "lower perennial stream" is defined as follows: "A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud." (Sections 10 and 404)

C. Nationwide Permit General Conditions

The following General Conditions must be followed in order for any authorization by an NWP to be valid:

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.

2. *Proper Maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. *Equipment.* Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)). Additionally, any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water Quality.* (a) In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

(b) For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to

General Condition 19 for vegetated buffer requirements for the NWP).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. *Coastal Zone Management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. *Endangered Species.* (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work.

(b) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their world wide web pages at <http://www.fws.gov/r9endspp/endspp.html> and http://www.nfms.gov/prot_res/esahome.html respectively.

12. *Historic Properties.* No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the

District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. *Notification.*

(a) *Timing;* where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary for the evaluation of the PCN only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an Individual Permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Notification:* The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.); and

(4) For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 7 (Outfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed.

(6) For NWP 14 (Linear Transportation Crossings), The PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable.

(7) For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable.

(8) For NWP 27 (Stream and Wetland Restoration), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee.

(9) For NWP 29 (Single-Family Housing), the PCN must also include:

(i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

(ii) A statement that the single-family housing activity is for a personal residence of the permittee;

(iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4-acre in size, formal wetland delineation must be prepared in accordance with the current

method required by the Corps. (See paragraph 13(f));

(iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

(10) For NWP 31 (Maintenance of Existing Flood Control Projects), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following:

(i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

(ii) A delineation of any affected special aquatic sites, including wetlands; and,

(iii) Location of the dredged material disposal site.

(11) For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources.

(12) For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site.

(13) For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required.

(14) For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US.

(15) For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US.

(16) For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures

taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities).

(17) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

(18) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

(c) *Form of Notification:* The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

(d) *District Engineer's Decision:* In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan

with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

(e) *Agency Coordination:* The District Engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the

appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

(f) *Wetland Delineations*: Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. *Compliance Certification*. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

15. *Use of Multiple Nationwide Permits*. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss

of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed 1/3-acre).

16. *Water Supply Intakes*. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. *Shellfish Beds*. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. *Suitable Material*. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).

19. *Mitigation*. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

(a) The project must be designed and constructed to avoid and minimize adverse effects to waters of the US to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands when permittees are required to meet the one-for-one compensatory mitigation ratio, with preservation used only in exceptional circumstances.

(d) Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

(e) To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive the mitigation requirement for wetland impacts.

(g) Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification

to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

(h) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. *Spawning Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. *Management of Water Flows.* To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. *Adverse Effects From Impoundments.* If the activity creates an

impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. *Waterfowl Breeding Areas.* Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. *Removal of Temporary Fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWP's in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with General Condition 13, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The District Engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

26. *Fills Within 100-Year Floodplains.* For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

(a) *Discharges in Floodplain; Below Headwaters.* Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, 43, and 44.

(b) *Discharges in Floodway; Above Headwaters.* Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, and 44.

(c) The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. *Construction Period.* For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date may be requested. This request must be submitted at least one month before the previously approved completion date.

D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWP's do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.

3. NWP's do not grant any property rights or exclusive privileges.

4. NWP's do not authorize any injury to the property or rights of others.

5. NWP's do not authorize interference with any existing or proposed Federal project.

E. Definitions

Best Management Practices (BMPs): BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental

effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

Ephemeral Stream: An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as "floodway fringe").

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent Utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from

rainfall is a supplemental source of water for stream flow.

Loss of Waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP. It is not the net threshold calculated after considering compensatory mitigation used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of perennial or intermittent stream that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US.

Non-tidal Wetland: A non-tidal wetland is a wetland (i.e., a water of the US) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open Water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is non-emergent, vegetated shallows, sparse, or absent. This term includes rivers, streams, lakes, and ponds.

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation

may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and Pool Complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Single and Complete Project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater Management Facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream Bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range

in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream Channelization: The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

Tidal Wetland: A tidal wetland is a wetland (i.e., water of the US) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall

of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment

and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NWP's result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated Shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

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Federal Register

**Thursday,
August 9, 2001**

Part V

**Department of Defense
General Services
Administration
National Aeronautics and
Space Administration**

**48 CFR Parts 27 and 52
Federal Acquisition Regulation;
Trademarks for Government Products;
Proposed Rule**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 27 and 52**

[FAR Case 1998–018]

RIN 9000–A198

**Federal Acquisition Regulation;
Trademarks for Government Products**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide guidance on the use of names, symbols, and logos that describe Government products, services, systems, and programs.

