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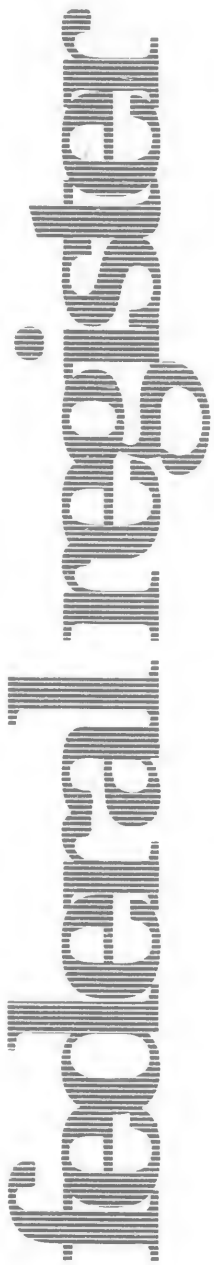

Wednesday
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Contents

Federal Register

Vol. 64, No. 115

Wednesday, June 16, 1999

Separate Parts In This Issue

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–4]

Amendment to Class E Airspace; Anaktuvuk Pass, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the error in the title of a correction to final rule that was published in the **Federal Register** on February 1, 1999 (64 FR 4784). The final rule establishing Class E airspace area at Anaktuvuk Pass, AK, was published in the **Federal Register** on November 5, 1998 (63 FR 59705), Airspace Docket 98–AAL–16.

EFFECTIVE DATE: 0901 UTC, July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.ctr.van-Haastert@faa. gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–29627, Airspace Docket 98–AAL–16, published on November 5, 1998, (63 FR 59705) established the Class E airspace area at Anaktuvuk Pass, AK, **Federal Register** Document 99–2335, Airspace Docket 98–AAL–24, published February 1, 1999 (64 FR 4784) corrected an error in the geographic coordinates for the Anaktuvuk Pass Airport and Anaktuvuk Pass Non-Directional Radio Beacon. In the correction to final rule, Airspace Docket 98–AAL–24, the title for the Anaktuvuk Pass Class E airspace description is in error. The title "AAL AK E2 Anaktuvuk Pass, AK" should read "AAL AK E5 Anaktuvuk Pass, AK". This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the title listed for the Anaktuvuk Pass airspace as published in the **Federal Register** on February 1, 1999 (64 FR 4784), (**Federal Register** Document 99–2335, page 4785), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Anaktuvuk Pass, AK [Corrected]

By removing "AAL AK E2 Anaktuvuk Pass, AK" and replacing with "AAL AK E5 Anaktuvuk Pass, AK".

* * * * *

Issued in Anchorage, AK, on June 3, 1999.

Trent S. Cummings,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–15295 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Miscellaneous Rules: Disclosure Requests

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending a rule of practice and procedure that governs disclosure requests. These amendments add requests for voluntary testimony to the scope of the rule's coverage. The amendments also clarify the existing scope of various paragraphs of the rule.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Gary M. Greenfield, (202) 326–2753, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission is amending 16 CFR 4.11(e), which governs compulsory process requiring disclosure by Commission employees of material and information relating to their official duties. This provision also governs compulsory process to former Commission employees and to current and former special government employees that requires the disclosure of nonpublic information acquired during their Commission employment.

The amendments expand the scope of § 4.11(e) to include requests for voluntary testimony. As with requests by compulsory process for documents or testimony, the amended Rule requires anyone seeking voluntary testimony from Commission employees (and, where applicable, special government employees or former employees) to furnish a statement to the General Counsel setting forth information that will enable the General Counsel to make an informed decision regarding the request.

Amendments to paragraphs (c) and (d) of § 4.11 clarify that paragraph (e) of that section governs compulsory process from government agencies for Commission documents or testimony. Paragraph (e)(3), as amended, provides that the General Counsel may discretionarily waive the statement required by the Rule with respect to any individual request by a government agency.

The requirements of § 4.11(e) do not apply to invitations to testify before Congress or to testify before other government bodies on the possible effects of proposed legislation or regulations.

The Commission does not seek public comment on these amendments because they relate solely to agency practice and procedure. Thus, the amendments are exempt from the notice-and-comment requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). In addition, the Commission certifies that these amendments will not have a significant impact on small business entities. Accordingly, no final regulatory flexibility analysis is required by the Regulatory Flexibility Act. *See* 5 U.S.C. 605(b).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

For the reasons set forth in the preamble, the Commission amends part 4 of 16 CFR as follows:

PART 4—MISCELLANEOUS RULES

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

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.11 is amended by adding a sentence at the end of paragraphs (c) and (d) and revising paragraph (e) to read as follows:

§ 4.11 Disclosure requests.

* * * * *

(c) * * * Requests for material pursuant to compulsory process, or for voluntary testimony, in cases or matters in which the Commission is not a party will be treated in accordance with paragraph (e) of this section.

(d) * * * Request for material pursuant to compulsory process, or for voluntary testimony, in cases or matters in which the Commission is not a party will be treated in accordance with paragraph (e) of this section.

(e) *Requests for testimony, pursuant to compulsory process or otherwise, and requests for material pursuant to compulsory process, in cases or matters to which the Commission is not a party.* (1) The procedures specified in this section will apply to compulsory process and requests for voluntary testimony directed to Commission employees, except special government employees, that relate in any way to the employees' official duties. These procedures will also apply to compulsory process and requests for voluntary testimony directed to former Commission employees or to current or former special government employees of the Commission that seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (e)(3) of this section will also apply when requests described above are directed to the Commission. For purposes of this section, the term *testimony* includes any written or oral statement by a witness, such as depositions, affidavits, declarations, and statements at a hearing or trial; the term *nonpublic* includes any material or information which, under § 4.10, is not required to be more public; the term *employees*, except where otherwise specified, includes *special government employees* and other Commission employees; and the term *special government employees* includes consultants and other employees as defined by section 202 of title 18 of the United States Code.

(2) Any employee or former employee who is served with compulsory process shall promptly advise the General Counsel of its service, the nature of the material or information sought, and all relevant facts and circumstances. This notification requirement also applies to any employee or former employee whose testimony is sought on a voluntary basis under the conditions set forth in paragraph (e)(1) of this section.

(3) A party who causes compulsory process to be issued to, or who requests testimony by, the Commission or any employee or former employee of the Commission shall furnish a statement to the General Counsel, unless, with respect to a request by a Federal or State agency, the General Counsel determines, as a matter of discretion, to waive this requirement. The statement shall set forth the party's interest in the case or matter, the relevance of the desired testimony or material, and a discussion of whether it is reasonably available from other sources. If testimony is desired, the statement shall also contain a general summary of the testimony and a discussion of whether Commission records could be produced and used in its place. Any authorization for testimony will be limited to the scope of the demand as summarized in such statement.

(4) Absent authorization from the General Counsel, the employee or former employee shall respectfully decline to produce requested material or to disclose requested information. The refusal should be based on this paragraph and on *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(5) The General Counsel will consider and act upon compulsory process and requests for voluntary testimony under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account such factors as the need to conserve the time of employees for conducting official business; the need to avoid spending the time and money of the United States for private purposes; the need to maintain impartiality between private litigants in cases where a substantial government interest is not involved; and the established legal standards for determining whether justification exists for the disclosure of confidential information and material.

(6) Invitations to testify before Congressional committees or subcommittees or to testify before other government bodies on the possible effects of legislative and regulatory proposals are not subject to paragraphs (e)(1) through (5) of this section.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–15187 Filed 6–15–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Carprofen

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for veterinary prescription use of carprofen chewable tablets for the relief of pain and inflammation associated with osteoarthritis in dogs.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed NADA 141–111 that provides for oral veterinary prescription use of Rimadyl® (carprofen) chewable tablets for the relief of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of May 14, 1999. The regulations are amended in 21 CFR 520.309 by revising the section heading, by revising paragraph (a), by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and by revising newly redesignated paragraphs (d)(1) and (d)(2) to reflect the approval.

The regulations currently provide for use of carprofen caplets in NADA 141–053. A revision of the indications for use has been approved by letter of April 21, 1999. At this time, the regulation is amended to reflect that approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval for nonfood-producing animals qualifies for 3 years of marketing

exclusivity beginning May 14, 1999, because the application contains substantial evidence of the effectiveness of the drug involved, or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant. Three years of marketing exclusivity applies only to use of carprofen chewable tablets for relief of pain and inflammation associated with osteoarthritis in dogs.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.309 is amended by revising the section heading, by revising paragraph (a), by redesignating paragraph (c) as paragraph (d), by reserving paragraph (c), and by revising newly redesignated paragraphs (d)(1) and (d)(2) to read as follows:

§ 520.309 Carprofen.

(a) *Specifications.* Each caplet or chewable tablet contains 25, 75, or 100 milligrams of carprofen.

* * * * *

(c) [Reserved]

(d) * * *

(1) *Amount.* 1 milligram per pound of body weight twice daily. Caplets and chewable tablets are scored and dosage should be calculated and given in half-caplet or half-chewable tablet increments.

(2) *Indications for use.* For the relief of pain and inflammation associated with osteoarthritis in dogs.

* * * * *

Dated: June 4, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–15291 Filed 6–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8805]

RIN 1545–AQ43

Application of Section 904 to Income Subject to Separate Limitations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Monday, January 11, 1999 (64 FR 1505) relating to the application of section 904 with respect to certain categories of income.

DATES: This correction is effective March 12, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Rosenberg (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 904 of the Internal Revenue Code.

Need for correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

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

§ 1.904–4 [Corrected]

Par. 2. Section 1.904–4 is amended as follows:

1. Paragraph (c)(1) is amended by adding the sentence "This paragraph (c)(1) is applicable for taxable years beginning after March 12, 1999." at the end of the paragraph.

2. Paragraph (c)(2)(i)(A) is amended by removing the last sentence of the paragraph and adding a new sentence "Paragraph (c)(2)(ii) of this section is applicable for taxable years beginning after March 12, 1999." in its place.

Cynthia E. Grigsby,

Chief, Regulation Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–15113 Filed 6–15–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–056]

RIN 2115–AA97

Safety Zone: Heritage of Price Fireworks, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Heritage of Pride Fireworks Display located on the Hudson River, New York. This zone is necessary to provide for the safety of life on navigable waters during the event. It is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This temporary final rule is effective from 9:30 p.m. until 11 p.m., on Sunday, June 27, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this temporary final rule. Because of the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the rule

30 days before its effective date. Good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after **Federal Register** publication. This event is being added to the First Coast Guard District's list of annual regulated fireworks displays in 33 CFR 100.114. The final rule for this list of events will not be effective before the date of this year's Heritage of Pride Fireworks display. Any delay encountered in this rule's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

The fireworks program is being sponsored by Heritage of Pride, Inc. This temporary final rule establishes a safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge located in approximate position 40°44′31″ N 074°01′00″ W (NAD 1983), about 400 yards west of Pier 54, Manhattan, New York. The safety zone is in effect from 9:30 p.m. until 11 p.m. on Sunday, June 27, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of the Hudson River, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 175 yards of the 925-yard wide Hudson River during the event. The Captain of the Port does not anticipate any negative impact on marine traffic due to this event. Further, vessels are not precluded from mooring at or getting underway from Piers 53–57 or from the Piers at Castle Point, New Jersey. Public notifications will be made before the event by the Local Notice to Mariners and marine-information broadcasts.

Regulatory Evaluation

This temporary final 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. It has not been reviewed by the Office of Management and Budget 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone; on vessels' not being precluded from getting under way from, or mooring at, Piers 53–57 the piers at Castle Point, New Jersey; on marine traffic's being able safely to transit to the west of the zone; and on the making of advance notifications.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This temporary final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

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

E.O. 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 safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–056 to read as follows:

§ 165.T01–056 Safety Zone: Heritage of Pride Fireworks, Hudson River, New York.

(a) *Location:* The following area is a safety zone: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′31″ N 074°01′00″ W (NAD 1983), about 400 yards west of Pier 54, Manhattan, New York.

(b) *Effective period.* This section is effective from 9:30 p.m. until 11 p.m. on Sunday, June 27, 1999. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–15300 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–071]

RIN 2115–AA97

Safety Zone: Clamfest Fireworks, Sandy Hook Bay, Atlantic Highlands, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Clamfest Fireworks Display located at Seastreak America's docks in Sandy Hook Bay, Atlantic Highlands, NJ. This zone is necessary to provide for the safety of life on navigable waters during the event. It is intended to restrict vessel traffic in a portion of Sandy Hook Bay.

DATES: This temporary final rule is effective from 8:30 p.m. until 10 p.m., on Saturday, June 19, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, Room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this temporary final rule. Good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after **Federal Register** publication. Because of the date the Application for Approval for Marine Event was received, there was insufficient time to draft and publish an NPRM and publish this rule 30 days before its effective date. Any delay encountered in this rule's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On May 14, 1999, Serpico International Fireworks, Co., Inc., applied to hold a fireworks program on the waters of Sandy Hook Bay from a barge moored at the end of Seastreak America's docks, Atlantic Highlands, NJ. The fireworks program is being sponsored by the Highlands Chamber of Commerce. This temporary final rule establishes a safety zone in all waters of Sandy Hook Bay within a 150-yard radius of the fireworks barge in approximate position 40°25′12″N 074°02′04″W (NAD 1983), which is moored at the end of the Seastreak America's Dock, Atlantic Highlands, NJ. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, June 19, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Sandy Hook Bay and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through northern Sandy Hook Bay during the event. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Additionally, vessels are not precluded from mooring at or getting under way from piers in Atlantic Highlands, New Jersey. Public notifications will be made before the event by Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This temporary final 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. It has not been reviewed by the Office of Management and Budget 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the area; on vessels' not being precluded from getting under way from, or mooring at piers in Atlantic Highlands, New Jersey; on vessels' still being able to transit through Sandy Hook Bay during the event; and on advance notifications' being made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain

regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This temporary final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

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

E.O. 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 safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

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

Regulation

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

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–071 to read as follows:

§ 165.T01–071 Safety Zone: Clamfest Fireworks, Sandy Hook Bay, Atlantic Highlands, New jersey.

(a) *Location*. The following area is a safety zone: All waters of Sandy Hook Bay within a 150-yard radius of the fireworks barge in approximate position 40°25′12″ N 074°02′04″ W (NAD 1983), which is moored at the end of Seastreak America's dock, Sandy Hook Bay, Atlantic Highlands, New Jersey.

(b) *Effective period*. This section is effective from 8:30 p.m. until 10 p.m. on Saturday, June 19, 1999. There is no rain date for this event.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–15299 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP GUAM 99–011]

RIN 2115–AA97

Safety Zone: Cocos Lagoon, Guam

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Cocos Lagoon because of a planned International Cocos swimming event occurring on June 20, 1999. The safety zone will encompass all waters within a triangle formed by connecting the following points: the mount of the Bile River (13 degrees 16 minutes 37 seconds North Latitude, 144 degrees 39 minutes 51 seconds East Longitude), the west tip of Cocos Island (13 degrees 14 minutes 02 seconds North Latitude, 144 degrees 38 minutes 39 seconds East Longitude), and Balang Point (13 degrees 15 minutes 03 seconds North Latitude, 144 degrees 41 minutes 26 seconds East Longitude). This zone is needed to protect personnel swimming in the water within this zone during the event. Law enforcement, Fire Department, and sponsor safety boats will be allowed in this zone during the event. Entry of all other vessels into this temporary zone is prohibited unless authorized by the Captain of the Port (COTP).

EFFECTIVE DATE: This safety zone will be in effect from 06:30 A.M. (+ Kilo, Local Time) to 10:00 A.M. (+ Kilo, Local Time) on June 20, 1999. Following the conclusion of the event the Captain of the Port will cease enforcement of the safety zone and will announce that fact by Broadcast Notice to Mariners.

ADDRESSES: Documents pertaining to this regulation are available for inspection and copying at U.S. Coast Guard Marine Safety Office Guam, PSC 455, Box 176, FPO AP 96540–1056.

FOR FURTHER INFORMATION CONTACT: Lieutenant David McClellan, Chief, Port Operations Department, Marine Safety Office Guam; (671) 339–2001, extension 163.

SUPPLEMENTARY INFORMATION:

Regulatory Information

In accordance with 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this regulation, and good cause exists for making it effective before, or less than 30 days after, **Federal Register** publication. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days before the event date. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the event would occur before the rulemaking process was complete, jeopardizing the safety of lives of event participants.

Discussion of Regulation

The Manukai Athletic Club will be holding their international Cocos Crossing swim competition on the Navigable waters of Cocos Lagoon. In order to promote public safety, the

Captain of the Port established a triangular safety zone. The safety zone will encompass all waters within a triangle formed by connecting the following points: the mouth of the Bile River (13 degrees 16 minutes 37 seconds North Latitude, 144 degrees 39 minutes 51 seconds East Longitude), the west tip of Cocos Island (13 degrees 14 minutes 02 seconds North Latitude, 144 degrees 38 minutes 39 seconds East Longitude), and Balang Point (13 degrees 15 minutes 03 seconds North Latitude, 144 degrees 41 minutes 26 seconds East Longitude).

This zone is established to protect the swimming event's participants from possible safety hazards associated with vessel traffic. Law enforcement, Fire Department, and sponsor's safety boats will be allowed in this zone during the event. Entry of all other vessels into this temporary zone is prohibited unless authorized by the Captain of the Port (COTP). Vessels may request authorization to transit the regulated area by calling the U.S. Coast Guard on Channel 16 VHF or by phone at (671) 339–2001, extension 112.

Regulatory Evaluation

This temporary final 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 sections 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget 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). Because of the short duration and limited geographic scope of the safety zone, the Coast Guard expects 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.

Collection of Information

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

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this temporary final rule and concluded that under Chapter 2.B.2 of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. An environmental analysis checklist has been completed.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this temporary final rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation). If so, the Act requires that reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government will be affected by this rule, so this rule will not result in annual or aggregate cost of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, part 165 of title,33, Code of Federal Regulations, is amended as follows;

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authorirty: 33 U.S.C. 1231; 50 U.S.c. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.T14–011 is added to read as follows:

§ 165.T14–011 Safety Zone: Cocos Lagoon, Guam.

(a) *Location:* The following area constitutes a safety zone in the navigable waters of the United States within Cocos Lagoon, Guam: a triangle formed by connecting the mouth of the Bile River (13 degrees 16 minutes 37 seconds North Latitude, 144 degrees 39 minutes 51 seconds East Longitude), the west tip of Cocos Island (13 degrees 14 minutes 02 seconds North Latitude, 144 degrees 38 minutes 39 seconds East Longitude), and Balang Point (13 degrees 15 minutes 03 seconds North Latitude, 144 degrees 41 minutes 26 seconds East Longitude). All coordinates refer to Datum: NAD 83.

(b) *Effective Dates:* This safety zone will be effective form 06:30 a.m. (+Kilo, Local Time) to 10:00 a.m. (+Kilo, Local Time) on June 20, 1999. Following the conclusion of the event the Captain of the Port will cease enforcement of the safety zone and will announce that fact by Broadcast Notice to Mariners.

(c) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply. Entry into, transit through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, or his or her designated representative. Vessels may request authorization to transit the safety zone by calling the U.S. Coast Guard Marianas Section Guam on Channel 16 VHF or call at (671) 339–2001, extension 112.

Dated: May 26, 1999.

S.J. Glover,

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

[FR Doc. 99–15298 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01 99–078]

RIN 2115–AA97

Safety Zone: Salvage of Sunken Fishing Vessel CAPE FEAR, Buzzards Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five-hundred (500)-yard radius of the site of the sunken fishing vessel CAPE FEAR in the entrance to Buzzards Bay, Massachusetts, during oil removal and salvage. Once the vessel is salvaged and brought to the surface, a temporary moving safety zone extending 1,000 yards ahead and astern, and 500 yards on either side, is established around the fishing vessel CAPE FEAR while it is towed into and safely moored in the port of Fairhaven, MA. This safety zone is needed to protect personnel and their resources on-scene during oil pollution abatement and salvage, the maritime community from hazards associated with ongoing oil-pollution abatement

and salvage, and any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, MA. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP), Providence RI.

EFFECTIVE DATE: This rule is effective from 6:00 a.m., Tuesday, June 8, 1999, until 11:59 p.m. on Wednesday, June 30, 1999.

FOR FURTHER INFORMATION CONTACT: LT David C. Barata, Waterways Management, Coast Guard Marine Safety Office, Providence, RI, at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, no notice of proposed rulemaking (NPRM) was published for this regulation, and good cause exists for making it effective less than 30 days after **Federal Register** publication. Because of the date that conclusive information for this event was received, there was insufficient time to draft and publish and NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of Buzzards Bay to protect personnel and their resources on-scene during oil pollution abatement and the salvage, the maritime community from hazards associated with ongoing oil-pollution abatement and salvage, and any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, MA.

Background and Purpose

This regulation establishes a safety zone in all waters within a five-hundred (500)-yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay at approximate position 41°23′ N, 071°01′ W during oil pollution abatement and salvage. After the vessel is salvaged and brought to the surface, a temporary moving safety zone will immediately be established on all waters extending 1,000 yards ahead and astern, and 500 yards on either side, of the fishing vessel CAPE FEAR until it is towed into and safely moored in the port of Fairhaven, MA. This safety zone is needed to protect personnel and their resources on-scene during oil-pollution abatement and salvage, the maritime community from hazards associated with ongoing oil-pollution abatement and salvage, and any spectators or vessels in the vicinity, and to ensure the safe transit and mooring of the fishing vessel CAPE FEAR as it is towed into the port of Fairhaven, MA. The public will be made aware of the change from a stationary to a moving safety zone through a Broadcast Notice to Mariners made from U.S. Coast Guard Group Woods Hole. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP), Providence, RI.

Regulatory Evaluation

This temporary final 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. It has not been reviewed by the Office of Management and Budget 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 rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves a small area of Buzzards Bay. Although this rule prevents traffic from transiting in the immediate area of the salvage site and prevents vessels from transiting near the fishing vessel CAPE FEAR as it is towed, the effect of this rule will not be significant as all vessel traffic may safely pass around this safety zone and as extensive maritime advisories will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under subsection 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 temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call LT D.C. Barata, telephone (401) 435–2300.

The Ombudsman of Regulatory Enforcement for Small Business and Agriculture and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate such enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

The Coast Guard has analyzed this temporary final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4 , the Coast Guard must consider whether this temporary final rule will result in an annual expenditure by state, local, and tribal governments, in aggregate, of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard has considered the environmental impact of this temporary final rule and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this final 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 Addressee.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this temporary final rule and reached the following conclusions:

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

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports 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, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under the authority of Sec. 311, Pub. L. 105–383.

2. Add temporary section 165.T01–078 to read as follows:

§ 165.T01–079 Safety Zone: Salvage of Sunken Fishing Vessel CAPE FEAR, Buzzards Bay, MA.

(a) *Location.* The following area constitutes a safety zone: All waters within a five-hundred (500)-yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay at approximate position 41°-23′ N, 071°-01′ W during oil-pollution abatement and salvage. After the vessel is salvaged and brought to the surface, a temporary moving safety zone will immediately be established on all waters extending 1,000 yards ahead and astern, and 500 yards on either side, of the fishing vessel CAPE FEAR until it is towed into and safety moored in the port of Fairhaven, MA.

(b) *Effective date:* This rule is effective from 6:00 a.m. on Tuesday, June 08, 1999, until 11:59 p.m. on Wednesday, June 30, 1999.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. Among these personnel are commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: June 3, 1999.

Peter A. Popko,

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

[FR Doc. 99–15297 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE011–1020; FRL–6357–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology Requirements for Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting conditional limited approval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires all major sources of nitrogen oxides (NO_X) to implement reasonably available control technology (RACT). This revision was submitted to comply with the NO_X requirements of the Clean Air Act. The intended effect of this action is to grant conditional limited approval of Delaware's NO_X RACT Regulation.

EFFECTIVE DATE: This final rule is effective on July 16, 1999.

ADDRESSES: 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 Delaware Department of Natural Resources and Environmental Control, Richardson & Robins, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 1999 (64 FR 13753), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed conditional limited approval of Delaware's Regulation No. 12, CONTROL OF NITROGEN OXIDE EMISSIONS (NO_X RACT Regulation). The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on January 11, 1993 and amended on January 20, 1994.

A description of Delaware's SIP revision and EPA's rationale for granting it conditional limited approval were provided in the NPR and shall not be restated here. No public comments were received on the NPR.

Terms of Conditional Approval

EPA is conditionally approving Delaware's NO_X RACT regulation based upon DNREC's commitment to submit all the source-specific RACT determinations made under Section 5 of Regulation No. 12. To fulfill the condition of this approval, DNREC must, by no later than July 17, 2000 of Regulation No. 12, certify that it has submitted all required case-by-case NO_X RACT determinations for all currently known subject sources. Once EPA has determined that DNREC has met this condition, EPA shall remove the conditional nature of its approval and Regulation No. 12 will, at that time, retain limited approval status. Should DNREC fail to meet the condition as specified above, the final conditional limited approval of the Delaware NO_X RACT regulation SIP revision shall convert to a disapproval.

Terms of Limited Approval

Conversion of the Delaware NO_X RACT Regulation to full approval will occur when EPA has approved all of the case-by-case RACT determinations submitted by DNREC in fulfillment of the conditional approval described above.

As indicated previously, other specific requirements of and the rationale for EPA's proposed actions are explained in the NPR and will not be restated here. Further details are contained in the TSD, which is available upon request, from the EPA Regional office listed in the **ADDRESSES** section of this document.

II. Final Action

EPA is granting conditional limited approval to Delaware Regulation No. 12 imposing RACT on major sources of NO_X, submitted on January 11, 1993 and January 20, 1994, as a revision to the Delaware SIP.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 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 EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB 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, E.O. 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." Today's 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 E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 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 final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 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 EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional and limited approvals of SIP submittals under sections 110 and 301, and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

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

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

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to Delaware's NO_X RACT regulation, must be filed in the United States Court of Appeals for the appropriate circuit by August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 27, 1999.

W. Michael McCabe,

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 I—Delaware

2. In § 52.420, the table in paragraph (c) is amended by adding in numerical order a new entry for "Regulation 12" to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Regulation 12—Control of Nitrogen Oxide Emissions				
Section 1	Applicability	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 2	Definitions	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 3	Standards	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 4	Exemptions	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 5	Alternative and Equivalent RACT Determinations.	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 6	RACT Proposals	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
Section 7	Compliance Certification, Record Keeping, and Reporting Requirements.	11/24/93	June 16, 1999 [*Federal Register* cite]	Limited approval.
*	*	*	*	*

* * * * *

3. Section 52.424 is amended by adding paragraph (d) to read as follows:

§ 52.424 Conditional approval.

* * * * *

(d) Revisions to the Delaware State Implementation Plan, Regulation No. 12, pertaining to NO_X RACT requirements on major sources submitted on January 11, 1993 and amended on January 20, 1994 by the Delaware Department of Natural Resources and Environmental Control, is conditionally approved. Delaware must meet the following condition by no later than July 17, 2000, in accordance with criteria defined in the EPA Memorandum dated November 7, 1996 from the Director of the Air Quality Strategies and Standards Division of the Office of Air Planning and Standards, entitled "Approval Options for Generic RACT Rules Submitted to Meet the Non-CTG VOC RACT Requirement and Certain NO_X RACT Requirements." This memorandum is available, upon request, at the office of the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

This condition is:

(1) The DNREC must certify, in writing, that it has submitted, as SIP revisions, RACT determinations for all sources subject to source-specific NO_X RACT requirements.

[FR Doc. 99–15015 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300859; FRL–6080–9]

RIN 2070–AB78

Sethoxydim; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus, carrot, cranberry, horseradish, peppermint tops and spearmint tops. The Interregional

Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective June 16, 1999. Objections and requests for hearings must be received by EPA on or before August 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300859], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300859], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300859]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9368, jamerson.hoyt@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 30, 1998 (63 FR 71920) (FRL–6050–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of pesticide petitions (PP 3E4162, 2E4092, 0E3909, and 2E4052) for tolerances by Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, New Jersey 08903. The notice included a summary of the petitions prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.412 be amended by removing the time limitations (expiration dates) on established tolerances for combined residues of the herbicide sethoxydim (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on asparagus (PP 3E4162) at 4.0 parts per million (ppm), carrot (PP 2E4092) at 1.0 ppm, cranberry (PP 0E3909) at 2.0 ppm, and peppermint and spearmint tops (PP 2E4052) at 30 ppm. Since the tolerances for asparagus, carrot, cranberry, peppermint and spearmint tops expired December 31, 1998, after the notice of filing was published in the **Federal Register**, this rule establishes the tolerances without time limitations. In addition, in the **Federal Register** of January 29, 1999 (64 FR 4650) (FRL–6055–8), PP 9E5049 proposed to amend 40 CFR 180.412 by establishing a tolerance for residues of sethoxydim and its metabolites in or on horseradish at 4 ppm.

I. Background and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sethoxydim and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus, carrot, cranberry, horseradish, and peppermint and spearmint tops. EPA's assessments of the dietary exposures and risks associated with establishing the tolerances are as follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sethoxydim are discussed in this unit.

1. *Acute toxicity.* Based on the available acute toxicity data, sethoxydim does not pose any acute dietary risks. A summary of the acute toxicity studies follows:

i. *Acute oral toxicity, rat*: Toxicity Category III; LD_{50}=3,125 milligrams/kilograms (mg/kg) (male), 2,676 mg/kg (female).

ii. Acute dermal toxicity, rat: Toxicity Category III; LD_{50} >5,000 mg/kg (male and female).

iii. *Acute inhalation toxicity, rat*: Toxicity Category III; LC_{50} (4-hour)=6.03 mg/liter (L) (male), 6.28 mg/L (female).

iv. *Primary eye irritation, rabbit*: Toxicity Category IV; no irritation.

v. *Primary dermal irritation, rabbit*: Toxicity Category IV; no irritation.

vi. *Dermal sensitization, guinea pig*: Waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18% active ingredient).

2. *Genotoxicity.* Ames assays were negative for gene mutation in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA 1537, with and without metabolic activity. A Chinese hamster bone marrow cytogenetic assay was negative for structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*. Recombinant assays and forward mutations tests in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative for genotoxic effects at concentrations of greater than or equal to 100%.

3. *Reproductive and developmental toxicity.* A 2-generation reproduction study with rats fed diets containing 0, 150, 600, or 3,000 ppm (approximately 0, 7.5, 30, or 150 mg/kg/day) with no reproductive effects observed under the conditions of the study.

A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, or 1,000 mg/kg/day with a maternal no-observed-adverse-effect level (NOAEL) of 180 mg/kg/day and a maternal lowest-adverse-effect level (LAEL) of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOAEL of 180 mg/kg/day, and a developmental LAEL of 650 mg/kg/day, based on a 21 to 22% decrease in fetal weights, filamentous tail, and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal, and pubes). A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, or 400 mg/kg/day with a maternal NOAEL of 320 mg/kg/day and a maternal lowest-observed-adverse-effect level (LOAEL) of 400 mg/kg/day (37% reduction in body weight gain without significant differences in group mean body weights and decreased food consumption during dosing); and a developmental NOAEL greater than 400 mg/kg/day highest dose tested (HDT).

4. *Subchronic toxicity.* A 21-day dermal study in rabbits with a NOAEL of >1,000 mg/kg/day (limit dose). The only dose-related finding was slight epidermal hyperplasia at the dosing site in nearly all males and females dosed at 1,000 mg/kg/day. This was probably an adaptive response.

5. *Chronic toxicity.* A 1-year feeding study with dogs fed diets containing 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOAEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in male dogs at the 17.5-mg/kg/day dose level.

A 2-year chronic feeding/carcinogenicity study with mice fed diets containing 0, 40, 120, 360, and 1,080 ppm (equivalent to 0, 6, 18, 54, and 162 mg/kg/day) with a systemic NOAEL of 120 ppm (18 mg/kg/day) based on non-neoplastic liver lesions in male mice at the 360-ppm (54 mg/kg/day) dose level. There were no carcinogenic effects observed under the conditions of the study. The maximum tolerated dose (MTD) was not achieved in female mice. The need for a new study will be based on the adequacy of the rat study currently under review.

A 2-year chronic feeding/carcinogenic study with rats fed diets containing 0, 2, 6, and 18 mg/kg/day with a systemic NOAEL greater than or equal to 18 mg/kg/day HDT. There were no carcinogenic effects observed under the conditions of the study. This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and the MTD was not achieved.

A second chronic feeding/carcinogenic study with rats fed diets containing 0, 360, or 1,080 ppm (equivalent to 18.2/23.0, or 55.9/71.8 mg/kg/day (males/females). The dose levels were too low to elicit a toxic response in the test animals and failed to achieve the MTD or to define a LAEL. Slight decreases in body weight in rats at the 1,080-ppm dose level, although not biologically significant, support a free-standing NOAEL of 1,080 ppm (55.9/71.8 mg/kg/day (males/females)). There were no carcinogenic effects observed under the conditions of the study.

A third chronic feeding/carcinogenicity study in rats has been submitted. Male and female rats were dosed at nominal concentrations of 0, 300, 1,000, or 3,000 ppm. Clinical findings at the high-dose included changes in food consumption, food efficiency, body weight, and liver pathology. Upon initial review, it appears that the dose selection was adequate, and that there was no evidence of carcinogenicity.

6. *Animal metabolism.* In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

B. Toxicological Endpoints

1. *Acute toxicity.* In a rat developmental study rats received doses of 0, 50, 180, 650, and 1,000 mg/kg/day. The maternal toxicity NOAEL was 180 mg/kg/day and the LOAEL was 650 mg/kg/day based on irregular gait, decreased activity, excessive salivation, and ano-genital staining. For developmental toxicity the NOAEL was 180 mg/kg/day and the LOAEL was 650 mg/kg/day based on 21-22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of accral and /or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal, and pubes. The end point for use in the risk assessment is the maternal NOAEL of 180 mg/kg/day. The end point is set on maternal effects because the NOAEL for developmental effects is also 180 mg/kg/day.

2. *Short- and intermediate-term toxicity.* No short or intermediate dermal or inhalation endpoints were identified. In a 21-day dermal study with rabbits dosed at 0, 40, 200, or 1,000 mg/kg/day, there was no evidence of compound related toxicity on clinical signs, body weights, food consumption, food efficiency, eye health, clinical pathology, organ weights, or gross pathology. The NOAEL was greater than 1,000 mg/kg/day (limit dose). In the acute inhalation study with rats the LC_{50} was 6.03 mg/L (males) and 6.28 mg/L (females placing sethoxydim in category IV.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for sethoxydim at 0.9 mg/kg/day. This RfD is based on a finding of equivocal anemia in the 1-year dog study. The NOAEL was 8.86 mg/kg in males and 9.41 mg/kg in females.

4. *Carcinogenicity.* Sethoxydim is not classified. Available studies show no evidence of carcinogenicity in rats or mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.412) for the combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on a variety of raw agricultural commodities. Risk assessments conducted by EPA to assess dietary exposures from sethoxydim are as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed

for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary endpoint is 180 mg/kg/day based on NOAEL's of 180 mg/kg/day for maternal and developmental effects in the rabbit developmental study. The FQPA safety factor of 3x was applied to females 13+ only because the endpoint (based on decrease in fetal weights, filamentous tail and lack of tail due to absence of sacral and/or caudal vertebrae, delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal) occurs only during in urtero exposure and is not a postnatal effect. Since the effects occur during in urtero exposure, it is not an appropriate endpoint for acute dietary risk assessment of infants and children.

In conducting this acute dietary risk assessment, the Agency made very conservative assumptions--100% of all commodities having sethoxydim tolerances will contain sethoxydim regulable residues and those residues will be at the level of the tolerance which result in an over estimation of human dietary exposure.

From the acute dietary (food only) risk assessment, a high-end exposure estimate of 0.2 mg/kg/day was calculated. This exposure yielded dietary (food only) margins of exposure (MOEs) ranging from 420 for children (1-6 years old) to 622 for female 13+ and greater than 500 for all other subgroups.

ii. *Chronic exposure and risk.* The FQPA Safety Factor will not be applied for chronic dietary risk assessment because the endpoint is based on anemia in male dogs. The endpoint for which the FQPA safety factor is based is an in utero effect and cannot result from postnatal exposure. There was no indication of increased susceptibility in the prenatal developmental study in rabbits following in utero exposure. In the 2-generation reproduction study in rats, effects in offspring were observed only at above treatment levels which resulted in evidence of appreciable parental toxicity. No increased susceptibility was demonstrated in the developmental toxicity study with rats when the maternal and developmental NOAELs/LOAELs were compared. In conducting this chronic dietary risk assessment, the Agency has made very conservative assumptions no percent crop-treated data were used and all commodities having sethoxydim tolerances will contain sethoxydim residues and those residues will be at the level of the tolerance which will result in an overestimate of human dietary exposure.

The sethoxydim tolerances (published and pending) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Subgroup	TMRC	%RFD
U.S. Population	0.039187	44
Nursing Infants	00.018957	21
Non-Nursing Infants (<1 year old)	00.072949	81
Children (1-6 years old)	00.085308	95
Children (7-12 years old)	00.058101	65
Female (13+, nursing)	00.040144	45
Males (13-19 years old)	00.040429	45
U.S Population (Summer Season)	00.039408	44
Hispanics	00.039428	44
Non-Hispanic Others	00.040452	45
Non-Hispanic Whites	00.039238	44

The subgroups listed above are: (1) the U.S. population (48 states); and (2) those for infants, children, females, 13+ nursing; and other subgroups for which the percentage of RfD occupied is greater than occupied by the subgroup U.S. population.

2. *Carcinogenic risk.* Sethoxydim has not been classified. At the present time, studies do not show evidence of carcinogenicity in rats or mice.

3. *From drinking water.* Limited monitoring data of ground water and surface water are available for sethoxydim. The modeling data estimates maximum concentrations in ground water of 0.84 microgram (µg)/liter (L) and in surface water 59.4 µg/L and 56-day EECs of 37.3 µg/L. The modeling data were compared to the results of the following equations used to calculate acute and chronic drinking water level of concern (DWLOC) for sethoxydim in ground and surface water (Standard Operating Procedures for Drinking Water Exposure and Risk Assessments, November 20, 1997). Models used were SCI-GROW and GENEC to provide estimates of ground and surface water contamination respectively from sethoxydim, but did not consider the behavior of degradates. Agency default weights and water consumption used in the calculations were 70 kg(2L) for adult males, 60 kg(2L) for adult females, and 10 kg (1L) for child.

i. *Acute exposure and risk.* Based on acute dietary exposure and using default body weights and water consumption values stated above, acute DWLOC were calculated using the following equation.

DWLOC (acute) = (NOAEL divided by uncertainty factor) - (acute food + residential exposure (mg/kg/day) x (body weight) divided by consumption(L) x 10^{-3} mg/µg.

Acute dietary water levels of concern were calculated to be 525,000 µg/L for the U.S. population, 56,000 µg/L for adult males 13+, 12,000 µg/L for adult females 13+ (including 3x safety factor) and 14,000 µg/L for child (infant < 1 year old).

ii. *Chronic exposure and risk.* Based on acute dietary exposure and using default body weights and water consumption values stated above, acute DWLOC were calculated using the following equation.

DWLOC (chronic) = (NOEL divided by uncertainty factor) - (chronic food + residential exposure (mg/kg/day) x (body weight) divided by consumption(L) x 10^{-3} mg/µg.

Chronic DWLOCs were calculated to be 1,760 µg/L for the U.S. population, 1,780 µg/L for adult males 13+, 1,700 µg/L for adult females 13+ (including 3x safety factor) and 14,000 µg/L for child (infant < 1 year old).

4. *From non-dietary exposure.* Sethoxydim is currently registered for use on the following residential non-food sites: ornamentals and flowering plants, recreational areas, and buildings/structures (outdoor non-agricultural). These residential uses comprise a short- and intermediate-term exposure scenario, but do not comprise a chronic exposure scenario.

i. *Acute exposure and risk.* There is a potential for exposure to sethoxydim by homeowner mixers/applicators. However, since no endpoints for dermal or inhalation were selected, the use on residential non-food sites is not

expected to pose an unacceptable acute risk.

ii. *Chronic exposure and risk.* The registered uses for sethoxydim do not comprise a chronic exposure scenario. A chronic non-dietary endpoint was not selected; therefore, the use on residential non-food sites is not expected to pose an unacceptable chronic risk.

iii. *Short- and intermediate-term exposure and risk.* Short-term or intermediate term endpoints were not identified. However, the following scenarios may result if herbicides containing sethoxydim are applied to residential turf, and/or ornamental plants: incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer, ingestion of pesticide-treated turfgrass, and incidental ingestion of soil from treated lawns. A residential exposure estimate and risk assessment was conducted for postapplication exposure following the application of sethoxydim on turf and ornamental gardens. The acute dietary endpoint was used for this risk assessment because the acute dietary endpoint provides the worst case estimate of risk and exposure for these use patterns. The assessment was performed using Draft SOPs for Residential Exposure Assessments (December 18, 1998). The proposed postapplication aggregate exposure assessment takes into account chronic dietary exposure plus outdoor residential exposures. These exposure assessments assume that 20% of the application rate is available from the turf grass as dislodgeable residue and 2 hours as the duration of exposure. These assumptions are considered conservative and protective.

Exposures and MOEs were calculated to be 0.053 mg/kg/day (MOE of 3,400) for hand to mouth transfer for treated lawns (toddlers), 0.0012 mg/kg/day (MOE of 15,000) for ingestion of treated turf grass (toddler), and 0.000025 (MOE of 7,000,000) for incidental ingestion of soil (toddlers). MOEs exceeded 100 for all three scenarios. MOEs greater or equal to 100 do not exceed the Agency's level of concern.

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

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

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Using the published and pending tolerances, the dietary (food only) acute MOEs range from 420 for children (1-6 year) to 622 for females 13+ years. The level of concern for females 13+ years is 300 (includes 3x safety factor) for acute sethoxydim exposure and 100 for all other population subgroups. This risk estimate should be viewed as highly conservative; refinement using anticipated residue values and percent crop treated data in conjunction with Monte Carlo analysis will result in a lower acute dietary exposure estimate. The dietary exposure does not exceed the Agency's level of concern.

Sethoxydim is a nonpersistent, but highly mobile compound in soil and water environments. The modeling data for sethoxydim in drinking water indicate levels less than OPP's DWLOC for acute exposure. Since a refined acute risk for food only would not exceed EPA's levels of concern for acute dietary exposures and the monitoring and modeling levels in water are less than the acute DWLOC, EPA does not expect aggregate acute exposure to sethoxydim will pose an unacceptable risk to human health.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sethoxydim from food will utilize 44% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 95% for children 1 to 6 years; discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sethoxydim in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sethoxydim residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Endpoints for short or intermediate term were not selected. An aggregate exposure estimate and risk assessment was conducted for postapplication exposure to sethoxydim on turf and ornamental plants taking into account chronic exposure from food and the acute dietary NOAEL. The resulting MOEs (1,390–2,350) are not of concern to the Agency.

4. *Aggregate cancer risk for U.S. population.* Sethoxydim has not been classified. Available studies do not show evidence of carcinogenicity in rats or mice.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sethoxydim residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of sethoxydim, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and postnatal sensitivity.* There was no indication of increased susceptibility in the prenatal developmental toxicity study in rabbits following in utero exposure. In the 2-generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of appreciable parental toxicity. No increased susceptibility was demonstrated in the developmental toxicity studies; however developmental toxic effects, were observed at the HDT.

Acceptable developmental toxicity studies have been performed in rats and rabbits; an acceptable 2-generation reproduction study has also been performed in rats. A chronic feeding/carcinogenicity guideline study in rats has been submitted and is currently undergoing review. An initial examination of the study supports the current findings of no evidence of carcinogenicity. There is a complete toxicity data base for sethoxydim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

The FQPA Safety Factor is to be retained in case of developmental toxicity in the absence of maternal toxicity. Since malformations were seen in the rat study at levels that produced minimal maternal toxicity. The Agency concluded that an FQPA factor is needed. However, it was determined that the 10x factor need not be retained, instead should be reduced to 3x based on the following weight of evidence considerations: (1) developmental toxicity was seen in only one species, in the presence of maternal toxicity, and at a very high dose (650 mg/kg/day) that approached the Limit-Dose of 1,000 mg/kg/day; (2) no developmental toxicity was observed in the rabbit study at the HDT (400 mg/kg/day); (3) there was no increased susceptibility seen in the 2-generation reproduction study in rats at doses up to 150 mg/kg/day HDT; and (4) lack of concern for structure activity relationship (i.e., no significant developmental or reproductive toxicity was seen with the structural analog, clethodim.)

Exposure assessments do not indicate a concern for potential risk to infants and children based on: (1) the dietary exposure assessments use field study data and assume 100% crop treated which results in an overestimate of dietary exposure; (2) limited monitoring data are used for ground and surface source drinking water exposure assessments, resulting in estimates considered to be reasonable upper-bound concentrations; (3) there is a potential for postapplication hand-to-mouth exposure to toddlers associated with lawn use; however, the use of conservative models and/or assumptions in the residential exposure assessment provide adequate protection of infants and children.

The FQPA safety factor is applicable for acute dietary risk assessment for females 13+ because the endpoint occurs only during in urtero exposure and is not a postnatal effect. Since the effects occur during in urtero exposure, it is not an appropriate endpoint for acute dietary risk assessment of infants and children. The FQPA safety factor is not applied for chronic risk assessment because the endpoint is an in urtero effect and cannot result from postnatal exposure. The FQPA safety factor is not applicable to the postapplication hand-to-mouth exposure associated with the lawn use since this exposure scenario would only be expected for toddlers and not for females 13+.

iii. *Conclusion.* Acceptable developmental toxicity studies have been performed in rats and rabbits; an acceptable 2-generation reproduction study has also been performed in rats. A chronic feeding/carcinogenicity guideline study in rats has been submitted and is currently undergoing review. An initial examination of the study supports the current findings of no evidence of carcinogenicity. There is a complete toxicity data base for sethoxydim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Using the conservative exposure assumptions that 100% of the commodities having sethoxydim tolerances will contain sethoxydim regulable residues and that those residues will be at the level of the tolerance, EPA calculated acute dietary (food only) MOEs ranging from 420 for children (1-6 years old) to 622 for females 13+ years. The level of concern is 300 (3x safety factor x 100) for females 13+ years and 100 for all other subgroups.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sethoxydim from food will utilize less than 100% of the RfD for nursing infants, non-nursing infants (<1 years old), children (1-6 years old), and children (7-12 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sethoxydim in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* An aggregate exposure estimate and risk assessment was conducted for postapplication exposure to sethoxydim on turf and ornamental plants taking into account chronic exposure from food and the acute dietary NOAEL. The resulting MOEs (1,390–2,350) are not of concern to EPA.

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

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of sethoxydim in plants and animals is understood, the tolerances for plant and animal commodities are expressed as the combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide).

B. Analytical Enforcement Methodology

BASF Method 30 as published in PAM Vol. II is adequate for tolerance enforcement in all raw agricultural commodities. Quantitation is accomplished by gas chromatography with flame photometric detection in the sulfur mode. Sethoxydim and its metabolites are not recovered or not likely to be recovered by FDA multiresidue methods.

C. Magnitude of Residues

The available crop field data support the established tolerances for asparagus at 4.0 ppm, carrot at 1.0 ppm, cranberry at 2.0 ppm, and peppermint and spearmint tops at 30 ppm. Residue data submitted in support of existing tolerances for carrot at 1.0 ppm, potato at 4.0 ppm, sugar beet at 1.0 ppm, and sweet potato at 4.0 ppm support the establishment of a tolerance for horseradish at 4.0 ppm.

D. International Residue Limits

Maximum Residue Levels (MRLs) have not been established for residues of sethoxydim on asparagus, carrot, cranberry, horseradish, peppermint, or spearmint tops.

IV. Conclusion

Therefore, the tolerances are established for combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on asparagus at 4.0 ppm, carrot at 1.0 ppm, cranberry at 2.0 ppm, horseradish at 4.0 ppm, and peppermint and spearmint tops at 30 ppm. at ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by August 16, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300859] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a

generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), 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 OMB 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 any 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."

Today's rule does not create an unfunded Federal 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.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

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

VIII. 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: May 20, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

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

2. In § 180.412(a), by removing the expiration date for the entries asparagus, carrot, cranberry, peppermint, tops and spearmint tops and inserting ≥None≥ in each place and adding a new entry for horseradish at 4.0 ppm to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Horseradish	4.0	None
* *	* *	*

* * * * *

[FR Doc. 99–14865 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–35

[FPMR Amendment F–1]

RIN 3090–AG79

User Fees; Network Registration Services

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule establishes fees for network registration services offered by the General Services Administration (GSA) to Government agencies and commercial organizations. These services include establishing and maintaining unique global names and network addresses for X.400 Private Management Domains (PMRD), X.500 Organizational Units (OU), Administrative Authority Identifiers (AAI), and Internet Domain names. This rule will allow State and local governments to be registered within the DOT–GOV.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jack L. Finley, Director, Electronic Messaging, Directories and Registrations Branch (TOI), 202–501–3932, *jack.finley@fed.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The following outlines GSA's responsibilities with regard to assigning and managing network registrations.

X.400 PRMD

X.400 is a series of international standards that define components and protocols for electronic Messaging Handling Systems (MHS). Within X.400, top-level Management Domains (MD) are assigned and delegated to

Administrative Management Domains (ADMD) and subordinately to Private Management Domains (PRMD). GSA assigns the PRMDs for the U.S. Government using a prefix of "GOV+" followed by an assigned name. For example, a PRMD for the Department of Transportation (DOT) might be P=GOV+DOT. This GSA service allows the Government to use unique PRMD names, regardless of the ADMD service provider.

X.500/LDAP

The International Telecommunication Union Telecommunication Standardization Sector (ITU–T) issued the X.500 Series of Recommendations, which define the components and protocols for distributed directory services. Many of the components and conventions defined by X.500 were subsequently adopted by the Internet community in the Lightweight Directory Access Protocol (LDAP) series of specifications. GSA registers and interconnects organizations operating X.500 or LDAP directory servers.

GSA has been delegated authority by the National Institute for Standards and Technology (NIST) for the name space "U.S. Government" as an organization (O) domain subordinate to the country (C) level "US" for the purposes of Governmentwide directories. Based on X.500 and LDAP specifications, GSA has developed a schema for a Governmentwide Directory Information Tree (DIT). Through GSA, agencies can establish a directory container as an Organizational Unit (OU) under C=US, O=U.S. Government in the Governmentwide DIT.

In conjunction with its X.500/LDAP registration service, GSA also provides operational directory support services. GSA operates a root-level directory server, which permits Government organizations to interconnect and communicate. Working in cooperation with ANSI, GSA also operates the C=US root directory, which interconnects non-government organizations, and connects the United States to other international directories.

Object Identifier (OID)

The Open Systems Interconnection (OSI) Reference Model uses naming hierarchies to provide global unambiguous identities for objects in a networked environment. The International Organization for Standardization (ISO) defines naming hierarchies or "trees." One naming tree is ISO 3166, Codes for the Representation of Names of Countries, which assigns the United States the two-letter code "US" and the numeric code "840". Subsequently, the American National Standards Institute (ANSI) has assigned the Federal Government the alpha code "GOV" and the numeric code "101".

Object Identifiers (OID) are used to identify technical objects, *e.g.*, attributes, and object classes that are not currently described in OSI standards. OIDs are assigned as "arcs." In the context of this document, an arc is a point where branches of the hierarchical tree are connected together and to the superior reference. GSA is responsible for registration of OIDs under the arc "joint-iso-ccitt(2) country(16) us(840) organization(1) us-government(101)" or "2.16.840.1.101" for short. GSA has established an OID numbering scheme beneath the US Government arc. (Note that there are other US branches of the OID tree; however, new registrations are only established under the 2.16.840.1.101 arc.)