DATES: Interested parties should submit comments in writing on or before October 9, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1998–018@gsa.gov.

Please submit comments only and cite FAR case 1998–018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 1998–018.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed rule amends FAR Parts 27 and 52 to add a new Subpart 27.X, Government-Unique Trademarks and Service Marks, and to add a new clause, 52.227–XX, Rights in Government-Unique Marks. The rule provides policy guidance and a contract clause that establishes the process for a contractor seeking to assert rights in Government-unique marks. The rule creates a contractor notification process to allow agencies to consider both the

Government's interests and a contractor's commercial interests in determining how to treat Government-unique marks. The guidance permits either the Government or a contractor to assert rights in a Government-unique mark and to seek trademark or service mark protection.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only provides standardized procedures for the Government to preserve trademark and service mark rights to the Government. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 27 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1998–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat has submitted a request for approval of a new information collection requirement concerning 9000–00XX, Trademarks for Government Products, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .25 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.

The annual reporting burden is estimated as follows:

Respondents: 75
Responses per respondent: 1
Total annual responses: 75
Preparation hours per response: .25
Total response burden hours: 18.75

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than October 9, 2001 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly 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 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 the use of automated collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, FAR Case 1998–018, Trademarks for Government Products, in all correspondence.

List of Subjects in 48 CFR parts 27 and 52

Government procurement.

Dated: August 3, 2001.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 27 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 27 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 27—PATENTS, DATA,
COPYRIGHTS, TRADEMARKS AND
SERVICE MARKS**

2. Revise the heading of Part 27 as set forth above.

3. Revise section 27.000 to read as follows:

27.000 Scope of part.

This part prescribes policies, procedures, and contract clauses pertaining to patents and trademarks and service marks that are Government-unique, and directs agencies to develop

coverage for rights in data and copyrights.

4. Add subpart 27.X, consisting of sections 27.X01 through 27.X05 to read as follows:

Subpart 27.X—Government-Unique Trademarks and Service Marks

Sec.

27.X01 Definition.

27.X02 General.

27.X03 Policy.

27.X04 Protection of Government-unique marks.

27.X05 Contract clause.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

27.X01 Definition.

As used in this subpart—

Government-unique mark means any mark that identifies and distinguishes goods first developed or manufactured in performance of a Government contract or that identifies and distinguishes services first rendered in performance of a Government contract.

27.X02 General.

(a) Trademarks are generally distinctive symbols, pictures, or words that distinguish and identify the origin of products.

(b) The owner of a trademark has exclusive rights to use it on the product it was intended to identify and often on related products. Service marks receive the same legal protection as trademarks but are meant to distinguish services rather than products.

(c) Trademarks and service marks protect certain economic interests and goodwill. Parties that infringe or dilute trademarks and service marks may be liable under 15 U.S.C. 1114 and 1125.

27.X03 Policy.

(a) The Government has an interest in avoiding restrictions on competition, protecting agency goodwill, and avoiding liability for trademark infringement and dilution. To protect these interests, agencies may elect to register or assert rights in a Government-unique mark. The Government may then use the mark on an exclusive basis or may make the mark available on a nonexclusive basis. When the Government decides not to register or assert rights in a Government-unique mark, the contractor may register or assert rights in the mark.

(b) The clause at 52.227–XX, Rights in Government-Unique Marks, requires the contractor to provide written notification of its intention to assert rights in a Government-unique mark. This notification process will allow the Government to consider both the

Government's interests and a contractor's commercial interests in determining which party will register or assert rights in the mark.

27.X04 Protection of Government-unique marks.

When the clause at 52.227–XX, Rights in Government-Unique Marks, is inserted in the contract, the contractor must notify the Government in writing of its intent to assert rights in, or file an application to register, a Government-unique mark.

(a) The contractor may proceed to assert the rights or file the application if the Government does not object to the contractor's intended action within 120 days of receipt of the notification. Failure of the Government to respond does not waive the Government's right under the Trademark Act to contest the contractor's assertion of rights or application.