Network Service Access Point (NSAP) Administrative Authority Identifier (AAI)

A second ISO naming hierarchy is ISO 6523, Structure for the Identification of Organizations. Under ISO authority, the British Standards Institute issued the International Code Designator (ICD) "0005" to NIST. NIST, in turn, has delegated responsibility for managing and administering the 0005 ICD to GSA.

The US Government OSI Profile (GOSIP) V2 established a method of assigning Network Service Access Point (NSAP) addresses using the ICD "47 0005" under the authority of NIST. An octet "80" following the initial ICD (*i.e.*, "47 0005 80") indicates that the next three octets are in "GOSIP V2" format. These three terminating octets are called Administrative Authority Identifiers (AAIs), which are delegated to an organization to further define its network addresses based on specific organizational requirements. GSA assigns AAIs for Government organizations. A registration for a GOSIP NSAP AAI would be: "47 0005 80 NNNNNN" (where N is assigned by GSA).

INTERNET .GOV and FED.US Domain Names

The National Science Foundation (NSF) has delegated to GSA the authority to manage and administer the .GOV Internet domain. GSA provides second-level domain registrations in the "GOV" domain (*e.g.*, <Agency>.gov). Similarly, GSA provides third-level domain registrations in the "fed.us" domain under authority of the Internet Assigned Numbers Authority (IANA) (*e.g.*, <organization>.fed.gov). Internet registrations are limited to Federal, State, and local Government organizations. GSA is not responsible for and will not charge fees for any further delegation of a domain name assigned to an agency. For example, Treasury has registered "ustreas.gov," but registrations such as "irs.ustreas.gov" would be the responsibility of the domain manager for Treasury.

A proposed rule was published in the **Federal Register** at 63 FR 66102, December 1, 1998. No comments were received in response to the proposed rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

The final rule is not expected 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.*

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the regulation does not impose record keeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 because it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–35

Archives and records, Computer technology, Government procurement, Government property management, Information technology, Intergovernmental relations, Telecommunications.

For the reasons set forth in the preamble, 41 CFR part 101–35 is amended to read as follows:

PART 101–35—TELECOMMUNICATIONS MANAGEMENT POLICY

1. The authority citation for part 101–35 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 1424(b). Subpart 101–35.7 also issued under authority of 31 U.S.C. 9701.

2. Subpart 101–35.7 is added to read as follows:

Subpart 101–35.7—Network Address Registration

Sec.

Subpart 101–35.7—Network Address Registration

§ 101–35.705 What does this subpart contain?

This subpart addresses registration services provided by GSA to Government agencies and the public.

§ 101–35.710 What registration services are available through GSA?

(a) The National Institute of Standards and Technology (NIST), Department of Commerce, has designated GSA as the Government Open Systems Interconnection Profile (GOSIP) Address Registration Authority for unique naming assignments of X.400 Private Management Domains (PRMD), X.500 Organizational Units (OU), and Network Service Access Point (NSAP) Administrative Authority Identifiers (AAI). GOSIP registration is limited to Government agencies, with the exception of NSAP AAIs, which may be used by commercial organizations to identify private asynchronous transfer mode (ATM) networks.

(b) For purposes of global interoperability, GSA will operate an X.500/LDAP Directory Service at the "C=US" level and at the "O=U.S. Government" level. Federal agencies may link operational directories to the "O=U.S. Government" level and commercial organizations may link to the "C=US" level in accordance with the fees set forth in § 101–35.704.

(c) The National Science Foundation (NSF) has delegated to GSA the authority to manage and administer the .GOV Internet domain. GSA provides second-level domain registrations in the GOV domain (*e.g.*, <Agency>.gov). Similarly, GSA provides third-level domain registrations in the "fed.us" domain under authority of the Internet Assigned Numbers Authority (IANA). Internet registration services are limited to Federal, State, and local Government organizations. GSA is not responsible for and will not charge fees for any further delegation of a domain name assigned to an agency. For example, the U.S. Department of the Treasury has registered "ustreas.gov," but registrations such as "irs.ustreas.gov" would be the responsibility of the domain manager for Treasury.

§ 101–35.715 Who should I contact for more information or to register?

Individuals or organizations that want to register or would like more information should contact the registration officials at GSA by sending an e-mail message to *registration@fed.gov* or by using the Web site at *http://www.nic.gov.*

§ 101–35.720 Is there a fee for these services?

GSA will assess Government agencies and commercial organizations nominal fees to cover the cost of registration and other services as listed in the table in this section. The fees are based on anticipated costs for providing the services and are consistent with industry charges. The table follows:

Service	Setup	Recurring (annual)
(a) Network Naming and Address Registration (GOSIP)	$1,000.00	$500.00
(b) Governmentwide Directory Operation (X.500/LDAP)	1,000.00	500.00
(c) Internet Domain Name Registration	250.00	50.00

Note to § 101–35.720: Setup fees may be waived at the discretion of GSA. When levied, setup fees include the annual fee for 1 year.

§ 101–35.725 How and where do I pay these fees?

GSA will invoice registrants according to the fee schedule in § 101–35.720. Government registrations must be paid by Government credit card. Commercial organizations are encouraged to pay by credit card. All other payments should be made to: GSA Registration Services, 1800 F Street NW, Suite G–222, Washington, DC 20405.

Dated: May 11, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–15023 Filed 6–15–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 416

[HCFA–3831–F]

RIN 0938–AH15

Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

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

ACTION: Final rule.

SUMMARY: This final rule establishes a process under which interested parties may request a review of whether the current Medicare payment amount for intraocular lenses furnished by participating ambulatory surgical centers is appropriate for a class of new technology intraocular lenses. This rule implements section 141(b) of the Social Security Act Amendments of 1994, which requires us to develop and implement this process.

This rule also serves as the initial notice to those wishing to submit requests for review of the appropriateness of the payment amount with respect to a particular intraocular lens, in accordance with § 416.195 of this rule.

DATES: *Effective date:* These regulations are effective on July 16, 1999.

Applicability date: We will accept requests for review under this part 416, subpart F, until September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Claude Mone, (410) 786–5666.

SUPPLEMENTARY INFORMATION: *Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the

order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

I. Background

A. Payment for Ambulatory Surgical Center Facility Services

Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) provides that the scope of benefits under the Medicare supplementary medical insurance (Part B) program includes certain services furnished in connection with surgical procedures that are performed in an ambulatory surgical center (ASC). To participate in the Medicare program as an ASC, a facility must meet the standards specified under section 1832(a)(2)(F)(i) of the Act and in our regulations at 42 CFR part 416. In addition, our regulations at 42 CFR part 416 contain the coverage and payment rules for services furnished by participating ASCs.

Section 1833(i)(2)(A) of the Act authorizes us to pay ASCs a prospectively-determined rate for facility services. "Facility services" includes services that are furnished in conjunction with covered surgical procedures performed in an ASC. Section 416.61 of our regulations sets forth included and excluded facility services. ASC payment rates represent our estimate of a fair fee that takes into account the costs incurred by ASCs generally in furnishing facility services in connection with performing a surgical procedure. ASC payment rates do not include physicians' fees and other medical items and services, such as laboratory services or prosthetic devices, for which separate payment may be authorized under other provisions of the Medicare program. However, an intraocular lens (IOL) is included as an ASC facility service under section 1833(i)(2)(A)(iii) of the Act.

Payment for ASC facility services is subject to the usual Medicare Part B deductible and coinsurance requirements. Therefore, participating ASCs are paid 80 percent of the prospectively-determined rate adjusted for regional wage variations. The beneficiary pays a coinsurance amount equal to 20 percent of the wage-adjusted ASC facility fee.

Currently, the Medicare program pays an ASC facility fee for approximately 2,300 surgical procedures performed in an ASC. These surgical procedures are identified by codes established by the American Medical Association's Current Procedural Terminology (CPT). We assign to each procedure one of eight standard payment rates. Collectively, the procedures assigned a particular payment rate constitute an ASC payment group. The current payment group rates follow:

Group 1—$312	Group 5—$674
Group 2—$419	Group 6—$785
Group 3—$479	Group 7—$935
Group 4—$591	Group 8—$923

This is further discussed in our September 4, 1997 proposed rule, "Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses" (62 FR 46699).

B. Payment for Intraocular Lenses Furnished in an Ambulatory Surgical Center

In the proposed rule, we explained that at the inception of the ASC benefit on September 7, 1982, Medicare paid 80 percent of the reasonable charge for IOLs supplied for insertion concurrent with or following cataract surgery performed in an ASC. Subsequently, the statute was amended to mandate that we include payment for an IOL furnished by an ASC for insertion during or following cataract surgery as part of the ASC facility fee rather than paying for the IOL separately. Payment included in the facility fee for an IOL must be reasonable and related to the cost of acquiring the class of IOL involved.

Thus, for services furnished beginning March 12, 1990, which was the effective date of the final notice published in the **Federal Register** on February 8, 1990, entitled "Revision of Ambulatory Surgery Center Payment Rate Methodology" (55 FR 4526), Medicare included payment for an IOL in payment group 6 and payment group 8, the two payment groups that include IOL insertion procedures. The Physicians' Current Procedural Terminology (CPT) codes for groups 6 and 8 and their descriptors follow:

Payment group 6:	
CPT code 66985	Insertion of intraocular lens prosthesis (secondary implant), not associated with concurrent cataract removal.
CPT code 66986	Exchange of intraocular lens. (This CPT code was first listed in CPT 1992; we added it to the ASC list effective January 30, 1992.)
Payment group 8:	
CPT code 66983	Intracapsular cataract extraction with insertion of intraocular lens prosthesis (one stage procedure).
CPT code 66984	Extracapsular cataract removal with insertion of intraocular lens prosthesis (one stage procedure), manual or mechanical technique (for example, irrigation and aspiration or phacoemulsification).

Section 4151(c)(3) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990) (Public Law 101–508), enacted on November 5, 1990, froze the IOL payment amount at $200 for IOLs furnished by ASCs in conjunction with surgery performed during the period beginning November 5, 1990 and ending December 31, 1992. We continued paying an IOL allowance of $200 from January 1, 1993 through December 31, 1993.

Section 13533 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (Public Law 103–66), enacted on August 10, 1993, mandated that payment for an IOL furnished by an ASC be equal to $150 beginning January 1, 1994 through December 31, 1998.

In a proposed rule in the June 12, 1998 **Federal Register** (63 FR 32290) entitled "Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998," we proposed new payment rates and an ambulatory payment classification (APC) system based on facility costs and procedure charges collected in a 1994 survey of ASCs. In that proposed rule, we stated that the 1994 survey data revealed that the current IOL allowance of $150 is higher than the cost of acquiring the lens. The survey data indicated that the weighted mean lens cost was $100, and the weighted median cost was $97. We

stated that before December 31, 1998, we would propose a revised payment rate for lens insertion procedures to include an IOL allowance that is reasonable and related to the cost of the lens. However, we subsequently issued notices in the **Federal Register** on October 1, 1998 (63 FR 52663) and November 13, 1998 (63 FR 63430) that extended the comment period on the proposed rule and announced that a final rule would be issued as soon as possible after January 1, 2000.

II. Provisions of the Proposed Regulations

A. Requirement for Review of Payment for New Technology Intraocular Lenses

On October 31, 1994, the Social Security Act Amendments of 1994 (SSAA 1994) (Public Law 103–432) were enacted. Section 141(b) of SSAA 1994 requires us, not later than 1 year after the date of enactment (that is, by October 31, 1995), to develop and implement a process under which interested parties may request, with respect to a class of new technology IOLs, a review of the appropriateness of the payment amount provided for IOLs furnished by ASCs under section 1833(i)(2)(A)(iii) of the Act. Since January 1, 1994, the payment amount for IOLs furnished by ASCs under section 1833(i)(2)(A)(iii) of the Act has been $150.

Section 141(b)(1) of SSAA 1994 stipulates that an IOL may not be treated as a new technology IOL unless it has been approved by the Food and Drug Administration (FDA). Section 141(b)(2) of SSAA 1994 requires that, in determining whether to provide a payment adjustment, we take into account whether use of the IOL is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or any other comparable clinical advantages.

Section 141(b)(3) of SSAA 1994 requires that we publish at least annually a list of the requests received for review of the appropriateness of the IOL payment amount with respect to a new technology IOL. We must provide a 30-day comment period on the IOLs that are the subject of the requests for review. Within 90 days of the close of the comment period, we must publish a notice of the determinations made with respect to the appropriateness of the IOL payment amount for the IOLs for which a review was requested. Any adjustment of the IOL payment amount (or payment limit) for a particular IOL or class of IOLs that we determine is warranted would be effective not later than 30 days following publication of the final notice of our determination.

Implementation of section 141(b) of SSAA 1994 requires three principal policy decisions:

- Identification of a class or classes of new technology IOLs.
- Determination of whether the current IOL payment amount is appropriate for an IOL identified as belonging to a class of new technology IOLs.
- Identification of the payment adjustment to be applied if the current payment amount is found to be inappropriate.

B. Identification of a Class of New Technology Intraocular Lenses

1. Distinguishing Among Classes of Intraocular Lenses

In order to prepare the final notice entitled "Revision of Ambulatory Surgery Center Payment Rate Methodology" (55 FR 4526) that was published in the **Federal Register** on February 8, 1990, we sought supporting documentation that would justify pricing IOLs according to IOL type or "class," and that would establish the basis for distinguishing among different types of IOLs, such as placement of the IOL within the eye, either as anterior chamber or posterior chamber IOLs; or the style of the IOL, either single-piece or multi-piece; or characterization of the IOL as "advanced technology."

On February 22, 1989, the FDA advised us in a letter that its premarket approval review process determined whether IOLs were "safe and effective" not by comparing IOLs with one another, but by comparing them with a set of historical IOL data known collectively as the "grid." The FDA noted that no additional labeling or advertising claims of the superiority of one IOL (or type of IOL) over another had been approved at that time; that is, medical benefits of one IOL or type of IOL over another had not been proven in the studies that were submitted to the FDA. There were no across-the-board differences in the indications and contraindications or in the warnings sections of the package insert that would imply across-the-board medical benefits for one IOL or type of IOL over another.

The studies that were submitted to HCFA at that time failed to yield conclusive evidence of specific clinical conditions or indications that required or influenced the use of one IOL over another, nor did HCFA find justification for a differentiated price structure based on IOL type. We therefore determined that a $200 payment amount was both reasonable and related to the costs incurred by ASCs to acquire IOLs available at that time.

2. Criterion To Define a Class of New Technology Intraocular Lenses

There still is no universally accepted definition of what constitutes a "class of new technology intraocular lenses." Section 141(b) of SSAA 1994 does not define new technology IOLs other than to specify that an IOL may not be treated as a new technology IOL unless it has been approved by the FDA. We must therefore first define the characteristics that distinguish a "new technology" IOL from other IOLs in order to comply with section 141(b) of SSAA 1994.

Section 141(b) of SSAA 1994 requires that we take clinical outcomes such as "reduced risk of intraoperative or postoperative complication or trauma" and "reduced induced astigmatism" into account in determining whether to provide a payment adjustment with respect to a particular IOL. Because they are identified with such specificity, we infer that the clinical outcomes listed in the law are intended to characterize IOLs that belong to a "class of new technology intraocular lenses," the use of which not only produces the specified clinical outcomes, but does so to a greater degree than other IOLs. We submit that the latter consideration is crucial because of the abundant evidence that demonstrates that IOLs have attained a level of technical sophistication, clinical success, and patient satisfaction that exceeds that of the more than 1 million IOLs implanted during clinical trials conducted between 1978 and 1982. (An analysis of the 1978 through 1982 clinical trial data forms the FDA's "grid," the historical control group against which newer IOLs are measured.) To illustrate, 93 percent and 96.8 percent of patients in trials of two IOLs that were approved in 1994 achieved visual acuity of 20/40 or better, compared to 88 percent of patients in the historical control group. The "best cases," those without any preoperative ocular pathology or macular degeneration at any time, achieved visual acuity of 20/40 or better in 97 percent and 99.5 percent of the patients in the two newer trials, compared to 94 percent of the control group grid patients. The high level of improved vision and the low rate of adverse effects already attainable using currently available IOLs seem to leave little room for substantive improvements in the areas listed as desirable outcomes in SSAA 1994. At issue, then, is how to

recognize IOLs that exceed the already superior levels of performance of IOLs readily accessible in the current market to such an extent that they warrant being recognized as belonging to a separate and distinct class of IOLs. We proposed that the criterion for identifying an IOL to be treated as a new technology IOL be that all claims of the IOL's clinical advantages and superiority over existing IOLs must have been approved by the FDA for labeling and advertising purposes. An explanation of the reasons for relying on the FDA's determination is explained in the proposed rule (62 FR 46700 through 46701). We received favorable public comments on the proposal and adopted them in this final rule.

3. Five-Year Limit on Subsets of "New Technology"

We proposed to impose certain constraints on payment adjustments that result from the process that is the subject of this rule. For instance, we did not believe that all IOLs that could satisfy the overall criteria of "new technology" in the proposed rule would necessarily be of the same type or category. Rather, based on our assessment of the kinds of IOLs that are currently in clinical trials, we believe "new technology" IOLs could logically be grouped into smaller subsets of "new technology," each of which is defined or identified by a common salient feature or characteristic, such as fabrication from the same material, or being multifocal in design, or designed to correct astigmatism.

For payment purposes, after we accept an IOL as satisfying the criterion for belonging to a "class of new technology lenses," we proposed to assign that IOL to a subset of IOLs with which it shares a common feature that distinguishes it from other "new technology" IOLs. We further proposed to set the lifespan of each subset of "new technology" IOLs at 5 years. That is, beginning the sixth year following our initial recognition of a "new technology" subset, the new technology attribute that the IOLs in the subset have in common would cease to be considered a characteristic of "new technology," and the Medicare payment adjustment for IOLs in that subset would be discontinued. We would not have considered for payment adjustment any other IOLs whose primary distinguishing feature was that attribute. For IOLs approved at the beginning of the fifth year of the subset term, Medicare would have paid any "new technology" adjustment for 1 year only.

We proposed a 5-year limit because defining a "new technology" characteristic as "new" for fewer than 5 years did not seem fair to manufacturers whose model(s) of the new technology IOL may receive FDA approval sometime after the original IOL that opened the subset within the class of "new technology" IOLs receives its premarket approval. But to define a "new technology" characteristic as "new" for more than 5 years seemed to impose an unnecessary and unwarranted drain on the Medicare trust fund, given the natural course of market forces that have repeatedly succeeded in reducing IOL costs in a few years following introduction of a modification or innovation in design or material.

C. Appropriateness of Payment Amount

SSAA 1994 requires us to review the appropriateness of the current IOL payment amount with respect to a class of new technology IOLs. Because SSAA 1994 itself does not provide explicit guidance on the standard for judging the appropriateness of the current IOL payment amount, we looked to section 1833(i)(2)(A)(iii) of the Act, which requires that the IOL payment amount included in the ASC facility fee be reasonable and related to the cost of acquiring the class of IOL involved. Therefore, after we determine that an IOL meets the criterion that qualifies it to be treated as a new technology IOL under the process in this rule, we reasoned that we must next determine if the current IOL payment amount is reasonable and related to the cost of acquiring that IOL. We have reconsidered this issue in light of the public comments, which are addressed later in this final rule.

We also proposed that in order to determine IOL acquisition costs, we would be required to survey purchasers and audit invoices. The OIG conducted such a survey in preparing its 1994 report entitled *Acquisition Costs of Prosthetic Intraocular Lenses,* OEI–05–92–01030. (Copies can be obtained from the Office of Inspector General, Department of Health and Human Services, (312) 353–4124.) The OIG found that when IOL payments were fixed at $200, ASCs could acquire and were acquiring IOLs for an average of $126 in 1991 and $112 in 1992. This does not take into account discounts available to the majority of purchasers because the financial arrangements took many forms, only a few of which were straightforward rebates or price reductions. The OIG also discovered that the newest type of IOL available at the time of its review (a foldable, ultraviolet-absorbing, silicone IOL) was obtainable within relatively the same price range as other IOLs in the study (from $75 to $475 for the foldable IOLs, compared to a range of $30 to $450 for rigid IOLs). The OIG determined that ASCs were buying foldable IOLs for $125 or less, at a time when the Medicare IOL payment amount was $200.

We received several public comments concerning this proposal. We have reconsidered the process for adjusting payments for new technology IOLs in light of these comments, and we are no longer requiring the submission of data concerning the costs of acquiring the new technology IOL in order to determine the appropriateness of the IOL payment amount. Rather, as we discuss in the *Analysis and Responses to Public Comments* section of this rule, once an IOL is determined to be a new technology IOL, we will pay a flat premium in the amount of $50, over and above the payment allowance already included in the ASC facility fee for a standard IOL.

D. Payment Adjustment When Current Payment Amount Is Inappropriate

The final step in the process that was the subject of the proposed rule involved determining the amount of a payment adjustment if we find that the current IOL payment amount is inappropriate. Among the factors that we proposed in order to determine the amount of the adjustment to be made if the current IOL allowance was found to be inappropriate with respect to the acquisition cost of the particular IOL were the following:

- Market projections based on anticipated clinical indications of need for the IOL and the percent of the Medicare population expected to present that need on an annual basis.
- Additional incremental costs incurred to manufacture a new technology IOL relative to the cost of manufacturing other IOLs, such as the cost attributable to using a more sophisticated piece of machinery or the cost of fabricating a new IOL material.
- Additional costs incurred to conduct clinical trials that document for FDA approval the clinical superiority of the IOL relative to the costs incurred to conduct clinical trials for other IOLs.
- Research and development costs incurred that exceed those associated with other IOLs approved by the FDA.
- Current and historical pricing, sales volume, and revenues.
- A reasonable rate of return and profit based on the manufacturer's investment in the IOL.

We considered other options for determining the amount of an adjustment to be made if the current payment amount was found to be inappropriate for an IOL being reviewed under the provisions in this rule including—

- Application of a single flat, across-the-board percentage increase to the IOL payment amount for every IOL that we determined satisfied the criteria defining a "new technology" IOL.
- The percent of the IOL industry's investment in research and development that ultimately leads to innovations in IOLs.
- The percentage of sales attributable to an IOL for which a review was requested.

We rejected these options at that time, primarily because we believed they were inconsistent with the overall statutory mandate that payment be reasonable and related to the cost of acquiring an IOL. We received public comments concerning this position, and one commenter expressly disagreed with our interpretation of the statute. We have reconsidered our position in light of this comment. Further discussion can be found in the *Analysis of and Responses to Public Comments* section.

E. Implementation of the Payment Adjustment

1. Two-Year Limit on Payment Adjustment

A related issue pertains to the appropriate length of time the adjusted payment amount would be allowed by Medicare for a particular "new technology" IOL. We proposed to allow a single IOL the benefit of any payment adjustment determined to be appropriate for a period of 2 years following the review process in this rule. At the conclusion of the 2-year payment adjustment period, Medicare payment for the IOL would then revert to the standard payment rate for IOLs furnished by an ASC that is in effect at that time.

Supporting a 2-year payment limit is the OIG's 1994 report (*Acquisition Costs of Prosthetic Intraocular Lenses,* OEI–05–92–01030), which found a decrease in IOL prices generally over a 2-year period ranging from 11 to 14 percent in various settings. We assume this decrease is attributable to technology diffusion and the associated development of similar lenses by competing firms. We believe a desirable new technology IOL with demonstrated clinical superiority would be subject to equivalent conditions, and thus experience a similar drop in acquisition cost over a 2-year period. However, after considering the public comments on this issue, we have developed an alternative to this 2-year payment adjustment. See the *Analysis of and Responses to Public Comments* section for further discussion.

2. Operational Payment Principles

The payment adjustments we publish in the **Federal Register** would be implemented prospectively, effective 30 days from the date of their publication. This implementation date of a payment adjustment is required under section 141(b) of SSAA 1994.

We proposed to apply the same payment adjustment amount established for the first IOL or IOLs approved within a new technology subset to all IOLs that we subsequently accept as satisfying the criteria for "new technology" that are assigned to the same subset. If a new technology IOL were to qualify under more than one subset of technology, and the subsets had different payment rates, the IOL would be paid for at the higher (or highest) applicable rate.

We expect that more than one manufacturer would be working to develop IOLs that rely on the same or similar technology that defines "new technology" under the provisions of this rule. If we were to make a payment adjustment under the provisions in this rule, the payment adjustment amount would have been based on information regarding IOL production, acquisition costs, and IOL benefits that is submitted by the manufacturer or manufacturers that first request review for a particular type of new technology IOLs. Manufacturers would have had 3 years during which to submit requests for review of equivalent IOLs approved by the FDA that were in a "new technology" subset already approved by us and still benefit from the full 2-year payment adjustment term. Requests for review of an IOL submitted during the third year of a technology's designation as "new" would only have had the benefit of a payment adjustment for 1 year. Again, we have modified this proposal. Further discussion can be found in the *Analysis of and Responses to Public Comments* section.

If an interested party wants an IOL to be considered for a payment adjustment under section 141(b) of SSAA 1994, that interested party must request a review in accordance with the process in this final rule.

We will assign codes to be used to bill for IOLs that qualify for the payment adjustment. The list of these IOLs, with the appropriate billing code, will be published periodically in the **Federal Register**. Billing for any other IOLs using "new technology" billing codes may constitute fraud.

F. Review and Adjustment Process

In this section of the proposed rule, we described the process that we intended to implement in order to determine the appropriateness of IOL pricing as required under section 141(b) of SSAA 1994. The process, which was designed to be repeated annually on a 365-day cycle, would have involved publishing a series of **Federal Register** notices with built-in comment periods and allowance of time to review the appropriateness of payment amounts for new technology IOLs. However, since we are revising this review process, we believe we can shorten the timeframe to accomplish this to 180 days. For a further discussion of this issue see the *Analysis of and Responses to Public Comments* section.

G. Requirements for Content of a Request To Review

In the proposed rule, interested parties requesting a review of the IOL payment amount with respect to a particular IOL would have been required to submit the following: identification of the individual IOL under consideration as a "new technology" IOL for which a payment review is requested, including the name of the manufacturer, model number, trade name, and the date the FDA granted premarket approval for the IOL; a copy of the FDA's summary of safety and effectiveness; a copy of the labeling claims of specific clinical advantages approved by the FDA; reports of modifications made after FDA approval; development and manufacturing costs of the "new technology" IOL relative to the costs of manufacturing other approved IOLs; the costs of conducting clinical trials for the IOL in question relative to the costs of conducting clinical trials for other approved IOLs; indications and contraindications for use; epidemiological data indicating demand for the IOL; sales price, sales history, and revenues, and prices and projected revenues during the period of the payment adjustment; names of purchasers; and other information we consider appropriate for making a determination. Because of the revisions made to this process in the final rule, interested parties will not be required to submit information that is related to costs or sales as stated above. For a further discussion of this issue, see the *Analysis of and Responses to Public Comments* section.

Interested parties should be aware that 45 CFR 5.65(c) provides that a

submitter of information may designate all or part of the information as being exempt from mandatory disclosure under Exemption 4 of the Freedom of Information Act.

III. Analysis of and Responses to Public Comments

We received 16 timely items of correspondence. The comments were from ophthalmologists, professional organizations, IOL manufacturers, and ASCs. A summary of the major issues and our responses follow:

Comment: Several commenters suggested that, in addition to using FDA product labeling to identify what qualifies as a new technology lens, we should also consider data from well-designed and controlled health outcomes and economic studies through consultation with medical and industry experts.

Response: As we stated in the proposed rule, we considered convening an expert panel to evaluate claims of the clinical superiority of an IOL. Because the expertise and review process already exist within another Health and Human Services agency, namely the FDA, it would be duplicative for us to convene such a panel of experts. We, therefore, are not accepting this suggestion, and will rely on the FDA approval process for labeling and advertising purposes to determine that an IOL will be treated as a new technology lens.

Comment: Several commenters disagreed with the 2-year payment limit on single model new technology IOLs and the 5-year limit on the adjustment for subsets of new technology IOLs. The commenters thought that the payment adjustment should be extended to 7 years.

Response: After carefully considering the arguments made by these commenters, we believe we can resolve this issue with a compromise. We will extend the payment limit for single model new technology IOLs to 5 years beginning with the date that we recognize this particular IOL as a new technology IOL. Any subsequent IOL with the same characteristics will receive the payment adjustment for the remainder of the 5-year period established by the initial new technology IOL. For example, if new technology IOL "A" is recognized to receive a payment adjustment effective July 1, 1999, the payment adjustment would expire on June 30, 2004. The payment adjustment would then terminate, and revert back to the standard IOL payment rate in effect at that time. If new technology IOL "B" is recognized to receive a payment adjustment effective July 1, 2000, and has the same characteristics as "A," the payment adjustment for "B" would expire on June 30, 2004, and then revert back to the IOL payment rate in effect at that time.

We realize that we cited the 1994 OIG report (Acquisition Costs of Prosthetic Intraocular Lenses, OEI–05–92–01030), which found a decrease in IOL prices generally over a 2-year period ranging from 11 to 14 percent in various settings. However, we believe that the initial developer of a particular new technology lens should have some advantage over subsequent developers of a similar lens, and consequently we are extending the payment adjustment limit to 5 years for those initial developers. We do not believe, however, that extending the limit to 7 years is justified, given the data presented in the above-mentioned OIG report.

Comment: One commenter disagreed with our view that the overall statutory mandate would have precluded the adoption of a single flat rate across-the-board percentage increase. That commenter indicated that "the new technology IOL enabling legislation provides no specific guidance on the standard for judging the appropriateness of the current IOL payment vis-a-vis the rate adjustment for the new technology IOL. Given the fact that the purpose of the new technology IOL provision is to facilitate beneficiary access to new IOL technology, we do not believe the Congress would have intended HCFA to rely on historical pricing data. With a new lens, there will be no history. Awaiting the submission of acquisition data would delay the ability of providers to purchase the products under current facility reimbursement constraints."

Response: In developing the process for adjusting payment rates for new technology IOLs that we proposed in the September 4, 1997 **Federal Register**, we rejected applying a single flat, across-the-board percentage increase to the IOL payment amount for every IOL that we had determined satisfied the definition of new technology IOLs (62 FR 46702). Initially, we rejected that approach, believing that it might be viewed as inconsistent with a statutory requirement in section 1833(i)(2)(c) of the Act that the ASC allowance for IOLs be reasonable and related to IOL acquisition costs. We have reconsidered our interpretation in light of the public comment.

While it is true that section 141(b) of SSAA 1994 refers to section 1833(i)(2)(A)(iii) of the Act, the reference does not require the conclusion that the amount of an adjustment for new technology IOLs must also be reasonable and related to the cost of acquiring the IOL. Indeed, the commenter's point is well taken that by focussing on the clinical advantages of new technology IOLs, the Congress was attempting to encourage beneficiary access to new technologies. The statutory reference to section 1833(i)(2)(A)(iii) of the Act thus requires a comparison of the clinical advantages of new technology to the standard technology, and an adjustment to the payment rate to reflect the added benefits of the new technology. It does not require a comparison of the costs of acquiring standard IOLs to the costs of acquiring new technology IOLs in determining the amount of any adjustment. We agree that the statute can be reasonably interpreted to permit an adjustment that is not related to the cost of acquiring the particular new technology IOL. Since the flat rate adjustment for new technology IOLs was one of the more frequently suggested comments, we have decided to adopt this recommended approach.

Comment: Several commenters recommended that we develop a standard payment rate that would apply to any lens that we find is in compliance with the definition of a new technology IOL under the provisions of this regulation. Commenters suggested as a new technology IOL premium either a flat dollar amount between $50 and $75 or an amount equal to between 30 percent and 50 percent of the allowance for a standard IOL.

One consequence of this approach would be to reduce the data collection burden associated with our proposed requirement that interested parties submit information related to manufacturing, selling, overhead, and research and development costs, reducing the burden for manufacturers. In other words, our determination that a lens meets the criteria for being considered a new technology IOL would alone be sufficient to trigger a payment adjustment. Several commenters argued that the clinical outcomes resulting from use of the new technology IOL so substantially exceed the outcomes expected from a standard IOL as to justify payment of a premium. By definition, the payment allowance for a standard IOL could not be appropriate for a new technology IOL because the new technology IOL affords so many more clinical advantages and outcomes than a standard IOL, and the new technology IOL's additional features would not have been realized without additional costs having been incurred.

Response: Having considered these comments, we have decided to modify our original proposal and to adopt

instead payment of a flat, across-the-board $50 premium for any lens for which a payment review is requested in accordance with the provisions of the final regulations and that we find to comply with the definition of a new technology IOL. We will adopt this $50 payment at least until July 16, 2002.

During this 3-year period, we will monitor whether the flat payment of $50 has provided beneficiaries access to new technology. We will also monitor market parameters for IOLs. After this 3-year period, we may adjust our payment rate for NTIOLs through proposed and final rulemaking for ambulatory surgical centers.

The effect of adopting this approach will be to permit an expedited consideration of a request for payment review, and a standard $50 payment adjustment for any lens that we determine is a new technology IOL. We believe that a flat $50 premium per new technology IOL is a reasonable amount and is enough to encourage manufacturers to continue their IOL research and development programs. In fact, an industry-sponsored study found that the use of a certain type of new technology IOL, such as a multi-focal lens, enables a certain percentage of cataract patients to forego Medicare-reimbursed post-cataract eyeglasses. A payment adjustment of $50 for this type of lens seems to be justified since it offers certain benefits to both the beneficiary and the Medicare program. A flat rate adjustment also will expedite our review process and gives Medicare beneficiaries quicker access to new technology. By adopting a flat dollar amount, rather than a percentage of the standard IOL allowance, we hold the premium constant against potential increases or reductions in the IOL allowance for standard lenses.

Comment: Several commenters stated that the application process is cumbersome, time-consuming, and not possible due to the proprietary nature of the information that will have to be supplied by IOL manufacturers. Along the same line, several commenters thought that we should make the adjusted payment amount available within 90 to 180 days.

Response: As discussed above, by adopting a flat rate payment amount of $50, the time required for the application process would be dramatically reduced. The payment adjustment amount could be implemented within 180 days after receipt of the request to review a new technology IOL.

The commenters were also concerned that due to the proprietary nature of the information that would have to have been supplied, businesses could be reluctant to submit the requested information. By reducing the types of data necessary to make the determination, the final rule should alleviate some of the public's concern. In addition, as we stated in the proposed rule, 45 CFR 5.65(c) provides that a submitter of information may designate all or part of the information that he or she is submitting as being exempt from mandatory disclosure under Exemption 4 of the Freedom of Information Act. We reiterate that we will abide by the submitter's request if the submitter wishes any information to be withheld from disclosure.

Comment: Two commenters requested that we provide for appeals of our new technology IOL decisions.

Response: The SSAA 1994 does not require any appeal of this determination. Moreover, section 1869 of the Act already provides beneficiaries and certain other individuals the ability to challenge the amount of benefits paid if a claim is denied. We do not believe additional appeal rights are warranted and, therefore, are not accepting this comment.

Comment: Two commenters thought that interested parties who request a payment adjustment for new technology IOLS should be able to demonstrate that the payment adjustment be continued past the time limit.

Response: As discussed earlier in this section, we are increasing the time limit for an adjusted payment from 2 years to 5 years for the initial new technology IOL approved for the adjusted payment. Any subsequent new technology IOL with the same characteristics as the initial IOL will get the adjusted payment for the remainder of the 5-year period. Given the data presented in the 1994 OIG report, we believe this extension is sufficient to alleviate the need for a demonstration to extend payment beyond this time period.

IV. Provisions of the Final Regulations

In response to the comments we received, we are making several revisions to the proposed rule that we believe will streamline the process for determining an appropriate payment amount for new technology IOLS.

We are revising § 416.185, "Payment review process." In the proposed rule, interested parties seeking an adjustment in the current IOL payment rate for a new technology lens would have been required to submit information related to manufacturing, selling, overhead, research and development costs in addition to any other information that would be considered appropriate in determining a payment adjustment. In the final rule, we are eliminating the need for this information to establish a payment adjustment. Instead, we are establishing a flat rate adjustment of $50 over the current rate for standard IOLs for 3 years beginning on July 16, 1999. After this 3-year period, we may adjust our payment rate for IOLs through proposed and final rulemaking for ambulatory surgical centers.

This change also has an impact on § 416.195, "A request to review." In this section of the proposed rule, we were requiring documented evidence of the cost of the IOL and the manufacturer's investment in the IOL. This will no longer be necessary, since the final rule establishes a flat rate payment adjustment.

Another revision to the proposed rule is § 416.200, "Application of the payment adjustment." In the proposed rule, a single model IOL was recognized for a payment adjustment for a period of 2 years. We have revised that provision to extend the payment adjustment period to 5 years for the first IOL in a subset that we approve for the payment adjustment. Any subsequent IOL with the same characteristics as the first IOL recognized for a payment adjustment would receive the adjustment for the remainder of the 5-year period established by the first recognized IOL.

With these revisions to the proposed rule in place, we will then be able to shorten the time it takes to complete the review process in order to establish a payment adjustment. The proposed rule set up a 365-day cycle for the completion of this process. Although we are still required to publish two **Federal Register** notices in this review process, one with a 30-day comment period showing the list of requests received, and another within 90 days after the close of the comment period indicating the determinations that were made, we should be able to decrease the time to 180 days.

Finally, this rule will serve as the initial notice to those wishing to submit requests for review of the appropriateness of the payment amount with respect to a particular IOL, in accordance with § 416.195 of this rule. We will accept requests for 60 days following the effective date of this regulation. Subsequent requests for review of payment amounts will be made in accordance with the regulations as stated in this final rule. Please submit requests to: Grant Bagley, M.D., Director, Coverage and Analysis Group, Office of Clinical Standards and Quality, S3–02–01, 7500 Security Boulevard, Baltimore, Maryland 21244.

V. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on the information collection requirement discussed below.

Section 416.195 A Request To Review

Section 416.195(a) states that the request must include all of the following information:

(1) The name of the manufacturer, the model number, and the trade name of the IOL.

(2) A copy of the FDA's summary of the IOL's safety and effectiveness.

(3) A copy of the labeling claims of specific clinical advantages approved by the FDA for the IOL.

(4) A copy of the IOL's original FDA approval notification.

(5) Reports of modifications made subsequent to original FDA approval.

(6) Other information that HCFA finds necessary for identification of the IOL.

We believe the above requirement is not subject to the Act in accordance with 5 CFR 1320.3(c)(4) since this requirement does not collect information from 10 or more entities on an annual basis.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above.

If you comment on any of these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, ATTN: Louis Blank, HCFA–3831–F

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer

VI. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a rule not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all manufacturers of IOLs, ASCs, hospital outpatient departments, and physicians who perform IOL insertion surgery to be small entities. Individuals and States are not included in the definitions of a small entity. We are not preparing a regulatory flexibility analysis because we have determined, and the Secretary certifies, that this regulation will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and the Secretary certifies, that this regulation will not have a significant impact on the operations of a substantial number of small rural hospitals.

Although this rule is not an "economically significant" rule under Executive Order 12866, we present below a voluntary analysis of the effects of this rule because many beneficiaries who undergo IOL insertion surgery following a cataract extraction could be affected.

We believe that the fiscal impact of this rule will be negligible. We do not expect that making this payment adjustment will have an impact on the availability or prices of other IOLs. We do not expect that is will affect competition, employment, or investment. The ocular implant industry is mature, with a successful product readily available to purchasers. Our data suggest that we pay, under the Medicare program, more than the acquisition cost for most of the IOLs used today. In our June 12, 1998 proposed rule, "Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Surgical Procedures for Ambulatory Surgical Centers Effective October 1, 1998" (63 FR 32303), we stated that we would be proposing a new payment amount for the standard IOL that reflects the cost of acquiring the lens. New technology IOLs will achieve improvements in only small segments of the industry, since the majority of IOLs function superbly. The IOLs under development that we are aware of will substitute for spectacles in some cases, and in others will allow the patient to wear a single vision prescription rather than bifocals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 416

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

For the reasons set forth in the preamble, 42 CFR part 416 is amended as follows:

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for part 416 continues to read as follows:

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

2. A new subpart F, consisting of §§ 416.180, 416.185, 416.190, 416.195, and 416.200, is added to read as follows:

Subpart F—Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

Sec.

Subpart F—Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers

§ 416.180 Definitions.

As used in this subpart, the following definitions apply:

Class of new technology intraocular lenses (IOLs) means all of the IOLs, collectively, that HCFA determines meet the definition of "new technology IOL" under the provisions of this subpart.

Interested party means any individual, partnership, corporation, association, society, scientific or academic establishment, professional or trade organization, or any other legal entity.

New technology IOL means an IOL that HCFA determines has been approved by the FDA for use in labeling and advertising the IOL's claims of specific clinical advantages and superiority over existing IOLs with regard to reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

New technology subset means a group of IOLs that HCFA determines meet the criterion for being treated as new technology IOLs and that share a common feature or features that distinguish them from other IOLs. For example, all new technology IOLs that are made of a particular bioengineered material could comprise one subset, while all that rely on a particular optical innovation could comprise another.

§ 416.185 Payment review process.

(a) HCFA publishes a **Federal Register** notice announcing the deadline and requirements for submitting a request for HCFA to review payment for an IOL.

(b) HCFA receives a request to review the appropriateness of the payment amount for an IOL.

(c) HCFA compiles a list of the requests it receives and identifies the IOL manufacturer's name, the model number of the lOL to be reviewed, the interested party or parties that submit requests, and a summary of the interested party's grounds for requesting review of the appropriateness of the IOL payment amount.

(d) HCFA publishes the list of requests in a **Federal Register** notice with comment period, giving the public 30 days to comment on the IOLs for which review was requested.

(e) HCFA reviews the information submitted with the request to review, any timely public comments that are submitted regarding the list of IOLs published in the **Federal Register**, and any other timely information that HCFA deems relevant to decide whether to provide a payment adjustment as specified in § 416.200. HCFA makes a determination of whether the IOL meets the definition of a new technology IOL in § 416.180.

(f) If HCFA determines that a lens is a new technology IOL, HCFA establishes a payment adjustment as follows:

(1) Before July 16, 2002—$50.

(2) After July 16, 2002—$50 or the amount announced through proposed and final rulemaking in connection with ambulatory surgical center services.

(g) HCFA designates a predominant characteristic of a new technology IOL that both sets it apart from other IOLs and links it with other similar IOLs with the same characteristic to establish a specific subset of new technology within the "class of new technology IOLs."

(h) Within 90 days of the end of the comment period following the **Federal Register** notice identified in paragraph (d) of this section, HCFA publishes in the **Federal Register** its determinations with regard to IOLs that it has determined are "new technology" lenses that qualify for a payment adjustment.

(i) Payment adjustments are effective beginning 30 days after the publication of HCFA's determinations in the **Federal Register**.

§ 416.190 Who may request a review.

Any party who is able to furnish the information required in § 416.195 may request that HCFA review the appropriateness of the payment amount provided under section 1833(i)(2)(A)(iii) of the Act with respect to an IOL that meets the definition of a new technology IOL in § 416.180.

§ 416.195 A request to review.

(a) *Content of a request.* The request must include all of the following information:

(1) The name of the manufacturer, the model number, and the trade name of the IOL.

(2) A copy of the FDA's summary of the lOL's safety and effectiveness.

(3) A copy of the labeling claims of specific clinical advantages approved by the FDA for the lOL.

(4) A copy of the IOL's original FDA approval notification.

(5) Reports of modifications made after the original FDA approval.

(6) Other information that HCFA finds necessary for identification of the IOL.

(b) *Confidential information.* To the extent that information received from an IOL manufacturer can reasonably be characterized as a trade secret or as privileged or confidential commercial or financial information, HCFA maintains the confidentiality of the information and protects it from disclosure not otherwise authorized or required by Federal law as allowed under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and, with respect to trade secrets, the Trade Secrets Act (18 U.S.C. 1905).

§ 416.200 Application of the payment adjustment.

(a) HCFA recognizes the IOL(s) that define a new technology subset for purposes of this subpart as belonging to the class of new technology IOLs for a period of 5 years effective from the date that HCFA recognizes the first new technology IOL for a payment adjustment.

(b) Any IOL that HCFA subsequently recognizes as belonging to a new technology subset receives the new technology payment adjustment for the remainder of the 5-year period established with HCFA's recognition of the first IOL in the subset.

(c) Beginning 5 years after the effective date of HCFA's initial recognition of a new technology subset, payment adjustments cease for all IOLs that HCFA designates as belonging to that subset and payment reverts to the standard payment rate set under section 1833(i)(2)(A)(iii) of the Act for IOL insertion procedures performed in ASCs.

(d) ASCs that furnish an IOL designated by HCFA as belonging to the class of new technology IOLs must submit claims using specific billing codes to receive the new technology IOL payment adjustment.

(Sections 1832(a)(2)(F)(i) and 1833(i)(2)(a) of the Social Security Act (42 U.S.C. 1395k(a)(2)(F)(i) and 1395l(i)(2)(a)))

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

Dated: January 15, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 8, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–15067 Filed 6–14–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96–98; FCC 99–86]

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deaveraged Rate Zones for Unbundled Network Elements

AGENCY: Federal Communications Commission.

ACTION: Final rule; temporary stay.

SUMMARY: In this Order, the Commission temporarily stays the effectiveness of its

rule requiring each state to establish at least three geographic rate zones for unbundled network elements and interconnection. The Commission issues the stay to afford the states an opportunity to bring their own rules into compliance with the Commission's rule, in light of the U.S. Supreme Court's recent decision in *AT&T* v. *Iowa Utils. Bd.*

DATES: Effective May 7, 1999, 47 CFR 51.507(f), published at 61 FR 45476 (August 29, 1996), is stayed indefinitely. The Commission will publish in the **Federal Register** at a later date the date that the stay expires.

ADDRESSES: The entire file is available for inspection and copying weekdays from 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 Twelfth Street SW, Washington, DC 20554. Copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 Twentieth St., NW, Washington, DC 20036, (202) 857–3800.

FOR FURTHER INFORMATION CONTACT: Neil Fried, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530; TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: In the *Local Competition Order,* the Commission promulgated certain rules to implement section 251 of the Communications Act of 1934, as amended. 61 FR 45476; 11 FCC Rcd 15499 (1996). One such rule, section 51.507(f), requires each state commission to "establish different rates for [interconnection and unbundled network elements] in at least three defined geographic areas within the state to reflect geographic cost differences." 47 CFR 51.507(f). The Commission released the *Local Competition Order* on August 8, 1996. A number of parties, including incumbent LECs and state commissions, appealed the order shortly thereafter. The U.S. Court of Appeals for the Eighth Circuit stayed the effectiveness of the section 251 pricing rules on September 27, 1996. *Iowa Utils. Bd.* v. *FCC,* 96 F.3d 1116 (8th Cir. 1996) (per curium) (temporarily staying the *Local Competition Order* until the filing of the court's order resolving the petitioners' motion for stay). *See also Iowa Utils. Bd.* v. *FCC,* 109 F.3d 418 (8th Cir.) (dissolving temporary stay and granting petitioners' motion for stay, pending a final decision on the merits of the appeal), *motion to vacate stay denied,* 117 S. Ct. 429 (1996). On July 18, 1997, the Court of Appeals vacated these rules, including Section 51.507(f) on deaveraging, on the grounds that the Commission lacked jurisdiction. *Iowa Utils.* v. *FCC,* 120 F.3d 753, 800 n.21, 819 n.39, 820 (8th Cir. 1997). On January 25, 1999, however, the U.S. Supreme Court reversed the Eighth Circuit's decision with regard to the Commission's section 251 pricing authority, and remanded the case to the Eighth Circuit for proceedings consistent with the Supreme Court's opinion. *AT&T* v. *Iowa Utils. Bd.,* 119 S. Ct. 721, 733, 738 (1999).

In this Order, the Commission stays the effectiveness of section 51.507(f) until six months after the Commission issues its order in CC Docket No. 96–45 finalizing and ordering implementation of high-cost universal service support for non-rural LECs under section 254 of the Act. The six-month period shall run from the Commission's release of that order. Neither petitions for reconsideration nor appeals of that order shall have any bearing on the length of the stay.

The Commission found good cause to issue such a stay. *See* 47 CFR 1.3 (allowing the Commission to suspend its rules for good cause). Because of the Eighth Circuit's decisions, the section 251 pricing rules were not in effect for approximately two-and-a-half years. During that time, not all states established at least three deaveraged rate zones for unbundled network elements and interconnection. Some have taken no action yet regarding deaveraging; others have affirmatively decided to adopt less than three zones. A temporary stay will ameliorate the disruption that would otherwise occur, and will afford the states an opportunity to bring their rules into compliance with section 51.507(f).

A number of parties argued that the Commission made the appropriate policy decisions regarding deaveraging when it issued the *Local Competition Order,* and that implementation should not be further postponed. Some contended that it may be appropriate for the Commission to give states a reasonable amount of time to implement conforming rules, but argue that any "significant" delay is unwarranted. The Commission concluded that six months following the Commission's order in CC Docket No. 96–45 represents an appropriate length for the stay. State and federal regulators now have the benefit of not only a variety of court decisions, but also nearly three more years of experience and data. The stay will allow the states and the Commission a sufficient, but not excessive, amount of time to bring their rules into compliance in a manner coordinated with reform of universal service.

The Commission recognized the possibility that the three-zone rule may not be appropriate in all states. In some states, for instance, local circumstances may dictate the establishment of only two deaveraged rate zones. The Commission stated that it intends to address such situations on a case-by-case basis. States may file waiver requests with the Commission seeking relief from the general rule in light of their particular facts and circumstances. *See* 47 CFR 1.3 (allowing the Commission to waive any provision of its rules based on a petition if good cause is shown).

List of Subjects in 47 CFR Part 51

Communications common carriers, Deaveraged rate zones, Interconnection, Local competition, Pricing of elements, Telecommunications, Unbundled network elements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–14792 Filed 6–15–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 061099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second seasonal apportionment of pollock total allowable catch (TAC) in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), June 11, 1999, until 1200 hours, A.l.t., September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North

Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of pollock TAC is equal to 20 percent of the annual TAC (§ 679.20(a)(5)(ii)(C)). The pollock TAC in Statistical Area 620 was established by the Final 1999 Harvest Specifications for Groundfish (64 FR 12094, March 11, 1999) as 38,840 metric tons (mt) for the entire 1999 fishing year. In accordance with § 679.20(a)(5)(ii)(C) the second seasonal apportionment of pollock TAC in the Statistical Area 620 is 7,768 mt.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of pollock TAC in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,568 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the second seasonal TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the second seasonal apportionment of pollock TAC in Statistical Area 620 of the GOA. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: June 10, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–15277 Filed 6–11–99; 2:57 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208156–91]

RIN 1545–AQ30

Accounting for Long-Term Contracts; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking which was published in the **Federal Register** on Wednesday, May 5, 1999 (64 FR 24096). The notice of proposed rulemaking relates to accounting for long-term contracts.

FURTHER INFORMATION CONTACT: John M. Aramburu or Leo F. Nolan II (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is subject to this correction is under section 460 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–208156–91), which is the subject of FR Doc. 99–10948 is corrected as follows:

§ 1.460–4 [Corrected]

On page 24109, column 2, § 1.460–4(b)(3), line 9, the language "the treatment of post-completion costs," is corrected to read "the treatment of post-completion-year costs,".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–15115 Filed 6–15–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–051]

RIN 2115–AA97

Safety Zone: Macy's Fourth of July Fireworks, East River, NY

AGENCY: Coast Guard, DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document corrects the NPRM (CGD01–99–051) published May 25, 1999. That intended to restrict vessel traffic in a portion of the East River.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Waterways Oversight Branch of Coast Guard Activities New York, (CG–99–051), 212 Coast Guard Drive, Staten Island, New York 10305, room 205, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Macy's Fourth of July Fireworks, East River, New York, in the **Federal Register** (64 FR 28128).

Need for Correction

As published, the NPRM contains an inaccurate Latitude and Longitude that may prove to be misleading and therefore needs to be corrected.

Correction of Publication

Accordingly, the publication on May 25, 1999, of the NPRM (CGD01–99–051), is corrected as follows:

§ 165.T01–051 [Corrected]

1. On page 28128, in the third column, lines 6 and 47, and on page 28130 in the first column, line 55 the Latitude and Longitude "40°41′35″N 074°01′11″W" should read "40°41′33.5″N 074°00′42″W".

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–15301 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[FRL–6360–6]

Extension of Comment Period for Control of Diesel Fuel Quality Advance Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; notice of extension of comment period.

SUMMARY: EPA is extending the comment period for the Advance Notice of Proposed Rulemaking (ANPRM) for the control of diesel fuel quality. The ANPRM was published in the **Federal Register** on May 13, 1999 (64 FR 26142). The close of the comment period for the proposed rule was originally June 28, 1999. EPA is extending the closure of the comment period to July 13, 1999.

DATES: Comments will be accepted until July 13, 1999.

ADDRESSES: Comments on this ANPRM should be sent to Public Docket A–99–06 at the US Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC 20460. EPA requests that a copy of comments also be sent to Margaret Borushko, U.S. EPA, Engine Programs and Compliance Division, 2000 Traverwood Dr., Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, US EPA, Engine Programs and Compliance Division, (734) 214–4334; Borushko.Margaret@epa.gov.

SUPPLEMENTARY INFORMATION: On May 13, 1999 EPA published an ANPRM regarding control of diesel fuel quality (64 FR 26142). The comment period was scheduled to end June 28, 1999.

EPA received written requests to extend the comment period to give affected parties more time to address the issues raised in the ANPRM. One of the requests was for an extension to July 28, 1999; the other asked for the comment period to be extended to September 2, 1999.

Although we agree that additional time for the submittal of comments would be beneficial, we have a desire to make decisions regarding a proposal as soon as possible. Furthermore, the affected parties will have additional opportunities to comment during the rulemaking process. Therefore, EPA is extending the comment period 15 days to July 13, 1999.

Dated: June 9, 1999.

Robert Brenner,

Acting Assistant Administrator for OAR.

[FR Doc. 99–15273 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061099A]

Environmental Impact Statement (EIS) for the Proposed Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region

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

ACTION: Notice of intent to prepare an EIS; request for comments.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed Coral Reef Ecosystem Fishery Management Plan of the Western Pacific Region (FMP).

DATES: Written comments on the intent to prepare an EIS will be accepted on or before July 15, 1999. Initial scoping meetings are scheduled as follows:

1. 100th Western Pacific Fishery Management Council (Council) meeting/public hearing, June 16, 1999, Ala Moana Hotel, Honolulu, HI.

2. Coral Reef Ecosystem Plan Team Meeting, July 13–15, 1999, Council Office Conference Room, Honolulu, HI.

3. Additional field hearings for public scoping are tentatively planned for July and August in American Samoa, Commonwealth of the Northern Mariana Islands, Guam and Hawaii (details regarding times and locations will follow in a separate **Federal Register** announcement).

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, and to Charles Karnella. Administrator, NMFS, Pacific Islands Area Office, 2570 Dole St. Honolulu, HI 96822.

The following locations have been set for scoping meetings:

1. 100th Council Meeting/public hearing, June 16, 1999, 2 - 5:00 p.m. (estimated time), Ala Moana Hotel, 410 Atkinson Road, Honolulu, HI.

2. Coral Reef Ecosystem Plan Team Meeting, July 13–15, 1999, 8:30 a.m. - 5:00 p.m., Council Office Conference Room, 1164 Bishop St., Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, (808) 522–8220.

SUPPLEMENTARY INFORMATION: The proposed action would include permit and reporting requirements for non-subsistence harvest of coral reef resources, establishment of several Marine Protected Areas and a list of allowable gear types to harvest coral reef resources in the exclusive economic zone (EEZ). It would also include Essential Fish Habitat, Habitat Areas of Particular Concern, fishing and non-fishing threats, as well as other required provisions under the Sustainable Fisheries Act (SFA). A framework amendment process will be included to allow for the addition of new measures rapidly. The proposed Coral Reef Ecosystem EIS/FMP, being developed by the Council will be its fifth FMP for Federal waters, which is the EEZ for all U.S. Pacific Islands. This area includes nearly 11,000 km^2 (4,000 square miles) of coral reefs. Development of the FMP is timely considering new mandates and initiatives such as Ecosystem Principles in Fisheries Management, the President's 1998 Executive Order on Coral Reefs, and priorities of the U.S. Coral Reef Task Force and the U.S. Coral Reef Initiative, as well as the SFA and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act. The draft FMP describes the importance of coral reef resources to the region and current and potential threats that warrant a fishery management plan at this time. Information regarding the harvest of these resources in the EEZ is largely unknown. Potential for unregulated harvest and bio-prospecting for reef fish, live grouper, live rock and coral exists throughout the region. Marine debris, largely from fishing gear, is impacting reefs in the Northwestern Hawaiian Islands. To identify the scope of issues that will be addressed in the EIS and to identify potential impacts on the quality of the human environment, public participation is invited by providing written comments to the Council and attending the scoping meetings/hearings.

Public Information Meetings:

Additional public information meetings and public hearings on the proposed EIS/FMP will be held in various locations around the region later in the year. These meetings will be advertised in the **Federal Register** and the local newspapers.

Special Accommodations:

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty Simonds (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 11, 1999.

Gary C. Matlock,

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

[FR Doc. 99–15327 Filed 6–15–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

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.

INTERAGENCY COMMISSION ON CRIME AND SECURITY IN U.S. SEAPORTS

Establishment of Commission To Study Nature and Extent of Crime and Overall State of Security in U.S. Seaports

AGENCY: Interagency Commission on Crime and Security in U.S. Seaports.

ACTION: Notice.

SUMMARY: This document announces the establishment of the Interagency Commission on Crime and Security in U.S. Seaports (the Commission). The Commission will conduct a comprehensive study of the nature and extent of crime and the overall state of security in U.S. seaports, and the ways in which Federal, State and local governments are responding to this problem. The study will address all serious crime occurring in the maritime context, including but not limited to drug trafficking, cargo theft, and the smuggling of contraband and aliens. This document requests, and the Commission will take full account of, the views and expertise of interested members of the private sector in identifying and addressing issues of serious crime and in improving overall security in relation to U.S. seaports.

DATES: Comments must be received on or before August 16, 1999.

ADDRESSES: Written comments from interested members of the private sector may be addressed and submitted to: The Interagency Commission on Crime and Security in U.S. Seaports, 1331 Pennsylvania Avenue, NW, Suite 1331 North, Washington, DC 20004. Comments may also be submitted to the Commission by facsimile transmission (fax) (202–927–3743), or by electronic mail at the Commission's website address (http://www.seaportcommission.gov).

FOR FURTHER INFORMATION CONTACT: James F. Kelly, Working Group, (202–927–3741).

SUPPLEMENTARY INFORMATION:

Establishment of Commission

By Memorandum, dated April 27, 1999, the President authorized the Secretary of the Treasury, the Attorney General and the Secretary of Transportation, in cooperation with numerous other executive departments and Federal agencies, to establish the Interagency Commission on Crime and Security in U.S. Seaports (the Commission). The President's Memorandum is printed in the Weekly Compilation of Presidential Documents, Vol. 35 (1999), page 755.

Composition of Commission

The Commission is co-chaired by the Commissioner, U.S. Customs Service (Department of the Treasury), the Assistant Attorney General, Criminal Division (Department of Justice), and the Administrator, Maritime Administration (Department of Transportation).

In addition, Commission members include senior officials from: The Departments of State, the Treasury, Defense, Justice, Agriculture, Commerce, Labor, Health and Human Services, and Transportation; the Environmental Protection Agency, the Office of Management and Budget, the Office of National Drug Control Policy, the Central Intelligence Agency, the National Security Council, and the Joint Chiefs of Staff. All members of the Commission are full-time Federal employees.

The Executive Director of the Commission, chosen by the Secretary of the Treasury, oversees the support staff and a working group established to further the work of the Commission. The Executive Director reports directly to the three co-chairs. The working group is composed of Federal employees from the previously enumerated executive departments and agencies involved in the Commission.

Purpose of Commission

The Commission will undertake a comprehensive study of the nature and extent of crime and the overall state of security related to U.S. seaports, as well as the ways in which Federal, State and local governments are responding to this problem. The study will address all serious crime occurring in the maritime context, including but not limited to drug trafficking, cargo theft, and the smuggling of contraband and aliens. Moreover, the study will carefully examine the role of internal conspiracies associated with such crime, including the potential threat posed by terrorists and others to the people and critical infrastructures of seaport cities.

On or before completing its work within one year of the date of its establishment, the Commission will submit a report to the Secretary of the Treasury, the Secretary of Transportation, and the Attorney General. Within 3 months of the submission of the report, these officials will forward it, with their joint recommendations, to the Chief of Staff to the President for final review and appropriate action.

The Commission's report will include: An analysis of the type and level of serious crime, as well as a determination as to the overall state of security, in U.S. seaports; an overview of the specific missions and authorities of Federal agencies in this area, along with a general description of the usual roles played in this regard by State and local agencies, as well as by the private sector; an evaluation of the nature and effectiveness of coordination among Federal, State and local government agencies responsible for dealing with issues of crime and security in the maritime context; and recommendations for improving the response of Federal. State and local governments to seaport crime and enhancing seaport security.

Some Areas of Focus

The following is a general overview of some of the subject areas on which the Commission will focus in conducting its study:

1. Overall Assessment of Crime in the Maritime Context

As noted, the Commission will undertake an analysis of the overall nature and extent of criminal activity occurring in relation to U.S. seaports, including drug trafficking, cargo theft, and the smuggling of contraband and aliens; assess the role of internal conspiracies in connection with such crime; provide an overview of the specific missions and authorities of the Federal agencies with relevant responsibilities for dealing with

criminal activity in the maritime context, along with a general description of the typical roles played in this connection by State and local agencies and the private sector; conduct an assessment of the nature and effectiveness of coordination among Federal, State and local government agencies, including intelligence efforts; and provide recommendations for improving the response of Federal, State and local governments to the problem of serious crime, including resource requirements and mandatory crime reporting.

2. Terrorism, Threats, and Environmental Crime

The Commission will: Assess the threat of terrorism in the maritime context, both from domestic and foreign sources; identify major vulnerabilities to terrorist activity at U.S. seaports, in the transportation of cargo to and from ports, and at foreign ports where cargo is laded aboard ships bound for the U.S.; and recommend improvements in overall seaport security intended to make ports less susceptible to terrorist acts.

Also, the Commission will focus on potential threats of environmental terrorism and negligence in and around the nation's seaports, including the risk of marine accidents and pollution occasioned by, among other things, hazardous commodities such as petroleum; assess environmental consequences and vulnerabilities in this area; and make recommendations for improvements in environmental protection and safety at seaports and on coastal and inland waterways.

3. Security and Prevention

The Commission will evaluate the overall state of security existing at U.S. seaports, including measures for controlling access to ports, safeguarding passengers and cargo, and ensuring the security of possible military mobilization operations (at selected seaports); the Commission will develop recommendations, including identifying new techniques, on enhancing seaport security standards, and on whether such standards should be mandatory or voluntary.

4. Cargo Control

The Commission will analyze the effectiveness and integrity of cargo control mechanisms at U.S. seaports that deal, for example, with false manifesting and the diversion of cargo (inbound, outbound, and in-bond); and make recommendations on how cargo control procedures may be improved.

5. Technology

The Commission will seek to identify and recommend state-of-the-art technology for use in combating crime and bolstering security at seaports.

6. Legislation/Regulation/Funding

The Commission will identify, and develop recommendations for appropriate changes in, Federal laws and regulations pertaining to seaport crime, terrorism and security. Furthermore, the Commission will seek to identify potential sources of funding, as necessary to implement its recommendations in all areas.

Input From Private Sector Requested

The issues involving U.S. seaport security affect many different private sector interests in a variety of ways. Accordingly, the Commission hereby invites, and will take full account of, the views and expertise of interested members of the private sector in addressing the issues of serious crime and overall security in U.S. seaports. All comments in this matter are welcome. In concert with the subject areas generally outlined above, the Commission believes input as to the following would be most helpful:

(1) Describing particular problems that need to be solved concerning crime, terrorism and security in seaports;

(2) Proposals for new laws or regulations, programs or other courses of action to combat crime and terrorism and increase security in seaports;

(3) Suggested methods for ensuring better reporting and more accurate collection of data on crime in relation to the maritime context; and

(4) Possible ways to improve coordination and cooperation among Federal, State and local government agencies, in combating criminal activity and fostering greater security in seaports.

The Commission believes that the experience and knowledge that members of the private sector can bring to this undertaking will enable the Commission to conduct its evaluation of seaport crime and security in a more effective and reliable manner, and help ensure that the Commission's report contains recommendations that are realistic and that can be effectively implemented.

Dated: June 9, 1999.

D. Lynn Gordon,

Executive Director.

[FR Doc. 99–15245 Filed 6–15–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on July 13 and 14, 1999 at the Confederated Tribes of Warm Springs Forestry and Fire Management Conference Room at 4430 Upper Dry Creek Road. The first day will be an overnight field trip to the Lower Deschutes river to discuss topics which affect the river as well as the province. These include noxious weeds, grazing, and dispersed camping. The second day will be a business meeting which will begin at 11 p.m. and finish at 4 p.m. Agenda items include Hosmer Lake Working Group Recommendations, the PAC/IAC Summit, FERC update, ICBEMP update, the September meeting agenda, the Regional Problem Solving Effort, and a public forum starting 3:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 NE 3rd, Bend, OR 97701, phone (541) 383–4769.

Dated: June 8, 1999.

Sally Collins,

Forest Supervisor.

[FR Doc. 99–15199 Filed 6–15–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Amended Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 18, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of May 14, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—The New York Report

VI. State Advisory Committee Report
" "Alaskan Natives and Other Minorities in the Special Education Program of Four Alaskan Districts" (Alaska)
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–15367 Filed 6–11–99; 4:52 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Agency: Economic Development Administration (EDA).

Title: Guidelines for Revolving Loan Fund Grants.

Agency Form Number: Not Applicable.

OMB Approval Number: 0610–0095.

Type of Request: Extension of a currently approved collection.

Burden: 14,080 hours.

Average Hours Per Response: Revolving Loan Fund Plan—Approximately 40 hours. Post-Approval Guidelines—Approximately 24 hours.

Number of Respondents: Approximately 560 respondents (40 respondents for Revolving Loan Plan annually and 520 respondents for Post-Approval Guidelines quarterly and semiannually).

Needs and Uses: This information collection is needed to establish eligibility to evaluate proposals based on merit, and to ensure proper monitoring and compliance with program and administrative requirements as set forth in EDA's authorizing legislation Public Works and Economic Development Act of 1965, as amended, including the comprehensive amendments by the Economic Development Administration Reform Act of 1998, Public Law 105–393, (PWEDA) and EDA's implementing regulations. The information is used by EDA to review and approve federal grants for public and non-profit entities in order to assist economically distressed communities. Information is also used to monitor grantee progress in establishing the loan funds, making initial loans, collecting and relending the proceeds from loans, and compliance with time schedules and federal requirements for administering grants, civil rights, environmental and other requirements prior to grant disbursement. The guidelines are based on OMB administrative requirements for Federal Grants as implemented by DOC at 15 CFR parts 14, 24, and 29, and are intended to supplement and explain such requirements and are not intended to replace or negate such requirements.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: One time and On occasion for monitoring, and reports.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 10, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–15259 Filed 6–15–99; 8:45 am].

BILLING CODE: 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Turkey: Notice of Extension of Time Limits for Second Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–5288.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Results

On August 27, 1998, the Department of Commerce ("the Department") initiated the second administrative reviews of the antidumping duty orders on certain pasta from Italy and Turkey, covering the period July 1, 1997 through June 30, 1998 (63 FR 45796). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the reviews within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this time period to up to 365 days. Accordingly, on March 12, 1999, the Department extended the time limit for completion of the preliminary results of the administrative review by 90 days (64 FR 12287). We have now concluded, however, that the full 120-day extension is necessary. Accordingly, the Department is extending the time limit for completion of the preliminary results of these administrative reviews by the full 120 days, or until August 2, 1999. We plan to issue the final results of these administrative reviews within 120 days after publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act.

Dated: June 4, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–15302 Filed 6–15–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050699A]

Marine Mammals; File No. 715–1457

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Andrew W. Trites, North Pacific Universities Marine Mammal Research Consortium, University of British Columbia, 6248 Biological Sciences Rd., Hut B3, Rm. 18, Vancouver, B.C., Canada V6T 1Z4, has been issued a permit to take Steller sea lions

(*Eumetopias jubatus*) 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 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907–586–7221).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro, 301/713–2289.

SUPPLEMENTARY INFORMATION: On July 29, 1998, notice was published in the **Federal Register** (63 FR 40513) that a request for a scientific research permit to take Steller sea lions had been submitted by the above-named individual. 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.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 10, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–15320 Filed 6–15–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service's (hereinafter the "Corporation"), 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 ((FRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that the requested data can be provided in the desired format, reporting burden (time and financial resources), is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its request for approval of a new information collection from organizations conducting literacy and tutoring activities under the sponsorship of Corporation grants in order to assess the impact of these literacy and tutoring activities on children's reading proficiencies and other related outcomes. This request is a follow-up to the evaluation currently being conducted that describes the Corporation's literacy and tutoring programs. Approval to conduct the descriptive study was granted by the Office of Management and Budget (OMB) in February, 1999 under the condition that the current outcome study to assess program impact would subsequently be conducted. This form will be used by the Corporation to solicit information regarding the programs' impacts on children's reading skills.

Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Comments on this notice must be received by August 16, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Attn: Susan Labin, Office of Evaluation, 1201 New York Avenue, NW, 9th floor, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Susan Labin, (202) 606–5000, ext. 160.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose 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, e.g., permitting electronic submissions of responses.

Background

One of the missions of the Corporation is to "provide opportunities to engage in service that addresses the nation's unmet educational * * * needs" (42 U.S.C. 12501(b)). President Clinton's *America Reads* initiative calls on all Americans to help ensure that every child can read well and independently by the end of the third grade. The Corporation is playing an important role in this initiative by supporting efforts to recruit and train tutors in local communities to work with children to improve their reading skills. The Corporation is dedicating a significant portion of its resources to literacy and tutoring efforts. In addition, the Corporation places a high priority on evaluating the effects of these efforts and thus, is now seeking approval to conduct this new outcome evaluation.

Current Action

The Corporation seeks approval to conduct an outcome evaluation of the Corporation's literacy and tutoring programs that it supports through grants. The study will provide estimates of the impact on students' (in grades K–3) reading proficiencies and other outcomes as a result of their participation in the literacy and tutoring programs. The study will have two parts: (1) *A national study* using a representative sample of program students in grades K–3; and (2) three *local evaluations* of purposively selected programs.

The national study will provide important information to the Corporation in the form of generalizations about overall program effects on students' reading skills and about relationships between program characteristics and student effects. The evaluation will be strengthened further by conducting three local evaluations in which appropriate comparison groups will be constructed against which the performance of program students can be compared. Taken together, the *national study* and the *local evaluations*, will provide the Corporation with important

information about the effects of their literacy and tutoring efforts on children's reading proficiencies.

The data to be collected includes: (1) Measures of student reading performance as measured by the standardized reading skills sub-tests; (2) teacher ratings of student classroom behavior (academic motivation and competence, problem behaviors, social skills); (3) tutor perceptions of student academic and social competence; and (4) measures of the school climate within which the literacy and tutoring activities are being conducted.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Outcome Evaluation of Literacy and Tutoring Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Public school students in grades K–3. Public school teachers in grades K–3. Corporation members (the tutors).

Total Respondents: Approximately 3,000 students. Approximately 200 teachers. Approximately 500 Corporation members (tutors).

Frequency: Two waves of data collection.

Average Time Per Response: Students—40 minutes. Teachers—10 minutes per student. Corporation members (tutors) 10 minutes per student.

Estimated Total Burden Hours: 4,200 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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; these will also become a matter of public record.

Dated: June 10, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–15284 Filed 6–15–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission to OMB for Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), 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 (PRA95) (44 U.S.C. 3506(c)(2)(A)). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National Service Office of Evaluation, Chuck Helfer, (202) 606–5000, Extension 248. Individuals who use a telecommunications device for the Deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20305, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose 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, e.g., permitting electronic submissions of responses.

The Corporation seeks approval of five survey forms for the evaluation of the Corporation's Senior Companion Programs (SCP) that it supports through grants. It will allow for the assessment of the impact of the SCP on clients, family members/caregivers and agencies served. It will also help the Corporation to determine effective practices in the use of Senior Companions by agencies that are affiliated with the program.

I. SCP Client and Comparison Group Baseline Survey

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Client Baseline Survey.

OMB Number: None.

Agency Number: None.

Affected Public: SCP clients and comparison group members (at baseline).

Total Respondents: Approximately 1,800.

Frequency: One time.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 900 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: This survey is designed to assess baseline characteristics of SCP clients, and comparison group members in order to determine the health and functional status of older adults at entry into the program, their extent of social support, psychological well-being, need for medical and health care services, and their expectations for future care.

II. SCP Client and Comparison Group Follow-up Survey

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Client Follow-up Survey.

OMB Number: None.

Agency Number: None.

Affected Public: SCP clients and comparison group members (at 3- and 6-month follow-up)

Total Respondents: Approximately 1,350 at 3-month follow-up and approximately 1,013 at 6-month follow-up.

Frequency: Two times.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 675 hours at 3-month follow-up, and 507 hours at 6-month follow-up.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: This survey is designed to assess changes in physical and functional status, extent of social support, psychological well-being, need for health and medical care services, and satisfaction with SCP and SCP-like services among SCP clients and comparison group subjects at 3-month and 6-month follow-up.

III. SCP Family Member/Caregiver and Comparison Group Baseline Survey

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: SCP Family Member/Caregiver Baseline Survey.

OMB Number: None.

Agency Number: None.
Affected Public: Family members/caregivers and comparison group members affiliated with the SCP (at baseline).
Total Respondents: Approximately 640.
Frequency: One time.
Average Time Per Response: 30 minutes.
Estimated Total Burden Hours: 320 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: This survey is designed to assess the baseline characteristics of family members/caregivers associated with SCP clients, and comparison group members, and to determine their attitudes toward caregiving, perceptions of the unmet needs of their older relatives/family members, and their expectations of future care for SCP clients/comparison group subjects. Family members/caregivers also will be asked to answer health and functional status questions on behalf of SCP clients and comparison group members when clients/comparison group subjects are unable to speak on their own behalf. We have recalculated the respondent burden to more accurately reflect the burden we expect family members/caregivers to incur at the time of the family member/caregiver baseline survey. Our previous estimate did not take into account the reduction in the number of potential respondents as a result of obtaining an 80% response rate. By incorporating an 80% response rate into our revised estimate, we have reduced the number of respondents from 800 (as previously reported) to 640 (as reported here), and we have reduced family member/caregiver respondent burden from 400 to 320 hours.

IV. SCP Family Member/Caregiver and Comparison Group Follow-Up Survey

Type of Review: New approval.
Agency: Corporation for National and Community Service.
Title: SCP Family Member/Caregiver Follow-up Survey.
OMB Number: None.
Agency Number: None.
Affected Public: Family members/caregivers and comparison group members affiliated with the SCP (at 3- and 6-month follow-up).
Total Respondents: Approximately 544 at 3-month follow-up and approximately 462 at 6-month follow-up.
Frequency: Two times.
Average Time Per Response: 30 minutes.
Estimated Total Burden Hours: 272 hours at 3-month follow-up, and 231 hours at 6-month follow-up.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: This survey is designed to assess the changes in the characteristics of family members/caregivers associated with SCP clients, and comparison group members at 3-month and 6-month follow-up, and to document changes in attitudes toward caregiving, perceived unmet needs of relatives/family members, changes in family member/caregiver well-being, and satisfaction with SCP and SCP-like services received. Changes in health and functional status of SCP clients and comparison group members also will be assessed from family members/caregivers on behalf of SCP clients and comparison group members who respond on behalf of SCP clients/comparison group subjects.

V. Agency Cross-Sectional Survey

Type of Review: New approval.
Agency: Corporation for National and Community Service.
Title: SCP Agency Survey.
OMB Number: None.
Agency Number: None.
Affected Public: Agency supervisors who oversee Senior Companions at their agencies.
Total Respondents: Approximately 160.
Frequency: One time.
Average Time Per Response: 30 minutes.
Estimated Total Burden Hours: 80 hours.
Total Burden Cost (capital/startup): None.
Total Burden Cost (operating/maintenance): None.
Description: This survey is designed to document the types of agencies that are affiliated with the SCP, examine the types of roles and activities performed by senior companions and received by agency clients, assess the costs and benefits of having senior companions associated with participating agencies, and to determine agency satisfaction with SCP services. Agency representatives also will be asked to assess the impact of the SCP on the communities that they serve, and to suggest ways in which the SCP could be improved over time.

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 will also become a matter of public record.

Dated: June 11, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–15285 Filed 6–15–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Application for MSC Afloat Employment; MSC 12310/1; OMB Number; 0703–0014.
Type of Request: Extension.
Number of Respondents: 11,700.
Responses Per Respondent: 1.
Annual Responses: 11,700.
Average Burden Per Response: 2 hours.
Annual Burden Hours: 23,400.
Needs and Uses: This collection of information is used to identify specific knowledge, skills, and abilities, as well as to determine qualifications of merchant marine applicants for positions on Military Sealift Command ships. The associated form is used by the applicant to provide information beyond that inherent in the licenses and documents held by the individual.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain benefits.
OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: June 10, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15186 Filed 5–15–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Technology).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on July 29, 1999, at the Pentagon.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition and Technology) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. Appendix II, (1994)), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly the meeting will be closed to the public.

DATES: Thursday, July 29, 1999, (8:00 a.m. to 5:30 p.m.).

ADDRESSES: Room 3E869, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Diane Evans, Defense Threat Reduction Agency/AS, 45045 Aviation Drive, Dulles, VA 20166–7517. Phone: (703) 810–4504.

Dated: June 10, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–15184 Filed 6–15–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Deadline for Submission of Donation Applications for the ex-FORRESTAL (CV 59)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the deadline of November 26, 1999, for submission of a donation application for the ex-FORRESTAL, located at the Naval Inactive Ship Maintenance Facility, Newport, RI. A donation is anticipated pursuant to 10 U.S.C. Section 7306. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) The District of Columbia; or (3) Any not-for-profit or nonprofit entity. Transfer of a vessel under this law shall be made at no cost to the United States Government.

The transferee will be required to maintain the vessel in a condition satisfactory to the Secretary of the Navy as a static museum/memorial. Prospective transferees must submit a comprehensive application addressing their plans for managing the significant financial, technical, environmental and curatorial responsibilities that accompany ships donated under this program.

DATES: Application deadline is November 26, 1999.

ADDRESSES: Applications should be sent to Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Carvalho, Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Ship Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, telephone number (703) 602–5450 or 7098.

(Authority: 10 U.S.C. 7306)

Dated: June 2, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 99–15202 Filed 6–15–99; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference and public hearing on Wednesday, June 23, 1999. The hearing will be part of the Commission's regular business meeting. Both the conference and business meeting are open to the public and will be held at the Shawnee Inn, One River Road, Shawnee-on-Delaware, Pennsylvania.

The conference among the Commissioners and staff will begin at 9:00 a.m. in the Payett Room and will include a status report on the Flowing Toward the Future workshops and discussions of the Flow Management Technical Advisory Committee's flow needs Basinwide reconnaissance proposal and coordinated drought response.

In addition to the subjects summarized below which are scheduled for public hearing at the 10:30 a.m. business meeting in the Pearsall-Patterson Room, the Commission will also address the following: Minutes of the April 28, 1999 business meeting; announcements; report on Basin hydrologic conditions; reports by the Executive Director and General Counsel; and public dialogue. The Commission will also consider resolutions to: amend the Ground Water Protected Area Regulations for Southeastern Pennsylvania; advertise a Basinwide flow needs reconnaissance request for proposal; amend the Commission's Administrative Manual: By-laws, Management and Personnel to establish flex time schedules for Commission staff; contract for design and construction of a barrier-free restroom; authorize an agreement with USEPA concerning its Energy Star building partnership; and elect Commission offices of Chair, Vice Chair and Second Vice Chair for the year commencing July 1, 1999.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Riverton Country Club D–85–10 RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 6 million gallons (mg)/30 days of water to the applicant's golf course irrigation system from Well Nos. 1A and 2. Commission approval on April 26, 1989 was extended to 10 years. The applicant requests that the total withdrawal from all wells remain limited to 6 mg/30 days. The project is located in Cinnaminson Township, Burlington County, New Jersey.

2. *Green Waltz Water Company D–98–55 CP.* An application for approval of a ground water withdrawal project to supply up to 11.7 mg/30 days of water for bulk water hauling to bottling plants from the redevelopment of existing Well No. 1. The project is located in Washington Township, Northampton County, Pennsylvania.

3. *Dan Schantz Farm & Greenhouses D–99–14.* An application for approval of a ground water withdrawal project to supply up to 3.45 mg/30 days of water to the applicant's nursery from Well Nos. PW–1, PW–3, PW–4, PW–5, PW–

6, PW–7 and PW–8, and to limit the withdrawal from all wells to 3.45 mg/30 days. The project is located in Lower Milford Township, Lehigh County in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Harmony Sand & Gravel, Inc. D–99–16.* An application for approval of a ground water withdrawal project to supply up to 6.5 mg/30 days of water to the applicant's sand and gravel washing operation from Well No. 1, and to limit the withdrawal from all wells to 6.5 mg/30 days. The project is located in White Township, Warren County, New Jersey.

5. *Borough of Bernville D–99–18 CP.* An application to upgrade and expand the applicant's 0.14 million gallons per day (mgd) contact stabilization sewage treatment plant (STP) to a 0.285 mgd high quality secondary treatment plant via the sequencing batch reactor process. The STP will continue to serve only the Borough of Bernville located in Berks County, Pennsylvania. Treated effluent will continue to discharge to Northkill Creek approximately 0.2 miles above its confluence with Tulpehocken Creek.

6. *Penn Estates Utilities, Inc. D–99–20.* An application to upgrade and expand the applicant's 0.15 mgd extended aeration STP to 0.56 mgd to provide advanced secondary treatment for service of growth of the applicant's residential development in Stroud Township, Monroe County, Pennsylvania. Treated effluent will continue to discharge to an unnamed tributary (known locally as Cranberry Creek) of Brodhead Creek.

7. *Maiden Creek Associates (James Saunders) D–99–25.* An application to construct a new 0.06 mgd tertiary level STP to serve West Penn Pines Mobile Home Park. The STP will be located just south of State Route 895, approximately 2.5 miles west of its intersection with State Route 309, in West Penn Township, Schuylkill County, Pennsylvania. The proposed STP effluent will discharge to Lizard Creek, a tributary of the Lehigh River.

8. *Pasteur Merieux Connaught Laboratories, Inc. D–99–27.* A project to expand by rerating the applicant's existing 0.15 mgd industrial wastewater treatment plant (IWTP) to 0.2 mgd to continue to serve its vaccine production facility located in Pocono Township, Monroe County, Pennsylvania. The treated effluent will continue to discharge to Swiftwater Creek via the existing outfall.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who would like to attend the hearing should contact the Secretary at (609) 883–9500 ext. 203 or through the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the DRBC may accommodate your needs.

Dated: June 8, 1999.

Susan M. Weisman,

Secretary.

[FR Doc. 99–15261 Filed 6–15–99; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 10, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress (NAEP) Year 2000 Field Test and Year 2001 Main Assessment of World Geography and U.S. History.

Frequency: Field test 2000, main study 2001.

Reporting and Recordkeeping Hour Burden:

Responses: 9,600.

Burden Hours: 9,870.

Abstract: The Congressionally-mandated 2001 National Assessment of Educational Progress will assess world geography knowledge and knowledge of U.S. history among 4th, 8th and 12th graders, and will provide contextual information to interpret the assessment information relevant background characteristics of the students and their schools and teachers. The clearance package provides all the background questions and supporting information for the field test and the main study. The results of the main study will be used to provide descriptive information about programs and practices in the teaching of history and geography; suggest relationships between characteristics and assessment results; and serve as a basis for monitoring change over time.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian—Reese@ed.gov,* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements,

contact Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Annual Performance Reporting Form for Office of Indian Education (OIE) Local Grantees.
Frequency: Annually.
Reporting and Recordkeeping Hour Burden:
Responses: 1,272.
Burden Hours: 5,088.
Abstract: This data collection will be conducted annually to obtain program and performance information from local education agencies on their project activities. The information collected will assist federal program staff in responding to the Government Performance and Results Act (GPRA). Data will primarily be collected through an internet form. Grantees without internet access will complete a paper version of this form.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 202–708–9902. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–15191 Filed 6–15–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 16, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 11, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: Evaluation of the Eisenhower Regional Consortia Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,562.
Burden Hours: 781.
Abstract: The Evaluation of the Eisenhower Regional Consortia Program is designed to determine the quality and effectiveness of technical assistance and professional development activities that each of the 10 Consortia provide to educators in their respective regions. The evaluation is mandated by Congress and is needed to provide information on the program in time for the reauthorization of the program. In addition, the evaluation is designed to provide information to measure the program's Government Performance and Results Act (GPRA) performance indicators. Respondents to the surveys being submitted for clearance include State Education Agency staff and other state-level educators, as well as local educators who have received Consortia services.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Vivian_Reese@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–15247 Filed 6–15–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on July 31, 1998, an arbitration panel rendered a decision in the matter of *Donald R. Williams* v. *North Carolina Department of Human Resources, Division of Services for the Blind (Docket No. R–S/97–9)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Donald R. Williams.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf

(TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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http://www.access.gpo.gov/nara/index.html

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper denial by the North Carolina Department of Human Resources, Division of Services for the Blind (the State licensing agency (SLA)), of Mr. Donald R. Williams' request to acquire satellite vending machines at the Kinston Post Office. A summary of the facts is as follows: In September 1994, complainant Donald R. Williams, a blind vendor under the State's Randolph-Sheppard program, spoke with the SLA regarding his desire to have supplemental income in addition to managing a facility at the Caswell Center Canteen. Mr. Williams also informed the SLA that he would be looking for other sites within the city that would support a Randolph-Sheppard vending facility.

In October 1994, complainant contacted the postmaster at the Kinston Post Office concerning the possibility of establishing a Randolph-Sheppard vending facility at that location. The site was then under contract with a private concessionaire.

In April 1996, the concession contract at the Kinston Post Office expired, and the SLA became the new contract holder on July 15, 1996. Subsequently, the SLA determined that the location would be advertised as a separate facility and would not be added as an outside vending location to the Caswell Center Canteen.

Mr. Williams requested and received a State evidentiary fair hearing on this matter on March 3, 1997. On March 26, 1997, the hearing officer affirmed the SLA's decision to advertise and award the Kinston Post Office location to another vendor. The SLA adopted the hearing officer's decision as final agency action, and it is this decision that Mr Williams sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing on this matter was held on April 23, 1998.

Arbitration Panel Decision

The issue before the arbitration panel was whether the North Carolina Department of Human Resources, Division of Services for the Blind, was correct in awarding the Kinston Post Office location to another vendor instead of adding it to Mr. Williams' facility.

The majority of the panel concluded that the SLA is charged with providing vending facility preference to blind persons in need of employment. Specifically, by awarding the Kinston Post Office facility to the current vendor, who was unemployed, the SLA acted in fulfillment of a specific requirement of the Act in 20 U.S.C. 107(a) and implementing regulations in 34 CFR 395.7(a), which states in relevant part that "the State licensing agency shall establish in writing and maintain objective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. * * *"

The majority of the panel further concluded that the SLA and not the complainant has the authority to locate and negotiate facilities at new sites. The SLA also has the inherent authority to determine if the site will be offered as a separate facility and not as a satellite location.

Therefore, the majority of the panel ruled that, upon a thorough review of the documents, testimony, and arguments presented at the hearing, the SLA acted properly in awarding the Kinston Post Office facility to the current vendor.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 10, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–15323 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act

SUMMARY: Notice is hereby given that on July 31, 1998, an arbitration panel rendered a decision in the matter of *Brent Davidson* v. *Texas Commission for the Blind (Docket No. R-S/97–15).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Brent Davidson.

FOR FURTHER INFORMATION: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal**

Register. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper suspension by the Texas Commission for the Blind, the State licensing agency (SLA), of Brent Davidson's vendor's license for 90 days. A summary of the facts is as follows: Complainant Brent Davidson signed an agreement to operate a vending facility located at the Texas Department of Transportation (TDOT) on October 17, 1996. The facility opened for business on October 21, 1996. Problems arose from almost the moment the facility opened. Those problems were: (1) Sales at this facility were only half the anticipated level on the first day and never improved. (2) The TDOT never enforced a coffee agreement and, therefore, complainant's facility never benefitted from the anticipated coffee revenue. (3) The complainant and the SLA disagreed about pricing, equipment, the type of food offered, the number of employees, complainant's attendance, and the hours of operation.

The SLA alleged that Mr. Davidson did not comply with the operator's agreement he signed on October 17, 1996, and the Business Enterprise Program Manual. The SLA alleged further that complainant continued to operate the vending facility in non-compliance with the operator's agreement, the manual, and the State rules and regulations governing the Texas vending facility program. In January 1997, the SLA placed Mr. Davidson on probation for a period of 90 days for violation of the operator's agreement and the manual.

Mr. Davidson requested and received a State evidentiary fair hearing on May 20, 1997. The Administrative Law Judge (ALJ) in her decision dated May 27, 1997, affirmed the SLA's decision to place Mr. Davidson's license on probationary status for 90 days. The SLA adopted the ALJ's decision as final agency action, and it is this decision that Mr. Davidson sought to have reviewed by a Federal arbitration panel. A Federal arbitration hearing of this matter was held on April 3, 1998.

Arbitration Panel Decision

The issue before the arbitration panel was whether the Texas Commission for the Blind acted properly and within the scope of its authority under the Randolph-Sheppard Act and implementing regulations in placing Brent Davidson on probation for a period of 90 days.

Because of the illness and non-attendance at the hearing of the panel member appointed by Mr. Davidson, the parties stipulated that the decision and award would be made solely by the neutral Panel Chair.

The Panel Chair concluded that the evidence presented fully supported the decision of the SLA to place Mr. Davidson on probation for 90 days. Specifically, the Panel Chair noted a letter dated January 29, 1997, sent to complainant by the director of the Texas Business Enterprise Program placing Mr. Davidson on probation for 90 days and outlining the areas of non-compliance with the operator's agreement, the manual, and the State rules and regulations. The Panel Chair further noted from the record complainant's acknowledgment of his actions as well as his receipt of the January 29th letter from the SLA and the fact that Mr. Davidson made no attempt to take corrective action.

The Panel Chair ruled that the SLA's decision to place complainant's license on a 90-day probationary status was the most lenient of any alternative available to the SLA. If Mr. Davidson had chosen to comply, the decision provided ample opportunity for complainant to correct by agreement the matters concerning non-compliance of which the SLA complained.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: June 10, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–15326 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATE: Thursday, July 1, 1999 6:00 p.m.–9:30 p.m.

ADDRESSES: College Hill Library (Front Range Community College), 3705 West 112th Avenue, Westminster, CO 80021.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. The Board will approve the selection of the contractor to provide technical support services for the Community Radiation (ComRad) Program.
2. RFCAB will begin its initial discussion to refine definitions for cleanup phases end-states.
3. The Board will review and approve recommendations on the TRU Waste Environmental Assessment.
4. RFCAB will discuss and approve the process for developing its 2000 Work Plan.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the

Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on June 11, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–15286 Filed 6–15–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos.

DATES: Wednesday, June 30, 1999, 6:00–9:00 p.m. Board Meeting.

ADDRESSES: Jemez Pueblo Elderly Center, 5121 Highway 4, Jemez Pueblo, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 528 35th Street, Los Alamos, NM 87544, Phone: 505–665–5048; FAX 505–665–4872.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment 6:30–7:00 p.m.
2. Committee Reports
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on June 11, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–15287 Filed 6–15–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–74–000]

Alcoa Inc., et al.; Notice of Amendment

June 10, 1999.

Take notice that on June 7, 1999, Alcoa Inc., tendered for filing with the Federal Energy Regulatory Commission, copies of applications with respect to Alcoa Inc.'s proposed reorganization recently filed with the New York Public Service Commission and with the North Carolina Utilities Commission. In addition, is a filing Alcoa Inc. recently filed with the Securities and Exchange Commission (SEC) requesting that the SEC revisit Alcoa Inc.'s status under the Public Utility Holding Company Act. This supplements Alcoa Inc.'s application filed with the Commission on May 14, 1999:

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 204246 in accordance with Rules 211 and 214 of the Commission's Rules of Practice amd Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–15195 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2021–000]

California Power Exchange Corporation; Notice of Filing

June 10, 1999.

Take notice that on June 8, 1999, the California Power Exchange Corporation (PX) amended its filing in this proceeding.

The PX requests an effective date of July 1, 1999 for the amended filing.

The PX states that it has served a copy of the amended filing on all PX Participants and the parties in this docket. The PX has also posted the filing on its website.

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 Procedures (18 CFR 385.211 and 385.214). Ali such motions and protests should be filed on or before June 18, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/

online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15249 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4410–001]

Entergy Services, Inc.; Notice of Filing

June 10, 1999.

Take notice that on June 1, 1999, Entergy Services, Inc., as agent and on behalf of the Entergy Operating Companies (together, Entergy) tendered for filing its compliance filing as required by the letter order issued on May 7, 1999, in Docket No. ER98–4410–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 21, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–15248 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–53–000]

FirstEnergy Operating Companies; Notice of Amendment

June 10, 1999.

Take notice that on June 8, 1999, FirstEnergy Operating Companies (First Energy) tendered for filing with the Federal Energy Regulatory Commission, an amendment to their joint application for authorization to transfer jurisdictional facilities under section 203 of the Federal Power Act which was filed on March 19, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 23, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15193 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–17–002]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

June 10, 1999.

Take notice that on June 7, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective April 7, 1999:

Substitute Original Sheet No. 22
Substitute Original Sheet No. 60
Substitute Original Sheet No. 71
Substitute Original Sheet No. 72
Substitute Original Sheet No. 73
Substitute Original Sheet No. 75
Substitute Original Sheet No. 176
Substitute Original Sheet No. 177
Substitute Original Sheet No. 179
Substitute Original Sheet No. 192
Substitute Original Sheet No. 195

HIOS asserts that the purpose of the filing is to comply with the Commission's May 3, 1999 letter order in the captioned proceeding in regard that a Delaware LLC has members, not partners.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15196 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–546–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

June 10, 1999.

Take notice that on June 7, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP99–546–000 a request pursuant to sections 157.205, 157.208, and 157.212, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, 157.212) for authorization to construct and operate facilities in Grundy County, Illinois under Natural's blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The proposed facilities are to be located between Natural's Gulf Coast Mainline and the nonjurisdictional processing plant owned by Aux Sable Liquid Products, Inc. (Aux Sable) and will be utilized to receive natural gas transported by the Alliance Pipeline L.P. (Alliance) system and nominated for delivery to Natural's Gulf Coast Mainline (Natural's system). As such, these facilities will serve to replace interconnection facilities authorized by the Commission's September 17, 1998 order in Docket Nos. CP97–168, et al.

Certificating the Alliance project. Following processing, Aux Sable will directly deliver the Alliance volumes nominated to Natural's system.

The proposed interconnection facilities will also be capable of delivering gas from Natural's system to the Aux Sable facility (for use as "plant augmentation" volumes) and back to Natural. On a completely interruptible basis, such volumes will be available to Aux Sable to blend with the Alliance volumes it is processing. Such additional volumes will serve the purpose of enhancing, while not changing, the operation of the processing plant. The benefit to Natural will be enhanced pressure for such volumes upon their return along with the Alliance volumes nominated to Natural's system.

The estimated cost of the proposed facilities is $12.4 million. Such cost will be fully reimbursed by Alliance as a contribution-in-aid to Natural.

Natural proposes an approximately 3,000 foot, 30/36-inch line (36-inch line), meter and tap facilities designed to receive up to 1.5 Bcf/day from Alliance, either directly or via the Aux Sable plant; and (2) an approximately 3,000 foot, 24/30-inch line (30-inch line), meter and tap facilities designed to receive or deliver up to 800 Mmcf/day from or to the Aux Sable plant. These facilities will serve the primary function of enabling the delivery of volumes transported by Alliance and, following processing by Aux Sable, nominated for delivery to Natural's system.

The 36-inch line will perform this function most days, but the 30-inch line will also be available. Both lines will be available, on a firm basis and to the exclusion of all other uses, if necessary to effect delivery of the Alliance shippers' volumes to Natural's system. The secondary function of these facilities will be to move, on a completely interruptible basis, plant augmentation volumes from Natural's system into (via the 30-inch line) and out of (via the 36-inch line) the Aux Sable plant.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–15192 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–332–000]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 10, 1999.

Take notice that on June 8, 1999, OkTex Pipeline Company (OkTex), filed that tariff sheets in compliance with the Commission's directives in Order No. 587–K.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that resulted from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its April 2, 1999 Order No. 587–K in Docket No. RM96–1–011. OkTex further states that Order No. 587–K contemplates that OkTex will implement the GISB consensus standards for July 1999 business, and that the tariff sheets therefore reflect an effective date of July 1, 1999.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15197 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC991–71–000]

PanEnergy Lake Charles Generation, Inc., et al.; Notice of Amendment.

June 10, 1999.

Take notice that on June 7, 1999, CMS Generation Co. tendered for filing with the Federal Energy Regulatory Commission. an amendment in the above-referenced proceeding. It is an Assignment of Rights To A Stock Purchase Agreement dated as of May 28, 1999 whereby CMS Generation Co. assigns its rights to purchase stock of PanEnergy Lake Charles Generation, Inc. to its affiliate, Trunkline Field Services Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15194 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–30–000]

Washington 10 Storage Corporation, Notice of Petition for Adjustment

June 10, 1999.

Take notice that on June 1, 1999, Washington 10 Storage Corporation (Washington 10) filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), and Rule 1104 of the Commission's regulations. Washington 10 requests to implement rates for storage service and storage-related transportation service under NGPA section 311 that are comparable to its currently effective cost-based rates for such services on file with the Michigan Public Service Commission (MPSC). Washington 10 submits that the adjustment relief will prevent the inequitable result that otherwise would occur if Washington 10 were required to make a cost-of-service presentation to the Commission under section 284.123(b)(2) to support a petition for rate approval.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure.

Any person desiring to participate in this proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with the provisions of such Subpart K. All such motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register.** Copies of this petition are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–15198 Filed 6–15–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00602; FRL–6082–5]

Data Generation for Pesticide Reregistration; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Data Generation for Pesticide Reregistration," [EPA ICR No.1504, OMB No. 2070–0107]. This ICR involves a collection activity that is currently approved and scheduled to expire on July 31, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPP–00602, must be received on or before August 16, 1999.

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

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you are a pesticide registrant and are required to submit data to support continued registration of your product. EPA must assess health and safety data for all pesticide active ingredients originally registered before November 1, 1984, to determine whether the pesticide use poses unreasonable risks to human health or the environment. Section 4 of the of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), amended, also establishes a process and a schedule for the development of the information EPA needs before these pesticides can be reregistered. The EPA may require registrants to generate and submit data to the Agency when data is needed to determine whether the pesticide is eligible for reregistration (see section 3(c)(2) (B) of FIFRA).

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals 287—Agricultural chemicals	Pesticide registrants

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have registered a pesticide with the Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

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

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice. Although a copy of the ICR is posted with the **Federal Register** notice, you can also access a copy of the ICR by going directly to http://www.epa.gov/icr/. You can then easily follow the menu to locate this ICR by the EPA ICR number, the OMB control number, or the title of the ICR.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6072 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number OPP–00602, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond to this Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00602, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00602. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

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

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

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the EPA and OMB ICR numbers.

IV. What Information Collection Activity or ICR Does This Notice Apply to?

EPA is seeking comments on the following ICR:

Title: Data Generation for Pesticide Reregistration.

ICR numbers: EPA ICR No. 1507.04, OMB No. 2070–0107.

ICR status: This ICR is currently scheduled to expire on July 31, 1999. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the Paperwork Reduction Act, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: Under the FIFRA section 4 reregistration program, EPA examines health and safety data for active ingredients in pesticides initially registered before November 1, 1984, and determines whether they are eligible for reregistration. To be eligible, a pesticide must have a substantially complete data base and the Agency must assess all the information/data necessary to determine whether use of a pesticide presents unreasonable risks to man or the environment when used in accordance with its approved label directions. Registrants may be required to generate additional information on human health and environmental effects beyond the information submitted to the Agency when a pesticide was first registered. Prior to 1984, only acute testing or short-term environmental testing was required for many pesticides before registration. However, by 1984, EPA had determined that data on chronic health

effects and long-term environmental effects (e.g., tests for carcinogenicity or mutagenicity, or life cycle tests of organisms exposed to a pesticide) are necessary in many cases and issued updated data requirements for registration.

In addition, all pesticides must meet the safety standards of the Food Quality Protection Act of 1996 (FQPA). FQPA directs the Agency to consider aggregate exposures from dietary and other non-occupational sources when assessing the risks of a chemical. In addition to dietary exposure, such sources as drinking water and residential use need to be considered. EPA must make the statutory determination that the resulting pesticide residues in food or feed will result in a reasonable certainty of no harm to human health from aggregate exposure through dietary, non-occupational, and drinking water routes of exposure as part of the consideration for reregistration. FQPA also directs EPA to consider the cumulative effects of pesticides that share a "common mechanism of toxicity," consider special sensitivities of infants and children, and consider possible endocrine disruptor effects. The Agency is to reassess all existing tolerances (maximum limits for pesticides residues in food or feed) by 2006. EPA is implementing these new FQPA provisions primarily through the reregistration program.

When the need for additional information/data occurs in developing pesticide reregistration decisions, the Office of Pesticide Programs (OPP) will issue a data call-in (DCI) pursuant to FIFRA section 3(c)(2)(B) to obtain data and when necessary, the registrant may be required to certify compliance with data compensation requirements under the authority of FIFRA section 3(c)(2)(D). Agency scientists and analysts integrate the new data received from registrants with the existing data in EPA's files. EPA reviews all relevant information to assess the potential risks associated with the use of the pesticide to make a determination whether the pesticide should be reregistered. If a determination is made that a pesticide is eligible to be reregistered, and the registrant submits acceptable product-specific data and revised labeling, products containing the pesticide shall be reregistered within a specified time period. However, if after a review of the data, it is determined that a pesticide should not be reregistered, the Agency will take appropriate regulatory action.

A record of each study submitted is maintained in the Agency's Pesticide Document Management System (PDMS), and the public may access the PDMS bibliography through the National Pesticides Information Retrieval System (NPIRS). NPIRS supports searches of the PDMS database by chemical, subject, submission date, laboratory, guideline number, and document type. The public may request copies of studies that are non-confidential, through the mechanism of a Freedom of Information Act (FOIA) request.