(b) The contractor may not proceed to assert the rights or file the application if the Government—

(1) Chooses to assert its rights in the mark; or

(2) Objects to the contractor's intended action. If the Government objects, the parties may negotiate conditions for contractor use of the Government-unique mark that may include, but are not limited to, the contractor agreeing to—

(i) Grant licenses in a nondiscriminatory manner to third parties to use the Government-unique mark for reasonable terms and fees, as long as the third party meets minimum quality standards;

(ii) Avoid use of the Government-unique mark in a manner that disparages the Government including the use of the mark by its licensees;

(iii) Limit the use of the Government-unique mark to specific goods or services;

(iv) Provide copies of any applications for registration, registrations, and renewals and notify the contracting officer prior to any abandonment of the Government-unique mark; and

(v) Not charge for use of the Government-unique mark when used for the benefit of the Government.

27.X05 Contract clause.

Insert the clause at 52.227–XX, Rights in Government-Unique Marks, in solicitations and contracts when either a rights in data clause (52.227–14, Rights in Data-General) or a patent clause (52.227–11, Patent Rights-Retention by the Contractor (Short Form), 52.227–12, Patent Rights-Retention by the Contractor (Long Form), or 52.227–13, Patent Rights-

Acquisition by the Government) is present. The clause may also be used in any contract in which the contracting officer determines that a Government-unique mark may arise.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add section 52.227–XX to read as follows:

52.227–XX Rights in Government-Unique Marks

As prescribed in 27.X05, insert the following clause:

Rights in Government-Unique Marks (Date)

(a) *Government-unique mark*, as used in this clause, means any mark that identifies and distinguishes goods first developed or manufactured in performance of a Government contract or that identifies and distinguishes services first rendered in performance of a Government contract.

(b) The Government has the right to assert rights in or register Government-unique marks and preclude others, including the Contractor, from using any Government-unique mark.

(c) The Contractor must notify the Government in writing of its intent to assert rights in, or file an application to register, a Government-unique mark. The Contractor's notification shall be in writing and shall identify the Government-unique mark (including the word, name, symbol, or design), provide a statement as to its intended use(s) in commerce, and list the particular classes of goods or services in which registration will be sought.

(d) The Contractor may proceed to assert rights in or file the application to register if the Government does not object to the Contractor's intended action within 120 days of receipt of the notification. Failure of the Government to respond does not waive the Government's right under the Trademark Act to contest the Contractor's assertion of rights or application.

(e) The Contractor may not proceed to assert the rights or file the application if the Government—

(1) Chooses to assert its rights in or register the mark; or

(2) Objects to the Contractor's intended action. If the Government objects, the parties may negotiate conditions for Contractor use of the Government-unique mark.

(f) Nothing contained in this clause—

(1) Affects the Contractor's or the Government's rights in any marks other than Government-unique marks; or

(2) Provides authorization or consent, express or implied, by the Government regarding the Contractor's use of any mark, including a Government-unique mark.

(End of clause)

[FR Doc. 01–19928 Filed 8–8–01; 8:45 am]

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- McDonnell Douglas; comments due by 8-13-01; published 6-29-01
- Airworthiness standards:
- Special conditions—
- Raytheon C90A airplane; comments due by 8-16-01; published 7-17-01
- Raytheon Model Hawker 800XP airplanes; comments due by 8-17-01; published 7-18-01
- Class E airspace; comments due by 8-13-01; published 7-13-01
- TRANSPORTATION DEPARTMENT National Highway Traffic Safety Administration**
- Consumer information:
- Light motor vehicles; rollover resistance; driving maneuver tests evaluation; comments due by 8-17-01; published 7-3-01
- Motor vehicle safety standards:
- Economic impact on small businesses entities; comments due by 8-14-01; published 7-3-01
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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 "PLUS" (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. 468/P.L. 107-23

To designate the Federal building located at 6230 Van Nuys Boulevard in Van Nuys, California, as the "James C. Corman Federal Building". (Aug. 3, 2001; 115 Stat. 198)

H.R. 1954/P.L. 107-24

ILSA Extension Act of 2001 (Aug. 3, 2001; 115 Stat. 199)
Last List July 31, 2001

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