This information collection program is separate from the information collection program described in the ICR entitled "Data Call in for Special Review Chemicals and Registration Review Program" (OMB No. 2070–0057) implemented pursuant to section 3(g) of FIFRA. The Registration Review Program is a recent amendment to the OMB No. 2070–0057 ICR authorized by the 1996 amendments to FIFRA and requires EPA to establish a procedure for periodic review of all pesticide registrations every 15 years. Similar to the FIFRA section 4 reregistration program, the Registration Review Program directs EPA to use the authority in FIFRA section 3(c)(2)((B) to require pesticide registrants to generate and submit data to the Agency where such data is needed to assess whether registration of an existing pesticide poses unreasonable risk to man or the environment. By the time the reregistration program is completed, the new section 3(g) Registration Review Program should be fully implemented.

Process and Program Status

Section 4 of FIFRA mandates reregistration of all pesticides registered before November 1, 1984, with the goal that these pesticides were to be reregistered by 1997. The reregistration process is divided into in five phases with mandated deadlines.

Phase 1-List active ingredients: FIFRA directs EPA to create a list of the active ingredients used in pesticides registered before November 1, 1984, and requested pesticide registrants to notify EPA of the intent to seek reregistration. EPA created a list that is divided into four categories, Lists A through D.

Phase 2-Declare intent and identify studies: This phase requires pesticide registrants to notify EPA, whether or not they intended to reregister their products; to identify and commit to providing the necessary studies including either making a generic data exemption claim or commitment to generate or share data; and to pay the first installment of the reregistration fee. During this phase, EPA issued guidance for registrants to assist in Phase 2 and Phase 3 responses. Phase 2 was completed in 1990.

Phase 3-Summarize studies: This phase required registrants to submit summaries and reformat acceptable studies, "flag" studies indicating adverse effects, re-commit to satisfying all applicable data requirements, and pay the final installment of the reregistration fee. Phase 3 was completed in October 1990.

Phase 4-EPA review and data call-in: During Phase 4, EPA reviewed all data submitted in Phase 2 and Phase 3 and required registrants to meet any unsatisfactory data requirements within 4 years. This phase was completed in 1993.

Phase 5-Reregistration decisions: Currently, EPA is implementing Phase 5. The Agency is actively reviewing the studies submitted on each active ingredient and determining whether or not the pesticide is eligible for reregistration.

It was OPP's intent to complete all DCI's for necessary information under the ICR approved through June 30, 1999. However, this goal was not met because of workload demands. The chemicals on List A moved directly to Phase 5 because the Agency had substantially reviewed these under the Registration Standard program. Therefore, the data call-in for List A chemicals has been completed and no additional data call-ins are expected unless the submitted data are inadequate or tiered requirements need to be satisfied. For chemicals on lists B, C, and D, data call-ins will not be completed during the current ICR authorization. Once an eligibility decision is made, the Agency will issue a Reregistration Eligibility Document (RED) to the registrant who then must provide product-specific data to EPA within 8 months of receipt of the RED.

Therefore, the Agency seeks a renewal of this ICR because there may be a need to request additional or supplemental data before final reregistration decisions can be made. This re-approval will also allow EPA to continue to use all forms associated with this ICR; e.g., EPA Data Call-In Response Form; EPA Requirements Status and Registrant's Response Form; Certification of Offer to Cost Share in the Development of Data Form (EPA No. 8570–32); and Certification with Respect to Citation of Data (EPA No. 8570–34).

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, "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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Data Generation for Pesticide Reregistration information collection is estimated to average 359.5 hours per an average 111 respondents. The average burden estimates assume that that respondents recieving product specific DCIs have an average of 8.9 products. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Pesticide registrants.

Estimated total number of potential respondents: 111.

Frequency of response: As needed only when specific data is required.

Estimated total/average number of responses for each respondent: 8.9.

Estimated total annual burden hours: 2,715 to 33,120.

Estimated total annual burden costs: $183,870 to $2,701,872.

VI. Are There Changes in the Estimates from the Last Approval?

Yes. Three factors distinguish this ICR from the previous one. Both the unit test costs and labor rates were updated to reflect more current values. The unit test costs for list "C" and "D" chemicals almost doubled from the prior ICR. Secondly, the data requirements for list "B", "C", and "D" chemicals were revised. Lastly, the anticipated number of cases per year, the number per chemical list and the respondents affected changed from the previous ICR. The previous ICR anticipated an average number of 668 respondents and this ICR estimated a total of 269 respondents over 3 years or 90 per year which is about 60 percent lower.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests.

Dated: June 3, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–14863 Filed 6–15–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6361–2]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Drinking Water Intake Subcommittee of the Science Advisory Board's (SAB) Executive Committee will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

The Subcommittee will hold two public meetings to review the Agency's report entitled Estimated Per Capita Water Consumption in the United States. The first meeting will be conducted as a public teleconference on Thursday, July 8, 1999, between the hours of 12:00 noon and 2:00 p.m., Eastern Time. The purpose of the first meeting will be to introduce the topic to the Subcommittee, to conduct some preliminary discussions on the report, and to plan for the second meeting which will be held on July 19–20, 1999. The July 8 meeting will be coordinated through a conference call connection in Room 3709 of the Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. For those intending to participate telephonically, the briefing slides used by EPA in its introductory remarks to the Subcommittee can be viewed at the SAB Website (*http://www.epa.gov/sab/*) by July 6, 1999. The Website link to the slides will be contained within the "What's New" sidebar and will be titled "Drinking Water Intake." Additional instructions about how to participate in the conference call can be obtained by calling Ms. Dorothy Clark at (202) 260–6555, and via e-mail at: <clark.dorothy@epa.gov> by July 2, 1999.

The second meeting, a two-day face-to-face meeting to discuss the report in detail and to formulate SAB advice, will be held in the Capital Hill Room of the Embassy Suites Hotel Crystal City, 1300 Jefferson Davis Highway, Arlington, VA 22202, telephone (703) 979–9799, beginning at 8:30 am Monday, July 19, 1999 and ending not later than 5:00 pm Tuesday, July 20, 1999.

Background—Water Consumption Estimates for the United States

EPA has prepared a report providing estimates of per capita water intake in the U.S. based on the USDA 1994–96 Continuing Survey of Food Intake for Individuals (CSFII). Estimates include amounts of direct and indirect water consumption. Direct water consumption is plain water consumed directly as a beverage. Indirect water is water added to foods and beverages during final preparation at home, in schools, or restaurants. In addition, empirical distributions of estimated water consumption were generated by water source and by the respondent demographic and physical characteristics. Water sources include: (1) The community water supply, (2) bottled water, (3) other sources including a household well or rain cistern, or a household or public spring. Physical and demographic characteristics include: age, gender, race, socioeconomic status, geographic region. Estimates were also generated separately for pregnant and lactating women. The distributions of estimated water intake include point estimates of the mean and the following percentiles: 1st, 5th, 10th, 25th, 50th, 75th, 90th, 95th, and 99th. In addition, confidence intervals for the mean and bootstrap intervals for the upper percentiles are provided for the larger subpopulations.

Charge to the Science Advisory Board

The Agency charge to the SAB includes the following questions:

1. The distributions of estimated water intake were generated using standard statistical methodology for surveys with complex designs such as the 1994–96 CSFII. Is the statistical methodology used to generate the estimates appropriate?

2. EPA limited the calculation of confidence intervals about the mean and boot strap intervals for percentiles to the distributions for the larger subpopulations. The complex sample design makes the calculation and interpretation of results for smaller subpopulations difficult if not impossible to calculate and interpret. Is this an appropriate decision?

3. The CSFII survey is based on short-term survey data. Upper percentile estimates may differ for short-term and long-term data because short-term survey data tends to be inherently more variable. Is it appropriate to report upper percentile estimates such as the 99th percentile?

4. Are the data conventions used to identify indirect water appropriate?

5. Do the data support estimates of subpopulation distributions?

6. EPA has provided distributions of estimated water intake for numerous subpopulations. Should any additional subpopulations be added? Should any be excluded? Specify such subpopulations.

7. USDA has identified two types of indirect water in foods. They are:

a. The amount of water in food as consumed.

b. The amount of water used to prepare food.

The EPA water intake report provides estimates of the amount of indirect water in food as consumed. If resources permit, we could expand our report as a future addendum to include estimates of the amount of indirect water used to prepare food. Would this be desirable?

8. Additional water intake estimates associated with types of food may be useful for specific risk-exposure analyses, e.g., cold beverage intake. Such analyses are feasible using the CSFII data. EPA could expand the report as a future addendum if resources permit. Are any such targeted analyses of significant interest at this time?

9. Intrinsic water is the water contained in foods and beverages at the time of market purchase. Intrinsic water includes commercial water (added to food products by food manufacturers) and biological water (found naturally in foods). Intrinsic water is not included in EPA's current analysis. If resources permit, EPA could expand the report as a future addendum to include estimates of intrinsic water. Would this be desirable?

10. What are the scientific limitations to the use of the water consumption estimates provided in this report?

FOR FURTHER INFORMATION: Single copies of the background report for the review can be obtained by contacting either Dr. Julie Du, US EPA, Office of Science and Technolgy, Mail Stop 4304, 401 M Street, SW, Washington, DC, 20460; [telephone: (202) 260–7583] or Ms. Helen Jacobs, US EPA, Office of Science and Technolgy, Mail Stop 4303, 401 M Street, SW, Washington, DC, 20460; [telephone: (202) 260–5412]. Additional information for these meetings, or the agendas for the meetings, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer (DFO) for the Drinking Water Intake Subcommittee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202) 260–5886; by fax at (202) 260–7118 or via e-Mail at: <miller.tom@epa.gov>, or by contacting Ms. Dorothy Clark at (202) 260–6555, by fax at (202) 260–7118, and by e-Mail at: <clark.dorothy@epa.gov>. Anyone wishing to make an oral presentation to the Subcommittee must contact Mr. Miller, in writing (by letter, fax, or E-mail) no later than 12 noon, Thursday, July 1, 1999, in order to be included on the Agenda for the July 8 teleconference meeting and no later than 12 noon, Monday, July 12, 1999 for the July 19–20 meeting. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Subcommittee and the interested public.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: June 7, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–15272 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34190; FRL–6087–9]

Organophosphate Pesticides: Bensulide and Profenofos; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for two organophosphate pesticides, bensulide and profenofos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos, must be received by EPA on or before August 16, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in

person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply To Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on bensulide and profenofos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

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

A. Electronically

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

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established official records for these actions under docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

C. By Telephone

If you need additional information about this action, you may also contact the person identified in the "FOR FURTHER INFORMATION" section.

III. How Can I Respond To This Action?

A. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control numbers OPP–34132B for bensulide and OPP–34138B for profenofos. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action is EPA Taking in This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for two organophosphate pesticides, bensulide and profenofos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April-1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology.

A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the bensulide and profenofos preliminary risk assessments, which where released to the public August 10, 1998 (63 FR 43175) (FRL–6024–3) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for bensulide and profenofos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemicals specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific bensulide and profenofos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commentors may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commentors may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before August 16, 1999 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 10, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–15282 Filed 6–15–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30480; FRL–6084–5]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by July 16, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30480] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address
Robyn Rose	Rm. 910W44, CM #2, 703–308–9581, e-mail: rose.robyn@epa.gov	1921 Jefferson Davis Hwy, Arlington, VA
Susanne Cerrelli	Rm. 910W45, CM #2, 703–308–8077, e-mail: cerrelli.susanne@epa.gov	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 72098–A. Applicant: Taensa, Inc., 26 Sherman Court, P.O. Box 764, Fairfield, CT 06430. Product Name: TAE-022 Technical. Plant Strengthening Agent and Biofungicide. Active ingredient: *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 at 73.3%. Proposed classification/Use: None. For manufacturing purposes only. (R. Rose)

2. File Symbol: 69592–L. Applicant: Agraquest Inc., 1105 Kennedy Place, Davis, CA 95616. Product Name: QST 713 Technical. Microbial Fungicide. Active ingredient: QST 713 strain of dried *Bacillus subtilis* at 5%. Proposed classification/Use: None. For use in

manufacturing or formulating end-use products to control various fungal plant pathogens and terrestrial use. (S. Cerrelli)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30480] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30480]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: June 7, 1999.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–15283 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400142; FRL–6077–9]

Emergency Planning and Community Right-to-Know; Notice of Availability of Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has prepared and is making available several guidance documents to assist industries in understanding their compliance responsibilities in association with section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). One of the documents is an expanded and updated version of the 1997 EPCRA Section 313 Questions and Answers document which provides guidance on commonly asked questions. EPA is also making available a crosswalks document which lists the source of the question and answer and a description of and revisions to the original. Another document EPA is making available is the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document" which outlines clarifications made to the current instructions package. In addition to these documents, EPA has updated several industry-specific guidance documents developed for facilities in the industry groups recently added to the list of industries covered under EPCRA section 313. These documents are intended to assist these recently added industries in understanding the requirements under EPCRA section 313 and to help them more easily determine if their facility is likely to have reporting responsibilities under EPCRA section 313.

FOR FURTHER INFORMATION CONTACT: Sara Hisel McCoy, 202–260–7937, e-mail: hisel-mccoy.sara@epa.gov for questions related to the Questions and Answers document, its Crosswalks document or the Forms and Instructions Crosswalks document. For specific information regarding the industry-specific guidance documents, contact Velu Senthil, 202–260–3943, e-mail: senthil.velu@epa.gov. For more information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be interested in this notice if you manufacture, process, or otherwise use any of the chemicals covered by EPCRA section 313. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Industry	Manufacturing, metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products-wholesale, petroleum bulk terminals and plants wholesale, and solvent recovery services.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in these documents. Other types of entities not listed in the table could also be interested. To determine whether your facility would be interested in these documents, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of these documents to a particular entity, consult the appropriate person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of These Documents?

1. *Electronically.* You may obtain electronic copies of these documents from the EPA internet Home Page at http://www.epa.gov. On the Home Page select in the following order: "Offices, Labs and Regions," "Offices," "Office of Prevention, Pesticides and Toxic Substances," "Right-to-Know," and then look up the entry for these documents under "TRI Forms, Reporting Requirements and Guidance." You can also go directly to the "TRI Forms, Reporting Requirements and Guidance" listing at http://www.epa.gov/opptintr/tri.

2. *By mail.* Copies of these documents are also available from the National Center for Environmental Publications and Information (NCEPI), P.O. Box 42419, Cincinnati, OH 45242–2419.

3. *In person or by phone.* If you have any questions or need additional information about these documents, please contact the appropriate technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

II. Additional Documentation and Clarification

A. What Documents are Being Made Available?

EPA is making available the 1998 "Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 Questions and Answers Document," the 1998 "EPCRA Section 313 Questions and Answers Crosswalks Document," and the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document." In addition, EPA is making available several updated guidance documents specific to the seven industries recently added to the list of industrial sectors covered by EPCRA section 313 and section 6607 of the Pollution Prevention Act. The titles and document numbers for these six documents are as follows:

- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Metal Mining Facilities" (EPA 745–B–99–001)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Coal Mining Facilities" (EPA 745–B–99–002)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Electricity Generating Facilities" (EPA 745–B–99–003)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for RCRA Subtitle C TSD Facilities and Solvent Recovery Facilities" (EPA 745–B–99–004)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Chemical Distribution Facilities" (EPA 745–B–99–005)
- "Section 313 Emergency Planning and Community Right-to-Know Act Guidance Document for Petroleum Bulk Facilities" (EPA 745–B–99–006)

The revised 1998 "EPCRA Section 313 Questions and Answers Document" and the six new industry guidance documents are effective beginning with the 1999 reporting year. However, to ensure consistency in reporting and the integrity of the data, the Agency would prefer that covered facilities use these documents as guidance for the 1998 reporting year as well.

B. How Has EPA Updated the "EPCRA Section 313 Questions and Answers Document" and What is the "EPCRA Section 313 Questions and Answers Crosswalks Document"?

The revised 1998 "EPCRA Section 313 Questions and Answers Document" assists regulated facilities in complying with the reporting requirements of EPCRA section 313. This updated document presents guidance in the form of answers to many commonly asked questions on compliance with EPCRA section 313 and is intended to help covered facilities understand various issues associated with completing the Form R and the Alternate Threshold Certification Statement (Form A).

In an effort to make the "1998 EPCRA Section 313 Questions and Answers Document" as complete as possible, EPA has added over 150 questions and answers (Q&As) to the updated document. These additional Q&As were derived from: (1) The "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries"; (2) recent interpretive guidance letters produced by EPA's Toxics Release Inventory Branch on EPCRA section 313; and (3) inquiries by the regulated community from the 1997 spring EPCRA section 313 training sessions. Facilities covered by EPCRA section 313 should review the entire updated document to understand compliance with the regulations.

In addition to adding new Q&As, in some instances EPA edited some of the 1997 Q&As for clarity. To highlight any edits EPA has made between the 1998 Q&As and the original version, EPA has also prepared the 1998 "Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 Questions and Answers Crosswalks Document." This crosswalks document includes the 1998 Q&A number, the source of the Q&A, if there have been any edits other than punctuation, whether the edit was minor or more significant, and if the edits are significant, a rationale for the edit.

In most of the Q&As where EPA made edits, the Agency simply added language to provide a more complete picture of the reporting requirements associated with issues presented in the question. However, there are a few cases in which the answer has been modified from the original. These modifications include:

1. EPA has made revisions to many of the laboratory activities exemption Q&As (see section 2D of the documents or the 1998 Q&A numbers 292 through 314). As made clear in the EPCRA section 313 regulations, for toxic chemicals to be exempted from reporting under the laboratory activities exemption, the activities must take place inside the laboratory (40 CFR 372.38(d)(3)). Some Q&As on this exemption may have been unclear on this point. These Q&As have been modified to clarify that activities must be conducted inside a laboratory to be eligible for this exemption.

2. The answer to Q&A number 189 in the 1997 "EPCRA Section 313 Questions and Answers Document" on the motor vehicle exemption has also been modified in the 1998 "EPCRA Section 313 Questions and Answers Document." In the 1997 Q&A number 189, a covered facility allows motor vehicles from other facilities to come on-site to refuel. In this 1997 Q&A, the facility was instructed to exempt the quantity of the toxic chemicals in the fuel used to refuel the motor vehicles from off-site. However, the activity in the 1997 Q&A number 189 was misidentified as an otherwise use of the toxic chemical. To be consistent with other reporting guidance on this topic, the answer has been changed in the 1998 Q&A number 287 to reflect the fact that the facility is actually processing the toxic chemicals in the gasoline and therefore is not eligible for the motor vehicle exemption.

3. The answer to Q&A number 161 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 246). In the 1997 Q&A number 161, a facility which has exceeded the threshold for ammonia is instructed to discount the releases and other waste management of ammonia in the quantities of sewage derived from the employees working at the facility under the personal use exemption. However the quantities of ammonia derived from the employee waste have been coincidentally manufactured as a result of the degradation of the waste. Therefore, because only quantities of the toxic chemical that are otherwise used are eligible for the personal use exemption, the quantities of ammonia coincidentally manufactured cannot be exempt under the personal use exemption. The updated 1998 Q&A number 246 (1997 Q&A 161) reflects this more accurate interpretation.

4. The answer to Q&A number 88 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been clarified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 133) to reflect that ammonia produced from the decomposition of animal products used to produce feed is to be counted towards

the manufacturing as well as processing thresholds.

5. In the "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries" Q&A number 67 (1998 Q&A 171) a facility which receives reusable containers with residual amounts of a toxic chemical adds more toxic chemical to the containers on-site and sends the containers to customers. The answer in the Addendum Q&A directed the facility to consider the residual amounts in these containers towards the facility's processing threshold. Because these residual amounts remain in the original container in which they were first placed, they are not being repackaged. EPA therefore modified the answer in the 1998 Q&A number 171 to indicate that these residual amounts need not be counted towards the facility's processing threshold because they do not meet the definition of processing.

6. The "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries" Q&A number 92 has been modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 251) to reflect that while storm water drawn from the environment may qualify for the intake water exemption in 40 CFR 372.38(c)(5), toxic chemicals acquired by storm water after the storm water has run onto and off of facility equipment and buildings are to be considered toward threshold determinations and release and other waste management calculations.

7. The "EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries" Q&A number 48 has been modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 530) to clarify that although the use of a temporary storage pile may not be considered a reportable release to the land provided certain conditions are met, the volatilizing or leaching of toxic chemicals from the pile is considered reportable releases and is to be reported if the EPCRA section 313 thresholds have been met by the facility for the toxic chemical in the storage pile.

8. The answer to Q&A number 394 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been updated in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 540) to reflect EPA's modified interpretation of the term otherwise use. In the EPCRA section 313 facility expansion rulemaking (62 FR 23834, May 1, 1997) (FRL–5578–3), EPA reinterpreted the term otherwise use to include on-site treatment for destruction, disposal and stabilization of toxic chemicals in materials received from off-site for the purposes of further waste management. This change to the regulations became effective in the 1998 reporting year. The answer to the 1998 Q&A number 540 reflects this change in the regulations.

9. The answer to Q&A number 435 in the 1997 "EPCRA Section 313 Questions and Answers Document" has been edited in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 588) to clarify that although a toxic chemical may not undergo any releases or other waste management activities, a Form R or Form A may still be required if thresholds have been met for the chemical.

10. The Hotline Monthly Report Question from November 1997 was modified in the 1998 "EPCRA Section 313 Questions and Answers Document" (1998 Q&A number 664) to clarify that a Form R submitted after the submission of a Form A for the same chemical and reporting year is considered a late submission of the Form R and a request to withdraw the previously filed Form A.

C. Why is EPA Updating the New Industry Sector Guidance Documents?

As a result of the final rule to add seven new industrial sectors to EPCRA section 313 reporting (62 FR 32834), EPA has received numerous inquiries from representatives of these newly added industries. In response to these questions, EPA has made several determinations clarifying how activities conducted by these new industries should be considered under EPCRA section 313. EPA would like to provide all facilities with this additional information and is making it available in these documents for use in preparing the first years reports for those industries.

D. What is the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document"?

To clarify various reporting issues and to provide additional guidance for the industrial sectors newly regulated under EPCRA section 313 (62 FR 32834), EPA has made some changes to the EPCRA Section 313 Forms and Instructions for the 1998 reporting year. The Agency has received requests from the regulated community to identify what exactly has changed in the instructions. EPA is making available the "Toxic Chemical Release Inventory Reporting Forms and Instructions: Revised 1998 Version Crosswalks Document" which outlines the areas in the instructions that have been amended to reflect these clarifications.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: June 8, 1999.

Joseph A. Carra,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–15281 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6360–9]

John P. Saad Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to enter into a cost recovery settlement pursuant to section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(g). This administrative settlement would resolve the settling party's liability for past response costs incurred by EPA at the John P. Saad Superfund Site located in Nashville, Tennessee. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor on or before July 16, 1999.

Dated: May 28, 1999.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–15275 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6361–1]

John P. Saad Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to enter into two (2) cost recovery settlements pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9622(h). These administrative settlements would resolve the settling party's liability for past response costs incurred by EPA at the John P. Saad Superfund Site located in Nashville, Tennessee. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate that the proposed settlements are inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, GA 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor on or before July 16, 1999.

Dated: May 28, 1999.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–15276 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

PREVIOUSLY ANNOUNCED DATE & TIME: Tuesday, June 15, 1999, 10:00 a.m., meeting closed to the public. This meeting was cancelled.

DATE & TIME: Tuesday, June 22, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

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.

DATE & TIME: Thursday, June 24, 1999 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–13: National Republican Congressional Committee by Allison R. Hayward, Legal Counsel.

Proposed Final Rules and Explanation and Justification on Treatment of Limited Liability Companies Under the Federal Election Campaign Act.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 99–15474 Filed 6–14–99; 3:34 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 99–N–6]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it is seeking public comments concerning a three-year extension by the Office of Management and Budget (OMB) of the previously approved information collection entitled "Advances to Nonmember Mortgagees."

DATES: Interested persons may submit comments on or before August 16, 1999.

ADDRESSES: Address comments and requests for copies of the information collection to Elaine L. Baker, Secretary to the Board, by telephone at 202/408–2837, by electronic mail at bakere@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Senior Financial Analyst, Policy Development and Analysis Division, Office of Policy, Research and Analysis, by telephone at 202/408–2866, by electronic mail at curtisj@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) authorizes the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to certified nonmember mortgagees. *See* 12 U.S.C. 1430b. In order to be certified as a nonmember mortgagee, an applicant must meet the eligibility requirements set forth in section 10b of the Bank Act. Subpart B of part 935 of the Finance Board's regulations implements the statutory eligibility requirements an applicant must meet in order to be certified as a nonmember mortgagee and establishes uniform review criteria the FHLBanks must use in evaluating applications. *See* 12 CFR 935.20–935.24. More specifically, § 935.22 of the rule implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy the requirements. 12 CFR 935.22. Under § 935.23, the FHLBanks have authority to approve or deny all applications for certification as a nonmember mortgagee, subject to the statutory and regulatory requirements. 12 CFR 935.23. Section 935.23 also permits an applicant to appeal a FHLBank's decision to deny certification to the Finance Board. Section 935.24 of the rule establishes the terms and conditions under which a FHLBank may make advances to a nonmember mortgagee. 12 CFR 935.24. Section 935.24 also imposes on a certified nonmember mortgagee a continuing obligation to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory requirements.

The information collection contained in §§ 935.22 through 935.24 of the rule is necessary to enable, and is used by the FHLBanks to determine whether a respondent satisfies the statutory and regulatory requirements to be certified initially and maintain its status as a nonmember mortgagee eligible to receive FHLBank advances. The Finance Board requires and uses the information collection to determine whether to uphold or overrule a FHLBank's decision to deny nonmember mortgagee certification to an applicant.

The OMB number for the information collection is 3069–005. The OMB clearance for the information collection expires on November 30, 1999.

The likely respondents include applicants for nonmember mortgagee certification and certified nonmember mortgagees.

B. Burden Estimate

The Finance Board estimates the total annual average number of applicants at five, with one response per applicant. The estimate for the average hours per application is ten hours. The estimate for the annual hour burden for applicants is 50 hours (5 applicants × 1 response per applicant × approximately 10 hours).

The Finance Board estimates the total annual average number of certified nonmember mortgagees at 43, with 1 response per mortgagee. The estimate for the average hours per certified nonmember mortgagee response is 0.5 hours. The estimate for the annual hour burden for certified nonmember mortgagees is 21.5 hours (43 certified nonmember mortgagees × 1 response per mortgagee × approximately 0.5 hours).

The Finance Board estimates that the total annual hour burden for all respondents is 71.5 hours (5 applicants × 1 response per applicant × approximately 10 hours + 43 certified nonmember mortgagees × 1 response per mortgagee × approximately 0.5 hours).

C. Comment Request

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

By the Federal Housing Finance Board.

Dated: June 9, 1999.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–15211 Filed 6–15–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-14485) published on page 30521 of the issue for Tuesday, June 8, 1999.

Under the Federal Reserve Bank of Richmond heading, the entry for BB&T Corporation, Winston-Salem, North Carolina, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina; to merge with Matewan Bancshares, Inc., Williamson, West Virginia, and thereby indirectly acquire Matewan National Bank, Williamson, West Virginia.

In connection with this application, Applicant also has applied to acquire Matewan Bank, FSB, Paintsville, Kentucky, and thereby engage in thrift activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and Matewan Venture Fund, Inc., Williamson, West Virginia, and Hampden Venture Limited, Hampden, West Virginia, and thereby engage in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Comments on this application must be received by July 2, 1999.

Board of Governors of the Federal Reserve System, June 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15212 Filed 6–15–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. BCB Holding Company, Inc., Theodore, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bay Bank, Theodore, Alabama (in organization).

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Quincy Bancshares, Inc., Quincy, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Quincy, Quincy, Illinois (in organization).

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Belvedere Capital Partners LLC, San Francisco, California; California Community Financial Institutions Fund Limited Partnership, San Francisco, California; and Placer Capital Co., San Francisco, California; to acquire 100 percent of the voting shares of Placer Savings Bank, Auburn, California.

Board of Governors of the Federal Reserve System, June 10, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–15213 Filed 6–15–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99153]

Cooperative Agreements To Develop National Strategies To Promote Disease Prevention and Health Promotion; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to develop national health promotion and disease prevention

strategies to assist health care organizations, state and local health departments, businesses, and other nonprofit organizations whose mission is to promote prevention, improve health care quality and improve the public's health. This program addresses all priority areas of the "Healthy People 2000".

B. Eligible Applicants

Applications will be accepted from national, nonprofit organizations who provide documented proof of meeting the following criteria in the "Eligibility" section of the application:

1. Be an established tax-exempt organization (i.e., a non-governmental, tax exempt corporation or association whose net earnings in no way accrue to the benefit of private shareholders or individuals). Tax-exempt status may be confirmed by providing a copy of the relevant pages from the Internal Revenue Service's (IRS) most recent list of 501(c)(3) tax exempt organizations or a copy of the current IRS Determination Letter. Proof of tax exempt status must be provided with the application.

2. Have a specific charge from its Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally within the United States and its territories.

3. Have at least three years documented experience in operating and centrally administering a coordinated program for its membership focusing on health and health related issues in the business community.

Note: Pub. L. 04–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 to $500,000 is available in FY 1999 for approximately 1–3 awards. It is expected that the average award will range from approximately $100,000 to $300,000 per award. It is expected that awards will begin on or about September 30, 1999, for a 12 month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by the successful completion of required activities and reports, and by the availability of funds.

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement national health disease prevention programs and preventive health models for use by the recipient in providing assistance to a broad range of organizations, including private sector health care organizations, State and local health departments, universities, managed care organizations, and businesses.

b. Collaborate nation-wide with public, private, nonprofit, and academic institutions to promote the goals of prevention.

c. Conduct process and outcome evaluation on all activities.

d. Disseminate information concerning effective prevention activities for health care organizations.

2. CDC Activities

a. Provide technical assistance.

b. Provide up-to-date scientific information concerning prevention activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001)(adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit. On or before August 16, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either: (a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for objective review. (Applicants must request a legibly dated U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of time and date of mailing.)

Late applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria:

1. Organizational Profile, Background and Need (20 points)

a. The extent to which the applicant's existing organizational structure, mission, goals, objectives, activities, and functions are consistent with the purpose of this Program Announcement.

b. The extent to which the applicant clearly describes the need for national preventive health models, demonstrates an understanding of, access to, and the exchange of information, technical assistance and professional consultation to assist health care organizations, State and local health departments, and other organizations whose mission is to promote prevention and improve the public's health.

c. The ability of the applicant's previous history in working with State and local health departments, national private health care organizations, academia and public health to promote prevention programs and its experience in the management and delivery of resources through various mediums.

2. Goals and Objectives (15 points)

a. The extent to which the applicant's goals are clearly documented and objectives are time-phased, specific, measurable, and achievable.

b. The quality and specificity of the applicant's proposed plan to establish and maintain existing partnerships.

3. Project Management and Staffing (10 points)

a. The extent to which the project staff are clearly described, appropriately assigned, and have appropriate skills and experiences in prevention programs.

b. The extent to which the applicant has internal infrastructure and program experience in prevention to carry out objectives.

c. The extent to which the applicant provides details regarding the level of effort and allocation of time for each staff position.

4. Plan of Operation (20 points)

The quality and specificity of the applicant's proposed plan to develop health education models, and the extent to which the proposed activities are realistic and meet the intended purposes of the funding.

5. Evaluation Plan (20 points)

The extent to which the applicant provides a detailed description of the methods to be used to evaluate program

effectiveness, including what will be evaluated and analyzed, who will perform the evaluation and the time-frame.

6. Collaboration (15 points)

The extent to which the applicant documents evidence of collaboration and experience with partners.

7. Budget (Not scored)

The extent to which the budget is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. An annual progress report.
2. A financial status report, no more than 90 days after the end of the budget period; and
3. A final financial status and performance report, no more than 90 days after the end of the project period.

The following additional requirements are applicable to the program. For a complete description of each see Addendum 1 in the application package.

AR–5 HIV Program Review Panel Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)2) of the Public Health Service Act (42 U.S.C. 241(a) and 247b(k)2)), as amended.

J. Where To Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: http://www.cdc.gov (click on funding). To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest, 99153.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99153, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Mailstop E–13, Atlanta, GA 30341–4146; Telephone: (770) 488–2717; E-mail address: jcw6@cdc.gov.

For program technical assistance contact: Nancy Chalmers, M.P.A., Centers for Disease Control and Prevention, Office of Program Planning and Evaluation, 1600 Clifton Road, Mailstop D–24, Atlanta, GA 30333; Telephone: (404) 639–7085; E-mail address: npc1@cdc.gov.

Dated: June 10, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–15218 Filed 6–15–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 22 and 23, 1999, 8 a.m. to 5:30 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: On July 22, 1999, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for the correction of myopia with and without astigmatism using laser in-situ keratomileusis (LASIK). The committee will also discuss, make recommendations, and vote on a holmium laser for the correction of hyperopia using laser thermal keratomileusis. On July 23, 1999, the committee will discuss, make recommendations, and vote on a soft acrylic intraocular lens for the visual correction of aphakia after cataract extraction. The committee will also discuss, make recommendations, and vote on a PMA for the correction of myopia with and without astigmatism using LASIK.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 12, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m. on July 22 and 23, 1999. Near the end of the committee deliberations on each PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 12, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 9, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–15183 Filed 6–15–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–13]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration; HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR 486.301–486.325.

Form No.: HCFA–R–13.

Use: An Organ Procurement Organization (OPO) is an entity that performs or coordinates the performance of retrieving, preserving and transporting organs and maintains a system of locating prospective recipients for available organs. OPOs are required to submit accurate data to HCFA concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs. This information collection lays out the conditions for coverage for OPOs.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Number of Respondents: 62.

Total Annual Responses: 62.

Total Annual Hours Requested: 1.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 7, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15207 Filed 6–15–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–131]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Information Collection Requirements in 42 CFR 411.408.

Form No.: HCFA–R–131 (OMB# 0938–0566).

Use: This information will be used by physician's providing written notice to a beneficiary that Medicare is likely to deny payment for a specified service. This information will also be used by Medicare Part B carriers to determine beneficiaries' liability. Section 9332 of the Omnibus Budget Reconciliation Act of 1986, requires physicians "who do not accept payment on an assignment-related basis" to refund to patients any amounts they collect for services denied under section 1862(a)(1) of the Social Security Act, as "not reasonable and necessary for the treatment of illness or injury or to improve the functioning of a malformed body member." Refunds are not required in either of two circumstances. First, a refund is not required if the physician informs the beneficiary, prior to furnishing the service, that Medicare is unlikely to pay for the service and the beneficiary, after being so informed, agrees to pay out of his or her pocket. Second, a refund is not required if the physician did not know, and could not reasonably have been expected to know, that Medicare would not pay for the service. In those cases, the beneficiary is liable for the service.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 237,322.

Total Annual Responses: 925,904.

Total Annual Hours: 115,738.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Date: May 20, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15206 Filed 6–15–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–43]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Conditions of Participation for Portable X-ray suppliers and Supporting Regulations in 42 CFR 486.104, 486.106, and 486.110;

Form No.: HCFA–R–43 (OMB# 0938–0338);

Use: This information is needed to determine if portable X-ray suppliers are in compliance with published health and safety requirements. These requirements are among other requirements classified as conditions of participation or conditions for coverage. These conditions are based on a provision specified in law relating to diagnostic X-ray tests "furnished in a place of residence used as the patient's home," and are designed to ensure that each supplier has a properly trained staff to provide the appropriate type and level of care, as well as, a safe physical environment for patients. HCFA uses these conditions to certify suppliers of portable X-ray services wishing to participate in the Medicare program.

Frequency: Annually;

Affected Public: Business or other for-profit;

Number of Respondents: 670;

Total Annual Responses: 670;

Total Annual Hours: 1,675.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 6, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–15208 Filed 6–15–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Young Drivers Intervention Study

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 30, 1998, pages 71933–71934 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Young Drivers Intervention Study.

Type of Information Collection Request: New.

Need and Use of Information Collection: The purposes of this study are (1) determine the impact of parental actions in monitoring and controlling their adolescents' driving behavior, and (2) test the effectiveness of education in promoting parental restriction of adolescent risky driving behavior. The specific questions addressed in this study include: (1) Are parents' perceptions about driving risks associated with parental restrictions on teen driving? (2) Is a parent-teen driving agreement an effective way of reducing teen-aged risky driving? (3) Is information tailored to the interests and background of the participants more effective than non-tailored information? (4) Do parental restrictions on teen driving reduce traffic citations and crashes among teens?

In each of two states, 4000 parent-teen dyads will be recruited, asked to provide informed consent, and interviewed by telephone. Interviews will occur upon recruitment, at the time of licensure, 6-months post-licensure, and 12-months post-licensure. Parents will be asked about their attitudes and management practices regarding their teens' driving. Teens will be asked about their driving attitudes, practices, and privileges. With the consent of the participants, the driving records for each teen-aged participant will be obtained from the state motor vehicle administration and citations and crashes will be examined 24-months post-licensure.

Parent-teen dyads will be assigned randomly to an information-only group or tailored-education group. Parents and teens in the information-only group will receive standard information on safe driving. Parents and teens in the tailored-education group will receive personalize educational materials in the mail, including a parent-teen driving agreement and an educational videotape.

Frequency of Response: On occasion.

Affected Public: Individuals or households.

Type of Respondents: Teen-aged children and parents. The annual reporting burden is as follows: Estimated number of Respondents: 14134; Estimated Number of Responses per Respondent: 1.33; Average Burden Hours Per Response: .50, and Estimated Total Annual Burden Hours Requested: 9399. The annualized cost to respondents is estimated at: $47,333. There are no capital costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions form the public and affected agencies are invited on one or more or the following points: (1) Whether the

proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Bruce Simons-Morton Chief, Prevention Research Branch, Division of Epidemiology, Statistics and Prevention Research, National Institutes of Child Health and Human Development, 6100 Executive Blvd, Room 7B05, Bethesda, MD 20852–7510 or call non-toll free number (301) 496–1126 or E-mail your request, including your return address, to Bruce__SimonsMorton@nih.gov.

COMMENT DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before July 16, 1999.

Dated: June 9, 1999.

Michael H. Rosenthal,

Acting Executive Officer, NICHD.

[FR Doc. 99–15224 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Survey of Colorectal Cancer Screening Practices in Health Care Organizations.

SUMMARY: In compliance with the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 30, 1998, Volume 63, No. 229 page 65796 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Survey of Colorectal Cancer Screening Practices in Health Care Organizations. Type of Information Collection Request: New. Need and Use of Information Collection: This study will measure primary care and specialty physician's knowledge, attitudes, and practice patterns related to colorectal cancer screening and diagnostic follow-up. This study also will assess guidelines, policies, and programs to provide or promote colorectal cancer screening within health plans. The purpose of this study is to obtain current, nationally representative data on the physician and health system factors that may influence the use of colorectal cancer screening and diagnostic follow-up for suspected colorectal cancer in community practice. Three questionnaires will be administered by mail, telephone, facsimile, or Internet using national samples of physicians and health plans. Study participants will select their preferred response mode. Study participants will be primary care and specialty physicians with active licenses to practice medicine in the U.S., and the medical directors of health plans listed by the American Association of Health Plans. Burden estimates are as follows:

Questionnaire	Estimated number of respondents	Number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Primary Care Physicians	1,389	1	0.333	463
Speciality Physicians	1,042	1	0.333	347
Health Plans	323	1	0.333	108
Total				918

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited in one or more of the following points: (a) whether the proposed collection of information is necessary for the 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Request for Comments: Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs,New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Carrie N. Klabunde, Ph.D., Epidemiologist, National Cancer Institute, EPN 313, 6130 Executive Boulevard, MSC 7344, Bethesda, Maryland 20892–7344, telephone 301–402–3362.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before July 16, 1999.

Dated: June 8, 1999.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 99–15225 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Development of Anti-CD30 Monoclonal Antibody; for the Development of HeFi–1, Cooperative Research and Development Agreement

National Cancer Institute: Development of Anti-CD30 monoclonal antibody: Opportunity for Cooperative Research and Development Agreement (CRADA) for the development of HeFi–1, a murine antibody that targets the CD30 transmembrane receptor expressed on activated B and T lymphocytes and some tumor cells. Development activities will include the humanization and/or chimerization of HeFi–1, followed by the pre-clinical and clinical development of the antibody. In addition, clinical studies of the murine HeFi–1 are also anticipated under this CRADA.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice for CRADA Opportunity.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to develop a new treatment for CD30 positive tumors including Hodgkin's Disease non-Hodgkin's lymphomas. The CRADA would have an expected duration of four (4) years. The goals of the CRADA include the rapid humanization and/or chimerization of the antibody for clinical trials and timely commercialization of products, diagnostics and treatments that result from the research. The CRADA Collaborator will have an option to an exclusive commercialization license in a pre-determined field of use to subject inventions arising under the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to: Dr. Suzanne Frisbie, Technology Development & Commercialization Branch, National Cancer Institute, 6120 Executive Boulevard Suite 450, Rockville, MD 20852 (phone: 301–435–3113, fax: 301–402–2117).

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwrded at any time. Confidential CRADA proposals, preferably two pages or less, must be submitted to the NCI within 30 days from date of this publication. Guidelines for preparing a full CRADA proposal will be communicated shortly thereafter to the respondent who has been selected.

SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists at the NCI have developmed a murine monoclonal antibody, HeFi–1, that targets CD30, a 120 kD transmembrane protein from the tumor necrosis receptor family that is expressed on activated B and T cells. In addition, CD30 expression has been detected on Band T cell lymphomas, Epstein-Barr virus-infected lymphoblastoid cells, HIV-associated lymphomas, Reed-Sternberg cells from Hodgkin's Lymphomas, embryonal carcinoma cells and carcinoma cells of the rhino-pharynx (Schmincke's tumor). Expression of either the CD30 receptor of fragments of CD30 has been identified as a negative prognostic sing in Hodgkin's Lymphoma. In vitro experiments have demonstrated that binding of the CD30 ligand can induce cells to proliferate, differentiate or undergo apoptosis, depending on the cell line. The potential usefulness of CD30 as an anti-tumor agent has been established in murine xenograft models. In mice treated with HeFi–1 following injection of Anaplastic Large Cell Lymphoma cells, no evidence of tumor was detected at day 60 in contrast to a median survival of 39 days for control animals. The NCI is interested in developing HeFi–1 as an anti-tumor agent for the treatment of human disease and is soliciting proposals for humanization and/or chimerization of the antibody using standard molecular techniques.

The successful Collaborator must have extensive, documented experience in the humanization and/or chimerization of murine-derived antibodies suitable for use in clinical trials. The product must retain the same or better affinity for binding to CD30 as the original HeFi–1 antibody and the producer cell line must secrete the antibody at a high enough rate to make it cost effective for use in large-scale production. The Collaborator will be responsible for verifying that the humanized and/or chimerized antibody binds the appropriate target protein and the final product must be stable and not aggregate. The NCI will provide the original cell line producing the murine antibody to the Collaborator.

For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid humanization and/or chimerization of the antibody for clinical trails as well as full and timely exploitation of any commercial opportunities.

The role of the National Cancer Institute in this CRADA will include, but not limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with the original cell line producing the murine HeFi–1 antibody.
3. Planning research studies and interpreting research results.
4. Support and sponsorship of clinical trails to evaluate efficacy and safety of product.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise in the development and production of humanized antibodies and in the pre-clinical and clinical development of the antibody.
2. Ability to collaborate with the NCI in the development of and conduct of assays to assure that the final product conforms to the technical requirements for use of the antibody in clinical trials and make all data available to the NCI.
3. Providing technical expertise and/or financial support (e.g. facilities, personnel and expertise) for CRADA-related activities.
4. Accomplishing objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.
6. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.
7. The willingness to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
8. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions.

9. The ability to obtain licensing or background rights if required for commercialization of the humanized and/or chimerized HeFi–1 antibody. NCI is currently not aware of any relevant patents that would need to be licensed for this CRADA opportunity, however NCI does not warrant that no such patents exist.

Dated: June 3, 1999.

Kathleen Sybert,

Chief, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–15226 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Oncogenes in Cancer Etiology and Progression.

Date: June 25, 1999.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David Irwin, PHD., Research Programs Review Section Chief, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6130 Executive Boulevard, EPN-Room 635E, Rockville, MD 20892–7405, (301) 402–0371.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15227 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Phase III: Trial of Lycopene and Selenium in Prostrate Cancer and Selenium and Vitamin E Chemprevention Trial.

Date: June 30, 1999.

Time: 9 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room 635, Rockville, MD 20852.

Contact Person: Mary C Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN—Room 643G, Bethesda, MD 20814, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.939, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15228 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Transdisciplinary Tobacco Use Research Centers.

Date: July 7–9, 1999.

Time: 7 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Gerald G. Lovinger, PHD., Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–78987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15230 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Population Based Cancer Epidemiology Research Program.

Date: June 29, 1999.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza North, 6130 Executive Boulevard, Room 640, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lalita D. Palekar, PHD., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research: 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 9, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15234 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Research Technology.

Date: June 28, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John L. Meyer, PHD., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15229 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Center for Complementary and Alternative Medicine (NCCAM) Special Emphasis Panel (SEP) meeting.

Name of SEP: NCCAM Special Review Committee.

Date: June 18, 1999.

Time: 8:30 a.m. to 1:00 p.m.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Contact Person: John C. Chah, Ph.D., Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, Bethesda, Maryland 20892, Telephone: 301–402–4334.

Purpose/Agenda: To evaluate and review grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. [93.213, Research and Training in Alternative Medicine], National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

Note: this notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

[FR Doc. 99–15232 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c0(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: June 30–July 1, 1999.

Time: June 30, 1999, 8 PM to adjournment.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn—Silver Spring, 877 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Valerie L. Prenger, PHD., Scientific Review Administrator, Review Branch, DEA, NHLBI, NIH, Two Rockledge Centre, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15231 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 1999.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jack D. Maser, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–444–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 9, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Jack D. Maser, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–444–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 13, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle. 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Laurence R. Stanford, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 14–16, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Laurence R. Stanford, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 19, 1999.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Russell E. Martenson, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 27–28, 1999.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert H. Stretch, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 28, 1999.

Time: 2 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Russell E. Martenson, PHD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15233 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Communications Support".

Date: July 15–16, 1999.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 9, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 99–15235 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Prevention Services Research Replicating a School-Based Program.

Date: July 28, 1999.

Time: 1 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: William C. Grace, PHD., Deputy Director, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93. 278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: June 9, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institute of Health.

[FR Doc. 99–15236 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 9, 1999.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Carole L. Jelsema, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group Alcohol and Toxicology Subcommittee 4.

Date: June 14–15, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopal C. Sharma, DVM, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Lung Biology and Pathology Study Section.

Date: June 15–16, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007.

Contact Person: George M. Barnas, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, The History Medicine Study Section.

Date: June 15, 1999.

Time: 8:30 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Luigi Giacometti, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Cell Development and Function 3.

Date: June 15–16, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PHD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.csr.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 15, 1999.

Time: 12 PM to 12:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Nursing Research Study Section.

Date: June 16–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Metabolism Study Section.

Date: June 16–17, 1999.

Time: 8 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Harborview, 1646 Front Street, San Diego, CA 92101.

Contact Person: Krish Krishnan, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 2.

Date: June 16–17, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada Inn, 8400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rona L. Hirschberg, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Microbial Physiology and Genetics Subcommittee 1.

Date: June 16–17, 1999.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Martin L. Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Epidemiology and Disease Control Subcommittee 1.

Date: June 16–18, 1999.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional, and Cognitive Neuroscience Initial Review Group, Visual Sciences B Study Section.

Date: June 16–17, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Leonard Jakubczak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Nutritional and Metabolic Sciences Initial Review Group, Nutrition Study Section.

Date: June 16–17, 1999.

Time: 8:30 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Harborview, 1646 Front Street, San Diego, CA 92101.

Contact Person: Sooja K. Kim, PHD, RD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892 Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Endocrinology Study Section.

Date: June 16–17, 1999.

Time: 8:30 AM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Hotel Harborview, 1646 Front Street, San Diego, CA 92101.

Contact Person: Syed M. Amir, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Chemical Pathology Study Section.

Date: June 16—18, 1999.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Syed Quadri, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 16, 1999.

Time: 1 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Robert Weller, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7848, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, Washington, DC 20036.

Contact Person: Robert Weller, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7848, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Physiological Chemistry Study Section.

Date: June 17–18, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Contact Person: Richard Panniers, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Biophysical Chemistry Study Section.

Date: June 17–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Donald Schneider, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 1FCN–7 (01).

Date: June 17–18, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group, Human Embryology and Development Subcommittee 1.

Date: June 17–18, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael Knecht, PHD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Initial Review Group, Visual Sciences A Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Initial Review Group, Respiratory and Applied Physiology Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington Hotel, 1400 M Street NW., Washington, DC 20005–2750.

Contact Person: Everett E. Sinnett, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016. sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Molecular and Cellular Biophysics Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel, 1914 Connecticut Ave, NW, Washington, DC 20009.

Contact Person: Nancy Lamontagne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Experimental Immunology Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Calbert A. Laing, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Allergy and Immunology Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Eugene M. Zimmerman, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17–18, 1999.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Immunological Sciences Initial Review Group, Immunological Sciences Study Section.

Date: June 17–18, 1999.

Time: 8:30AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Alexander D. Politis, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–1.

Date: June 17–18, 1999.

Time: 8:30AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., NW, Washington, DC 20007.

Contact Person: Carl D. Banner, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biochemical Sciences Initial Review Group, Biochemistry Study Section.

Date: June 17–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Contact Person: Chhanda L. Ganguly, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 17, 1999.

Time: 4 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nabeeh Mourad, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 18, 1999.

Time: 8:30AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–9 (22).

Date: June 20–23, 1999.

Time: 6 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.996, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated; June 8, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–15237 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5. U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial properly such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, General Medicine B Study Section.

Date: June 15–16, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Shirley Hilden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, IFCN 4.

Date: June 16–18, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: St James Preferred Residence, 950 24th Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PHD, Scientific Review Administrator, Integrative, Functional & Cognitive Neuroscience, & Cognitive Neuroscience Study Section 4, Center For Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Michael Micklin, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Experimental Therapeutics Subcommittee 1.

Date: June 21–22, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Phillip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Experimental Cardiovascular Sciences Study Section.

Date: June 21–22, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, Bethesda, MD.

Contact Person: Anshumali Chaudhari, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–6.

Date: June 21–22, 1999.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Bristol Hotel, 2430 Pennsylvania Ave, NW, Washington, DC 20037.

Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Pathology B Study Section.

Date: June 21–23, 1999.

Time: 8 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: City Plaza Downtown Hotel, 210 South Dubuque Street, Iowa City, IA 52240.

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Experimental Virology Study Section.

Date: June 21–22, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Garrett V. Keefer, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Initial Review Group, Physical Biochemistry Study Section.

Date: June 21–22, 1999.

Time: 8:30 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, rakhitg@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Radiation Study Section.

Date: June 21–23, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–BDCN–1 (01)s.

Date: June 21–22, 1999.

Time: 8:30 AM to 5 PM

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–BDCN–2 (01).

Date: June 21–22, 1999.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Herman Teitelbaum, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21–22, 1999.

Time: 9 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 21, 1999.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: A. Hameed Khan, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Orthopedics and Musculoskeletal Study Section.

Date: June 22–23, 1999.

Time: 8 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Montgomery Village Ave., Gaithersburg, MD 20879.

Contact Person: Daniel F. McDonald, PHD, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Initial Review Group, Pharmacology Study Section.

Date: June 22–23, 1999.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Jeanne N. Ketley, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN–5.

Date: June 22–23, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Syed Husain, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.

Date: June 22–23, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SSS–8 (56).

Date: June 22–24, 1999.

Time: 7 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Nadarajen A. Vydelingum, PHD, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 8, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, National Institutes of Health.

[FR Doc. 99–15238 Filed 6–15–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1610–00]

Notice of Availability of the Proposed Caliente Management Framework Plan Amendment and Final Environmental Impact Statement for the Management of Desert Tortoise Habitat

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The Proposed Plan Amendment and Final Environmental Impact Statement for the Caliente Management Framework Plan would implement management goals and actions for Bureau of Land Management (BLM)-administered desert tortoise habitat in Lincoln County, Nevada. The Mojave desert tortoise (*Gopherus agassizii*) was listed as a threatened species in 1990, based on declining numbers in some areas of its range. These goals and actions, some of which are recommended in the U.S. Fish and Wildlife Service's approved Desert Tortoise (Mojave Population) Recovery Plan, would assist the recovery and delisting of the desert tortoise in the Northeastern Mojave Recovery Unit. This amendment is required to comply with the Endangered Species Act of 1973 which mandates that all federal agencies conserve and recover listed species within their administrative units. The accompanying Final EIS satisfies the National Environmental Policy Act, which mandates that federal agencies analyze the environmental consequences of major federal actions.

The planning area for this amendment consists of approximately 754,600 acres of public land In southern Lincoln County, administered by the Caliente Field Station, within BLM's Ely Field Office. No private lands would be directly affected by management direction described under the Proposed Action or alternatives. The planning area is located within the Northeastern Mojave Recovery Unit, as defined by the Recovery Plan. The document discusses several alternatives for the protection of desert tortoise habitat and recovery of the species.

The Proposed Plan Amendment may be protested by any person who participated in the planning process, and who has an interest which is or may be adversely affected by the approval of the Proposed Plan Amendment. A protest may raise only those issues which were submitted for the record during the planning process (see 43 CFR 1610.5–2).

All protests must be written and must be postmarked on or before *July 23, 1999* and shall contain the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts of the document being protested.
- A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.
- A concise statement explaining precisely why the Bureau of Land Management, Nevada State Director's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Record of Decision will be issued. The Approved Plan Amendment/Record of Decision will be mailed to all individuals who participated in this planning process and all other interested publics upon their request.

DATES: All written protests must be postmarked no later than July 23, 1999.

ADDRESSES: Protests must be filed with: Director, Bureau of Land Management, Attn. Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

Copies of the Proposed Plan Amendment/FEIS may be obtained from the Ely Field Office, HC33 Box 33500, Ely, NV 89301 and the Caliente Field Station, U.S. Highway 93, P.O. Box 237, Caliente, NV 89008.

Public reading copies are available for review at the public libraries of Clark, White Pine and Lincoln Counties, all government document repository libraries and at the following BLM locations:

Office of External Affairs, Main Interior Building, Room 5000, 1849 C Street, NW., Washington, DC.;

Public Room, Nevada State Office, 1340 Financial Blvd., Reno, NV;

The Caliente Field Station and the Ely Field Office at the above addresses.

FOR FURTHER INFORMATION CONTACT: Gene L. Drais, Project Manager at (775) 289–1880 at the Ely Field Office.

Dated: June 4, 1999.

Gene A. Kolkman,

Field Manager.

[FR Doc. 99–15209 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–99–1990–00; CACA–20139 and CACA–22901]

Extending the Public Comment on the Proposed Sand and Gravel Mining Operation, Los Angeles County, CA Until September 13, 1999

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs—South Coast Field Office, Desert District, CA.

ACTION: Extension of the public comment period until September 13, 1999 for the draft environmental impact statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.1(a), notice is hereby given that the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Transit Mixed Concrete (TMC) Company Sand and Gravel Mining Project proposed for construction and operation off of Soledad Canyon Road and State Highway 14, Los Angeles County, California. The project site is within an unincorporated area of the County, north of Soledad Canyon Road, south of Antelope Valley Freeway, and west of Agua Dulce Canyon.

Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing to the contact person listed below. Public reading copies of the Draft EIS are available at the following County of Los Angeles public libraries: Canyon Country Library, 18536 Soledad Canyon Road, Santa Clarita, CA 91351; Newhall Library, 22704 W. Ninth Street, Santa Clarita, CA 91321; Valencia Library, 23743 W. Valencia Boulevard, Santa Clarita, CA 91355.

DATES: Comments must be received in writing to the BLM no later than September 13, 1999.

ADDRESSES: Written comments shall be mailed to the following address: Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs—South Coast Field Office, 690 W. Garnet Avenue, PO Box 1260, North Palm Springs, California, 92258. Comments may also be submitted by electronic mail (e-mail) to the following address: http://www.ca.blm.gov/palmsprings. The response to comments will be provided in the Final EIS.

SUPPLEMENTARY INFORMATION: TMC plans to mine a total of 83 million tons of materials and produce and sell approximately 56 million tons of Portland cement concrete sand and gravel over a 20-year period. The project plan includes the transport of processed material off-site in trucks as either aggregate product or ready-mixed concrete. All proposed mining and processing operations are located north of Soledad Canyon Road and outside the floodplain of the Santa Clara River and its tributaries. Mining will begin on the south side of a northeast-southwest trending ridge on-site, and progress through four successive excavation cuts. Fill areas for excess natural fines will be established on the south and north sides of the ridge. Reclamation and revegetation will be concurrent with mining operations and measures have been incorporated into project design to minimize erosion, provide watershed control, and protect water quality in the Santa Clara River. A full range of alternatives to the proposed action are considered in the Draft EIS.

The project site is on "split-estate" lands where the surface is privately owned and the minerals are federally owned and administered by the BLM. Thus, the project is also subject to approval of a Surface Mining Permit through preparation of an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA). The County of Los Angeles is the lead agency responsible for preparation of the EIR which has been prepared concurrently with the EIS.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Elena Misquez, BLM, Palm Springs—South Coast Field Office, PO Box 1260, North Palm Springs, CA 92258, telephone (760) 251–4804.

Dated: June 8, 1999.

Tim Salt,

District Manager.

[FR Doc. 99–15200 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–1610–00]

Notice of Intent To Conduct a Planning Review and Request for Public Participation Concerning Land Use Planning Decisions for Certain Bureau of Reclamation Withdrawn Lands in Wyoming To Be Restored to Bureau of Land Management Jurisdiction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Seven Bureau of Land Management (BLM) Field Offices in Wyoming are reviewing their land use plans to determine which of the resource and land use planning and management decisions in those plans will apply to the Bureau of Reclamation (BOR) withdrawn lands being restored to BLM jurisdiction. The BOR lands involved total about 310,000 acres and collectively lie within the BLM Cody, Worland, Rawlins, Casper, Rock Springs, Kemmerer, and Pinedale Field Office administrative areas. The public is invited to identify concerns to be addressed in the planning review.

EFFECTIVE DATES: Meeting dates and other public participation activities in the seven BLM Field Office areas will be announced in public notices, the local media, or in letters sent to interested and potentially affected parties. Persons wishing to participate in this planning review and wishing to be placed on mailing lists must notify the appropriate BLM Field Office(s) at the addresses and phone numbers below.

FREEDOM OF INFORMATION ACT CONSIDERATIONS: Public comments submitted for this planning review, including names and street addresses of respondents, will be available for public review and disclosure at the addresses below during regular business hours (7:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT:

Worland and Cody Field Offices:
Bob Ross, Planning Coordinator, BLM, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401–0119, 307–347–5100;

Casper Field Office:
Glen Nebeker, Resource Advisor, BLM, 1701 East E Street, Casper, Wyoming 82601–2167, 307–261–7600;

Rawlins Field Office:
John Spehar, Planning Coordinator, BLM, 1300 North 3rd Street, P.O. Box 2407, Rawlins, Wyoming 82301–2407, 307–328–4200

Rock Springs, Kemmerer, and Pinedale Field Offices:
Renee Dana, Resource Advisor, BLM, 280 Highway 191 North, Rock Springs, Wyoming 82901–3448, 307–352–0256.

SUPPLEMENTARY INFORMATION: The BLM in Wyoming is reviewing the land use planning decisions in the Cody, Grass Creek, Washakie, Great Divide, Platte River, Green River, Kemmerer, and Pinedale Resource Management Plans (RMPs) to determine which of those decisions apply to the BOR withdrawn lands being restored to BLM jurisdiction. The withdrawn lands to be restored, involving parts of the Shoshone, Missouri River Basin, Platte River, and Seedskadee Reclamation Projects, are no longer needed for those reclamation projects.

The Federal Land Policy and Management Act (FLPMA) requires the development of land use plans for the BLM-administered public lands. Accordingly, the BOR withdrawn lands that will be restored to BLM jurisdiction must be incorporated into the BLM RMPs and have planning decisions made for them.

The initial focus of the planning review will be on determining which of the BOR withdrawn lands have undergone sufficient NEPA analysis to adopt the existing RMP decisions that will apply to them and for incorporating those lands into and amending the RMPs. The NEPA analyses documented in the Environmental Impact Statements (EISs) for the RMPs will be reviewed for this determination. When these EISs were prepared, there was no differentiation made between the Federal lands under BOR jurisdiction and the Federal lands under BLM jurisdiction. Therefore, the BOR withdrawn lands were included in the impact analyses. However, the BLM did not include planning decisions for these lands in the BLM RMPs because of lacking jurisdiction to do so.

The withdrawn lands involved in this review are closed to the operation of the

public land laws, including the mining laws. Opening orders, to allow operation of the public land laws and the staking and development of mining claims, will not be published until the BLM RMP decisions are in place for the lands and, if possible, will take place simultaneously with BLM implementing any new withdrawals that may be necessary on any of the lands. There is also a moratorium on leasing Federal minerals on these lands until the review is completed, the amendments to the RMPs are completed and any new withdrawals that may be needed on any of the lands are in place.

The planning and management decisions in the above mentioned RMPs will be reviewed to identify such things as (1) which of the RMP planning and management decisions will apply to the BOR-withdrawn lands that will be restored to BLM jurisdiction; (2) cases where decisions must be deferred, because further analysis is needed before RMP decisions can be applied or made for any of the lands to be restored; (3) whether it may be necessary to pursue new withdrawals on any of the lands to be restored; and (4) what other procedures will be required to amend the RMPs and to incorporate the restored lands and the associated planning and management decisions.

Some of the BOR withdrawals to be terminated are within national forests or on private and State lands and do not involve Federal lands that would be restored to BLM jurisdiction. These lands will not be addressed in the planning review.

Some situations may involve BLM jurisdiction over the Federal mineral estate beneath private or State surface ownership. The planning review will address management of that Federal mineral estate.

Dated: June 10, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–15219 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–09–1420–00]

Notice of Filing of Plat Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on July 8, 1999.

New Mexico Principal Meridian, New Mexico

T. 13 N., R. 34 E., accepted June 7, 1999, Supplemental Plat.

Indian Meridian, Oklahoma

T. 15 N., R. 14 W., accepted June 7, 1999, for Group 75 OK.

T. 4 N., R. 19 W., accepted June 7, 1999, for Group 60 OK.

Sixth Principal Meridian, Kansas

T. 34 S., R. 42 W., accepted June 7, 1999, for Group 25 Kansas.

T. 34 S., R. 43 W., accepted June 7, 1999, for Group 25 Kansas.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: June 8, 1999.

John P. Bennett,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 99–15260 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Connecticut in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Connecticut in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA.

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Mashantucket Pequot Tribe and the Mohegan Indian Tribe.

In 1870, human remains representing one individual were donated to the Peabody Museum by Alfred Hersey of Westerly, RI. No known individual was identified. No associated funerary objects are present.

Correspondence from the donor indicates these human remains were "exhumed from a grave in an old burying ground of the Pequot Indians." Although Peabody Museum documentation lists the geographic location of the human remains as "Westerly, Rhode Island" due to the postmark on the collector's correspondence, there is no information that the remains actually came from that location. Based on the copper staining on the human remains, these human remains have been determined to date to the contact/early historic period (post-1614). Consultation evidence presented by representatives of the Mashantucket Pequot Tribe indicates that in about 1870, the Fanning Road cemetery in Ledyard CT, a known historic burial area of the Mashantucket Pequot was looted. The cultural attribution of the burial area given by the donor, combined with the historic date of the human remains, the donation date of the human remains, and the date of looting of the historic Fanning Road burial area of the Mashantucket Pequot indicates that these human remains most likely came from the Fanning Road cemetery.

In 1923, human remains representing two individuals from Stonington, CT were donated to the Peabody Museum from Brown University, RI. No known individuals were identified. No associated funerary objects are present.

Museum documentation indicates these human remains were collected on an unknown date by Reverend Frederick Denison. In 1871, Denison donated his collection of Native American cultural material to the Jenks Museum at Brown University. Museum records and copper staining on the human remains indicate the remains were interred sometime during the early historic period or later (post-1614 A.D.). Oral tradition and historic documentation support that the geographic area of Stonington is within

the aboriginal and historic homeland of the Mashantucket Pequot Tribe.

In 1937, human remains representing one individual from Ecclestone Site, Mystic, CT were donated to the Peabody Museum from the Department of Archaeology at Philips Andover Academy in Andover, MA. No known individuals were identified. No associated funerary objects are present.

These human remains were collected in 1922 as part of an expedition by Warren King Moorehead. Museum documentation indicates that Moorehead was specifically investigating Native American burial grounds on this expedition. Museum records indicate the individual was interred sometime during the contact/early historic period (post-1614 A.D.). Oral tradition and historic documentation supports the Ecclestone site as being within the aboriginal and historic homelands of the Mashantucket Pequot Indians.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Mashantucket Pequot Tribe.

In 1937, human remains representing one individual from Norwich, CT were donated to the Peabody Museum from the Department of Archaeology at Philips Andover Academy, Andover, MA. No known individual was identified. No associated funerary objects are present.

These human remains were collected in 1922 as part of an expedition by Warren King Moorehead. Museum documentation indicates Moorehead was specifically investigating Native American burial grounds on this expedition. Museum records indicate this individual was interred sometime during the contact/early historic period (post-1614 A.D.). Oral tradition and historic documentation support the conclusion that the geographic area of Norwich falls within the aboriginal and historic homelands of the Mohegan Indian Tribe.

Based on the above mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Mohegan Indian Tribe.

This notice has been sent to officials of the Mashantucket Pequot Tribe and the Mohegan Indian Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Barbara Isaac, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Ave., Cambridge, MA 02138; telephone: (617) 495-2254, before July 16, 1999. Repatriation of the human remains to the Mashantucket Pequot Tribe and the Mohegan Indian Tribe may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: June 10, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 99–15254 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 872, Abandoned mine reclamation funds, and form OSM–74, Certification of Blasters in Federal program States and on Indian lands, has been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection packages were previously approved and assigned clearance numbers 1029–0054 for 30 CFR Part 872, and 1029–0083 for the OSM–74 form. This notice describes the nature of the information collection activities and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by July 16, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted requests to OMB to renew its approval for the collections of information for 30 CFR part 872, Abandoned mine reclamation funds, and form OSM–74, Certification of Blasters in Federal program States and on Indian lands. OSM is requesting a 3-year term of approval for these information collection activities.

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 these collections of information are listed in 30 CFR 872.10, which is 1029–0054; and on the form OSM–74 and in 30 CFR 955.10, which is 1029–0083.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on February 22, 1999 (64 FR 8628). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Abandoned mine reclamation funds, 30 CFR Part 872.

OMB Control Number: 1029–0054.

Summary: 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and Tribal abandoned mine land reclamation agencies.

Total Annual Responses: 1.

Total Annual Burden Hours: 1.

Title: Certification of blasters in Federal program States and on Indian lands—30 CFR 955.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement to conduct blasting on Indian lands or in Federal primacy States.

Bureau Form Number: OSM–74.

Frequency of Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 33.

Total Annual Burden Hours: 57.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence, 1029–0054 for 30 CFR Part 872, and 1029–0083 for the OSM–74 form.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503, and to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240.

Dated: June 11, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–15222 Filed 6–15–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–278–280 (Review) and 731–TA–347–348 (Review)]

Malleable Cast Iron Pipe Fittings From Brazil, Japan, Korea, Taiwan, and Thailand [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on malleable cast iron pipe fittings from Brazil, Japan, Korea, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

[1] The investigation numbers are as follows: Brazil is 731–TA–278 (Review), Japan is 731–TA–347 (Review), Korea is 731–TA–279 (Review), Taiwan is 731–TA–280 (Review), and Thailand is 731–TA–348 (Review).

Background

On April 8, 1999, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (64 FR 19196, April 19, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on November 2, 1999, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning

at 9:30 a.m. on December 2, 1999, at the U.S. Internation Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 18, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 23, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 203.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is November 12, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is December 13, 1999. Witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit statement of information pertinent to the subject of the review on or before December 13, 1999. On January 11, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 13, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 10, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15215 Filed 6–15–99; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Preliminary)]

Certain Non-Frozen Concentrated Apple Juice From China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–841 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of concentrated apple juice, other than frozen,[1] provided for in subheading 2009.70.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 22, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 29, 1999.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on June 7, 1999, by counsel on behalf of Coloma Frozen Foods, Inc., Coloma, MI; Green Valley Packers, Arvin, CA; Knouse Foods Cooperative, Inc., Peach Glen, PA; Mason County Fruit Packers, Ludington, MI; and Tree Top, Inc., Selah, WA.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

[1] For purposes of this investigation, defined as with a Brix value of 40 or greater, whether or not containing added sugar or other sweetening matter, not fortified with vitamins or minerals, unfermented and not containing added spirits.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 28, 1999, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than June 23, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 1, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 10, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–15216 Filed 6–15–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on May 21, 1999, a proposed Consent Decree in *United States* v. *City of Grand Rapids, Michigan, et. al.,* Civil Action No. 1:99 CV 388, was lodged with the United States District Court for the Western District of Michigan, Southern Division. This consent decree represents a settlement of claims brought by the United States, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.,* against 53 Settling Defendants for reimbursement of response costs and injunctive relief in connection with the Butterworth No. 2 Landfill Superfund Site ("Site") located in Grand Rapids, Kent County, Michigan.

Under this settlement with the United States, the Settling Defendants will implement most of the remedy for the Site as set forth in the Record of Decision issued by the United States Environmental Protection Agency in March 1992 and as modified by an Explanation of Significant Differences dated October 1998. The decree reserves a portion of the remedial work, which the United States will seek to have non-settlors perform.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Grand Rapids, Michigan, et al.,* D.J. Ref. 90–11–2–145A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Grand Rapids, Michigan, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and the Consent Decree Library, 1120 G Street, NW, 3rd Flood, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $33.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–15204 Filed 6–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on June 1, 1999, a proposed Consent Decree in *United States* v. *NationsBank, N.A.* Civil Action No. 1:99–0264–06 was lodged with the United States District Court for the District of South Carolina.

In this action the United States sought the recovery of past costs incurred in response to releases and threatened releases of hazardous substances at the Clearwater Finishing Superfund Site in Clearwater, Aiken County, South Carolina. The Consent Decree represents a settlement with one of the potential responsible parties listed in the Amended Complaint for violations of Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607. Under the Consent Decree, NationsBank, N.A. has agreed to pay the United States $300,000. The United States has incurred approximately $1,182,000.00. The Amended Complaint names three additional parties.

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. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *NationsBank, N.A.* D.J. Ref. Number 90–11–3–06135.

The proposed Consent Decree may be examined at the Office of the United

States Attorney, for the District of South Carolina, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–15205 Filed 6–15–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Florida Rock Industries, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in the Middle District of Florida, Jacksonville Division, Civil No. 99–516–CIV–J–20A.

On May 26, 1999, the United States filed a Complaint alleging that the proposed acquisition by Florida Rock of the stock of Harper Bros. and Commercial Testing, Inc. would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Florida Rock to divest the Alico Road Quarry, Fort Myers, Florida, the Palmdale Sand Mine, Palmdale, Florida, and related assets that it will obtain in connection with the acquisition of Harper Bros. and Testing.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202/307–0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, (202) 514–2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States District Court, Middle District of Florida, Jacksonville Division

United States of America, Plaintiff, v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants [Civil No.: 99–516–CIV–J–20A].

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Middle District of Florida.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court, on or before September 15, 1999.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed the Hold Separate Stipulation and Order.

5. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

6. In the event (a) the United States has withdrawn its consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

7. Defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: May 25, 1999.

For Plaintiff United States

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20530, Telephone: (202) 307–0620, Facsimile: (202) 307–6283.

For Defendant Florida Rock Industries, Inc.

Eugene J. Meigher,

Arent Fox,

1050 Connecticut Avenue, N.W., Washington, D.C. 20036–5339, Telephone: (202) 857–6048, Facsimile: (202) 857–6395.

Lewis S. Lee,

LeBoeuf, Lamb, Greene & MacRae, 50 N. Laura Street, Jacksonville, Florida 32202–3650, Telephone: (904) 630–5322, Facsimile: (904) 353–1673.

For Defendants Harper Bros., Inc., Commercial Testing, Inc. and Daniel R. Harper

Neil Imus,

Vinson & Elkins L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004–1008, Telephone: (202) 639–6675, Facsimile: (202) 639–6604.

Order

Approved for entry and ordered [1] this 27th day of May, 1999, at Jacksonville, Florida.

Harvey E. Schlessinger,

United States District Judge.

United States of America, Plaintiff v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants. [Civil No.: 99–516–Civ–J–20A.]

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties,

[1] Final Judgment and Proposed Final Judgment mean the same thing.

subject to approval and entry by the Court, that:

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and including its successors and assigns, and it subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of building, highways, bridges, tunnels, and other projects that is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind. Silica sand is combined with aggregate to produce specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The city of Sarasota, Florida is located in Sarasota County, and the city of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

1. All rights, titles, and interest, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) All intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit records, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. "Palmdale Sand Mine" means Harper Bros.' Palmdale, Glades County, Florida sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand, inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale Sand Mine, and related maintenance facilities and administration buildings including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, sand washing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of silica sand at the Alico Road Quarry; and

(2) All intangible assets, including silica and sand reserve testing information, technical information, know-how, leases, safety procedures, quality assurance and control procedures, customer lists and credit records, and contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

II. Objectives

The Proposed Judgment filed in this case is meant to ensure Florida Rock's prompt divestitures of the Alico Road Quarry and the Palmadale Sand Mine for the purpose of maintaining viable competitors in the sale of aggregate and silica sand in Southwest Florida to remedy the effects that the United States alleges would otherwise result from Florida Rock's proposed acquisition of Harper Bros. This Hold Separate Stipulation and Order ensures, prior to such divestiture, that the Alico Road Quarry and the Palmdale Sand Mine that are being divested be maintained as an independent, economically viable, ongoing business concern, and that competition is maintained during the pendency of the diverstitute.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Middle District of Florida.

IV. Hold Separate Provisions

Until the divestiture required by the Final Judgment has been accomplished:

A. Florida Rock shall preserve, maintain, and operate the Alico Road Quarry and the Palmdale Sand Mine assets as an independent competitor with management, sales and operations held entirely separate, distinct and apart from those of Florida Rock. Florida Rock shall not coordinate its production, marketing or sale of silica sand and aggregate or stone products with that produced by the Alico Road Quarry and the Palmdale Sand Mine assets. Within thirty (30) days of the entering of this Order, Florida Rock will inform the United States of the steps taken to comply with this provision.

B. Florida Rock shall take all steps necessary to ensure that: (1) The Alico Road Quarry and Palmdale Sand Mine assets will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of silica sand and aggregate and stone products in Southwest Florida; (2) management of the Alico Road Quarry and the Palmdale Sand Mine assets will not be influenced by Florida Rock; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Alico Road Quarry and the Palmdale Sand Mine assets will be kept separate and apart from the aggregate and stone products business of Florida Rock. Florida Rock's influence over the Alico Road Quarry and the Palmdale Sand Mine assets shall be limited to that necessary to carry out Florida Rock's obligations under this

Hold Separate Stipulation and Order and the Final Judgment.

C. Florida Rock shall use all reasonable efforts to maintain and increase sales of silica sand and aggregate and stone products by the Alico Road Quarry and the Palmdale Sand Mine assets, and shall maintain at 1998 or previously approved levels, whichever are higher, promotional, advertising, sales, technical assistance, marketing and merchandising support for silica sand and aggregate and stone products produced or sold by the Alico Road Quarry and the Palmdale Sand Mine assets.

D. Florida Rock shall provide sufficient working capital to maintain the Alico Road Quarry and the Palmdale Sand Mine assets as economically viable, competitive, and ongoing businesses.

E. Florida Rock shall take all steps necessary to ensure that the Alico Road Quarry and the Palmdale Sand Mine assets are fully maintained in operable condition at no lower than their current rated capacity configurations, and shall maintain and adhere to normal repair and maintenance schedules for the Alico Road Quarry and the Palmdale Sand Mine assets.

F. Florida Rock shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Alico Road Quarry and Palmdale Sand Mine assets.

G. Florida Rock shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as every four weeks or every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Alico Road Quarry and Palmdale Sand Mine assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer or terminate, or alter any current employment or salary agreements for any Florida Rock or Harper Bros. employees who (i) on the date of the signing of this Agreement, work at the Alico Road Quarry and Palmdale Sand Mine or (ii) are members of the management committee referenced in Section IV(I) of this Order.

I. Until such time as the Alico Road Quarry and the Palmdale Sand Mine assets are divested, the assets shall be managed by Fred Buckner. Mr. Buckner shall have complete managerial responsibility for the Alico Road Quarry and the Palmdale Sand Mine, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Buckner is unable to perform his duties, Florida Rock shall appoint, subject to the United States' approval, a replacement within ten (10) working days. Should Florida Rock fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

J. Florida Rock shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestiture contemplated by the Final Judgment or until further Order of the Court.

Dated: May 25, 1999.

For Plaintiff United States:

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 3000, Washington, D.C. 20530, Telephone: (202) 307–0620, Facsimile: (202) 307–6283.

For Defendant Florida Rock Industries, Inc.

Eugene J. Meigher, Arent Fox,

1050 Connecticut Avenue, N.W., Washington, D.C. 20036–5339, Telephone: (202) 857–6048, Facsimile: (202) 857–6395.

Lewis S. Lee,

LeBoeuf, Lamb, Greene & MacRae, 50 N. Laura Street, Jacksonville, Florida 32202–3650, Telephone: (904) 630–5322, Facsimile: (904) 353–1673.

For Defendants Harper Bros., Inc., Commercial Testing, Inc. and Daniel R. Harper

Neil Imus,

Vinson & Elkins L.L.P., The Willard Office Building, 1455 Pennsylvania Avenue, N.W., Washington, D.C. 20004–1008, Telephone: (202) 639–6675, Facsimile: (202) 639–6604.

Order

Approved for entry and ordered [1] this 27th day of May, 1999, at Jacksonville, Florda.

Harvey E. Schlessinger,

United States District Judge.

United States of America, Plaintiff, v. Florida Rock Industries, Inc., Harper Bros., Inc., Commercial Testing, Inc., and Daniel R. Harper, Defendants. Civil No.: 99–516–CIV–J–2CA.

Proposed Final Judgment

Whereas, plaintiff, the United States of America, and defendants. Florida Rock Industries, Inc. ("Florida Rock"), Harper Bros., Inc. ("Harper Bros."), Commercial Testing, Inc. ("Testing"), and Daniel R. Harper, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein and that this Final Judgment shall settle all claims made by the United States in its Complaint filed on May 26, 1999;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate and silica sand in Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 480 in Florida;

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States currently believes that entry of this Final Judgment is in the public interest;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows.

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

[1] Proposed final Judgment and Final Judgment referred to herein are exchangeable.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida, and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (Known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementing material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind. Silica sand is combined with aggregate to produce specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The City of Sarasota, Florida is located in Sarasota County, and the City of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) All intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. "Palmdale Sand Mine" means Harper Bros.' Palmdale, Glades County, Florida sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale Sand Mine, and related maintenance facilities and administration buildings including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, sand washing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of silica sand at the Palmdale Sand Mine; and

(2) All intangible assets, including silica sand reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

L. "Reserve Assets" means the aggregate reserves leased by Florida Rock located in Lee County Florida, identified as Florida Rock Properties, Inc's properties in the following locations in Lee County, Florida:

(1) West Mining Parcel: The east ½ of Section 33 and the south 1500 feet of the southeast ¼ of Section 28, Township 45 South, Range 26 East, Lee County, Florida (see Area 1 of attached map);

(2) North Mining Parcel: The south 1500 feet of Section 27, Township 45 South, Range 26 East and the northwest ¼ of Section 34, Township 45 South, Range 26 East, Lee County, Florida (see Area 2 of attached map); and

(3) an easement through the north 956,405 feet of Section 4, Township 46 South, Range 26 East, Lee County, Florida.

III. Applicability

A. The provisions of this Final Judgment apply to the defendnats, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of the Alcio Road Quarry and the Palmdale Sand Mine, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Florida Rock is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Alico Road Quarry and the Palmdale Sand Mine to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Florida Rock shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, Florida Rock promptly shall make known, by usual and customary means, the availability of the Alico Road Quarry and the Palmdale Sand Mine. Florida Rock shall inform any person an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Florida Rock shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Florida Rock shall make available such information to the United States at the same time that such information is made available to any other person.

D. Florida Rock shall not interfere with any negotiations by any purchaser to employ any Florida Rock or Harper Bros. employee who works at, or whose principal responsibility concerns any

silica sand or aggregate and stone products business that is part of the Palmdale Sand Mine or the Alico Road Quarry assets.

E. As customarily provided as part of a due diligence process, Florida Rock shall permit prospective purchasers of the Alico Road Quarry and the Palmdale Sand Mine to have access to personnel and to make such inspection of these assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that each asset will be operational on the date of sale.

G. Florida Rock shall not take any action, direct or indirect, that will impede in any way the operation of the Alico Road Quarry or the Palmdale Sand Mine.

H. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that there are no known material defects in the environmental, zoning, or other permits pertaining to the operation of these assets, and that Florida Rock with respect to the Alico Road Quarry and the Palmdale Sand Mine will not undertake, directly or indirectly, following the divestiture of these assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, whether by Florida Rock or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Alico Road Quarry and the Palmdale Sand Mine and be accomplished by selling or otherwise conveying each asset, or such other assets included by the Trustee under Section V, to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the manufacture and sale of aggregate and stone products and silica sand. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States' sole satisfaction that the purchaser: (1) Has the capability and intent of competing effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; and (3) is not hindered by the terms of any agreement between the purchaser and Florida Rock which gives Florida Rock the ability unreasonably to raise the purchaser's cost, lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to effectively compete in Southwest Florida.

V. Appointment of Trustee

A. In the event that Florida Rock has not divested the Alico Road Quarry or the Palmdale Sand Mine within the time specified in Section IV.A of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States and approved by the Court to effect the divestiture of each such asset not sold. If the Alico Road Quarry has not been sold, the trustee shall have the right, in its sole discretion, to include the Reserve Assets in the sale of the Alico Road Quarry.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Sections V(C) and VIII of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Florida Rock any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Florida Rock shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Florida Rock must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Florida Rock, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Florida Rock and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the assets to be divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of price and terms of the divestiture and the speed with which it is accomplished.

D. Florida Rock shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Florida Rock shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidential assurances. Florida Rock shall permit prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistant with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

G. The conduct or actions shall be subject to review by the Court upon the application of any party here to.

Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment. Florida Rock or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify Florida Rock. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from Florida Rock, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Florida Rock and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (2) calendar days after the United States has been provided the additional information requested from Florida Rock, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to Florida Rock and the trustee, if there is one, stating whether or not it objects to the proposed divestiture if the United States provides written notice to Florida Rock and the trustee that it does not object, then the divestiture may be consummated, subject only to Florida Rock's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Florida Rock under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Florida Rock shall deliver to the United States an affidavit as to the fact and manner of compliance with sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Florida Rock has taken to solicit a buyer for any of the assets to be divested and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Florida Rock, including limitations on information, shall be made within (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Florida Rock shall deliver to the United States an affidavit which describes in detail all actions Florida Rock has taken and all steps Florida Rock has implemented on an on-going basis to preserve the Alico Road Quarry and the Palmdale Sand Mine pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Florida Rock's efforts to maintain and operate the Alico Road Quarry and the Palmdale Sand Mine as active competitors, maintain the management, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Florida Rock shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Florida Rock's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Florida Rock shall preserve all records of all efforts made to preserve the Alico Road Quarry and the Palmdale Sand Mine and to effect the ordered divestitures.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Alico Road Quarry and the Palmdale Sand Mine.

IX. Financing

Florida Rock is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Florida Rock made to its principal offices, shall be permitted:

(1) Access during office hours of Florida Rock to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Florida Rock, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Florida Rock and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Florida Rock's principal offices, Florida Rock shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Section VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Florida Rock to the United States. Florida Rock represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Florida Rock marks each pertinent page of such material. "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to Florida Rock prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Florida Rock is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Done and ordered this _____ day of _____, 1999, Jacksonville, Florida.

_____

United States District Judge.

United States of America, Plaintiff, v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants. [Civil No. 99–516–CIV–J–20A].

Proposed Final Judgment

Whereas, plaintiff, the United States of America, and defendants, Florida Rock Industries, Inc. ("Florida Rock"), Harper Bros., Inc. ("Harper Bros."), Commercial Testing, Inc. ("Testing"), and Daniel R. Harper, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein and that this Final Judgment shall settle all claims made by the United States in its Complaint filed on May 26, 1999;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of establishing a viable competitor in the production and sale of aggregate and silica sand in Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 480 in Florida;

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States currently believes that entry of this Final Judgment is in the public interest;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Florida Rock" means defendant Florida Rock Industries, Inc., a Florida corporation headquartered in Jacksonville, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "Harper Bros." means defendant Harper Bros., Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Testing" means defendant Commercial Testing, Inc., a Florida corporation headquartered in Fort Myers, Florida, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

D. "Daniel R. Harper" means defendant Daniel R. Harper, an individual who resides in Fort Myers, Florida, and is the Chairman of the Board and majority stockholder of Harper Bros. and the majority stockholder of Testing.

E. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and ready mix concrete. "Stone products" refer to any products produced at an aggregate quarry.

F. "Silica sand" means sand that is naturally occurring and not produced at an aggregate quarry (known as "manufactured sand"). Silica sand is used to produce specific types of ready mix concrete used in Florida Department of Transportation highway projects and commercial construction projects.

G. "Asphalt concrete" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

H. "Ready mix concrete" means a building material used in the construction of buildings, highways, bridges, tunnels, and other projects that is produced by mixing a cementing

material (commonly portland cement) and aggregate with sufficient water to cause the cement to set and bind. Silica sand is combine with aggregate to produced specific types of ready mix concrete required for certain construction projects.

I. "Southwest Florida" means Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida. The City of Sarasota, Florida is located in Sarasota County, and the City of Fort Myers, Florida is located in Lee County.

J. "Alico Road Quarry" means Florida Rock's Alico Road, Lee County, Florida quarry located at 11840 Alico Road, Fort Myers, Florida that produces aggregate and stone products, encompassing the north and south operations, inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Alico Road Quarry, and related maintenance facilities and administration buildings including, but not limited to, all real property and aggregate and stone products reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, stone crushing equipment, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of aggregate and stone products at the Alico Road Quarry; and

(2) All intangible assets, including aggregate and stone products reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties aggregate and stone products, associated with the Alico Road Quarry.

K. "Palmdale Sand Mine" means Harper Bros. Palmdale, Glades County, Florida sand mine located at 5200 U.S. 27, Northwest, Palmdale, Florida that produces silica sand inclusive of:

(1) All rights, titles, and interests, including all leasehold and renewal rights, in the Palmdale San Mine, and related maintenance facilities and administration buildings, including, but not limited to, all real property and silica sand reserves, capital equipment, fixtures, inventories, trucks and other vehicles, licenses, and sand washing equipment, power supply equipment, scales, interests, permits assets or improvements related to the production, distribution, and sale of silica sand at the Palmdale Sand Mine; and

(2) All intangible assets, including silica sand reserve testing information, technical information, leases, know-how, safety procedures, quality assurance and control procedures, customer lists and credit reports, contracts to supply third parties silica sand associated with the Palmdale Sand Mine.

L. "Reserve Assets" means the aggregate reserves leased by Florida Rock located in Lee County, Florida, identified as Florida Rock Properties, Inc.'s properties in the following locations in Lee County, Florida:

(1) West Mining Parcel: The east ½ of Section 33 and the south 1500 feet of the southeast ¼ of Section 28, Township 45 South, Range 26 East, Lee County, Florida (see Area 1 of attached map);

(2) North Mining Parcel: The south 1500 feet of Section 27, Township 45 South, Range 26 East and the northwest ¼ of Section 34, Township 45 South, Range 26 East, Lee County, Florida (see Area 2 of attached map); and

(3) An easement through the north 959.405 feet of Section 4, Township 46 South, Range 26 East, Lee County, Florida.

III. Applicability

A. The provision of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employeers, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of the Alico Road Quarry and the Palmdale Sand Mine, that the purchaser or purchasers agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Florida Rock is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of the proposed Final Judgment, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Alico Road Quarry and the Palmdale Sand Mine to a purchaser or purchasers acceptable to the United States, in its sole discretion.

B. Florida Rock shall use its best efforts to accomplish the divestiture as expeditiously and timely as possible.

C. In accomplishing the divestitures ordered by this Final Judgment, Florida Rock promptly shall make known, by usual and customary means, the availability of the Alico Road Quarry and the Palmdale Sand Mine. Florida Rock shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Florida Rock shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding these assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Florida Rock shall make available such information to the United States at the same time that such information is made available to any other person.

D. Florida Rock shall not interfere with any negotiations by any purchaser to employ any Florida Rock or Harper Bros. employee who works at, or whose principal responsibility concerns any silica sand or aggregate and stone products business that is part of the Palmdale Sand Mine or the Alico Road Quarry assets.

E. As customarily provided as part of a due diligence process, Florida Rock shall permit prospective purchasers of the Alico Road Quarry and the Palmdale Sand Mine to have access to personnel and to make such inspection of these assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that each asset will be operational on the date of sale.

G. Florida Rock shall not take any action, direct or indirect, that will impede in any way the operation of the Alico Road Quarry or the Palmdale Sand Mine.

H. Florida Rock shall warrant to the purchaser or purchasers of the Alico Road Quarry and the Palmdale Sand Mine that there are no known material defects in the environmental, zoning, or other permits pertaining to the operation of these assets, and that Florida Rock with respect to the Alico Road Quarry and the Palmdale Sand Mine will not undertake, directly or indirectly, following the divestiture of these assets, any challenges to the environmental, zoning, or other permits pertaining to the operation of the assets.

1. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, whether by Florida Rock or by trustees appointed pursuant to Section V of this Final Judgment, shall include the Alico Road Quarry and the Palmdale Sand Mine and be accomplished by selling or otherwise conveying each assets, or such other assets included by the

Trustee under Section V, to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the manufacturer and sale of aggregate and stone products and silica sand. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States' sole satisfaction that the purchasers: (1) Has the capability and intent of competing effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the production and sale of aggregate and stone products and silica sand in Southwest Florida; and (3) is not hindered by the terms of any agreement between the purchaser and Florida Rock which gives Florida Rock the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to effectively compete in Southwest Florida.

V. Appointment of Trustee

A. In the event that Florida Rock has not divested the Alico Road Quarry or the Palmdale Sand Mine within the time specified in Section IV. A of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States and approved by the Court to effect the divestiture of each such asset not sold. If the Alico Road Quarry has not been sold, the trustee shall have the right, in its sole discretion, to include the Reserve Assets in the sale of the Alico Road Quarry.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest any assets. The trustee shall have the power and authority to accomplish any and all divestitures of assets at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Sections V(C) and VIII of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Florida Rock any investment bankers, attorneys, or other grants reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountably solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser acceptable to the United States, and shall have such other powers as this Court shall deem appropriate. Florida Rock shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Florida Rock must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Florida Rock, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Florida Rock and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the assets to be divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Florida Rock shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best effort to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Florida Rock shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidential assurances. Florida Rock shall permit prospective acquirers of the assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestiture required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment; provided, however, that to the extent shall reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expresses an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the businesses to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the assets to be divested.

F. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States, or

G. The conduct on actions of the trustee shall be subject to review by the Court upon the application of any party here to.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Florida Rock or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify Florida Rock. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to,

acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from Florida Rock, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Florida Rock and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Florida Rock, the proposed purchaser, and any third party, whichever is later, the United States shall provide written notice to Florida Rock and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Florida Rock and the trustee that it does not object, then the divestiture may be consummated, subject only to Florida Rock's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V may not be consummated. Upon objection by Florida Rock under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Florida Rock shall deliver to the United States an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in any of the assets to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Florida Rock has taken to solicit a buyer for any of the assets to be divested and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Florida Rock, including limitations on information, shall be made within (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Florida Rock shall deliver to the United States an affidavit which describes in detail all actions Florida Rock has taken and all steps Florida Rock has implemented on an on-going basis to preserve the Alico Road Quarry and the Palmdale Sand Mine pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Florida Rock's effort to maintain and operate the Alico Road Quarry and the Palmdale Sand Mine as active competitors, maintain the management, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Florida Rock shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Florida Rock's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Florida Rock shall preserve all records of all efforts made to preserve the Alico Road Quarry and the Palmdale Sand Mine and to effect the ordered divestitures.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture of the Alico Road Quarry and the Palmdale Sand Mine.

IX. Financing

Florida Rock is ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

X. Compliance Inspection

For the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Florida Rock made to its principal offices, shall be permitted:

(1) Access during office hours of Florida Rock to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Florida Rock, who may have counsel present, relating to the matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Florida Rock and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to Florida Rock's principal offices, Florida Rock shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Section VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Florida Rock to the United States, Florida Rock represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Florida Rock marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the United States to Florida Rock prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Florida Rock is not a party.

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

DONE and ORDERED this _____ day of _____ 1999, Jacksonville, Florida.

_____

United States District Judge.

A copy of the tract map can be obtained from the U.S. Department of Justice, Antitrust Division, 202–514–2481.

United States of America, Plaintiff, v. Florida Rock Industries, Inc.; Harper Bros., Inc.; Commercial Testing, Inc.; and Daniel R. Harper, Defendants. [Civil No.: 99–516–CIV–J–20A; Filed: 5/26/99.]

Competitive Impact Statement

The United States, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of The Proceeding

The United States filed a civil antitrust Compliant under section 15 of the Clayton Act, 15 U.S.C. 25, on May 26, 1999, alleging that the proposed acquisition by Florida Rock Industries, Inc. ("Florida Rock") of Harper Bros., Inc. ("Harper Bros.") and Commercial Testing, Inc. ("Testing") pursuant to a letter of intent entered into on May 5, 1999, would violate Section 7 of the Clayton Act, 15 U.S.C. 18.

The Complaint alleges that a combination of two of only three significant competitors in the aggregate and silica sand markets in Charlotte, Lee, and Collier Counties and Sarasota County south of State Route 780 in Florida ("Southwest Florida") would lessen competition in the production and sale of aggregate and silica sand in Southwest Florida. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing Florida Rock from acquiring control of Harper Bros., Testing, and 320 acres of land, or otherwise combining with the businesses of Harper Bros. and Testing; (3) the United States be awarded costs; and (4) other relief as the Court deems just and proper.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Florida Rock to complete its acquisition of Harper Bros., Testing, and 320 acres of land, but require a certain divestiture that will preserve in the Southwest Florida aggregate and silica sand markets. This settlement consists of a Stipulation and Order, a proposed Final Judgment and a Hold Separate Stipulation and Order.

The proposed Final Judgment orders Florida Rock to divest the Florida Rock Alico Road Quarry located in Lee County, Florida, the Harper Bros. Palmdale Sand Mine located in Glades County, Florida, and certain related tangible and intangible assets associated with the facilities. Florida Rock must complete the divestiture of this quarry and related assets within one hundred and eighty (180) calendar days after the date on which the proposed Final Judgment was filed (i.e., May 26, 1999) or within 5 days after notice of the entry of the Final Judgment by the Court, whichever is later, in accordance with the procedure specified therein. If Florida Rock does not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell the assets. If a trustee must undertake to divest the Alico Road Quarry, the trustee has the option of adding certain Florida Rock aggregate reserve parcels that are contiguous to the Alico Road Quarry to the divestiture package.

The Stipulation and Order, proposed Final Judgment and Hold Separate Stipulation and Order require Florida Rock to ensure that the Alico Road Quarry, the Palmdale Sand Mine, and related assets to be divested will be maintained and operated as an independent, ongoing, economically viable and active competitor until the divestitures mandated by the proposed Final Judgment have been accomplished. Final Rock must preserve and maintain the quarry and sand mine to be divested as saleable and economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of Florida Rock's other aggregate and silica sand businesses. Florida Rock will appoint a person to monitor and ensure its compliance with these requirements of the proposed Final Judgment.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to The Alleged Violation

A. Florida Rock, Harper Bros., Testing, and the Proposed Transaction

Florida Rock is a Florida corporation with headquarters in Jacksonville, Florida. Florida Rock operates in Florida, Georgia, Virginia, Maryland, Washington, DC, and North Carolina. One of its principal businesses is extracting and selling aggregate and silica sand. Florida Rock is engaged in the business of selling aggregate and silica sand in Southwest Florida. In Lee County, Florida Rock operates the Alico Road Quarry that produces aggregate, and in Glades County, it operates the Witherspoon Sand Mine which produces silica sand. In 1997, Florida Rock had sales of approximately $456 million.

Harper Bros. is a Florida corporation with headquarters in Fort Myers, Florida. One of Harper Bros.' principal business is extracting and processing aggregates and silica sand. Harper Bros. is engaged in the business of selling aggregate and silica sand in Southwest Florida. In Lee County, Harper Bros. operates the Alico Road Mine that produces aggregate, and in Glades County, it operates the Palmdale Sand Mine which produces silica sand. In 1997, Harper Bros. had sales of approximately $44 million.

On July 21, 1998, through a letter of intent that was supplemented on August 26, 1998, Florida Rock agreed to acquire all of the outstanding capital stock of Harper Bros., Testing and 320 acres of land. The letter of intent lapsed on January 2, 1999, and a subsequent letter of intent was entered into by the defendants on May 5, 1999. The purchase price is approximately $87.5 million. This transaction, which would take place in the highly concentrated Southwest Florida aggregate and silica sand industries, precipitated the government's suit.

B. The Transaction's Effects in Southwest Florida

The Complaint alleges that, the production and sale of aggregate and silica sand constitute two distinct lines of commerce, or relevant product markets, for antitrust purposes, and that Southwest Florida constitutes a section of the country, or relevant geographic market. The complaint alleges that the effect of Florida Rock's acquisition may be to lessen competition substantially in the production and sale of aggregate and silica sand in Southwest Florida.

Aggregate is a stone product used to manufacture asphalt concrete and ready mix concrete. Aggregate differs from all other types of stone products in its physical composition, functional characteristics, customary uses, and pricing. It must meet Florida Department of Transportation or American Society of Testing Material's specifications for the specific type of asphalt concrete or ready mix concrete being produced. Manufacturers of asphalt concrete and ready mix concrete in Southwest Florida do not view other types of stone products as good substitutes. The production and sale of aggregate used to manufacture asphalt concrete and ready mix concrete constitutes a line of commerce and a relevant market for antitrust purposes.

Silica sand differs from sand that is manufactured from stone products (manufactured sand is the alternative to silica sand) in its physical composition, functional characteristics, and customary uses. The Florida Department of Transportation requires silica sand to be used in ready mix concrete whenever the ready mix concrete is used as a surface for vehicular traffic. Commercial contractors use silica sand in place of, or in combination with, manufactured sand to manufacture ready mix concrete when superior pumping or finishing qualities are required. Manufacturers of ready mix concrete recognizes silica sand as a distinct product. The production and sale of silica sand used to manufacture specific types of ready mix concrete constitutes a line of commerce and a relevant market for antitrust purposes.

Producers of aggregate and/or silica sand located in or near Southwest Florida sell and compete with each other for sales of aggregate and silica sand in Southwest Florida. Due to high transportation costs and long delivery time, producers of aggregate and/or silica sand not located in or near Southwest Florida do not sell a significant amount of aggregate and/or silica sand for use within Southwest Florida.

The Complaint alleges that Florida Rock's acquisition of Harper Bros. would substantially lessen competition for the production and sale of aggregate and silica sand in Southwest Florida. Actual and potential competition between Florida Rock and Harper Bros. for the production and sale of aggregate and silica sand in Southwest Florida will be eliminated. Florida Rock and Harper Bros. are the largest producers of aggregate in Southwest Florida and have the largest reserves of aggregate in Southwest Florida. Florida Rock accounts for about 44 percent of the aggregate produced in Southwest Florida and Harper Bros. accounts for approximately 24 percent. After the acquisition, the combined entity will control about 68 percent of the Southwest Florida aggregate market. They are two of only three significant producers in Southwest Florida possessing sufficient aggregate reserves that would permit consumers to switch aggregate suppliers if prices increased.

For silica sand, Florida Rock and Harper Bros. are two of only three producers capable of selling silica sand in Southwest Florida. After the acquisition, the combined entity will control approximately 60 percent of the Southwest Florida silica sand market.

The acquisition of Harper Bros. by Florida Rock would create a dominant aggregate and silica sand company in Southwest Florida. In the aggregate market, it would reduce from three to two the number of significant competitors which possess sufficient aggregate reserves that would permit consumers to switch aggregate suppliers if prices were increased. In the silica sand market, the number of competitors would decline from three to two. Florida Rock would have the market power to increase prices for aggregate and silica sand. In addition, the proposed acquisition will facilitate coordinated pricing activity among aggregate and silica sand producers and increase the likelihood of anticompetitive price increases for consumers. Aggregate and silica sand products are only slightly differentiated (if at all), and price is an important dimension of competition. The combination of Florida Rock's and Harper Bros.' Southwest Florida aggregate and silica sand businesses would result in a substantial reduction in competition, increase the risk of coordinated action, and likely result in higher aggregate and silica sand prices.

New entry in Southwest Florida is unlikely to restore the competition lost through Florida Rock's removal of Harper Bros. from the aggregate and silica sand markets. Establishing a new, successful aggregate or silica sand production facility in or near Southwest Florida is difficult, time-consuming and costly. To be cost competitive in Southwest Florida, an aggregate or silica sand production facility must be able to produce large amounts of consistent quality aggregate or silica sand in close proximity to asphalt concrete and/or ready mix concrete plants. Environmental and zoning permits must be obtained to operate an aggregate or silica sand production facility. Federal, state and local environmental provisions and state and local zoning provisions make it very difficult to open an aggregate or silica sand production facility in or near Southwest Florida. Timely and sufficient entry is unlikely to occur in the aggregate or silica sand markets in Southwest Florida to defeat any post-acquisition price increases.

C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: Competition for the production and sale of aggregate and silica sand in Southwest Florida will be substantially lessened; actual and potential competition between Florida Rock and Harper Bros. in the production and sale of aggregate and silica sand in Southwest Florida will be eliminated; and prices for aggregate and silica sand in Southwest Florida are likely to increase above competitive levels.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the production and sale of aggregate and silica sand in Southwest Florida by placing in independent hands Florida Rock's Alico Rod Quarry which serves the Southwest Florida aggregate market and Harper Bros.' Palmdale Sand Mine which serves the Southwest Florida silica sand market. This would maintain the existing number of suppliers in the two markets. In response to a price increase from Florida Rock, purchasers would be able to turn to other producers of aggregate and silica sand with significant capacity to serve Southwest Florida.

Within one hundred and eighty (180) calendar days after filing the proposed Final Judgment of five (5) days after the entry of the Final Judgment, whichever is later, Florida Rock must divest its Alico Road aggregate quarry, Harper Bros.' Palmdale Sand Mine, and related assets. The Alico Road Quarry and the Palmdale Sand Mine will be sold to a purchaser or purchasers that demonstrates to the sole satisfaction of

the United States that they will be an economically viable and effective competitors, capable of competing effectively in the production and sale of aggregate and/or silica sand in Southwest Florida.

Until the ordered divestiture take place, Florida Rock must take all reasonable steps necessary to accomplish the divestiture and cooperate with any prospective puchaser. If Florida Rock does not accomplish the ordered divestiture within the specified one hundred and eighty (180) calendar days, which may be extended by up to sixty (60) calendar days by the United States in its sole discretion, the proposed Final Judgment provides for procedures by which the Court shall appoint a trusteee to complete the divestiture. If a trustee must undertake to divest the Alico Road Quarry, the trustee has the option of adding certain Florida Rock aggregate reserve parcels that are contiguous to the Alico Road Quarry to the divestiture package. Florida Rock must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Florida Rock will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price then available for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the mandated divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explain why the divestiture has not been accomplished, and make any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Florida Rock, Harber Bros., Testing, or Daniel Harper.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its contest to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the production and sale of aggregate and silica sand in Southwest Florida that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the prposed Final Judgment "is in the public interest." In making that determination, the court may consider—

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). The courts have recognized that the term "'public interest' take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert, denied*, 465 U.S. 1101

(1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1997–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a Court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United State* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981). See also, *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. [2]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted." [3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Executed on: May 25, 1999.

Respectfully submitted,

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–13]

Jimmy H. Conway, Jr., M.D.; Grant of Restricted Registration

On January 28, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jimmy Harold Conway, Jr., M.D. (Respondent) of Oklahoma City, Oklahoma, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(2) and (a)(4), for reason that he was convicted of a felony relating to controlled substances and that his registration would be inconsistent with the public interest.

By letter dated February 23, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Oklahoma City, Oklahoma on July 14 and 15, 1998, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On December 21, 1998, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted without restrictions. Neither party filed exceptions to Judge Randall's opinion, and on January 26, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended rulings, findings of fact and conclusions of law of the Administrative Law Judge, and adopts in part Judge Randall's recommended decision in this matter. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1983, and has been in private practice since 1989. He is an orthopedic surgeon specializing primarily in the treatment of shoulder and knee juries, general orthopedics, and sports medicine.

On February 27, 1996, an agent with the Oklahoma Bureau of Narcotics and Dangerous Drugs Control (OBN) received a complaint from a pharmacist concerning Respondent. The pharmacist had become suspicious of several prescriptions filled at the pharmacy for patient "Jim Conway" for Lorcet, a Schedule III control substance, and Soma, a non-controlled substance

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975) A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See*, H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cynamid Co.* 719 F.2d at 565.

[3] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, *460* U.S. 1001 (1983) *quoting United States* v. *Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States* v. *Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

Federally but a Schedule IV controlled substance in Oklahoma. The pharmacist was having trouble verifying the prescriptions with the alleged prescribing physician, and indicated that she had learned that "Jim Conway" was a physician in the Oklahoma City area. A printout from the pharmacy revealed that between June 1, 1995 and February 26, 1996, "Jim Conway" had 13 prescriptions filled at the pharmacy. It was later discovered that the address listed on these prescriptions was the same as Respondent's residence.

Subsequently, the OBN agent visited a number of pharmacies in the Oklahoma City area and seized prescriptions allegedly issued to Respondent by various physicians for approximately 5,973 dosage units of controlled substances.

On March 4, 1996, the OBN agent met with a physician whose name appeared as the prescribing physician on a number of the prescriptions. This physician had been a medical partner with Respondent at Respondent's then-current practice, and had known Respondent socially and professionally since 1979. After reviewing the prescriptions he alleged wrote for Respondent, the physician indicated that he did not write or authorize any of the prescriptions.

That same day, the OBN agent met with another physician whose name appeared as the prescribing physician on a number of the prescriptions. This physician was a then-current partner at Respondent's practice. After reviewing the prescriptions he allegedly wrote for Respondent, the physician also indicated that he did not write or authorize any of the prescriptions. This physician further indicated to the agent that in approximately March 1995, he was told by a pharmacist that Respondent was using his prescription pad to acquire controlled substances. The physician confronted Respondent who admitted forging prescriptions, but told the physician that it was poor judgment on his part; that it was a "one-time" occurrence; and that he would never forge prescriptions again. The physician never reported this incident to any law enforcement authorities.

Also on March 4, 1996, the OBN agent met with Respondent at which time Respondent candidly admitted to the agent that he had forged the prescriptions by using the names and DEA registration numbers of his partners without their knowledge. Respondent attributed his addiction to "frustration over his practice and workload." At that time Respondent was dissatisfied with his medical practice which according to him was mainly a group of doctors that associated with each other professionally, but practiced as individuals. This dissatisfaction caused his stress level to increase.

In the past, Respondent relieved stress by drinking alcohol. In late 1992 or 1993, Respondent began using controlled substances first on the weekends and then also at night. Initially he consumed samples of Lortab and Soma taken from his medical practice. Respondent then began forging prescriptions for drugs such as Lorcet, Ambien, Soma, Xanax and Restoril, by signing the names of his medical partners on the prescriptions. Ultimately, Respondent became addicted to these substances.

While he was addicted to these drugs, Respondent was physically and emotionally withdrawn from the people around him. Although Respondent admitted his addiction to the OBN agent, he stated that "he did not feel the addiction had impaired him in any way during surgery." A colleague testified at the hearing that he did not feel that Respondent was impaired when they would perform surgery together.

At the conclusion of the meeting with the OBN agent on March 4, 1996, Respondent surrendered his state and DEA controlled substance registrations. On March 8, 1996, the Oklahoma Board of State Medical Licensure and Supervision (Board) held an emergency hearing, and on March 29, 1996, issued an Emergency Order immediately suspending Respondent's medical license.

According to Respondent, he felt relieved when confronted by the OBN agent because he knew that at that point he would be able to receive help for his addiction. Within two hours of meeting the OBN agent on March 4, 1996, Respondent admitted himself to a local hospital for detoxification. Respondent readily admitted his addiction to his doctor at the hospital. After five days at the local hospital, Respondent entered a treatment center in a suburb of Chicago. Most patients spend about 12 weeks at the treatment center, however Respondent was released from in-patient treatment after only 8½ weeks. Respondent's success at the treatment center is attributable to the fact that he had already admitted his drug addiction and had accepted that he had a problem before he entered the center.

While at the treatment center, Respondent learned about what constitutes an addiction; how to control and treat his dependence; what causes relapse; and how to prevent it from happening to him. Respondent credibly testified at the hearing that "I have absolutely no desire to return to that lifestyle."

Respondent left the treatment center in May 1996. The treatment center requires program participants to undergo further drug treatment monitoring for at least two years following release from in-patient treatment, since the likelihood of relapse is extremely low after two years. Therefore, Respondent committed to a two-year "contract" with the treatment center which required Respondent to attend Alcoholics Anonymous (AA) meetings and to participate in the Oklahoma Physicians Recovery Program (PRP). This contract expired in May 1998.

After returning to Oklahoma from the treatment center, Respondent entered into a five-year contract with the PRP, which is aimed at supporting the recovery of physicians with addictions. This contract required drug screening two times a week for the first six months, and then weekly random testing for up to two years. After two years, drug screening is completely at random, but once a person is called for a test, he must give a urine sample within four hours. In addition, participants must attend at least three weekly twelve-step meetings, such as AA, and must have a physician to monitor their physical well-being, and a different physician sponsor to help them overcome their addiction. Respondent has compiled with the program requirements and is committed to continuing his participation in the PRP and AA.

In late September 1996, the Board issued an order granting Respondent a medical license subject a five-year probationary term beginning on March 8, 1996. Respondent is required to maintain duplicate, serially numbered controlled substance prescriptions and to make them available to the Board upon request. He is prohibited from authorizing any personnel under his supervisor to issue a prescription, and he may not handle any amphetamines, amphetamine-like substances, aneroxic drugs and/or anabolic steroids. During his probation with the Board, Respondent is required to submit biological fluid specimens upon request, and he is prohibited from prescribing, administering or dispensing any medications for personal use. Respondent is further prohibited from taking any medication unless it is authorized by a physician treating him for a legitimate medical need. Finally, he is required to continue his contract with the treatment center in Chicago.

Subsequently, on October 31, 1996, Respondent pled guilty to two counts of

an eleven-count criminal information charging him with obtaining controlled substances by forged or altered prescriptions, with the remaining counts dismissed pursuant to a plea agreement. Respondent received a four-year deferred sentence and as part of the sentence, Respondent agreed to participate in "drug testing [and] treatment as required by [the] Medical Board," and to participate in 120 hours of community service programs with Alcoholics Anonymous and/or the Fellowship of Christian Athletes.

In November 1996, the OBN granted Respondent a state controlled substance license which was also placed on probation for five years, effective March 8, 1996. The OBN license is subject to the same terms as those imposed by the Board on Respondent's medical license.

Respondent cooperated with authorities throughout the investigation and the subsequent criminal and regulatory proceedings. As of the date of the hearing, Respondent has willingly compiled with all of the terms of his probation and his contracts with the PRP and the treatment center. Respondent's urine screens have all been negative, and he has been "clean" since March 4, 1996.

Respondent is currently a member of a different group medical practice than he was during his addiction. In this practice, Respondent has supportive relationships with the other partners in the practice. The physicians in this practice attend regular "accountability meetings" and the partners are vigilant in monitoring Respondent's behavior. According to Respondent, his stress level is reduced and his job satisfaction is higher, due in part, to his professional support system.

The physician who treated Respondent at the local hospital and is now the medical director of the PRP, testified that a person's active involvement in the recovery process is the best predicator of future performance. Specifically he testified that, "[a]s long as that person is actively involved in an ongoing recovery process, relapse is seldom." According to this physician, the recovery rate for physicians participating in the PRP is approximately 90–95%.

Respondent's wife, the Chief Executive Operating officer of his current practice, and several of his colleagues and friends all testified that if Respondent were to begin abusing controlled substances again, they would recognize the abuse.

At some point during his addiction recovery period, Respondent legitimately ingested narcotics following knee surgery. According to Respondent he had no desire to use additional medication, and he did not relapse as a result of the lawfully prescribed use of this medication.

Respondent's current and potential patients are inconvenienced because Respondent does not have a DEA registration. Patients must wait until another physician is available to prescribe them narcotics to control their pain. Respondent is unable to obtain privileges at a number of hospitals and he cannot participate in many insurance plans without a DEA registration. According to one of the physicians whose name was used by Respondent to forge prescriptions, without a DEA Certificate of Registration, Respondent's "talents * * * cannot be adequately utilized."

As Respondent pointed out, the lack of a DEA registration does not affect his ability to abuse controlled substances, if he chooses to do so. Respondent candidly acknowledged that "[m]y ability to prescribe medicine in no way affects my recovery from addiction in terms of me actually writing a prescription. The way I obtained the medication prior to my treatment was by forgery and I could do that regardless of whether or not I had a DEA number."

Judge Randall found that Respondent exhibited genuine remorse for his actions and has accepted responsibility for his prior conduct.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwarz, Jr., M.D.*, 54 FR 16422 (1989).

Both parties argue that all five factors are relevant in this case in determining the public interest. The Government contends that Respondent's application should be denied in light of the actions by the Board and OBN; Respondent's forging of controlled substance prescriptions for several years; his conviction of two felonies relating to controlled substances; and his untruthful behavior. Respondent, on the other hand, argues that despite his unlawful conduct, he should be granted a DEA Certificate of Registration. In support of his contention, Respondent points out that he is currently authorized to practice medicine and handle controlled substances in Oklahoma; he did not illegally dispense controlled substances to anyone but himself; his deferred sentence is not considered a conviction under state law; he has complied with applicable laws except regarding his own addition; and those in regular contact with him have indicated that he is not a threat to the public health and safety.

As to factor one, it is undisputed that in March 1996, Respondent voluntarily surrendered his state controlled substance license and his medical license was suspended. However it is also undisputed that in September 1996, the Board reinstated Respondent's medical license and in November 1996, the OBN granted Respondent a license to handle controlled substances. Both of these licenses were granted subject to a five-year probationary period and Respondent is therefore still on probation with the Board and OBN. Although state licensure is a prerequisite for a DEA registration, it is not the only factor to be considered.

Factors two and four, Respondent's experience in dispensing controlled substances and his compliance with laws related to controlled substances, are clearly relevant in determining the public interest in this matter. While it is true that Respondent did not illegally dispense controlled substances to anyone but himself, his conduct was nonetheless egregious. He abused his position as a physician beginning in 1992 or 1993 by taking samples of controlled substances from his medical office for his own personal use. When that was no longer effective, he began forging his medical partners' signatures, and thereby using their DEA registrations, to issue unauthorized prescriptions for his own personal use. There is no question that Respondent violated 21 U.S.C. 843(a)(2) and (a)(3). However, it is also undisputed that Respondent's illegal actions were caused by his addiction to controlled

substances for which he has received extensive treatment.

As to factor three, there is some dispute as to whether Respondent has been convicted of controlled substance related offenses. Respondent pled guilty to two felony charges related to the illegal obtaining of controlled substances, and as a result received a four-year deferred sentence. Respondent argues that this deferred sentence may not be considered a conviction under Oklahoma state law, citing *White* v. *State,* 702 P.2d 1058, 1062 (Okla. Crim. App. 1985). However, DEA has consistently held that a deferred adjudication, following the entry of a guilty plea, is considered a "conviction" for purposes of the Controlled Substances Act. *See Yu–To Hsu, M.D.,* 62 FR 12840 (1997), *Harlan J. Borcherding, D.O.,* 60 FR 28796 (1995); *Mukand Lal Arora, M.D.,* 60 FR 4447 (1995); *Clinton D. Nutt, D.O.,* 55 FR 30992 (1990). Thus for purposes of this factor, Respondent has been convicted of two felony counts relating to controlled substances. However, the Deputy Administrator also recognizes that these convictions were a result of Respondent's addiction to controlled substances, and that he is in the midst of successful recovery efforts from this addition. As Judge Randall noted, "[at]t the present time, the Respondent is halfway through the term of his deferred adjudication and has shown no signs of relapse."

As to factor five, during his addiction, Respondent lied to his colleagues and family about his drug abuse. The Deputy Administrator agrees with Judge Randall that "[a]bsent rehabilitation, such behavior supports the Government's position that the Respondent could pose a threat to the public health and safety of the citizens of Oklahoma."

Judge Randall concluded that the Government made a prima facie case for the denial of Respondent's application for registration. However, she further concluded that it would not be in the public interest to deny the application. The Deputy Administrator agrees. Respondent has accepted responsibility for his prior actions and has shown remorse. He cooperated with law enforcement authorities from the moment he was questioned about the forged prescriptions. He is no longer affiliated with the medical practice that caused the stress which led to his addiction. He has taken affirmative steps toward rehabilitation and is being closely monitored by the Board, the OBN, the PRP, the treatment center, his family and his colleagues. As Judge Randall noted. "the Respondent lives and works in a community dedicated to his recovery and personal growth. This external support system ensures to a high probability that the Respondent will remain free of narcotic and alcoholic substances." Of even greater significance to the Deputy Administrator than this external support system is Respondent's apparent commitment to continuing with his rehabilitative efforts and to living a drug-free life.

Judge Randall recommended that Respondent be granted a DEA registration without restrictions since "[t]he State of Oklahoma and the OBN have implemented substantial and aggressive monitoring procedures to ensure that the Respondent continues to comply with his licensing conditions and to ensure that any possible relapse is immediately detected." Judge Randall further recommended that should the deputy Administrator find that additional monitoring by DEA is necessary, Respondent should be required to file with DEA duplicate copies of the documents being filed with the State of Oklahoma.

The Deputy Administrator agrees with Judge Randall that denial of Respondent's application is not warranted. However, the Deputy Administrator believes that some restrictions on Respondent's registration are necessary to protect the public health and safety in light of Respondent's fairly recent abuse of controlled substances, his forging of prescriptions and his felony convictions.

Therefore, the Deputy Administrator concludes that Respondent's application for registration should granted subject to the following restrictions for three years from the date of issuance of the DEA Certificate of Registration:

1. Respondent must maintain his contractual relationship with the Oklahoma Physicians Recovery Program and abide by its recommendations.

2. Respondent shall continue to undergo random urinalysis at his own expense on at least a monthly basis regardless of whether he is released from his probation with the Oklahoma Board and the OBN. He shall forward copies of the results of these tests to the DEA Oklahoma City office.

3. Respondent shall make copies of his prescriptions available to DEA personnel upon request for inspection and copying.

4. Respondent shall notify the DEA Oklahoma City office within 30 days of any change in his employment.

5. Respondent shall consent to periodic inspections by DEA personnel based on a Notice of Inspection rather than an Administrative Inspection Warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the November 20, 1996 application for registration submitted by Jimmy Harold Conway, Jr., M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than July 16, 1999.

Dated: June 7, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–15189 Filed 6–15–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,985 and TA–W–34,985A]

Bernstein & Sons Shirt Corp., UTICA, MS, and Crystal Springs, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade At of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 9, 1998, applicable to all workers of Bernstein & Sons Shirt Corporation, Utica, Mississippi. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 16140).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at Bernstein & Sons' Crystal Springs, Mississippi facility. The workers are engaged in employment related to the production of men's and women's sport shirts.

Accordingly, the Department is amending the certification to cover workers of Bernstein & Sons Shirt Corporation, Crystal Springs, Mississippi.

The intent of the Department's certification is to include all workers of Bernstein & Sons Shirt Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–34,985 is hereby issued as follows:

All workers of Bernstein & Sons Shirt Corporation, Utica, Mississippi (TA–W–34,985) and Crystal Springs, Mississippi (TA–W–34,985A) who became totally or partially separated from employment on or after September 1, 1997 through November 9, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15309 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,695]

Fellowes Manufacturing Co., Boone, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 22, 1999, in response to a petition filed by the company on behalf of workers at Fellowes Manufacturing Company, Boone, North Carolina. The workers produce wood CD, video, and cassette racks.

A company official has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15306 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,132]

Guilford Fibers, Inc. Gainesville, GA; Notice of Revised Determination on Reconsideration

On April 23, 1999, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 6, 1999 (64 FR 24419).

The Department initially denied TAA to workers of Guilford Fibers, Inc., Gainesville, Georgia, producing nylon and polyester filament textile yarn because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department obtained more information about imports of like or directly competitive filament textile yarns. According to company officials, inexpensive filament yarns are flooding the U.S. market which has caused the subject firm's parent company to require price reductions from its internal supplier (the subject firm). the subject firm, as an internal supplier to its parent company, could not compete with the price of imported yarns. A review of imports of life or directly competitive articles revealed a significant increase in imports of polyester filament yarns accompanied by a decrease in U.S. production.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with nylon and polyester filament textile yarn, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Gilford Fibers, Inc., Gainesville, Georgia. In accordance with the provisions of the Act, I make the following certification:

All workers of Guilford Fibers, Inc., Gainesville, Georgia who became totally or partially separated from employment on or after October 5, 1997 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 29th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15308 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,159]

International Wire Group, Rolling Prairie, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 1999, in response to a worker petition which was filed on behalf of workers at International Wire Group, Rolling Prairie, Indiana.

All workers of the subject firm are included under an existing certification (TA–W–33,467). Consequently, further investigation in this case would serve no purpose.

Signed in Washington, DC, this 26th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15303 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,438]

Motorola Ceramic Products, Albuquerque, NM; Notice of Negative Determination on Reconsideration

On March 9, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioners presented new evidence that indicated the Department had not fully investigated the subject firm's decision to shift production to an offshore location and the impact of the subsequent imports of RF filters. The notice was published in the **Federal Register** on April 6, 1998 (64 FR 16757).

The Department initially denied TAA to workers of Motorola Ceramics because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of RF filters.

On reconsideration, the Department requested additional information from the subject firm as to its shift in production and subsequent imports of RF filters. Upon further examination, it was revealed that in 1996 the subject firm transferred approximately 85% of the final production stage of RF filters to an offshore facility and the workers affected by that action were certified eligible to apply for Trade Adjustment Assistance (TA–W–32,889). In mid-1997 the subject firm made a strategic business decision to transfer middle production stages offshore. The subject firm now manufactures the middle and final stages at its offshore location and imports final stage production into the U.S. The worker group under this investigation were affected by the latest transfer of production and were primarily engaged in middle production stages of RF filters and not engaged in

the production of articles like or directly competitive with those being imported by the subject firm.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for worker adjustment assistance for workers and former workers of Motorola Ceramics Products, Albuquerque, New Mexico.

Signed at Washington, DC, this 24th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15312 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,881]

Perry & Perry, Inc., Midland, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 22, 1999 in response to a worker petition which was filed on behalf of all workers at Perry & Perry, Incorporated, located in Midland, Texas (TA–W–35,881).

The petitioner has requested that the petition be withdrawn.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15305 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,472]

Tony Lama Boot Co. Justin Boot Company; El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 1999 applicable to all workers of Tony Lama Boot Company located in El Paso, Texas. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16753).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of boots. New information shows that Justin Boot Company is one of four sister firms of Tony Lama Boot Company located in El Passo, Texas. The company also reports that some workers separated from employment at Tony Lama Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Boot Company, also located in El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Tony Lama Boot Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–35,472 is hereby issued as follows:

All workers of Tony Lama Boot Company, Justin Boot Company, El Paso, Texas who became totally or partially separated from employment on or after December 21, 1997 through March 11, 2001 are eligibile to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington DC. This 27th day of May, 1999.

Grant D. Beale,

Acting Director. Office of Trade Adjustment Assistance.

[FR Doc. 99–15311 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,539]

Wendt Corp., Tonawanda, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 23, 1999, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Wendt Corporation located in Tonawanda, New York, was signed on March 15, 1999, and published in the **Federal Register** on May 11, 1999 (64 FR 25371).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition, filed on behalf of workers of the subject firm in Tonawanda, New York, producing scrap processing equipment was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that Wendt Corporation did not import scrap metal processing equipment. Additionally, the articles produced by workers at the subject plant in Tonawanda, New York, are a customized product not imported into the U.S. in sufficient quantities to contribute importantly to worker separations.

The petitioner also asserts that the company is importing scrap processing equipment. As learned during the investigation, the subject firm acts as an agent/distributor for some foreign producers of scrap processing equipment. That equipment, however, is not like or directly competitive with the articles produced at the workers firm.

The petitioner attributes worker separations at Wendt to an increase in imports of steel scrap into the U.S. This allegation was made by petitioners in their January 11, 1999 petition, and was addressed in the April 19, 1999, TAA eligibility decision. Imports of scrap steel or steel cannot be considered as a basis for worker group certification under the Trade Act of 1974, as amended. The Department limits its investigation to the impact of imports of articles like or directly competitive with the products produced and sold by the workers' firm, which in this case is scrap processing equipment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15310 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,583]

Branch Cheese, Suputo Cheese USA, Branch, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Branch Cheese, Suputo Cheese USA, Branch, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,583; Branch Cheese, Suputo Cheese USA
Branch, Wisconsin (June 2, 1999)

Signed in Washington, DC, this 3rd day of June 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15318 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02987]

Fashion Enterprises, Jones Apparel Group USA, Inc., El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 26, 1999, applicable to all workers of Fashion Enterprises located in El Paso, Texas. The notice was published in the **Federal Register** on May 11, 1999 (64 FR 25373).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of ladies' jackets, skirts and pants. New information received from the company shows that Jones Apparel Group USA, Inc. is the parent firm of Fashion Enterprises located in El Paso, Texas. The company also reports that some workers separated from employment at Fashion Enterprises had their wages reported under a separate unemployment insurance (UI) tax account for Jones Apparel Group USA, Inc. El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Fashion Enterprises who were adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA—02987 is hereby issued as follows:

All workers of Fashion Enterprises, Jones Apparel Group USA, Inc., El Paso, Texas who became totally or partially separated from employment on or after February 22, 1998 through April 26, 2001 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance, Office of Trade Adjustment Assistance.

[FR Doc. 99–15307 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03005]

Pegasus Gold Corporation d.b.a. Florida Canyon Mining, Incorporated, Nevada Operations, Spokane, WA; Notice of Termination of Investigation

Pursuant to section 250 of the Trade Act of 1974, an investigation was initiated on March 18, 1999, in response to a petition filed on the same date on behalf of workers at Pegasus Gold Corporation, Spokane, Washington. The workers produce gold dore.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 24th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15316 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02730]

Frenesius Medical Care Renal Product Technologies A/K/A Erika of Texas, McAllen, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA-Transitional Adjustment Assistance on February 22, 1999, applicable to workers of Frenesius Medical Care, Renal Product Technologies located in McAllen, Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22649).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of components for kidney dialysis devices. New information provided to the Department shows that all of the workers at the subject firm have had their wages reported to the unemployment insurance (UI) tax account for Erika of Texas. Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by the shift in production to Mexico.

The amended notice applicable to NAFTA–02730 is hereby issued as follows:

All workers of the Frenesius Medical Care, Renal Product Technologies, also known as Erika of Texas, McAllen, Texas who became totally or partially separated from employment on or after November 6, 1997 through July 27, 2000, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed in Washington, DC, this 20th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15314 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02438A]

Gould Electronics, Inc., Now Known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 as amended (19 U.S.C. 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for NAFTA Adjustment Assistance on September 17, 1998, applicable to workers at Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas. The notice was published in the **Federal Register** on September 28, 1998 (63 FR 51607).

At the request of the State agency, the Department reviewed the amended certification for workers of the subject firm. The workers are engaged in the production of electrical fuses. New information shows that Ga-Tek, Inc. is the parent firm of Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas and is "now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group", El Paso, Texas. The company reports that some workers separated from employment at Gould Electronics, Inc., Circuit Protection Group had their wages reported under a separate unemployment insurance (UI) tax account for Ga-Tek, Inc., now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas.

The intent of the Department's certification is to include all workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group adversely affected by increased imports from Mexico.

The amended notice applicable to NAFTA—02438A is hereby issued as follows:

All workers of Gould Electronics, Inc., Circuit Protection Group, now known as Ga-Tek, Inc./Gould Electronics, Inc., Circuit Protection Group, El Paso, Texas who became totally or partially separated from employment on or after May 20, 1997 through July 7, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 3rd day of June, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15313 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03120]

International Wire Group, Rolling Prairie, IN; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act and in accordance with section 250(a), Subchapter D, Chapter 2, Title II of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 23, 1999, on behalf of workers at International Wire Group, Rolling Prairie, Indiana.

Workers at the International Wire Group, Rolling Prairie, Indiana are covered under an existing certification, NAFTA–1700.

Consequently, further investigation in this case would serve no purpose.

Signed in Washington, DC, this 26th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15315 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03158]

Jahmpasa, USA, Vass, NC; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 28, 1999, in response to a petition filed on behalf of workers at Jahmpasa, USA, located in Vass, North Carolina (NAFTA–03158).

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (NAFTA–03140).

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15317 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02821]

Tony Lama Boot Co., Justin Boot Co., El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 11, 1999, applicable to all workers of Tony Lama Boot Company located in El Paso, Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22649).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of boots. New information shows that Justin Boot Company is one of four sister firms of Tony Lama Boot Company located in El Paso, Texas. The company also reports that some workers separated from employment at Tony Lama Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Boot Company, also located in El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Tony Lama Boot Company who were adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–02821 is hereby issued as follows:

All workers of Tony Lama Boot Company, Justin Boot Company, El Paso, Texas, who

became totally or partially separated from employment on or after December 28, 1997 through March 11, 2001 are eligible to apply for NAFTA–TA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–15304 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: The Metalworking Fluids Standards Advisory Committee (MWFSAC), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Washington, DC on Wednesday, July 7, Thursday, July 8 and Friday, July 9, 1999.

DATES: The meeting will be held July 7, 1999 from 10 a.m. to 6 p.m.; on July 8 from 8 a.m. to 5 p.m.; and on July 9 from 8 a.m. to 3 p.m.

ADDRESSES: The Committee will meet at the Capital Hilton Hotel, 16th & K Streets, NW, Washington, DC 20036, Telephone: 202–393–1000.

Mail comments, views, or statements in response to this notice to Dr. Peter Infante, U.S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, OSHA, (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the MWFSAC at the times and location indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 693–1999 (Fax: 202–693–1634) no later than June 28, 1999, to obtain appropriate accommodations.

Meeting Agenda

The MWFSAC will discuss its draft final report to OSHA. The report is expected to include the Committee's recommendations for OSHA action and best practices for working in the metalworking fluid environment, including medical surveillance, training, and exposure monitoring. The Committee intends to complete and ratify its final report to OSHA at the meeting. OSHA will present a risk assessment update and report on data collected by the Michigan Occupational Safety and Health Administration (MIOSHA).

Public Participation

Written data, views, or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 25 copies, to Dr. Peter Infante. Submissions received by June 28, 1999, will be provided to the members of the Committee. Anyone wishing to make an oral presentation to the Committee on any of the agenda items listed above should notify Dr. Peter Infante at the address listed above. The request to speak should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, D.C. this 10th day of June, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–15239 Filed 6–15–99; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. The title of the information collection:

NRC Form 313, "Application for Material License."
NRC Form 313A, "Training and Experience"
NRC Form 313B, "Preceptor Statement"

3. The form number if applicable:

NRC Form 313
NRC Form 313A
NRC Form 313B

4. How often the collection is required: There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license. Amendments are submitted as needed by the licensee.

5. Who will be required or asked to report: All applicants requesting a license, and licensees requesting renewal or amendment of a byproduct or source material license to possess, use, or distribute radioactive material.

6. An estimate of the number of responses: 9007 (2522 NRC licensees and 6485 Agreement State licensees)

7. The estimated number of annual respondents: 17,958 (5,556 NRC licensees and 12,402 Agreement State licensees) This is the total number of licensees which could potentially submit licensing actions.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 66,652 (18,663 hours for NRC licensees and 47,989 hours for Agreement State licensees, an average of about 7.4 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: All applicants must submit NRC Form 313 to obtain, renew, or amend a specific license to possess, use, or distribute byproduct or source material. NRC Form 313A, "Training and Experience," and NRC Form 313B, "Preceptor Statement," are used for 10 CFR Part 35, "Medical Use of Byproduct Material," applicants and licensees along with NRC Form 313 to obtain the above information. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures

which are adequate to protect the health and safety of the public, and minimize danger to life or property.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by July 16, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0120), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 10th day of June 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–15242 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Arizona Public Service Company (the licensee) to withdraw its November 6, 1996, application for proposed amendments to Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74, for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, located in Maricopa County, Arizona.

The proposed amendments would have revised the facility technical specifications to provide a method to respond to a sustained, degraded switchyard voltage condition.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on January 2, 1997 (62 FR 123). However, by letter dated December 16, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated November 6, 1996, and the licensee's letter dated December 16, 1998, which withdrew the application for license amendments. The above documents are available for public inspection—2 -at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 7th day of June 1999.

For the Nuclear Regulatory Commission.

Mel B. Fields,

Project Manager, Section 2, Project Directorate IV & Decommissioning Division of Licensing Project Management Office of Nuclear Reactor Regulation

[FR Doc. 99–15243 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454, STN 50–455, STN 50–456 and STN 50–457]

Commonwealth Edison Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–37 and NPF–66 issued to the Commonwealth Edison Company (ComEd, the licensee) for operation of Byron Station, Unit Nos. 1 and 2, respectively, located in Ogle County, Illinois, and Facility Operating License Nos. NPF–72 and NPF–77 issued to ComEd for the operation of Braidwood Station, Unit Nos. 1 and 2, respectively, located in Will County, Illinois.

The proposed amendments would change the Technical Specifications to support a plant modification to install new storage racks for fuel in the spent fuel pools (SFP). As part of the modification, the total capacity of the SFP at each station is being increased from 2,870 assemblies to 2,984 assemblies.

Before issuance of the proposed license amendments, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

During the installation of the new Holtec spent fuel pool storage racks, both Holtec and the existing Joseph Oat spent fuel pool storage racks will be in the spent fuel pool at the same time. This interim arrangement will not increase the probability or consequences of an accident previously evaluated. The criticality analysis for the Joseph Oat spent fuel pool storage racks states that should a spent fuel pool water temperature change accident or a fuel assembly misload accident occur in the Region 1, Region 2, or failed fuel storage cells, k_{eff} will be maintained less than or equal to 0.95 due to the presence of at least 550 ppm (no fuel handling) or 1650 ppm (during fuel handling) of soluble boron in the spent fuel pool water. These assumptions are more conservative than the requirements stated in the criticality analysis for the Holtec spent fuel pool storage racks which only requires 220 ppm boron to maintain k_{eff} less than or equal to 0.95 during the worst case fuel assembly misload accident. The new Holtec racks have a superior neutron attenuation capability due to their improved design. The requirement of 2000 ppm boron will be maintained during the entire change out process, therefore, ensuring that k_{eff} will remain less than or equal to 0.95. At the completion of installation, only Holtec spent fuel pool storage racks will be in the spent fuel pool.

The previously evaluated Byron and Braidwood Stations accidents relative to spent fuel storage are discussed in the Updated Final Safety Analysis Report (UFSAR) Section 15.7.4, "Fuel Handling Accidents," and UFSAR Section 15.7.5, "Spent Fuel Cask Drop Accident." These accidents were considered for the new Holtec spent fuel pool racks and are listed below.

a. Spent fuel assembly dropped onto the spent fuel pool floor.

b. Spent fuel assembly dropped between racks.

c. Spent fuel assembly dropped between a rack and the spent fuel pool wall.

d. Spent fuel assembly loaded contrary to placement restrictions.

e. Spent fuel assembly dropped onto to [sic] a rack.

f. Spent fuel cask drop.

g. Change in spent fuel pool water temperature.

Spent Fuel Assembly Dropped Onto the Spent Fuel Pool Floor

The probability and consequences of dropping a spent fuel assembly onto the spent fuel pool liner have been evaluated and shown to be bounded by the existing design basis as described in the Byron and Braidwood Stations UFSAR. The maximum drop distance for a fuel assembly will not change as a result of this design change and, therefore, the consequences of this fuel handling accident remain unchanged. The probability of this fuel handling accident is not changed by the installation of new Holtec spent fuel pool storage racks or by the small increase (approximately 4.0%) in spent fuel storage capacity as the spent fuel handling procedures and equipment are unaffected by the change. Also, the number of spent fuel assemblies is not an input to the initial conditions of this accident evaluation.

Spent Fuel Assembly Dropped Between Racks

The probability and consequences of dropping a fuel assembly between rack modules was previously evaluated under UFSAR Section 9.1.2.3.9, "Accident/Abnormal Storage Conditions in Spent Fuel Pool Racks," which supports TS Limiting Condition for Operation (LCO) 3.7.15 and was shown to have no effect on reactivity. This is considered a bounding analysis and is applicable to this design change since the new Holtec rack layout still precludes a reactivity increase due to this fuel handling accident. The probability of this event is unaffected due to the similarity between the new Holtec spent fuel pool rack layout and the existing Joseph Oat spent fuel pool rack layout.

Spent Fuel Assembly Dropped Between a Rack and the Spent Fuel Pool Wall

The probability and consequences of dropping a spent fuel assembly between a rack module and the spent fuel wall has been evaluated for the new Holtec spent fuel pool racks. The worst case scenario consists of a fresh fuel assembly, of the highest allowed enrichment, accidentally placed in a cut out area between a rack and the new fuel elevator or tool bracket. The consequences of this event remain within the design basis criticality limit of less than or equal to 0.95 k_{eff}, assuming a minimum soluble boron concentration of 220 ppm in the spent fuel pool water. The probability of this event is unaffected due to the similarity between the new Holtec spent fuel pool rack layout and the existing Joseph Oat spent fuel pool rack layout. This event is bounded by the analysis of misloading an assembly into a Region 2 rack, discussed below.

Spent Fuel Assembly Loaded Contrary to Placement Restrictions

The probability and consequences of loading a fuel assembly contrary to placement restrictions has been evaluated for the Holtec racks. A worst case scenario of placing a fuel assembly of the highest enrichment (i.e., 5.0 weight percent U–235) into a Region 2 rack cell was shown to remain within the design basis criticality limit of 0.95 k_{eff}, assuming a minimum soluble boron concentration of 220 ppm in the spent fuel pool water. The current required soluble boron concentration in the spent fuel pool is 2000 ppm. The minimum soluble boron concentration, proposed in conjunction with this design change, is 300 ppm for conservatism. The probability of this event is unaffected by this design change since the existing pool already includes a two region layout, similar to the new Holtec racks. Further, the possibility of a misloaded fuel assembly is minimized by an independent verification of the Nuclear Component Transfer List that prescribes the exact location of each fuel assembly. After an assembly is placed in a spent fuel pool storage cell, station personnel once again independently verify it.

Spent Fuel Assembly Dropped onto to [sic] a Rack

The probability and consequences of dropping a spent fuel assembly onto a spent fuel storage rack have been evaluated for the Holtec racks. The consequences are shown to meet all existing design basis requirements as described in the Byron and Braidwood Station UFSAR. Analyses of the spent fuel drop accidents onto the top of a spent fuel pool storage rack (shallow drop), and a deep drop into the bottom of a cell, resulting in impact at the bottom of the rack cell, were performed to demonstrate that the spent fuel rack retains its structural integrity and capability to safely store spent fuel in adjacent cells. The damage due to a perfectly vertical drop, on the top of a rack, bounds an inclined fuel assembly drop because the impact energy is focused on a single cell wall, which results in maximum cell blockage. The radiological consequences of the drop onto the spent fuel pool liner, shallow drop onto to [sic] the top of the rack, and deep drop into the bottom of a rack cell, are bounded by the existing UFSAR assumptions that 314 fuel rods rupture. The UFSAR design basis dose is shown to be much less than the 10 CFR 100 off-site dose limits of 300 rem to the thyroid and 25 rem to the whole body. The probability of these fuel handling accidents occurring is unaffected by the installation of new spent fuel storage racks. The spent fuel handling procedures and equipment are unaffected by this change and therefore there is no increase in the probability of these fuel handling accidents.

Spent Fuel Cask Drop

The probability and consequences of a cask drop were evaluated and shown to be unaffected by the replacement of the existing Joseph Oat spent fuel pool storage racks with Holtec racks. There are no changes to any of the systems, structures, components or equipment associated with the movement of a spent fuel cask. The cask is shown by the Byron and Braidwood Stations UFSAR to be isolated from the spent fuel pool by the combination of guard walls, which are designed to withstand the impact of a cask drop, and both administrative and physical controls. These controls are designed to preclude the fuel handling building crane from traveling over the spent fuel pool. There are also trolley stops on the crane bridge which physically prevent the main hook of the crane from traveling into the spent fuel pool storage area when handling a spent fuel cask. Spent fuel pool rack installation activities and cask handling will not be performed simultaneously, thus minimizing the possibility of improper movement of the cask. This practice is consistent with the Byron and Braidwood Stations UFSAR assumptions relative to new fuel operations. Since there will be no changes to any of the equipment, procedures or operations relative to spent fuel cask handling that are associated with this design change, there is no increase in the probability or consequences of this fuel handling accident.

Change in Spent Fuel Pool Water Temperature

The probability and consequences of a change in the temperature of the spent fuel pool water was evaluated for the potential for an increase in reactivity. The new Holtec rack analysis was performed assuming a spent fuel pool water temperature of 4 °C (39 °F), which is well below the lowest normal operating temperature of 50 °F. Because the reactivity temperature coefficient in the spent fuel pool is negative, temperatures greater than 4 °C will result in a decrease in reactivity. The probability of this event is unaffected by the spent fuel pool rack replacement because there are no features of this design change affecting the spent fuel pool cooling system or that would prompt a spent fuel pool water temperature decrease.

Rack Installation

Holtec International personnel will execute the construction phases of the Byron and Braidwood Stations rack installations. All construction work will be performed in compliance with Byron and Braidwood Stations' commitments to NUREG–0612 and site-specific procedures. Holtec International and Commonwealth Edison are developing a complete set of operating procedures which cover the entire gamut of operations pertaining to the rack installation effort. Similar procedures have been utilized and successfully implemented by Holtec International on previous rack installation projects. These procedures assure that ALARA practices are followed and provide detailed requirements to assure equipment, personnel, and plant safety.

Crane and fuel bridge operators will be adequately trained in the operation of load handling machines per the station specific training program. The lifting device designed for handling and installation of the new racks at Byron and Braidwood Stations is in compliance with the provisions of NUREG–0612, including compliance with the primary stress criteria, load testing with a multiplier

for maximum working load, and nondestructive examination of critical welds.

An intensive surveillance and inspection program shall be maintained throughout the rack installation phase of the project. A set of inspection points has been established based on experience in numerous previous rack installation campaigns. These inspections have proven to eliminate incidence of rework or erroneous installation.

Based on the review of the accidents previously analyzed in the UFSAR, and considering the rigorous controls in place for installation of the new spent fuel pool storage racks, it is concluded that there will not be a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The replacement of the existing Byron and Braidwood spent fuel pool storage racks, having a capacity of 2870 cells, with new racks having a capacity of 2984 cells, was evaluated for the possibility of creating a new or different accident. The following cases were reviewed:

a. An accidental drop of a rack into the spent fuel pool, and

b. Additional heat load resulting from the additional storage capacity.

A construction accident resulting in a rack drop is an extremely unlikely event. Operability of the cranes will be checked prior to use. Lift equipment and rigging will also be inspected prior to use. Operators of lift equipment and cranes will be trained prior to use. Safe load paths will be followed and Byron and Braidwood Stations' commitments to the provisions of NUREG–0612 will be implemented by use of written procedures that have been utilized for numerous other similar rack installation projects. The Technical Requirements Manual requires that Fuel Handling Building Crane loads be limited to 2000 pounds when traveling over fuel assemblies. This limitation will be adhered to during the entire course of rack installation. In the unlikely event of a rack drop, a leak chase system located beneath the spent fuel pool liner is capable of collecting and isolating the leakage. A rack drop would present limited structural damage to the spent fuel pool slab on grade, due to the slab being founded on rock and soil. Local concrete crushing and possible liner puncture could occur. Failure of the liner would not result in a significant loss of water and no safety related equipment would be affected by the leakage. Make up water is available from 3 separate sources. There are two 500,000 gallon Refueling Water Storage Tanks, non-category 1 back up water sources, and the unborated Safety Category 1 fire protection system, available for spent fuel pool water make up. A rack drop, therefore, does not create the possibility of creating a new or different kind of accident.

The additional heat load resulting from the additional storage capacity of 114 cells (i.e., approximately 4%) has been evaluated for the possibility of creating a new or different kind of accident. The existing spent fuel pool cooling system has been shown to be capable of removing the decay heat generated by the additional spent fuel assemblies utilizing the standard Byron and Braidwood Stations operating procedures. Since it is shown that the spent fuel pool cooling system will maintain the spent fuel pool water temperature within the existing design basis, as detailed in the Byron and Braidwood UFSAR, it is concluded that the proposed changes do not create a new or different kind of accident.

Replacing the existing 23 Joseph Oat Boraflex racks with 24 new Holtec racks containing Boral, and increasing the spent fuel storage capacity in each of the spent fuel pools at Byron and Braidwood Stations to 2984 assemblies, will not create the possibility of an accident of a different type. The fuel pool rack and fuel configurations have been analyzed considering criticality, thermal hydraulic, and structural effects. The increase in storage capacity is achieved by the installation of additional racks of similar, but improved design, which are passive components. No new operating schemes or active equipment types will be required to store additional fuel assemblies in the fuel pools. The possibility of a different type of accident occurring is not created since the new racks meet or exceed the requirements applicable to the existing racks.

Therefore, implementation of the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes do not involve a significant reduction in a margin of safety.

The function of the spent fuel pool is to store fuel assemblies in a subcritical and coolable configuration throughout all environmental and abnormal loadings, such as earthquakes, dropped fuel assemblies, or loss of spent fuel pool cooling. The new spent fuel storage racks are designed to meet all applicable requirements for safe storage of spent fuel and are functionally compatible with the spent fuel pool.

The Holtec Licensing Report has analyzed the consequences of this reracking project by area. In each area, (i.e., criticality, seismic, structural, thermal hydraulics, and radiological exposure), design basis margins of safety will be maintained. Installation controls specified in Byron and Braidwood Stations' commitments to NUREG–0612 preserve the margins of safety with regard to heavy load restrictions. Compliance with the Byron and Braidwood Station design basis limits and procedure adherence will preclude reducing margins of safety.

The margin of safety is not reduced as demonstrated by analysis of the seismic, structural, thermal hydraulic, criticality, and radiological aspects of this design change. The Byron and Braidwood Station design basis spent fuel pool maximum bulk temperature acceptance limit of 140° F has been demonstrated to be preserved by analysis. Criticality calculations show that k_{eff} will be maintained at less than or equal to 0.95. The new Holtec spent fuel pool storage racks have been designed in accordance with the Byron and Braidwood Station design bases requirements and the NRC OT position paper.

Since all aspects of the design change have been demonstrated to be within the existing design bases for Byron and Braidwood Stations and the NRC requirements applicable to spent fuel storage, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 16, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating license and any person whose interest may be affected by this proceeding and who

wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010 for Byron Station, and the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481 for Braidwood Station. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for license amendments falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be

conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, Subpart G apply.

For further details with respect to this action, see the application for amendments dated March 23, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010 for Byron Station, and the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481 for Braidwood Station.

Dated at Rockville, Maryland, this 10th day of June 1999.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate 3, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15244 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 21, 1999, through June 4, 1999. The last biweekly notice was published on June 2, 1999 (64 FR 29707).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays: Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By July 19, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the

proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: May 23, 1997, as revised by letters dated September 27, 1998, and May 26, 1999.

Description of amendments request: The proposed amendments would revise Technical Specification (TS) Limiting Condition of Operation (LCO) 3.4.14 and TS Sections 5.5.9 and 5.6.8 to allow the use of steam generator (SG) tube sleeves as an alternative to plugging defective SG tubes. The May 26, 1999, letter completely revised the May 23, 1997, request for amendments, and this notice supersedes the original **Federal Register** notice dated July 30, 1997 (62 FR 40845).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to TS LCO 3.4.14.d and e will replace the leakage limits of 1 gallon per minute (gpm) primary to secondary leakage through all SGs and 720 gallon per day (gpd) through any one SG with a new limit of 150 gpd through any one SG. This is a more restrictive change. A TS limit of 150 gpd primary to secondary Leakage through any one steam generator is significantly less than the initial conditions assumed in the safety analyses. The 150 gpd limit is based on operating experience as an indication of one or more propagating tube leak mechanisms. The Steam Generator Tube Surveillance Program described in TS Section 5.5.9 ensures that the structural integrity of the SG tubes is maintained. The leakage rate limit of 150 gpd for any one SG provides additional assurance against tube rupture at normal and faulted conditions and provides additional assurance that cracks will not propagate to burst prior to detection by leakage monitoring methods and commencement of plant shutdown. Therefore, this change to TS LCO 3.4.14.e will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS 5.5.9 will add inservice inspection requirements for SG tube sleeves. These requirements will ensure that all installed SG tube sleeves will be inspected prior to initial operation and routinely thereafter, to assure the capability of each sleeve to perform its design function during each operating cycle. The tube sleeves will be the Combustion Engineering, Inc. (CE or ABB–CE) Leak Tight sleeves, as described in CE report CEN–630–P, "Repair of ¾" O.D. Steam Generator Tubes Using Leak Tight Sleeves," Revision 02, dated June 1997. (This proprietary report is provided as Enclosure 4 with this submittal.) The tube sleeve dimensions, materials and joints are designed to the applicable ASME [American Society of Mechanical Engineers] Boiler and Pressure Vessel code requirements. An extensive test program was performed that demonstrated that the sleeves will fulfill their intended function as leak tight structural members. Evaluation of sleeved tubes indicates no detrimental effects on the sleeve-tube assembly resulting from reactor coolant system flow, coolant chemistries, or thermal and pressure conditions. Structural analyses of the sleeve-tube assembly have established its integrity under normal and accident conditions. Mechanical testing using ASME code stress allowables was performed to support the analyses. Also, corrosion tests were performed and revealed no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions. A sleeved tube will exhibit greater hydraulic resistance and reduced heat transfer capability than an un-sleeved tube. However, these effects are much less than would be imposed by taking the tube out of service by plugging. Section 10.0 of CE report CEN–630–P describes the analyses to determine the hydraulic and heat transfer effects. Calculations using plant-specific information will identify sleeve-to-plug equivalency ratios. The proposed changes to the SG inservice inspection program will assure that sleeved SG tubes will meet the structural requirements of tubes that are not defective. The proposed sleeve plugging limit of 35% of nominal wall will ensure that the sleeves remaining in service will perform their design function. Also, installation of

sleeves will not significantly [a]ffect the primary system flow rate or the heat transfer capability of the SGs. Therefore, this change to TS section 5.5.9 will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to the SG reporting requirements in TS section 5.6.8 will ensure that the number of sleeved SG tubes will be reported to the NRC along with the number of plugged tubes. This is an administrative change that has no effect on the operation or maintenance of the plant and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to TS LCO 3.4.14.d and e will replace the leakage limits of 1 gpm primary to secondary leakage through all SGs and 720 gpd through any one SG with a new limit of 150 gpd through any one SG. This is a more restrictive change that will provide added assurance against steam generator tube ruptures. Since the current allowable primary to secondary leakage is being reduced, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to TS section 5.5.9 for the SG inservice inspection program will assure that sleeved SG tubes will meet the structural requirements of tubes that are not defective. Also, installation of sleeves will not significantly [a]ffect the primary system flow rate or the heat transfer capability of the SGs. Therefore, this change to TS section 5.5.9 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to the SG reporting requirements in TS section 5.6.8 will ensure that the number of sleeved SG tubes will be reported to the NRC along with the number of plugged tubes. This is an administrative change that has no effect on the operation or maintenance of the plant and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change to TS LCO 3.4.14.d and e will replace the leakage limits of 1 gpm primary to secondary leakage through all SGs and 720 gpd through any one SG with a new limit of 150 gpd through any one SG. This is a more restrictive change that will provide added assurance against steam generator tube ruptures. Since the current allowable primary to secondary leakage is being reduced, this change will not involve a significant reduction in a margin of safety.

The proposed changes to TS section 5.5.9 for the SG inservice inspection program will assure that sleeved SG tubes will meet the structural requirements of tubes that are not defective. Also, installation of sleeves will not significantly [a]ffect the primary system flow rate or the heat transfer capability of the SGs. Therefore, this change to TS section 5.5.9 will not involve a significant reduction in a margin of safety.

The change to the SG reporting requirements in TS section 5.6.8 will ensure that the number of sleeved SG tubes will be reported to the NRC along with the number of plugged tubes. This is an administrative change that has no effect on the operation or maintenance of the plant and will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Section Chief: Stephen Dembek.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendments would revise the basis for evaluation of the reactor building ventilation (VR) system exhaust plenum masonry walls. Specifically, the amendment would approve the use of different methodology and acceptance criteria for the reassessment of certain masonry walls subjected to transient pressurization loads resulting from a high energy line break.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The change involves reassessment of the VR exhaust plenum due to a transient pressurization during a Main Steam Line Break (MSLB). Since the transient pressurization is a result of the MSLB, and the block walls and the dampers are not initiators of any accident, the probability of an accident previously evaluated is not affected.

This analysis does not affect the total amount of radioactive release due to the MSLB Outside of the Primary Containment, so the total offsite dose consequences does not change. A small portion of the release, which passes the dampers prior to closure will now be an elevated release via the plant ventilation stack instead of a ground level release. The original analysis assumed the entire release was a ground level release, and thus remains bounding for the MSLB accident.

The Control Room and Auxiliary Electric Equipment Room (AEER) dose consequences are impacted only slightly due to the small amount of steam/air mixture released from the new pressure relief damper. The steam/air mixture becomes mixed with the air volume in that area of the Auxiliary Building but was all assumed to be available for inleakage to the Control Room and AEER. The dose increase for the Control Room and AEER is less than or equal to 0.05 Rem thyroid and negligible change to the whole body dose, such that the dose due to the MSLB accident remains much less than the DBA LOCA dose and General Design Criteria 19. The MSLB accident dose consequences remain bounded by the Design Basis Loss of Coolant Accident.

The effects of the steam released by the pressure relief damper into the Auxiliary Building has been evaluated for environmental qualification impact on systems, structures and components (SSCs) in the area of the Auxiliary Building affected for both radiation and steam/temperature affects. The effect on area temperature is about 4 °F and is above initial temperature for not more than 24 hours. The change in humidity is negligible, and radiation dose impact is small and bounded by previous calculations.

These consequences assume that the VR exhaust plenum masonry walls do not rupture based on the design changes being made in conjunction with the masonry wall reevaluation for each LaSalle Unit that will prevent the failure of the VR exhaust plenum masonry walls.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The MSLB accident is previously analyzed but considered only instantaneous closure of installed dampers. The reevaluation and design changes extend the previous accident analysis to assure that structures previously considered unaffected by the MSLB will maintain their structural integrity. The block walls are static and the dampers function in response to an accident, thus the analysis method and design changes are not accident initiators. Therefore the change does not create the possibility of a new [or] different kind of accident from any accident previously evaluated.

The design changes being made in conjunction with the masonry wall reevaluation for each LaSalle Unit that will prevent the failure of the VR exhaust plenum masonry walls are as follows:

(1) Installation of a pressure relief damper,

(2) An excess-flow check damper, and

(3) Required masonry wall support improvements in the reactor building ventilation exhaust plenum for each Unit.

The reevaluation of the masonry walls uses different load factors and load combinations

as well as reduced acceptance criteria than previously used for these walls. The change in the evaluation does not cause the rupture or failure of the effected masonry walls, since the evaluation shows the walls remain intact.

The installation of the above design changes, in conjunction with masonry wall analysis assure that the subject masonry walls will not rupture or fail. Therefore, SSCs that would be affected by wall rupture can fulfill their intended function, maintaining the consequences of previously evaluated accident the same.

The new pressure relief damper and excess-flow check damper are safety-related and are analyzed to function under the conditions created by the MSLB. In addition, the dampers and the duct they are installed in have been analyzed to assure no failure will occur during an Operating Basis Earthquake (OBE) or Safe Shutdown Earthquake (SSE).

Based on an analysis of potential failure modes in accordance with ANSI/ANS–58.9–1981, "Single Failure Criteria for Light Water Reactor Safety-Related Fluid Systems," Paragraph 4.1, the active function of the pressure relief damper and excess flow check damper are considered exempted from consideration of single failure. The principles governing operation of the dampers are simple and direct and not subject to change or deterioration with time, similar to the function of a code safety relief valve and a swing check valve. With periodic testing of the dampers, continued reliable performance is assured.

The dampers are designed and set so that the pressures created by normal ventilation flow changes do not cycle the dampers, and thus the new dampers do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Administrative controls will be in place prior to implementation of this change to assure the testing and maintenance is periodically performed in accordance with vendor recommendations. These dampers will be included as equipment required to be monitored/maintained, because the function performed by the dampers is within the scope of the Maintenance Rule, 10 CFR 50.65.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

Originally, no masonry walls were evaluated for HELB pressurization effects, because the walls were considered protected by the isolation dampers. However, the original design methodology for masonry did include load combinations including P_a:

Abnormal

$1.0D + 1.0L + 1.5P_a$

Abnormal/Severe Environment

$1.0D + 1.0L + 1.25P_a + 1.25E_o$

Abnormal/Extreme Environment

$1.0D + 1.0L + 1.0P_a + 1.0E_{ss}$,

Where D is Dead Load; L is Live Load; P_a is pressurization due to HELB; E_o is Loads generated by the Operating Basis Earthquake (OBE); and E_{ss} is Loads generated by the Safe Shutdown Earthquake (SSE).

The current reevaluation was required due to determination that some block walls in the LaSalle Auxiliary Building are affected by a transient pressurization due to a MSLB. The specific changes from the original analyses involve the following for loads and load combinations.

1. Abnormal:

$1.0D + 1.0L + 1.0P_{HELB}$

2. Abnormal/severe environmental:

$1.0D + 1.0L + [(1.1E_o)^2 + 1.0P_{HELB2}]^{1/2}$

3. Abnormal/extreme environmental:

$1.0D + 1.0L + [1.0E_{ss}^2 + 1.0P_{HELB}^2]^{1/2}$

Where:

(1) P_{HELB} is the short-term differential pressurization load on the VR plenum masonry walls resulting from non-instantaneous opening/closure of the protection dampers.

(2) The Load Factor on pressure due to HELB is 1.0 for all cases.

(3) The Loading Combination of pressure and seismic is the Square Root of the Sum of Squares (SRSS).

LaSalle has selected the proposed load combinations in consideration of the following:

Isolation, check, and relief dampers protect the walls; therefore the pressurization effects are not sustained, but are transient in nature.

The transient pressurization effect (P_{HELB}) is derived from a conservative detailed analysis of an instantaneous HELB combined with non-instantaneous damper opening/closure. Due to the precise nature and conservatism of this HELB analysis, there is little uncertainty in P_{HELB} .

Therefore a load factor of 1.0 is used for all abnormal load combinations.

P_{HELB} is a short duration, dynamic load. Accordingly, the seismic and transient HELB pressurization loads are combined using the Square Root of Sum of the Squares (SRSS) method because the peak effects of these dynamic loads are unlikely to occur simultaneously. This combination method is used in the analysis of other components such as component supports.

The proposed load combinations accordingly provide a conservative basis for reassessment of the VR exhaust plenum masonry wall systems.

In regards to the masonry acceptance criteria, the original acceptance criteria used for this condition are the National Concrete Masonry Associations (NCMA) "Specification for the Design and Construction of Load Bearing Masonry—1979" allowable stresses times a 1.67 factor. These allowable stresses correspond to stress equal to the modulus of rupture (f_r) of the masonry divided by a factor of safety of 3.35. During reviews to address masonry wall issues per NRC IE Bulletin 80–11, six walls did not meet this acceptance criteria. The acceptance criteria used for these walls was for f_r values determined from testing at Clinton Power Station divided by a factor of safety of 2.5. This acceptance criteria was accepted by the NRC for LaSalle in Supplement 5 of NUREG 0519, Safety Evaluation Report related to the Operation of LaSalle County Station, Units 1 and 2. The VR exhaust plenum walls will use the same acceptance criteria for the transient HELB pressurization cases.

The minimum masonry safety factor for the LaSalle Unit 2 walls affected by the HELB loads range from 2.6 to 3.1 with one wall having a safety factor of 4.9.

Masonry wall steel support members were originally designed for this condition elastically to the American Institute of Steel Construction's (AISC) "Steel Construction Manual—Seventh Edition" allowable stresses times a 1.6 factor. In the reassessment of these members due to the transient HELB pressurization, elasto-plastic behavior is allowed (with a ductility ratio limit of 10). It is appropriate to consider them similar to high-energy line break systems that will maintain their integrity as they absorb the energy of the incidental pressure excursion.

High-energy line breaks are discussed in Section 3.6 of the UFSAR. The discussion in this section focuses on the design of pipe whip restraints, and in Table 3.6–6 acceptance criteria are provided. This table shows that the energy absorbing portions of the pipe whip restraint are allowed to go plastic, thereby absorbing energy. While Table 3.6–6 of the UFSAR deals with energy absorbing portions of the pipe whip restraints, wide-flange shapes are not addressed. Wide-flange shapes absorb energy through flexural deformations.

Guidance on appropriate acceptance criteria for flexural members is provided in Appendix A to SRP 3.5.3, "Barrier Design Procedures." This appendix indicates that for tension due to flexure in structural steel members, a ductility ratio value not to exceed 10.0 is acceptable. SRP 3.8.4, paragraph III.5 also notes that some localized points on the structure, the allowable stresses specified for "structural steel" may be exceeded, provided that integrity of the structure is not affected.

Note that only one of the Unit 2 walls affected by these HELB loads required the use of the elasto-plastic acceptance criteria for two structural steel members.

In summary, these alternate criteria for reassessment of the integrity of the LaSalle Reactor Building Ventilation Exhaust Plenum masonry walls in conjunction with the design changes adding a pressure relief damper, an excess flow check damper and masonry wall support steel changes, assures that the walls will maintain their integrity during a MSLB. The safety factor is reduced; however, the walls have sufficient strength and safety margin to maintain structural integrity and thus perform their intended safety function during the pressurization transient due to a MSLB accident.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois

Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix, County, Michigan

Date of amendment request: May 11, 1999 (Accession No. 9905170189).

Description of amendment request: The proposed amendment would delete from the Defueled Technical Specifications (DTS) the definition for site boundary and Figure 5.1–1, Big Rock Point Site Map, and revise the description of the Big Rock Point site under subsection 5.1. The amendment also proposes editorial changes associated with the above proposed revisions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.91, Consumers Energy Company has made a determination that the proposed amendment does not involve significant hazards considerations. Consumers Energy Company has concluded that the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and has no [e]ffect on the health and safety of the public. There is no reduction or elimination of federal regulatory requirements associated with the proposed amendment. The information being removed from the Defueled Technical Specifications is unnecessary since Site Boundary is already defined in 10 CFR Part 20, and the site map [Defueled Technical Specification Figure 5.1–1] is already provided in the Updated Final Hazards [Summary] Report. Furthermore, the proposed changes are consistent with the guidance provide in NUREG–1625 ['Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants"].

The proposed change does not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed amendment does not change the site boundary as it currently exists. Deleting the Site Boundary definition and changing the upper case characters to lower case throughout the DTS and the Bases where it appears, and deleting the site figure from the DTS and related references will not increase the probability or consequences of a new or different kind of accident previously evaluated. This proposed change is administrative in nature and does not involve fuel handling or affect or modify any system, structure or component.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not change the site boundary as it currently exists. Deleting the Site Boundary definition and changing the upper case characters to lower case throughout the DTS and the Bases where it appears, and deleting the site figure from the DTS and related references will not create the possibility of a new or different kind of accident from any accident previously evaluated. This proposed change is administrative in nature and does not involve fuel handling or affect or modify any system, structure or component.

(3) Involve a significant reduction in the margin of safety.

The proposed changes do not involve any physical changes to the plant or plant procedures. There will be no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petosky, MI 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Dr. Michael T. Masnik.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 2, 1998, supplemented May 13, 1999.

Description of amendment request: The proposed amendments would resolve an unreviewed safety question involving use of credit for reactor building overpressure in the licensing basis for the available net positive suction head for the reactor building spray pumps and the low pressure injection pumps. If approved, the appropriate changes would be incorporated in the Oconee Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

The reactor building spray (RBS) and low pressure injection (LPI) systems are not considered as initiators of any analyzed event, therefore, this change has no impact on the probability of an event previously analyzed.

The consequences of a previously analyzed event are dependent on the initial conditions assumed for the analysis, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the set points at which these actions are initiated. The proposed change permits limited reactor building overpressure to be credited in the calculation of available net positive suction head (NPSH) for the RBS and LPI pumps for a limited period of time during the sump recirculation phase. It is supported by calculations which demonstrate that adequate reactor building overpressure will be available to ensure the RBS and LPI systems will be capable of performing their safety functions. Thus, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change permits limited reactor building overpressure to be credited in the calculation of available NPSH for the RBS and LPI pumps for a limited period of time during the sump recirculation phase. It does not involve a physical alteration of the plant. The proposed change is supported by calculations which demonstrate that adequate reactor building overpressure will be available to ensure the RBS and LPI systems will be capable of performing their safety functions. This change will not alter the manner in which the RBS or LPI system is initiated, nor will the function demands on the RBS or LPI system be changed. Thus, the proposed change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety?

The proposed change permits limited reactor building overpressure to be credited in the calculation of available NPSH for the RBS and LPI pumps for a limited period of time during the sump recirculation phase. Crediting a slight amount of overpressure does not result in a significant reduction in the margin of safety, because conservative analyses demonstrate that adequate reactor building overpressure will be available to ensure the RBS and LPI systems will be capable of performing their safety functions. Thus, the proposed change does not involve a significant reduction in a margin of safety.

Duke has concluded based on the above information that there are no significant hazards involved in this LAR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: May 11, 1999.

Description of amendment request: The proposed amendments would: (a) revise the pressure-temperature (P–T) limits of Technical Specification (TS) 3.4.3 for heatup, cooldown, and inservice test limitations for the Reactor Coolant System to a maximum of 33 Effective Full Power Years; (b) revise TS 3.4.12, Low Pressure Overpressure Protection System (LTOP), to reflect the revised P–T limits of the Unit 1, 2, and 3 reactor vessels; (c) permit operation during LTOP conditions with two reactor coolant pumps in operation in a single loop; and (d) relax the LTOP operating envelope, thereby reducing potential challenges to the reactor coolant system power operated relief valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration.

A. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

These proposed Technical Specification (TS) changes were developed utilizing the procedures of ASME XI, Appendix G, in conjunction with Code Cases N–514, N–588 and N–626, as described in the Technical Justification. Usage of these procedures provides compliance with the underlying intent of 10 CFR 50 Appendix G and provide safety limits and margins of safety that ensure failure of a reactor vessel will not occur.

The proposed changes do not impact the capability of the reactor coolant pressure boundary (i.e., no change in operating pressure, materials, seismic loading, etc.) and therefore do not increase the potential for the occurrence of a loss of coolant accident (LOCA). The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, or construction standards. The probability of any design basis accident (DBA) is not affected by this change, nor are the consequences of any DBA affected by this change. The proposed Pressure-Temperature (P–T) limits, Low Temperature Overpressure (LTOP) limits and setpoints, and allowable operating reactor coolant pump combinations are not considered to be an initiator or contributor to any accident analysis addressed in the Oconee UFSAR.

The proposed changes do not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. Radiological off-site exposures from normal operation and operational transients, and faults of moderate frequency do not exceed the guidelines of 10 CFR 100. In addition, the proposed changes do not affect any fission product barrier. The revised PORV LTOP setpoint is established to protect reactor coolant pressure boundary. The changes do not degrade or prevent the response of the PORV or safety-related systems to previously evaluated accidents. In addition, the changes do not alter any assumption previously made in the mitigation of the radiological consequences of an accident previously evaluated.

Therefore, the probability or consequences of an accident previously evaluated will not be increased by approval of the requested changes.

B. Create the possibility of a new or different kind of accident from the accident previously evaluated?

No.

The proposed license amendment revises the Oconee reactor vessel P–T limits, LTOP limits and setpoints, and allowable operating reactor coolant pumps combinations. Compliance with 10 CFR 50 Appendix G, includes utilization of ASME XI, Appendix G, as modified by Code Cases N–514, N–588 and N–626 to meet the underlying intent of the regulations.

Operation of Oconee in accordance with these proposed Technical Specifications changes will not create any failure modes not bounded by previously evaluated accidents. Consequently, approval of these changes will not create the possibility of a new or different accident from any accident previously evaluated.

C. Involve a significant reduction in a margin of safety?

No.

The proposed Technical Specification (TS) changes were developed utilizing the procedures of ASME XI, Appendix G, in conjunction with Code Cases N–514, N–588 and N–626, as described in the Technical Justification. Usage of these procedures provides compliance with the underlying intent of 10 CFR 50 Appendix G and provides safety limits and margins of safety which ensure failure of a reactor vessel will not occur.

No plant safety limits, set points, or design parameters are adversely affected. The fuel, fuel cladding, and Reactor Coolant System are not impacted. Therefore, there will be no significant reduction in any margin of safety as a result of approval of the requested changes.

Duke has concluded based on this information there are no significant hazards considerations involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 17, 1999.

Description of amendment request: The proposed amendment would revise the Technical Specifications associated with the enabling of the Oscillation Power Range Monitor (OPRM) instrumentation reactor protection system (RPS) trip function. The OPRM is designed to detect the onset of reactor core power oscillations resulting from thermal-hydraulic instability and suppresses them by initiating a reactor scram via the RPS trip logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of Interim Corrective Actions (ICAs) and certain limiting conditions of operation of Technical Specifications (TS) 3.4.1. The OPRM system can automatically detect and suppress conditions necessary for thermal-hydraulic (T–H) instability. A T–H instability event has the potential to challenge the Minimum Critical Power (MCPR) safety limit. The restrictions of the ICAs and TS 3.4.1 were imposed to ensure adequate capability to detect and suppress conditions consistent with the onset of T–H oscillations that may develop into a T–H instability event. With the installation of the OPRM System, these restrictions are no longer required.

The probability of a T–H instability event is most significantly impacted by power to flow conditions such that only during operation inside specific regions of the power to flow map, in combination with power shape and inlet enthalpy conditions, can the occurrence of an instability event be postulated to occur. Operation in these regions may increase the probability that operation with conditions necessary for a T–H instability can occur.

However, when the OPRM is operable with operating limits as specified in the COLR [Core Operating Limits Report], the OPRM can automatically detect the imminent onset of local power oscillations and generate a trip signal. Actuation of an RPS trip will suppress conditions necessary for T–H instability and decrease the probability of a T–H instability event. In the event the trip capability of the OPRM is not maintained, the proposed change includes actions which limit the period of time before the effected OPRM channel (or RPS system) must be placed in the trip condition. If these actions would result in a trip function, an alternate method to detect and suppress thermal hydraulic oscillations is required. In either case the duration of this period of time is limited such that the increase in the probability of a T–H instability event is not significant. Therefore the proposed change does not result in a significant increase in the probability of an accident previously evaluated.

An unmitigated T–H instability event is postulated to cause a violation of the MCPR safety limit. The proposed change ensures mitigation of T–H instability events prior to challenging the MCPR safety limit if initiated from anticipated conditions by detection of the onset of oscillations and actuation of an RPS trip signal. The OPRM also provides the capability of an RPS trip being generated for T–H instability events initiated from unanticipated but postulated conditions. These mitigating capabilities of the OPRM system would become available as a result of the proposed change and have the potential to reduce the consequences of anticipated and postulated T–H instability events. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1. The OPRM system uses input signals shared with APRM [Average Power Range Monitor] and rod block functions to monitor core conditions and generate an RPS trip when required. Quality requirements for software design, testing, implementation and module self-testing of the OPRM system provide assurance that no new equipment malfunctions due to software errors are created. The design of the OPRM system also ensures that neither operation nor malfunction of the OPRM system will adversely impact the operation of other systems and no accident or equipment malfunction of these other systems could cause the OPRM system to malfunction or cause a different kind of accident. Therefore, operation with the OPRM system does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation in regions currently restricted by the requirements of ICAs and TS 3.4.1 is within the nominal operating domain and ranges of plant systems and components for which postulated equipment and accidents have been evaluated. Therefore operation within these regions does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change which specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in certain regions of the power to flow [map] does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in regions of the power to flow map currently restricted by the requirements of ICAs and TS 3.4.1.

The OPRM system monitors small groups of LPRM signals for indication of local variations of core power consistent with T-H oscillations and generates an RPS trip when conditions consistent with the onset of oscillations are detected. An unmitigated T-H instability event has the potential to result in a challenge to the MCPR safety limit. The OPRM system provides the capability to automatically detect and suppress conditions which might result in a T-H instability event and thereby maintains the margin of safety by providing automatic protection for the MCPR safety limit while significantly reducing the burden on the control room operators. In the event the trip capability of the OPRM is not maintained, the proposed change includes actions which limit the period of time before the effected OPRM channel (or RPS system) must be placed in the trip condition. If these actions would result in a trip function, an alternate method to detect and suppress thermal hydraulic oscillations is required. Since, in either case, the duration of this period of time is limited so that the increase in the probability of a T-H instability event is not significant. Operation with the OPRM system does not involve a significant reduction in a margin of safety.

Operation in regions currently restricted by the requirements of ICAs and TS 3.4.1 is within the nominal operating domain assumed for identifying the range of initial conditions considered in the analysis of anticipated operational occurrences and postulated accidents. Therefore, operation in these regions does not involve a significant reduction in the margin of safety.

The proposed change, which specifies limiting conditions for operations, required actions and surveillance requirements of the OPRM system and allows operation in certain regions of the power to flow map, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: May 17, 1999.

Description of amendment request: The proposed amendment would change VCSNS Technical Specification 3.7.1.3 "Condensate Storage Tank—Limiting Conditions for Operation" to revise the tank minimum contained water volume from 172,000 gallons to 179,850 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

FSAR [Final Safety Analysis Report] 10.4.9.1 states that minimum required usable volume for the Condensate Storage Tank (CST) is 158,570 gallons based on maintaining the plant at HOT STANDBY conditions for eleven hours. This volume has already been adjusted for both plant uprate conditions and replacement steam generator requirements. This change to LCO [Limiting Condition for Operation] 3.7.1.3 will ensure that 160,054 gallons is maintained in the CST, being available and dedicated to the Emergency Feedwater (EFW) System. Thus, this change will ensure that the EFW System has an adequate water supply to perform its design basis function in regard to maintaining the plant in HOT STANDBY condition.

2. This request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change increases the minimum required volume of water in the CST, thus

ensuring that the EFW System can perform its required safety function. The maximum and normal water levels in the CST are not being changed. Therefore, no new failure modes of the CST, or flooding concerns are created.

3. This request does not involve a significant reduction in a margin to safety[.]

This change does not reduce any margin associated with the CST inventory available to the EFW. In fact, a small gain in margin (less than 1%) is realized by specifying the minimum required volume based on the maximum volume available due to nozzle locations and other physical characteristics of the tank instead of the minimum required to maintain HOT STANDBY for 11 hours. Additionally, the requirement for sufficient CST volume to maintain HOT STANDBY for 11 hours is still met and the Service Water System still provides the long term supply of safety grade cooling water to the EFW System. The Service Water supply is not affected by this change, and thus the margin for safety grade cooling water to the EFW System (or safety grade cooling of the RCS) is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc, Docket No. 50–348 Joseph M. Farley Nuclear Plant Unit 1, Houston County, Alabama

Date of amendment request: April 30, 1999.

Description of amendment request: The proposed amendment would add an additional condition to the Farley Nuclear Plant (FNP), Unit 1 license. This condition would allow cycle 16 operation based on a risk-informed approach to evaluate steam generator tube structural integrity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The probability of tube burst is slightly increased as a result of this proposed amendment but is within current industry guidance. Therefore, the probability of a previously evaluated accident are not significantly increased. There is no change in the FNP design basis as a result of this change and, as a result, this change does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed changes to the TSs [technical specifications] do not increase the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new limiting single failure or accident scenario has been created or identified due to the proposed changes. Safety-related systems will continue to perform as designed. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in the margin of safety. There is no impact in the accident analyses. These proposed changes are technically consistent with the requirements of NEI [Nuclear Energy Institute] 97–06, "Steam Generator Program Guidelines," Draft Regulatory Guide DG 1074, "Steam Generator Tube Integrity," and Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment In Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis." Thus the proposed changes do not involve a significant reduction in the margin of safety.

Accordingly, SNC [Southern Nuclear Operating Company] has determined that the proposed amendment to the Facility Operating License NPF–2 does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 3, 1999.

Description of amendment request: The proposed changes will modify the Technical Specifications to ensure the emergency ventilation system is maintained operable consistent with the assumptions in the radiological dose consequence reanalysis from a Large Break Loss-of-Coolant Accident and to clearly identify that the ventilation system is a shared system between the two units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. There is no significant change in the probability or consequences of an accident previously evaluated. There are no system changes which would increase the probability of occurrence of an accident. The dose consequences of the accidents have been reviewed, and in some cases the doses at the EAB [exclusion area boundary] * * * and the doses to the control room personnel were found to increase. However, this increase is not significant because the revised doses remain below the limits of 10 CFR 100 and below the limits of GDC [General Design Criterion]—19 of Appendix A of 10 CFR 50.

2. No new accident types or equipment malfunction scenarios have been introduced. Therefore, the possibility of an accident of a different type than any evaluated previously in the UFSAR [Updated Final Safety Analysis Report] is not created.

3. There is no significant reduction in the margin of safety, as the revised dose calculations for all accidents continue to meet the appropriate GDC–19 limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: May 6, 1999.

Description of amendment request: The proposed changes will modify the Technical Specifications, revising the surveillance frequency for the Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) analog instrumentation

channels and also revising the allowed outage time and action times for the RTS and ESFAS analog instrumentation channels and the actuation logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) Technical Specification changes for the North Anna Units 1 and 2 and determined that a significant hazards consideration is not involved. In support of this conclusion, the following evaluation is provided.

Criterion 1—Operation of North Anna Units 1 and 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The determination that the results of the proposed changes remain within acceptable criteria was established in the SER(s) [Safety Evaluation Reports] prepared for WCAP–10271, WCAP–10271 Supplement 1, WCAP–10271 Supplement 2, WCAP–10271 Supplement 2, Revision 1 and WCAP–14333 issued by letters dated February 21, 1985, February 22, 1989, April 30, 1998, and July 15, 1998.

Implementation of the proposed changes is expected to result in an increase in total RTS and ESFAS yearly unavailability. The proposed changes have been shown to result in a small increase in the core damage frequency (CDF) due to the combined effects of increased RTS and ESFAS unavailability and reduced inadvertent reactor trips.

The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analyses for the NRC [Nuclear Regulatory Commission] Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable. The analysis performed by the WOG and presented in the WCAP included changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers. The overall increase in the CDF, including the changes to the surveillance frequencies for the automatic actuation logic and actuation relays and the reactor trip and bypass breakers, was approximately 6 percent. However, even with this increase, the overall CDF remains lower than the NRC safety goal of 10^{-4}/reactor year.

Changes to surveillance test frequencies for the RTS and ESFAS interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance as currently required only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability is verified after a refueling shutdown. The definition of the channel check includes comparison of the channel status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. Therefore, the change in the interlock surveillance requirement to at least once every 18 months does not represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the RTS and ESFAS.

For the additional relaxations in WCAP–14333, the WOG evaluated the impact of the additional relaxation of allowed outage times and completion times, and action statements on core damage frequency. The change in core damage frequency is 3.1 percent for those plants with two out of three logic schemes that have not implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. This analysis calculates a significantly lower increase in core damage frequency than the WCAP–10271 analysis calculated. This can be attributed to more realistic maintenance intervals used in the current analysis and crediting the AMSAC [ATWS (anticipated transient without scram) mitigating system actuation circuitry] system as an alternative method of initiating the auxiliary feedwater pumps. Therefore, the overall increase in CDF is estimated to be 3.1% for the proposed changes per the generic Westinghouse analysis.

The NRC performed an independent evaluation of the impact on core damage frequency (CDF) and large early release fraction (LERF). The results of the staff's review indicate that the increase in core damage frequency is small (approximately 3.2%) and the large early release fraction would increase by only 4 percent for 2 out of 3 logic schemes that have not implemented the proposed surveillance test interval, allowed outage times, and completion times evaluated in WCAP–10271 and its supplements. Further, the absolute values for CDF still remain within NRC safety goals.

Therefore, the proposed changes do not result in a significant increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RTS and ESFAS but does not alter the manner in which protection is afforded or the manner in which limiting criteria are established.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RTS or ESFAS provide plant protection. No change is being made which alters the functioning of the RTS or ESFAS (other than in a test mode). Rather the likelihood or probability of the RTS or ESFAS functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes. Some existing instrumentation is designed to be tested in bypass and current Technical Specifications allow testing in bypass. Testing in bypass is also recognized by IEEE [Institute of Electrical and Electronics Engineers] Standards. Therefore, testing in bypass has been previously approved and implementation of the proposed changes for testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. Furthermore since the other proposed changes do not alter the physical operation or functioning of the RTS or ESFAS the possibility of a new or different kind of accident from any previously evaluated has not been created.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the safety limits, limiting safety system setpoints or limiting conditions for operation. The RTS and ESFAS analog instrumentation remain operable to mitigate as assumed in the accident analysis. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act.

Implementation of the proposed changes is expected to result in an overall improvement in safety by less frequent testing of the RTS and ESFAS analog instruments will result in less inadvertent reactor trips and actuation of Engineered Safety Features components.

This analysis demonstrates that the proposed amendment to The North Anna Unit 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch Jr.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois and Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: March 22, 1999.

Brief description of amendments: The amendments modify the technical specifications to permit the use of the Gamma-Metrics Post Accident Neutron Monitors source range neutron flux detectors in addition to the Westinghouse source range neutron flux monitors to satisfy the requirement that two source range neutron flux monitors be operable during Mode 6 operations (refueling).

Date of issuance: June 2, 1999.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 109 & 109, 102 & 102.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 29, 1999 (64 FR 14944). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 2, 1996, as supplemented on May 27, 1999.

Brief description of amendments: The amendments revised Technical Specification 3/4.4.2 to reduce the number of required Safety/Relief valves (SRVs). This change supports a modification to remove five of the currently installed SRVs due to excess capacity and to reduce the amount of valve maintenance and associated worker radiation dose. The revised TS requires that 12 of the remaining installed 13 SRVs be operable.

Date of issuance: June 3, 1999.

Effective date: Immediately, to be implemented prior to startup of L1C10 for Unit 1 and prior to startup of L2C9 for Unit 2.

Amendment Nos.: 133 & 118.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 29, 1997 (62 FR 4343). The May 27, 1999, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: March 23, 1999 (NRC–99–0025).

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement (SR) 4.4.1.1.1 to require each recirculation pump discharge valve be demonstrated operable at least once every 18 months, deletes the "*" footnote from the SR, and revises the footnote itself to read "Not used."

Date of issuance: May 25, 1999.

Effective date: May 25, 1999, with full implementation within 90 days.

Amendment No.: 133.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19555)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: July 9, 1998, as supplemented March 31, 1999.

Brief description of amendments: These amendments revised Technical Specification (TS) 3/4.7.1.1 and associated Bases for both units. This amendment specifies maximum allowable reactor power level based on the number of operable main steam safety valves (MSSVs) rather than requiring reduction in reactor trip setpoint. This change is consistent with the Nuclear Regulatory Commission's improved Standard Technical Specifications for Westinghouse plants (NUREG–1431, Revision 1). The maximum allowable reactor power level with inoperable MSSVs will be calculated based on the recommendations of Westinghouse Nuclear Safety Advisory Letter 94–01. The change to the Unit 1 TS 3.7.1.1 also deletes reference to 2 loop operation since 2 loop operation is not a licensed

condition for either unit. Unit 1 TS Table 3.7–3 is then renumbered to be Table 3.7–2.

The March, 31, 1999 letter withdrew a portion of the amendment which would have removed the values of the orifice diameter of each MSSV from the TSs. This information will be maintained in the TSs.

Date of issuance: June 3, 1999.

Effective date: Units 1 and 2 as of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 223 and 99.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43203). The March 31, 1999 letter did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: August 31, 1998.

Brief description of amendment: Changes the Crystal River Unit 3 Technical Specifications to add additional instrumentation variables to Improved Technical Specification Table 3.3.17–1, Post-Accident Monitoring Instrumentation.

Date of issuance: June 3, 1999.

Effective date: As of date of issuance, to be implemented prior to commencing cycle 12 operation.

Amendment No.: 177.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56250).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: November 23, 1998, as supplemented January 29 and May 7, 1999.

Brief description of amendment: The amendment changes the Improved Technical Specifications for several reactor protection system and engineered safeguards actuation system setpoint values, and changes the surveillance requirement to verify valve position for valves in the high pressure injection system flowpath.

Date of issuance: May 21, 1999.

Effective date: As of date of issuance, to be implemented prior to commencing Cycle 12 operation.

Amendment No.: 178.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71966). The supplemental letters dated January 29 and May 7, 1999, did not change the original proposed no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: December 16, 1998.

Description of amendment request: These amendments consist of changes to the Technical Specifications (TS) in response to Florida Power & Light's (FPL) application dated December 16, 1998, regarding facility staff qualifications for multi-discipline supervisor (MDS) positions at Lucie Units 1 and 2. The amendments revise the administrative controls in TS Section 6.3, "Unit Staff Qualifications," by modifying FPL's commitment to ANSI/ANS 3.1–1978, "Selection and Training of Nuclear Power Plant Personnel," to incorporate specific staff qualifications for the position of MDS.

Date of Issuance: May 25, 1999.

Effective Date: May 25, 1999.

Amendment Nos.: 161 and 102.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the TS.

Date of Initial Notice in **Federal Register**: February 10, 1999 (64 FR 6698).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981–5596.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 5, 1998, as supplemented February 18, 1999.

Brief description of amendment: The amendment modifies the safety limits and surveillances of the LPRM and APRM systems and related Bases pages to ensure the APRM channels respond within the necessary range and accuracy and to verify channel operability. In addition, an unrelated change to the Bases of Specification 2.3 is included to clarify some ambiguous language.

Date of Issuance: June 2, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 208.

Facility Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 16, 1998 (63 FR 69342). The February 18, 1999, supplemental letter provided clarifying information, was within the scope of the original application, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of application for amendment: December 22, 1998, as supplemented March 19, 1999.

Brief description of amendment: The amendment replaces specific titles in Section 6.0 of the Technical

Specifications of all three Millstone units with generic titles.

Date of issuance: June 3, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 105, 235, and 171.

Facility Operating License Nos. DPR–21, DPR–65, and NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4158). The March 19, 1999 letter provided clarifying information that did not change the scope of the December 22, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: April 20, 1999.

Brief description of amendments: The amendments revised the implementation date for the relocation of the requirements specified in Technical Specification Sections 3.1.E and 5.1 to the Updated Final Safety Analyis Report. On December 7, 1998, the NRC had previously issued license amendments 141 and 132 for Units 1 and 2, respectively, approving the relocation of aforementioned requirements by June 1, 1999. The proposed amendments would postpone the implementation date to September 1, 1999.

Date of issuance: June 2, 1999.

Effective date: June 2, 1999, with full implementation within 30 days .

Amendment Nos.: 145 and 136.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 29, 1999 (64 FR 23131) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 2, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: January 4, 1999.

Brief description of amendments: These amendments revise the administrative section of the Technical Specification pertaining to controlled access to high radiation areas, and the reporting dates for the annual occupational radiation exposure report and the annual radioactive effluent release report.

Date of issuance: May 24, 1999.

Effective date: Units 1 and 2, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 135 and 100.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6706) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County , New York

Date of application for amendment: January 25, 1999.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by relocating certain requirements from the TSs to the Final Safety Analysis Report.

Date of issuance: May 24, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 189.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19562).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

PP&L, Inc., Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: March 12, 1999.

Brief description of amendment: This amendment would change the allowable values for both the core spray system and the low pressure coolant injection system reactor steam dome pressure-low functions.

Date of issuance: May 25, 1999.

Effective date: As of date of issuance, and shall be implemented within 30 days after startup from the Unit 1 eleventh refueling and inspection outage currently scheduled for spring 2000.

Amendment No.: 181.

Facility Operating License No. NPF–14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 7, 1999 (64 FR 17028).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 27, 1998, as supplemented by letters in 1999 dated January 11, January 29, February 25, and April 7 (two letters), and May 17.

Brief description of amendment: The amendment revised Technical Specification 4.4.5.4, Table 4.4–3 and the associated Bases to allow the repair of the steam generator tubes with the Electrosleeve tube repair method.

Date of issuance: May 21, 1999.

Effective date: May 21, 1999, to be implemented within 30 days from the date of issuance. The amendment includes a two cycle operating limit that requires all steam generator tubes repaired with Electrosleeves to be removed from service at the end of two operating cycles following installation of the first Electrosleeve in the steam generators.

Amendment No.: 132.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66604). The supplemental letters in 1999 dated January 11, January 29, February 25, and April 7 (two letters)

provided additional clarifying information that did not expand the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Elmer Ellis Library, University of Missouri, Columbia Missouri 65201.

Dated at Rockville, Maryland, this 9th day of June 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–15098 Filed 6–15–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Notice of Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:30 p.m., June 16, 1999.

PLACE: OPM Conference Center, Room 1350, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The conference center is located on the first floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council will receive its first Interim Report and hear from Dr. Marick Masters, Research Director for the NPC Research Project, on the status and progress of the Project. The Council will also hear a review of its May skills-building conference and a status report on the John N. Sturdivant National Partnership Awards process.

CONTACT PERSON FOR MORE INFORMATION: Jeff Sumberg, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–2000, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–15250 Filed 6–15–99; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes To Close June 20–22, 1999, Meeting

At its meeting on June 7, 1999, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for June 20-22, 1999, in Potomac, Maryland.

MATTER TO BE CONSIDERED: 1. Strategic Planning.

PERSONS EXPECTED TO ATTEND: Governors, Ballard, Daniels, del Junco, Dyhrkopp, Fineman, McWherter, Rider and Winters; Postmaster General Henderson, Deputy Postmaster General Coughlin, Secretary to the Board Koerber, and General Counsel Elcano.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board Thomas J. Koerber, at (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–15434 Filed 6–14–99; 2:40 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23865; 812–11268]

Global TeleSystems Group, Inc.; Notice of Application

June 9, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Global TeleSystems Group, Inc. ("GTS") requests an order under section 3(b)(2) of the Act declaring that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

Filing Dates: The application was filed on August 24, 1998. Applicant has 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 requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 6, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Global TeleSystems Group, Inc., 1751 Pinnacle Drive, North Tower 12th Floor McLean, Virginia 22102.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Nadya B. Roytblat, Assistant Director, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. GTS, a Delaware corporation, provides telecommunications services to businesses, other telecommunications service providers, and consumers. Through its wholly- and majority-owned subsidiaries (together with GTS, the "GTS Group"), GTS operates voice and data networks, international gateways, local access and cellular networks, and various value-added services in Western Europe, Central Europe, and the Commonwealth of Independent States, primarily Russia.

2. GTS's management has extensive experience in the development and operation of telecommunications businesses outside the United States. GTS actively participates in the operations and management of its subsidiaries by providing most of the funding for the subsidiaries' operations, selecting key members of the local management team, developing business

plans and marketing strategies together with local management, monitoring operating functions, and integrating its networks and businesses in a manner which is consistent with GTSs overall strategic objectives.

3. GTS intends to continue to expand its business. GTS maintains that the telecommunications business is capital intensive and, in order to compete, that it requires substantial capital to continue to develop its networks and meet the funding requirements of its operations, including losses, as well as to provide capital for acquisition and business development initiatives. In the past three years, GTS states that it raised over $600 million through a combination of public and private offerings of equity and debt securities. In addition, GTS states that it raised approximately $1.6 billion over the past two years through the issuance of debt.

4. GTS currently holds its cash in short-term investments pending deployment of the cash in building out its telecommunications projects. In addition, GTS states that it may need to raise additional capital to execute its current business plan, fund expected operating losses, consummate future acquisitions and exploit opportunities to expand and develop its businesses. GTS states that its need to raise and maintain large amounts of capital to meet its anticipated capital expenditures may create uncertainty as to its status as an investment company under section 3(a) of the Act.

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7) of the Act.

2. GTS states that it meets the definition of an investment company under section 3(a)(1)(C) of the Act because it owns investment securities with a value in excess of 62% of its total assets (excluding cash items) on an unconsolidated basis. In addition, GTS states that because it anticipates raising additional capital to finance its capital expenditures and operations, it is unable to estimate when its holdings of investment securities, within the meaning of section 3(a)(2) of the Act, will represent less than 40% of GTS's total assets.

3. Section 3(b)(2) provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. GTS requests an order under section 3(b)(2) declaring that GTS is primarily engaged through its wholly- and majority-owned subsidiaries in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

4. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the SEC considers: (a) the applicant's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[1]

(a) *Historical Development:* GTS states that it was formed in 1983 to provide telecommunications services in foreign markets and to establish a high speed transmission network across Western Europe. Since its inception, GTS states that it also has developed into a leading independent provider of telecommunications services to businesses, other high usage customers, and telecommunications carriers in Europe.

(b) *Public Representations of Policy:* GTS states that it does not now, and has never, held itself out as an investment company. GTS asserts that, in its annual reports, shareholder letters, prospectuses, SEC filings, and on its Internet web site, it consistently represents itself to shareholders and the public as a company providing telecommunications services.

(c) *Activities of Officers and Directors:* GTS states that its officers and directors are actively engaged in the management and development of its telecommunications businesses. GTS further states that of its ten principal officers, only one spends any time (approximately 5%) monitoring the Group's cash reserves and short-term securities.

(d) *Nature of Assets:* GTS states that, as of December 31, 1998, its total assets, on a consolidated basis, were $2,614 million. Of these, $986 million, or approximately 37%, represented investment securities as that term is defined in section 3(a)(2) of the Act. GTS states that these investment securities consist of short-term, liquid instruments that are held by GTS not for investment purposes but to preserve its assets pending using these monies for business operations or for purchase of operating assets.

(e) *Source of Income:* GTS states that in 1998, it had total net losses of $255.8 million. Of these, 91% were attributable to GTS's operations and 9% to GTS's investment activities. GTS's investment expenses exceeded its investment income because GTS paid $83 million of interest on its short- and long-term debt and earned $60 million of interest income from its investment securities.

5. GTS thus states that it meets the factors that the SEC considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–15190 Filed 6–15–99; 8:45 am]

BILLING CODE 8010–01–M

[1] *See Tonopah Mining Company of Nevada, 26 S.E.C. 426, 427 (1947).*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Meeting; Satellite-Based Navigation User Forum

AGENCY: Federal Aviation Administration, Office of System Architecture and Investment Analysis.

SUMMARY: The Federal Aviation Administration (FAA) Office of System Architecture and Investment Analysis (ASD) will hold a forum to present findings and obtain information from the aviation user community as part of the investment analysis process as we transition to a satellite-based navigation (Sat/Nav) infrastructure.

DATES: The (Sat/Nav) user forum public meeting will be held on July 7, 1999, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the third-floor auditorium from 9:00 a.m. to 12 Noon, followed by a question and answer session. In addition, time will be made

available for specific follow-on meetings as needed. Contact the Sat/Nav Investment Analysis Team Lead for this purpose.

FOR FURTHER INFORMATION CONTACT: Ms. Millie Butler-Harris, CNS Facility Investment Analysis, ASD–410, at (202) 358–5399 and via e:mail at *millie.butler-harris@faa.gov* or Dr. Robert Rovinsky, the SatNav Investment Analysis Team Lead, ASD–410, at (202) 358–5212 and via e:mail at robert.rovinsky@faa.gov.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration is reviewing its plan to transition to a totally satellite-based navigation (Sat/Nav) infrastructure. A Sat/Nav public meeting is planned to obtain input from the aviation community as the FAA considers the analysis and develops the alternatives for a particular approach to navigation within the Nation's airspace.

At this meeting, the FAA will review the economic information that the team has already received along with the cost, benefits the risk findings. The team will also discuss its overall findings including the alternatives analysis. This is the last in a series of three public meetings prior to the investment analysis team's presentation before the FAA's Joint Resources Council with its recommended baseline for Sat/Nav.

The public is invited to attend the meeting as observers and/or to provide comment. Requests to attend this meeting and to obtain information should be directed to the contact persons listed above. Additional information will be posted on the Internet at *www.faa.gov/asd*.

Issued in Washington, DC., on June 9, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–15294 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–01–C–00–CEZ) To Impose and To Use a Passenger Facility Charge (PFC) at Cortez Municipal Airport, Submitted by the City of Cortez, CO.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and to use a PFC at Cortez Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 16, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Russ Machen, Acting Airport Manager, at the following address: Cortez Municipal Airport, 210 East Main Street, Cortez, Colorado 81321.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Cortez Municipal Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–01–C–00–CEZ) to impose and to use a PFC at Cortez Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 9, 1999, the FAA determined that the application to impose and to use a PFC submitted by the City of Cortez, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 7, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1999.

Proposed charge expiration date: August 1, 2007.

Total requested for approval: $200,078.00.

Brief description of proposed projects: Install distance remaining signs, construct electrical vault; Reconstruct commercial ramp; Purchase snowplow; Construct Taxiway "B"; Construct south half parallel Taxiway "A"; Land acquisition (Parcels 21 and 22); Acquire Index "A" fire truck.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Withdrawn per letter dated June 3, 1999.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cortez Municipal Airport.

Issued in Renton, Washington on June 9, 1999.

Carolyn T. Read,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–15296 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Butte and Yuba Counties, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Butte and Yuba Counties, California.

FOR FURTHER INFORMATION CONTACT: Robert F. Tally, Chief, Program Delivery Team—North, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) on a proposal to construct approximately 30 miles of expressway/freeway to provide facility continuity from the existing freeway at the junction of State Routes 65 and 70 south of Oroville, located in Butte County, and bypassing the City of Marysville, in order to better serve inter-regional transportation needs.

Alternatives under consideration include (1) taking no action; (2) an alternative which utilizes portions of existing State Route 70; and (3) several alternatives involving construction or

new alignments to the east or west of Marysville.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. In addition, scoping meetings will be held during the latter part of 1999. Public notice for these scoping meetings will be given. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: June 7, 1999.

Robert F. Tally,

Chief, Program Delivery Team—North Sacramento, California.

[FR Doc. 99–15201 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dallas County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Dallas County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Waidelich Jr., District Engineer, Federal Highway Administration, 300 E. 8th Street, Room 826, Austin, Texas 78701, Telephone (512) 916–5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) and the North Texas Tollway Authority (NTTA), will prepare an environmental impact statement (EIS) for the Trinity Parkway reliever route from the SH–183/IH–35E interchange to SH–310/US–175 interchange to relieve traffic congestion on IH–35E and IH–30 within the City of Dallas. In 1998, A Major Transportation Investment Study (MTIS) was completed by TxDOT in order to develop a locally-preferred plan to solve transportation problems along the Trinity River corridor in Dallas and to integrate with community plans and goals for the Trinity River resource. The study was focused on transportation needs in the IH–35E/IH–30 interchange on the west side of downtown Dallas, locally known as the "Mixmaster," and the depressed segment of IH–30 south of downtown, locally known as the "Canyon." The MTIS Recommended Plan of Action is comprised of seven elements, which include improvements to existing facilities, improving alternative transportation modes, and constructing a reliever route along the Trinity River. The MTIS considered in detail four corridors for the proposed reliever route. These included Stemmons Freeway (IH–35E), Industrial Boulevard, the east Trinity River levee and the west Trinity River levee.

During the MTIS process, numerous alternatives were evaluated for the reliever roadway. The analysis of effects for each of the reliever roadway alternatives included the estimation of construction and right-of-way costs, traffic capacity considerations, effect on natural and cultural assets, effect on social and economic conditions, impacts on Trinity River projects, number of displacements, effect on access to adjacent properties, and difficulty/disruption in construction. From the preliminary alternatives considered, four build alternatives, one along existing Industrial Boulevard and three along the Trinity River levees, were identified as potential alternative alignments that warrant further study. The principal variations of the three alternatives along the Trinity River levees consist of a combined roadway with eight general purpose lanes along the river side of the east levee; a split parkway with four general purpose lanes along the river side of both levees; and a split parkway with four general purpose lanes along the land side of both levees. The Industrial Boulevard alternative consists of an elevated roadway (double-deck) with eight general purpose lanes and two high-occupancy vehicle (HOV) lanes. These alternatives and the no-build alternative along with any other reasonable alternatives identified during the scoping and public involvement processes will be analyzed in further detail during the EIS review process.

The EIS will include a discussion of the effects of other known and reasonably foreseeable agency actions proposed within the Trinity Parkway corridor study area, which include proposed projects by the US Army Corps of Engineers (USACE) and the City of Dallas. The USACE has proposed flood control improvements consisting of the proposed Dallas Floodway Extension, which encompasses the Dallas Floodway from the AT&SF Railroad near Corinth Street to IH–20; and proposed flood control improvements from the AT&SF Railroad to Royal Lane in Dallas. The USACE has submitted a final EIS for the proposed Dallas Floodway Extension project. The proposed flood control improvements between the AT&SF Railroad and Royal Lane will be evaluated as part of a Programmatic EIS to be completed by the USACE for the Trinity River complex from the southern boundary of Dallas County to the upper reaches of the Trinity River Elm Fork, West Fork, and Clear Fork. The City of Dallas has proposed various Trinity River floodway improvements, which include the construction of lakes, wetlands, hike and bike trails, parks, and other recreational amenities. This project is identified as the City of Dallas Trinity River Master Implementation Plan and is currently in the planning stage.

A public scoping meeting is planned to be held in the summer of 1999. The date will be announced locally at a later time. This will be the first in a series of meetings to solicit public comments on the proposed action. In addition, public hearings will be held. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Walter C. Waidelich, Jr.,

District Engineer, Austin, Texas.

[FR Doc. 99–15262 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of safety advisory.

SUMMARY: FRA is issuing Safety Advisory 99–1 addressing safety practices related to the lifting or jacking of railroad equipment in order to remove trucks or repair other components on a piece of railroad equipment which require individuals to work beneath railroad equipment while it is raised.

FOR FURTHER INFORMATION CONTACT: Ronald Newman, Motive Power & Equipment Staff Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, SW, RRS–14, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6241), or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW, RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6036).

SUPPLEMENTARY INFORMATION: Two recent instances involving a car under repair falling off its jacks have resulted in a total of three fatalities. Although investigation of both incidents is still being conducted, preliminary findings have indicated that the stability of the ground supporting the jacking device contributed to the cars falling. These events have highlighted the dangers of working under and around cars which are supported off of their trucks.

On February 26, 1999, a Union Pacific Railroad employee was fatally injured while performing a wheel set replacement on a loaded grain hopper. The incident occurred on a siding serving a grain elevator at Greensburg, Kansas, where the car had been set out after tripping a hot box detector. Two individuals were dispatched in a car repair truck with tools, equipment, and a spare wheel set to repair the car. Hydraulic jacks supported on wood blocks were used to lift the car. Preliminary investigation indicates that safety supports were not used and that during reassembly the individuals involved were attempting to get good alignment of the parts by using small jacks and pry bars and that the car became unstable and fell, pinning one of the individuals under one of the ladder grab irons and fatally injuring him. Preliminary investigation also suggests that one of the wood support pads may not have been sufficient to support the weight of the car due to soil conditions under it.

On March 18, 1999, a double fatal accident occurred on Grand Trunk Western Railroad on a repair track at East Yard, Hamtramck, Michigan, when a car supported on electro-hydraulic car jacks and safety supports fell and fatally injured two of the three individuals working under it. Although wooden jacking pads were used under the jacks, preliminary findings indicates that the earth under the jack at the A-end, L-position, may have collapsed and that the safety supports may have been ineffective.

Recommended Action

Railroads and car repair shops need to ensure that personnel responsible for jacking railroad cars are provided proper equipment, training, and adequate safety supervision, as well as stable ground on which to work. FRA recommends that the following safety precautions be taken in addition to use of mandated personal safety equipment and blue signal protection:

- *Site selection and weather awareness:* A car which is to be lifted should be on level track in an area where the ground under the jacks is solid. If the ground is not solid or if soil conditions are significantly different from one side of the track to the other jacking should not be attempted and the car should be moved before lifting. Frozen ground may be temporarily solid but care should be taken in case one side should be defrosted by the sun, which could cause the car to tip to that side. If high winds or other dangerous weather conditions exist or are expected before the car can be set back on its truck, lifting should not be attempted.
- *Equipment selection:* Capacity of car jacks and safety supports should be clearly marked and personnel should be trained in selection of the proper equipment for the job.
- *Equipment inspection:* Prior to each use, car jacks and safety supports should be visually inspected for cracks, bends, hydraulic leaks, or other abnormal conditions that could indicate impending failure. Employees should be trained in how to properly inspect the equipment.
- *Preparation for lifting:* Before attempting to lift a car, the ground under the planned location of the jacks should be checked for stability and covered with blocking to spread the load of the jacks, as needed. Wooden blocking or jacking pads large enough to spread the load over the ground should be used. Wheels that are not to be lifted should be chocked to prevent rolling, and wood or other heavy duty cushioning material should be placed between the jack and the car to prevent slipping.
- *Angularity:* Jacks and safety supports should be set as close to vertical as possible. Deviation from vertical which is visible to the unaided eye should be corrected.
- *Safety supports:* While the car is being worked on or if it is to be left standing without a truck in place underneath it, safety supports which have been selected, inspected, and prepared as detailed above should be placed under the car, supporting weight.
- *Periodic inspection:* A periodic inspection program should supplement the visual inspection of the jacks and safety supports. Appropriate non-destructive testing should be a part of this periodic inspection.
- *Safety supervision:* Supervisory personnel at each facility should be tasked to ensure that the training and inspections recommended above are carried out in accordance with the intent of this safety advisory.

FRA may modify Safety Advisory 99–1, issue additional safety advisories, or take other appropriate necessary action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC on June 11, 1999.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 99–15252 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Proposed Wilmington Transit Connector, Wilmington, DE

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA), as Federal lead agency, and the Delaware Transit Corporation (DTC), a division of the Delaware Department of Transportation (DelDOT), as local lead agency, in cooperation with the City of Wilmington (City) and the Wilmington Area Planning Council (WILMAPCO), intend to prepare an Environmental Impact Statement (EIS) on a proposed investment strategy to improve mobility among major destinations within the City. The EIS will be prepared in conformance with the National Environmental Policy Act (NEPA). The corridor under study is approximately

1.8 miles in length and 0.5 miles in width, and encompasses the major activity centers making up Wilmington's downtown. The planning horizon for the work will be 20 years with the year 2020 to be employed as the 'design year.'

1. The alternatives include: (1) A No Build Alternative: this alternative involves no change to transportation services or facilities in the Corridor beyond already committed projects; (2) Transportation Systems Management (TSM) Alternatives: these alternatives would optimize existing transportation facilities and operations with low-cost investments to meet the travel demand. Components of this alternative include selected pedestrian, roadway and bus service enhancements; (3) two types of build alternatives—dedicated bus or busway and fixed rail. Each build alternative will consider a range of technologies, routes/alignments, and service levels. Preliminary routes/alignments have been identified for consideration in each of four areas of the corridor beginning at the north end of the corridor, as follows:

Segment 1—4 alignments serving Rodney Square Transit hub in the north section;
Segment 2—2 north-south alignments in the central section of the corridor;
Segment 3—3 alignments serving the Amtrak station transit hub; and
Segment 4—3 alignments serving the cultural/entertainment district in the south Riverfront area.

Other alternatives or revisions to the above alternatives that arise through the scoping process will also be considered.

Scoping will be accomplished through correspondence and meetings with interested persons, organizations, and Federal, State, and local agencies. A public meeting will be held regarding this project on Tuesday, June 29, 1999 from 4 to 7 p.m. in Wilmington, Delaware. See **ADDRESSES** below. The project also will be included in the future meetings, workshops, and focus groups of the 'Wilmington Initiatives,' an element of the Metropolitan Transportation Plan (MTP) for the region, through which the public will have full and regular access to project information and opportunity to comment on the findings as they emerge. As part of the systems planning of the Wilmington Initiatives, two public meetings have been held on April 14 and May 19 to discuss a transit connector concept.

DATES:

Comment Due Date: Written comments on the alternatives to be considered and comparative environmental impacts to be evaluated should be postmarked by August 2, 1999 and sent to the Delaware Transit Corporation or the Delaware Department of Transportation. See **ADDRESSES** below.

Scoping Meeting: A public scoping meeting will be held on Tuesday, June 29, 1999, from 4 to 7 p.m. at the Grand Opera House. See **ADDRESSES** below. The meeting will be held in an "open-house" format, and representatives of DTC/DelDOT, the City of Wilmington and WILMAPCO will be available to discuss the proposed project. Informational displays and written material will also be available. Provision to make written and verbal comments on the materials will be provided. The building in which the scoping meeting will be conducted is accessible to people with disabilities, and provisions will be made for the hearing impaired.

ADDRESSES: Written comments should be sent to:

Mr. Raymond C. Miller, Director, Delaware Transit Corporation (DTC), 655 Bay Road, Suite 4G, Dover, DE 19901

or

Terry Fulmer, Manager of Environmental Services, Delaware Department of Transportation (DelDOT), P.O. Box 778, Dover, DE 19903

The scoping meeting will be held as follows: Tuesday, June 29, 1999, From 4:00 p.m. to 7:00 p.m., Grand Opera House, Lower Level Function Room, 818 Market Street, Wilmington, Delaware 19801.

As mentioned above, there will also be provisions for written and verbal comments at the public meeting. People with special needs should contact: Doug Andrews, Delaware Transit Corporation (DTC), 400 S. Madison Street, Wilmington, DE 19801, (302) 577–3278 x3451.

FOR FURTHER INFORMATION CONTACT: John T. Garrity, Federal Transit Administration (FTA), Region III, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and the DTC/DelDOT, along with the City and WILMAPCO, invite interested individuals, organizations, and Federal, State, and local agencies to participate in defining transportation alternatives to be evaluated in the EIS and in identifying social, economic, or environmental issues related to the alternatives. An information packet describing the Wilmington Transit Connector, the study area, the proposed alternatives, and the impact areas to be evaluated are being mailed to affected Federal, State, and local agencies. Other interested parties may request the scoping materials by contacting Mr. Raymond C. Miller, Director of the Delaware Transit Corporation. See **ADDRESSES** above.

During scoping, comments should focus on identifying social, economic, or environmental impacts to be evaluated and suggesting alternatives that meet identified mobility needs in a cost-effective manner. However, scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the scoping, during and immediately after the development of Alternatives Analysis Draft EIS. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Raymond C. Miller, Director of the Delaware Transit Corporation. See **ADDRESSES** above.

II. Description of Study Area and Project Need

The study area extends from 14th Street in the north to Walnut Street on the east, along the Christina River in the southwest, to the Conrail rail tracks to the south, I–95 on the west, to 2nd Street east to Washington Street, joining 14th Street. The corridor is approximately 1.8 miles long and 0.5 miles wide. The corridor encompasses the major activity centers making up Wilmington's downtown and the developing riverfront entertainment district:

1. Substantial Office Core: Currently there are 8 million square feet of single-tenant and 4.2 million of square feet of multi-unit tenant office space in downtown Wilmington.

2. Downtown Retail Areas: Downtown Wilmington contains approximately 200,000 square feet of retail space.

3. Cultural Facilities: Cultural facilities include the Grand Opera House, the Dupont Playhouse, the Delaware Theatre Company, the Delaware Historical Society, Opera Delaware, the Christina Cultural Arts Center and the First USA Riverfront Arts Center. Wilmington's cultural attractions generate at least half a million visitors per year today.

4. Higher Education Facilities: Seven educational institutions with a current enrollment of 4,000 students are located in the corridor.

5. Hotels: Five hotels, with close to 850 rooms, generate approximately 230,000 guests per year today.

This area is the transportation hub of the region and is traversed by intercity rail, bus and highway networks extending up and down the northeast corridor of the United States. The corridor accounts for approximately 20% of the State of Delaware employment and 64% of the City's workforce.

The need for the project arises from three considerations: distances between major activity centers, constrained access to several of these activity centers, and planned economic development that is constrained by transportation access. First, Wilmington's corporate offices, retail, educational, cultural and entertainment centers are dispersed along most of the corridor. A major travel market for a transit service is the office employment in this corridor. However, employment sites are spread out over a length of about one mile (Christina Gateway Complex between 2nd and 4th Streets at Walnut and the Rodney Square/ Delaware Avenue area (north of 9th Street). Supportive land uses of retail and entertainment are generally separated from these concentrations by more than the typical one to three block distance that workers will walk at lunch time or after work. Considering current and projected (year 2006) employment approximately 1,700 trips per day would be generated for reliable transit service in this corridor. Other identified markets for transit in this corridor include: riverfront attractions and jobs (1,850 potential trips), commuting to and from train station (300 trips) and trips to and from educational facilities (100 trips).

Second, access to the rapidly developing entertainment, cultural, and retail centers on the riverfront is constrained by the northeast corridor viaduct, I–95, and the river. Patrons arriving at the train station in the middle of the corridor have limited options for getting to the new Exhibition center or retail due to these barriers and their effect on street configuration and connection. While the Downtown Circuit bus connects these two locations, the route is circuitous and subject to traffic delays. Use of an abandoned rail corridor, now owned by the state presents one of the few options for increased capacity and reliability of transit service.

Finally, the study corridor contains the City's major office, retail, hotel, transportation, cultural and educational facilities, and more is coming. Office facilities include several corporate headquarters and Federal and State office complexes. Entertainment/retail facilities have expanded along the riverfront and more is on the drawing boards. Hotels include the Hotel DuPont, a national historic landmark and national chains such as Wyndham, Marriott and Sheraton. A new hotel and residential apartments were announced in early 1999. A "Shipyard Shops" retail complex opened on the riverfront in May 1999. A rejuvenated retail area on southern Market Street called "Ship's Tavern District" breaks ground in May 1999. The study corridor also includes a judicial complex currently under construction at Fourth and King Streets. The Wilmington train station, with AMTRAK and regional rail facilities, serves as a major transit hub in the middle of the corridor; with Rodney Square, the transit hub in the northern segment. A major challenge of this study is how to efficiently serve these facilities and limit traffic and parking impacts. A high quality transit service in this corridor would allow implementation of a park-once policy, so that internally generated traffic and land devoted to parking would be minimized.

Also at issue is the need to link workers to the new jobs. To accomplish this will require better transit service between the train station and riverfront developments and between in-town neighborhoods and the new employment centers in the corridor.

III. Alternatives

Among the alternatives that the Alternatives Analysis and DEIS will evaluate are:

1. No Build Alternative: this alternative involves no change to transportation services or facilities in the Corridor beyond projects already committed for construction in the regional transportation improvement program and state capital improvement program.

2. Transportation Systems Management (TSM) Alternatives: these alternatives would optimize existing transportation facilities and operations with low-cost investments to meet the travel demand and improve safety. Components of this alternative will include selected pedestrian, roadway and bus service enhancements.

3. Fixed Guideway Alternatives: fixed guideway alternatives will include dedicated busway and rail alternatives, employing a combination of existing streets and former rail right-of-way. A range of specific alignments will be considered.

It is expected that the public scoping process and written comments will be a major source of additional candidate alternatives for consideration in the study. The types of transportation alternatives suggested in prior studies for consideration in this corridor includes Transportation Systems Management (TSM) options such as changes in transit routes, fares, and equipment, parking enforcement, and traffic operational changes. Major capital improvements considered have included both rubber-tire trolley and rail transit alternatives.

The alternatives to be evaluated in the EIS will be based on an element of the Metropolitan Transportation Plan (MTP) for the region, known as the Wilmington Initiatives. The transit element of the Initiatives is defined by six analyses:

- Rummel, Klepper & Kahl Consulting Engineers, Parsons Brinkerhoff, and Richard H. Pratt, Consultant, Inc. Regional Rail Study Phase III: Transit Opportunities Along Rail Corridors Within Northern New Castle County "Initial Feasibility Assessment: 6 Corridors". Delaware Department of Transportation, 1996.
- Johnson, Mirmiran & Thompson. Downtown Wilmington Transportation Study: Draft Technical Report, Downtown Circulation Study. 1997.
- *TransManagement, Inc.* Downtown Wilmington Land Use and Development Capacity Assessment. 1997.
- SG Associates, Inc. Wilmington Transportation Studies Transit Shuttle Feasibility Analysis. 1998.
- SG Associates, Inc. Wilmington Transportation Studies Transit Downtown Free Fare Zone Feasibility Analysis. 1998
- Kimley-Horne and Associates, Inc. Wilmington 2000 Streetcar Conceptual Study. 1998.

These analyzes may be reviewed at the Delaware Transit Corporation, 400 Madison Street, Wilmington; WILMAPCO, 850 Library Avenue, Suite 100, Newark, the Wilmington Institute Public Library at 10th & Market Streets, Wilmington [or obtained from Doug Andrews, Delaware Transit Corporation]. See **ADDRESSES** above.

IV. Factors To Be Evaluated

FTA and the DTC/DelDOT, along with the City and WILMAPCO, will evaluate the social, economic, and environmental impacts of the alternatives under consideration. Among the primary transportation issues to be evaluated are the expected increase in transit ridership, including recreational and work trips and the expected increased need for mobility for the transit dependent population. The support of the region's air quality goals, economic benefits, satisfying overall transportation needs of the corridor, capital outlays needed to construct the project, cost of operating and

maintaining the facilities created by the project, and the financial impacts on the funding agencies will all be considered. Potentially affected environmental and social resources to be evaluated include, land use and neighborhood impacts, residential and business displacements and relocations, impacts on historic properties and districts, traffic and parking impacts near stations and along the alignments, economic development potential, visual impacts, impacts on cultural resources, and impacts on parklands. Impacts on archaeological resources, air quality, water quality, wetlands and noise will also be considered. New information will be gathered and detailed studies on these subjects will be conducted as necessary. Existing findings about the presence of sites containing hazardous materials will be summarized and utilized; additional studies will be done as necessary. The environmental impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate adverse impacts will be considered.

V. FTA Procedures

In accordance with the regulations and guidance established by the Council on Environmental Quality, as well as with 23 CFR 450 and 23 CFR 771 of the FTA/Federal Highway Administration planning and environmental regulations and policies, an Alternatives Analysis/Draft EIS (DEIS) will include an evaluation of the social, economic, and environmental impacts of the alternatives and will review alternatives on the basis of conceptual design. The EIS will also comply with the requirements of the Clean Air Act Amendments of 1990 (CAAA) and with the Executive Order 12898 on Environmental Justice. After its preparation, the Alternatives Analysis/DEIS will be available for public and agency review and comment and a public hearing will be held. On the basis of the Alternatives Analysis/DEIS, and the comments received, the City will select a locally preferred alternative for a major investment strategy.

The locally preferred alternative will then be reaffirmed by the MPO for inclusion into the Metropolitan Transportation Plan and the Transportation Improvement Program (TIP). Following this action, the DTC / DelDOT will request FTA authorization to initiate preliminary engineering and to proceed with needed additional environmental studies prior to issuance of a Final EIS.

Issued on: June 11, 1999.

Sheldon A. Kinbar,

Regional Administrator, Federal Transit Administration, Region III.

[FR Doc. 99–15321 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5800; Notice 1]

Cosco, Inc.; Receipt of Application for Decision of Inconsequential Noncompliance

Cosco, Incorporated, of Columbus, Indiana, has determined that a number of child restraint systems fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defects and Noncompliance Reports." Cosco has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

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 judgement concerning the merits of the application.

FMVSS No. 213, S5.5.2.(k), requires that each add-on child restraint system designed to be used rear facing must have a label that warns the consumer not to place the rear-facing child restraint system in the front seat of a vehicle that has a passenger side air bag, and a statement that describes the consequences of not following the warning. These statements must be on a red, orange, or yellow contrasting background, and placed on the restraint so that it is on the side of the restraint designed to be adjacent to the front passenger door of a vehicle and is visible to a person installing the rear-facing child restraint system in the front passenger seat.

Cosco has notified the National Highway Traffic Safety Administration that between March 31, 1999 and April 7, 1999, it manufactured 815 Arrive Infant Child Restraints, Model 02–729–TED, that do not have the air bag warning label required in S5.5.2(k) of FMVSS 213. During this time period, one of the production lines used by Cosco to produce the Arriva model used pads for the Canadian version of this child restraint which do not incorporate the air bag warning label required by FMVSS 213.

Cosco supports its application for inconsequential noncompliance with the following:

Cosco contends this noncompliance is inconsequential as it relates to motor vehicle safety. A notice and remedy campaign ("recall") would not serve any safety related purpose and would in fact, cast doubt in the minds of the consumer as to the effectiveness of child restraints. We believe the low number of units involved (815) combined with the enormous publicity given to the warning label issue, rear-facing seats in air bag locations, and given the fact the instructions and unit labels do warn to the consumer about this misuse do not warrant a recall.

To reiterate, Cosco does not believe this noncompliance warrants a recall. The Agency, child restraint manufacturers and child passenger safety advocates are all aware of the negative impacts of recalls resulting from technical noncompliance. The two primary negative effects are, the public, because of the number and frequency of such recalls, pays no attention to recalls that in fact do in a practical way affect child passenger safety. In addition, the public upon seeing the number of recalls, concludes child restraints currently available are unsafe and therefore declines to use them. The Agency is aware and , in fact, has publicly advised consumers to use child restraints which have defects or noncompliances that have resulted in recalls until such child restraints can be corrected. This is in recognition of the fact that technical noncompliance does not compromise the overall effectiveness of child restraints. In the event a recall is ordered for the noncompliance which has been identified, both of the effects described will impact consumers negatively.

In conclusion, Cosco submits reasonable evaluation of the facts surrounding this technical noncompliance will result in the decision that no practical safety issue exists.

Interested persons are invited to submit written data, views, and arguments on the application of Cosco 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, but not required, 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: July 16, 1999.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 10, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–15251 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 3:00 p.m. on Sunday, June 27, 1999, in the Associate Administrator's Conference Room of the Corporation's Administration Building, 180 Andrews Street, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 25, 1999, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on June 11, 1999.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 99–15370 Filed 6–15–99; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99—50]

Revocation of Unimar, Inc. International as a Customs Approved Gauger and Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of Unimar, Inc. International as a Customs approved gauger and accredited laboratory.

SUMMARY: Unimar, Inc. International of Houston Texas, a Customs approved gauger and accredited laboratory, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found in violation of 19 CFR 151.13 of the Customs Regulations. Specifically, Unimar, Inc. International sites located in Brownsville, Texas; Keansburg, New Jersey; and Houston, Texas were not following proper regulations and procedures regarding equipment and instrument calibration and record keeping. Further, as required under section 151.13(b)(8) of the Customs Regulations, Unimar, Inc. International did not notify the Executive Director, Laboratories and Scientific Services, of the closing of their Gonzalez, Louisiana site. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval and laboratory accreditations given to Unimar, Inc. International have been revoked.

EFFECTIVE DATE: June 6, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ira Reese, Chief Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: June 8, 1999.

George D. Heavey,

Executive Director, Laboratories and Scientific Service.

[FR Doc. 99–15322 Filed 6–15–99; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 203

[DFARS Case 97-D020]

Defense Federal Acquisition Regulation Supplement; Employment Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies

Correction

In rule document 99–7135, beginning on page 14397, in the issue of Thursday, March 25, 1999, make the following correction:

203.570-2 [Corrected]

On page 14598, in the first column, above section heading "**203.570-Policy.**" add amendatory instruction 3. to read as follows: "3. Section 203.570-2 is revised to read as follows:".

[FR Doc. C9–7135 Filed 6–15–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-1430-11; WYW 83359]

Public Land Order No. 7342; Modification and Partial Revocation of 12 Secretarial Orders; Wyoming; Correction

Correction

In notice document 99–14703 appearing on page 31287 in the issue of Thursday, June 10, 1999, make the following correction(s):

On page 31287, in the second column, in the **EFFECTIVE DATE:** section, "[Insert Date of Publication in **Federal Register**]" should read "June 10, 1999".

[FR Doc. C9–14703 Filed 6–15–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-208156-91]

RIN 1545-AQ30

Accounting of Long-Term Contracts

Correction

In proposed rule document 99–10948, beginning on page 24096, in the issue of Wednesday, May 5, 1999, make the following correction:

§ 1.460-4 [Corrected]

On page 24110, in the second column, in § 1.460-(4)(b)(5)(v), in the sixth line, "§ 1.460-6(c)(1)(ii)2)" should read "§ 1.460-6(c)(1)(ii)".

[FR Doc. C9–10948 Filed 6–15–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday
June 16, 1999

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR PART 246

RIN 0584–AA80

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems

AGENCY: Food and Nutrition Service, USDA

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children. It would strengthen the requirements for operation of vendor management systems by establishing mandatory selection criteria; limitation of vendors; training requirements; criteria to be used to identify high-risk vendors; and monitoring requirements, including compliance buys. In addition, the rule would strengthen food instrument accountability and sanctions for participants who violate program regulations. It would also streamline the vendor appeals process. The rule is intended to ensure greater program accountability and efficiency in food delivery and related areas, and to promote a decrease in vendor violation of program requirements and loss of program funds.

DATES: To be assured of consideration, written comments must be postmarked on or before September 14, 1999. Since comments are being accepted simultaneously on several separate rulemakings, commenters on this proposed rule are asked to label their comments "Food Delivery Systems." In addition, due to the inherent problems associated with the large volume of comments this rule is expected to generate, electronic transmissions, including data faxes, will not be accepted.

ADDRESSES: Comments may be mailed to Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, at (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule would not have a significant impact on a substantial number of small entities. This rule would modify vendor selection, training, monitoring, sanction and appeal procedures and/or systems. The effect of these changes would fall primarily on State agencies. Local agencies and vendors would also be affected, some of which are small entities. However, the impact on small entities is not expected to be significant.

Executive Order 12372

The WIC Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of the preamble of the final rule. Prior to any judicial challenge to the application of the provisions of the final rule, all applicable administrative procedures must be exhausted.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–38) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The following constitutes a 60-day notice issued by FNS.

Send comments and requests for copies of this information collection to Lori Schack, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. A copy may be sent to Barbara Hallman, Branch Chief, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2746.

Comments and recommendations on the proposed information collection must be received by August 16, 1999. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

OMB Number: 0584–0043.

Expiration Date: 05/31/99.

Type of Request: Revision of a currently approved reporting and recordkeeping requirements.

Abstract: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–20) (Paperwork Reduction Act), the reporting and recordkeeping burden associated with this proposed rule will be used by FNS as a principal source of information about how each State agency's food delivery system operates. This proposed rule would primarily strengthen and improve vendor management, food instrument accountability, and participant sanctions in the WIC Program. It addresses vendor selection, training, monitoring and high-risk identification and food instrument reconciliation and security. The collection and recordkeeping of this information is necessary to determine compliance with Federal regulations.

Section 246.4(a) currently requires State agencies to submit changes to State Plans annually as a prerequisite to

receipt of funds from FNS. State Plans address specific State agency program operations such as: a description of the food delivery system, including the system for the monitoring; the system for the control and reconciliation of food instruments; State agency efforts to identify the disposition of food instruments; and efforts to identify dual participation. FNS estimates that addressing the additional State plan requirements that would be required by this proposal will take each State agency 3 hours annually, for a total of 264 personhours (88 State agencies × 3 personhours per State agency) for this provision annually.

Proposed section 246.12(i)(1) and (4) would require State agencies to conduct annual vendor training and to document the contents and receipt of vendor training, in part to assure that vendors have knowledge of program rules and procedures. FNS estimates that developing the content of vendor training materials will take each State agency an average of 8 personhours per State agency or 704 total personhours annually (8 hours × 88 State agencies). FNS further estimates that participation in the annual training will take each State agency and vendor an average of 2 hours for a total of 90,176 personhours annually (2 hours × 88 State agencies plus 2 hours × 45,000 vendors). Finally, FNS estimates that it will take each State agency and each vendor approximately 15 minutes to document receipt of the training for a total estimated annual burden of 11,272 (.25 hours × 88 State agencies plus .25 hours × 45,000 vendors).

Proposed section 246.12(j)(3) would require State agencies to monitor 10 percent of its vendor population each year. The monitoring would be required to be targeted to high-risk vendors. Proposed section 246.12(j)(3)(i) would require the State agency to document the reason why it has granted a waiver from compliance buys or inventory audits for vendors identified as high risk. This will allow FNS to identify whether a State agency has taken appropriate monitoring action against high-risk vendors, thus enabling FNS to better evaluate State agency compliance with high-risk monitoring requirements. FNS estimates that 10 percent of the total vendor population, or 4,500 vendors, will be identified as high-risk and that of those, 5 percent or 225 vendors will require a waiver from compliance buys or audits. FNS estimates it will take 2 personhours for the State agency to document each waiver, resulting in a national total of 450 personhours (225 waivers × 2 hours per waiver) required for this provision annually.

Proposed section 246.12(j)(4) would require that State agencies provide documentation for all monitoring visits, including compliance buys, inventory audits, and routine monitoring visits. FNS estimates that 10 percent or 4,500 vendors will receive compliance buys. FNS estimates that the average State agency will perform three compliance buys per vendor for a total of 13,500 compliance buys annually (4,500 vendors × 3 compliance buys per vendor). FNS further estimates that each buy will require 2 hours to document, for a national total of 27,000 personhours (13,500 compliance buys × 2 hours of documentation for each buy) spent on this provision annually.

Section 246.12(q) would require State agencies to identify the disposition of all food instruments as issued or voided, and as redeemed or unredeemed. Section 246.23(a)(4) would be amended to make State agencies liable for all redeemed food instruments that are unaccounted for, unless the State agency could demonstrate the reasons for the failure to fully account for them. For example, a State agency may not be able to account for food instruments damaged in computerized processing, or by water damage. FNS estimates that each State agency will spend 40 hours a year completing this task and that a total of 3,520 personhours will be required for this provision annually (88 reports × 40 hours per report).

The proposed reporting requirement in section 246.19(b)(5) would mandate that State agencies target areas specified by FNS during local agency reviews. This would allow FNS to effectively focus State agency attention on problem areas of program management needing intensive review and correction. State agencies review all of their local agencies once every 2 years. This means that half (1000) of all (2000) local agencies will be reviewed annually. FNS estimates that State agencies will be required to address targeted areas during local agency reviews once every 4 years. This means that an average of 250 (1000 × ¼) targeted reviews will be performed annually. FNS further estimates that it will take 2 hours for the State agency to address targeted areas during management evaluations and report the results of the targeted reviews to FNS. Therefore, 500 total personhours (250 targeted reviews per year × 2 hours per review) is estimated for this provision.

The proposed amendments to section 246.23(c)(1) would require State agencies to maintain on file documentation of the disposition of cases involving improperly obtained benefits. FNS estimates that this effort will take each of the 88 State agencies an average of 5 personhours per year, for a national total of 440 personhours (5 hours of recordkeeping a year × 88 State agencies) estimated for this provision annually.

Respondents: State agencies and vendors.

Estimated Number Respondents: State Agencies: 88 and Vendors: 45,000.

Estimate of Burden: The proposed estimates of the reporting burden by this rule are detailed below.

Proposed section and title	Estimated number of respondents	Reports filed annually	Total annual responses	Estimated avg. number of person-hours	Estimated total person-hours
246.4(a) State Plan	88	1	88	3	264
246.12(i)(1) Development of Vendor Training.	88	1	88	8	704
246.12(i)(1) Actual Vendor Training	88—State		88	2	176
	45,000—Vendors		45,000	2	90,000
246.12(i)(4) Documenting Training Receipt.	88	1	88	.25	22
	45,000		45,000	.25	11,250
246.12(j)(3) Waiver from Compliance Buys/Audits.	88	1	225	2	450
246.12(j)(4) Documenting Monitoring Visits.	88	1	13,500	2	27,000
246.12(q) Disposition of Food Instruments.	88	1	8	40	3,520

Proposed section and title	Estimated number of respondents	Reports filed annually	Total annual responses	Estimated avg. number of person-hours	Estimated total person-hours
246.19(b)(5) Targeted Reviews of Local Agencies.	88	1	250	2	500
246.23(c)(1) Disposition of Participant Claims.	88	1	88	5	440
Total	90,792		104,503		134,326

In accordance with the Paperwork Reduction Act, this proposed regulation invites the general public and other public agencies to comment on the information collection burdens that would result from the adoption of the proposals in the rule.

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

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

This proposed rule contains information collection requirements which are subject to review by OMB under the Paperwork Reduction Act. The reporting and recordkeeping requirements established by this rulemaking in sections 246.4(a), 246.12(i)(1), 246.12(i)(4), 246.12(j)(3), 246.12(j)(4), 246.12(q), 246.19(b)(5), 246.23(c)(1), and 246.25(c) are pending review by OMB.

References

(1) WIC State Agency Guide to Vendor Monitoring and Fraud and Abuse Control: Grant No. FNS–59–3198–0–96 (April 1982). Prepared by Arthur W. Burger and Steven Stollmack, ANALOGS, Incorporated. This study identifies methods for reducing vendor fraud and abuse in the WIC Program.

(2) Applied Research on Vendor Abuse: Grant No. FNS–59–3198–1–117 (June 1985). Produced by David Kornetsky, Nancy Wogman, and the Massachusetts WIC Program. This study worked with a consortium of ten State agencies to design a high-risk vendor identification system.

(3) WIC Compliance Buy Handbook: produced by USDA (June 1985). This handbook provides guidance for State agencies in conducting WIC compliance investigations.

(4) National Vendor Audit: Audit Report 27661–2–Ch, Special Supplemental Food Program for Women, Infants and Children—Vendor Monitoring and Food Instrument Delivery Systems (June 15, 1988). Conducted by the Office of Inspector General (OIG), USDA.

(5) Vendor Management Study (1990): Contract No. 53–3198–5–33 (December 1990). Conducted for FNS by Professional Management Associates. This study surveyed the 50 geographic WIC State agencies and the District of Columbia, excluding Vermont and Mississippi, which provide benefits exclusively through home food delivery and direct distribution, respectively.

(6) WIC Vendor Issues Study: Contract No. 53–3198–9–53 (May 1991). Conducted for FNS by Aspen Systems Corporation. This study investigated the extent of program losses due to fraud and program noncompliance from vendor overcharging in the WIC Program.

(7) The WIC Files: Case Studies of Vendor Audits and Investigations in the WIC Program (June 1991). Produced by the vendor managers of Southeast Region in cooperation with the Florida WIC Program.

(8) National Association of WIC Directors (NAWD) National Vendor Management Roundup Survey (1995). This survey, designed by FNS and the NAWD Vendor Committee representatives, provided profile date on State agency vendor management information systems.

(9) Vendor Activity Monitoring Profile (VAMP, 1996): Produced annually by the USDA. This report analyzes WIC State agency vendor monitoring activities. The report discusses the safeguards that exist to prevent vendor fraud and program noncompliance from occurring.

1. Background

Major final amendments to the WIC Program regulations regarding food delivery systems were last published on May 28, 1982 at 47 FR 23626 in response to audits and management evaluations disclosing problems in the food delivery area which could result in loss of WIC Program funds. The May 1982 regulations have not brought about an acceptable level of improvement in vendor management. Since 1982, the Program has grown in size and complexity. The Fiscal Year 1983 appropriation for the WIC Program was approximately $1.16 billion dollars. The appropriation has grown to $3.9 billion dollars in Fiscal Year 1999. As the Program has expanded, so has the potential for loss through misuse of program funds and violation of program regulations. State agencies have responded to this need with varying levels of effort and success. Both the OIG's National Vendor Audit in 1988 and the WIC Vendor Issues Study in 1993 indicated that significant levels of vendor violations continue to persist.

In response to the National Vendor Audit, the Department published a proposed rule on December 28, 1990 at 55 FR 53446 to strengthen State agency operations in vendor management and related food delivery areas. The Department provided a 120-day comment period that closed on April 29, 1991. During the comment period, 1,066 comments were received from State and local agencies, vendors and associated groups, public interest groups, members of Congress, members of the public, and WIC participants. They indicated that significant modifications to the December 1990 proposed rulemaking were still required, and that the extent of such modifications would warrant another opportunity for public input. In addition, several members of Congress requested that the rule be proposed again in light of its potential impact on certain State agency food delivery systems.

In response to the commenters' requests, the Department's intent is to propose new food delivery regulations once more. The Department has made changes to the 1990 proposal based on suggestions of commenters and subsequent State agency vendor experiences and the 1990 Vendor Management Study, "The WIC Files" and the WIC Vendor Issues Study.

a. Characteristics of This Proposal

This proposal would provide State agencies with detailed design standards for effective vendor management systems, as opposed to the more generally worded requirements and emphasis on broad goals which characterize current WIC food delivery

regulations. The emphasis in current regulations on general objectives has not yielded the necessary improvements in vendor management. In March 1988, the House Surveys and Investigations Staff released a report on the WIC Program. In that report, they stated that "knowledgeable fraud investigators believe, at a minimum, the program needs more stringent regulations and penalties to deter fraud by vendors. * * *" In addition, in May 1988 the General Accounting Office initiated a review of efforts to minimize fraud and abuse in the WIC Program. The scope of that review includes identification of efforts that the Department of Agriculture and State and local WIC agencies are taking to detect and prevent fraud and abuse in the WIC Program. Therefore, this proposal would mandate procedures and criteria by which State agencies must manage vendors to effectively control fraud and program noncompliance. It would define critical vendor management terms; establish staffing requirements for vendor management; and strengthen vendor authorization, agreements, training, monitoring, and high-risk identification. Related food delivery areas such as food instrument disposition and security, and State agency corrective action plans are also addressed. This proposal stresses the interaction and continuity between various food delivery areas. It not only would strengthen the individual steps in the process of vendor management—selection, training, monitoring, and high-risk identification, but also would increase overall system effectiveness by meaningfully tying these steps together. It would allow State agencies as much flexibility as possible within the framework of the mandated standards to take into account the distinct individual characteristics of each State agency's management system and to facilitate further experimentation and innovation.

In addition, the proposal recognizes the emergence of technology in the retail food delivery area relative to electronic benefits transfer (EBT). An EBT system for WIC, as demonstrated in the Wyoming Pay West System, can contribute to improved accountability. Some of the vulnerabilities for fraud and program noncompliance inherent with printed food instruments can be reduced by the food-item-based type EBT system used in WIC. With an EBT system, food package benefits are issued and redeemed through a computer chip on the EBT card or a computerized account accessed with the card. The participant is issued an EBT card at the local level instead of paper checks or vouchers. The EBT card or computerized account contains the participant's Personal Identification Number (PIN) and lists the authorized supplemental foods. The PIN ensures that only the participant or proxy uses the card to obtain the authorized supplemental foods.

At the vendor, the participant selects the authorized supplemental foods just as she would if paper checks or vouchers were used. At the check-out counter, the participant enters the PIN into the Point of Sale terminal located at the counter. A proper PIN alerts the computer and the store that the participant is authorized to access the food benefits. The cashier then scans each of the selected food items. The Universal Product Code (UPC) listed on the food item is checked against the authorized supplemental foods listed in the participant's account to determine if that food item is allowable. If the computer indicates that the food item is allowable, the item is automatically subtracted from the participant's list of food items. At the same time, the vendor's bank account is automatically credited for the amount of the purchase.

Through the use of the UPC, the opportunity for overcharging, substitution, and charging for food items not received is substantially reduced in an EBT environment. If, when the food item's UPC is scanned, the computer does not accept it as an authorized supplemental food for the participant, the food item will not be accepted as part of the WIC transaction.

Another benefit of using an EBT system is greater assurance that only participants receive WIC foods. Since the proper PIN must be entered in order to initiate the transaction at the check-out counter, there is added assurance, through the computer's verification of the PIN, that the individual is a participant or her proxy.

Because EBT and scanning substantially reduce program violations both for vendors and participants, proposed section 246.12(a) would provide FNS discretion on a case-by-case basis to modify regulatory provisions which FNS determines unnecessarily duplicate the accountability capabilities inherent in the particular EBT system. In addition, this proposal would amend certain regulatory requirements to recognize the different operations of EBT. For example, proposed section 246.12(q) would be amended to clarify that a PIN rather than a redeemed food instrument may be matched to a valid issuance and enrollment record (see section 19 of this preamble); and proposed section 246.12(h)(3)(iv) would clarify that a PIN may be used in lieu of a signature on the food instrument at the time it is exchanged for authorized foods (section 12 of this preamble).

Readers should note that as part of the March 18, 1999 final rule regarding vendor sanctions (64 FR 13311), the definition of food instrument was amended to include EBT cards.

b. Comments on the December 28, 1990 Proposal

Many commenters expressed general agreement or disagreement with the Department's decision to strengthen food delivery and related areas through the rule. General supporters of the December 1990 proposal commented that it would make positive improvements in vendor management and related areas. They stated that existing State agency food delivery systems need standardization, and that much of the proposal would serve to formalize systems that exist in many State agencies. Those in general opposition to the proposal believed that it: (1) failed to take into account the diversity of State agency vendor management systems, and (2) inappropriately promoted a "one size fits all" approach to vendor management.

Many opponents thought that WIC food delivery regulations should continue to outline broad vendor management goals, rather than detailed standards. Commenters were concerned about the resource implications of the proposal. In particular, some State agencies felt that the proposal's requirements would overburden their administrative resources. Vendors expressed concern about the resource burden associated with the training requirement. They also commented that the proposal unfairly punished all vendors for the program noncompliance of a few, and that the current system works well for the most part, and should not be changed.

The Department acknowledges the commenters' general concerns regarding the December 1990 proposal and agrees that any standardization of State vendor management practices must take into account the current diversity and needs of existing State agency systems. In designing this current proposal, the Department has attempted to acknowledge these differences, while at the same time addressing the fundamental need for a more effective approach to State agency vendor management.

The Department still firmly believes in the need for a system of more standardized vendor management practices than currently exists.

Differences in State agency vendor management systems have resulted in inconsistent treatment of vendors across State agencies and within State agencies, as well as unacceptable levels of vendor fraud and program noncompliance. The variations in vendor management practices are significant. Some State agencies have established very specific criteria for vendor selection which allow them to authorize only the best qualified vendors by excluding those which have indicators of high risk for fraud or program error. Vendor selection criteria in other State agencies are weak and ineffective, resulting in the authorization of more vendors than are needed to adequately ensure participant access, reasonable food costs, and effective management. Some State agencies have established strong training programs for authorized vendors that require annual face-to-face contact with each vendor. Other State agencies provide no periodic training for their vendors. For these State agencies, face-to-face training is often limited to an initial authorization visit, and vendors may operate for years before they receive additional training. Some State agencies have aggressively pursued covert compliance investigations as a method of identifying abusive vendor practices. Other State agencies do not perform compliance investigations at all, or perform them only nominally.

The Department recognizes the concerns expressed by commenters that any effort toward standardization must provide State agencies with the flexibility to pursue innovation. The Department is convinced, however, that because the Program has increased in size and in complexity, standardization and strengthening of basic vendor management practices must occur in order to address current food delivery problems and ensure that the WIC Program operates effectively in the future.

Many commenters objected to the December 1990 rulemaking's emphasis on detailed design standards for vendor management versus the goal oriented standards that exist in current regulations. They stated that currently mandated regulatory standards adequately address State agency vendor management needs. It should be noted that more specific design standards for vendor management were proposed in the past. On January 23, 1981 (46 FR 7846), the Department published a proposed food delivery regulation in response to OIG audits of WIC food delivery systems conducted in 1979 and 1980. These audits identified problems with State agency food delivery systems, including deficiencies in the areas of vendor monitoring, overcharge detection, and vendor sanctions. The January 23, 1981 rule proposed a number of design standards for State agency food delivery systems including: specific selection criteria for vendor authorization; limited timeframes for vendor agreements; periodic mandatory training of all authorized vendors; and mandatory compliance investigations of a specific percentage of each State agency's authorized vendor population. Comments received on the January 23, 1981 rule expressed concerns much like those expressed almost a decade later in the December 1990 proposal: that the proposal was overly detailed, not cost-effective, and could adversely affect participants. Commenters urged the Department to outline food delivery requirements in terms of broad goals rather than specific design standards. In response, the Department dropped its detailed design proposals, and in May 1982, published a final food delivery rule which instead focused on a few carefully selected cost-effective procedures, and outlined the remaining vendor management requirements as broad State agency goals.

In the intervening sixteen years since the publication of the May 1982 final food delivery rule, State agencies have had ample opportunity to develop and implement effective systems for vendor management within the framework of the current food delivery regulations. However, the 1988 National Vendor audit and, to a lesser extent, the 1991 Vendor Issues Study, indicate that many State agencies have continued to experience the same problems identified earlier. As such, the Department must conclude that the current approach leaves much room for improvement. In light of this experience, this proposal, like the December 1990 proposal, would mandate more detailed design standards for State agency food delivery systems.

Many commenters stated that the provisions outlined in the December 1990 proposal were too resource-intensive for State agencies. The Department acknowledges that the December 1990 proposal, as well as this one, would require some State agencies to devote additional resources to vendor management, although it is possible that some State agencies could actually experience a decreased burden. Nevertheless, the need for State agencies to address problems in this area of greatest program vulnerability continues to be imperative. As with the December 1990 proposal, this rule would not propose simply to add new requirements. Rather, it would replace many current requirements with more effective procedures. For example, State agencies would no longer be required to do representative monitoring, that is, on-site monitoring visits to at least 10 percent of all authorized vendors. Instead, the Department proposes that State agencies perform either covert compliance buys or inventory audits focused on their high-risk vendors (up to 10 percent of all authorized vendors), a potentially more focused way of detecting vendor noncompliance than the current representative monitoring requirement. Compliance buys have been shown to be the most effective means of detecting and minimizing vendor noncompliance. The 1988 National Vendor audit of WIC vendor management referenced the need to require compliance buys in WIC regulations. In this report, the Inspector General stated that "We believe that compliance purchases are the most effective method to identify that a vendor is abusing the WIC Program". While a shift in resources may be necessary to address the proposed compliance buy and inventory audit requirements, such a shift may be accomplished by reducing their routine monitoring efforts, which frequently include annual representative monitoring visits to *all* authorized vendors. The 1996 VAMP Report indicated that out of a universe of 45,397 vendors, 51 percent received on-site monitoring visits annually.

The Department has addressed the resource concerns expressed by commenters by lessening some of the requirements proposed in the December 1990 rule. The requirement for annual face-to-face vendor training in the December 1990 proposal would be reduced to one face-to-face training session each agreement period, which could run for a time period up to 3 years. Requirements for food instrument disposition and security and many reporting requirements would also be clarified and/or reduced.

Like the December 1990 proposal, this proposal would not only establish additional specific vendor management requirements, but would also strengthen the State agencies' ability to take successful action against violative vendors, possibly reducing the long-term administrative burdens. For example, the proposed selection criteria would help to prevent the authorization of vendors with a past history of noncompliance. The proposed mandatory training would help lower the frequency of cashier errors and reduce the level of improperly redeemed food instruments. The

Department also proposes to place limits on appeal rights and procedures.

Although vendor sanctions were addressed in the December 1990 proposed rule, they are not included in this proposal. On March 18, 1999, the Department published a final rule at 64 FR 13311 establishing mandatory uniform sanctions across WIC State agencies for the most serious WIC violations, including specific WIC violations that result in disqualification from the Food Stamp Program (FSP) in addition to the WIC Program. That rule also allows State agencies to establish State agency sanctions in addition to the mandated WIC sanctions. Finally, that rule mandates the disqualification of any WIC vendor who has been disqualified from the FSP. This proposal would make a number of other changes to conform the sanction requirements to other changes proposed in this rule.

c. Comments Solicited

The Department encourages comments on this proposal and would like to know which provisions have support, as well as which cause concern. This proposal has been modified from the December 1990 proposal. Only those timely comments in response to this second proposal will be considered in the development of a final rule. Commenters are asked to indicate at the outset that they are commenting on the Food Delivery Systems rule and to cite the section number (e.g., 246.12(g)(2)(iv)) of each provision addressed. Comments prove most helpful when they are specific, stating the reasons for support or opposition, suggesting modifications which would resolve a commenter's concerns, and providing relevant background information and State agency-specific data as appropriate. Due to the inherent problems associated with the large volume of comments this rule is expected to generate, electronic transmissions, including data faxes, will not be accepted. All comments postmarked during the comment period will be carefully considered.

Specific changes are discussed in the following sections of this preamble. While provisions are generally addressed in their order of appearance in the regulatory text, considerable cross-referencing and occasional repetition have proven necessary due to the close interrelationship between areas of the vendor management and food delivery processes.

Most of the regulatory provisions relative to food delivery systems appear in section 246.12 of the regulations. The rulemaking proposes numerous significant changes to this section. The standard procedure would be to print only the proposed amendments to this section. However, each of the steps in the management process addressed in section 246.12 are thoroughly integrated. Proposed changes cannot be fully understood and meaningfully assessed except in the context of the management function to which they apply. In addition, section 246.12 has been completely reorganized. The preamble will indicate both the current cites and the new cites for changed provisions. Therefore, the Department is printing section 246.12 in its entirety. However, comments are solicited only on the substantive changes and deletions to the text; these are discussed in the preamble.

d. Impact of this proposal on affected entities

The following chart summarizes the effect of this proposal on vendors, participants and State agencies. The chart also provides an estimate of the costs and benefits associated with this proposal. It is estimated that the proposal would reduce waste, fraud and program noncompliance by 50 percent, resulting in savings of approximately $25 to $50 million. The savings would allow more participants to be served.

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		Impact of WIC Food Delivery Proposal				
Current Rule:	Proposed Rule:	Effects On:				
		Vendors	Clients	SA's	Costs	Benefits
Summary WIC food delivery rules were last updated in 1982, and emphasize general objectives, affording States maximum discretion in selecting and managing vendors, FNS studies, management evaluations, and OIG audit findings indicate that current regulations are ineffective at preventing program abuse by vendors and clients. Therefore, more design oriented rules are proposed.	This proposal mandates procedures and criteria to strengthen State Agency management of vendors to effectively control fraud and abuse. It defines terms; establishes staffing requirements for vendor management; strengthens vendor authorizations and agreements, requires vendor training, identification of high risk vendors, monitoring, overcharge collection and detection. Also, appeals are streamlined. Participant sanctions, food instrument reviews, security of food instruments, and corrective action plans are also addressed, as is EBT.	Approximatcly 45,000 retail vendors are authorized to accept and redeem WIC food instruments and receive reimbursement amounting to $4 billion annually from States. The intended impact of these proposed regulations is to curtail program abuse estimated at 2% to 3% of salcs annually, by increasing State oversight and eliminating abusive stores from the Program. It is anticipated that this rule will impose an additional 3 hours of burden on each vendor at an estimated average cost of $50 per year. The impacts of each provision on stores are discussed below.	Over 7.6 million women, infants and children participate in WIC and receive supplemental food, nutrition education, and health care referral. Although this data is not collected, it is estimated that less than1/2 of 1% of participants abuse WIC by engaging in trafficking and other unauthorized practices. This regulation will define mechanisms for reducing this abuse, including more severe sanctions against WIC participants who abuse the Program. The rule permits States to disqualify abusive participants up to one year with fines and sanctions levied based on the cost of foods rceeived by the participant. However, program savings will allow several thousand additional participants to be served as a result.	The rule requires States to take more specific actions re store management, but still gives States considerable latitude. The rule will impose new requirements and offset other requirements for a net burden on 88 State Agencies. We estimate an increase reporting and recordkeeping burden on State and Local agencies to be 57,203 manhours. Using an average rate for State and local agency staff of $65, we estimate the cost of this rule for State and Local agencies would be less than $4 million per annum. States currently receive administrative grants valued at over $1.0 billion annually without a matching requirement.	Increased vendor oversight will require increased State effort. Some abusive vendors and some abusive clients will be forced off the Program, thus losing income for the vendor. Fraud in the Program also feeds political opposition to the Program. This action will not increase WIC Program costs at the Federal level.	FNS studies, audit findings, etc., show that current rules are ineffective at preventing fraud and abuse. A 1991 report found that 22 percent of authorized WIC vendors overcharge, costing the Program $39.4 million in 1991, or 1.9% of the retail redemption's in 1991. The same study also found substantial undercharges. The rule will reduce waste, fraud, and abuse by 50%, or $25 to $50 million. More recipients will be served with the money saved" through fraud reduction. The Program will operated more efficiently due to increased training at all levels. Fewer abuses will help assure continued public support for WIC.

2. Definitions (Section 246.2)

Food delivery systems vary significantly in structure from State agency to State agency. However, the discussion of issues must be based on a common understanding of key terms. In order to clarify some frequently used terms, the Department is proposing definitions for 14 terms related to vendor management.

"Authorized supplemental foods" would be defined as those supplemental foods authorized by the State or local agency for a particular participant.

"Compliance buy" is proposed to be defined as a covert, on-site investigation in which a representative of the Program poses as a participant, transacts one or more food instruments, and does not reveal his or her identity during the visit. This definition would exclude on-site buys used by some State agencies in which WIC staff or their agents pose as participants, purchase foods, and then introduce themselves to the vendor at the end of the transaction to discuss the results as a training mechanism.

A "high-risk vendor" would be defined as a vendor identified as having a high probability of violating program requirements through application of criteria mandated by the Department and any additional criteria the State agency may choose to establish. This definition would allow State agencies the flexibility to continue identifying high-risk vendors using their own criteria, in addition to the criteria that would be mandated by the Department by this rule. Criteria developed by the State agency are subject to approval by FNS through the State Plan process.

A "home food delivery contractor" would be defined to mean a sole proprietorship, a partnership, a cooperative association, or a corporation that contracts with a State agency to deliver authorized supplemental foods to the residences of participants under a home food delivery system. Adding this definition is necessary to accommodate the proposal to limit the term "vendor" to retail food delivery systems (see further discussion under the definition of "vendor").

This proposal would define "inventory audit" as an examination of food invoices or other proofs of vendor purchases to determine if the vendor purchased sufficient quantities of authorized supplemental foods to have sold the amounts of such foods to WIC participants for which the vendor has requested payment from the State agency during a given period of time. These audits are useful for identifying vendors who: buy food instruments from unauthorized vendors or from participants and submit them to the State agency for payment, without having provided to participants the quantities of authorized supplemental foods prescribed on the food instruments; and/or exchange food instruments for non-food items, or unauthorized foods.

This proposed rule would also define "proxy" to mean any person designated by a participant to act on her behalf and, in the case of an infant or child, the parent or caretaker who applies on behalf of the infant or child. Traditionally, proxy has been used in program regulations only to refer to a person designated by a participant to transact food instruments. This definition would make clear that when proxies are referred to in program regulations that parents and caretakers applying on behalf of infants and children are also included.

"Routine monitoring" would mean overt, on-site monitoring during which program representatives identify themselves to vendor personnel. Such monitoring is used for technical assistance purposes.

Routine monitoring contrasts with compliance buys, which are defined as covert investigations, and with inventory audits, which entail a review of specific records. The proposed requirements for a specific number of compliance buys or inventory audits (see section 14 of this preamble) necessitates a clear distinction between these activities and all other forms of monitoring, which would be encompassed by the term "routine monitoring." This term would replace the term "representative monitoring," which is used in current regulations and has proven to be confusing because it implies a method for selecting vendors to be reviewed (i.e., random selection) that yields a representative sample.

The term "vendor" would be defined as a sole proprietorship, a partnership, a cooperative association, or a corporation operating an individual retail site authorized to provide supplemental foods to participants under a retail food delivery system. Under this definition, each individual retail site would still be considered a separate vendor. The Department proposes to use the term "vendor" only in retail food delivery systems. Currently, the term also applies in home food delivery and direct distribution food delivery systems. However, experience has shown that most of the vendor requirements are inappropriate in those systems. Rather than create numerous exceptions to the vendor requirements, this proposed rule would limit the use of "vendor" to retail food delivery systems.

Although mobile vendors can be problematic, they may be the only means to ensure services to WIC participants in outlying areas, or to homeless persons. The proposed definition would permit State agencies to authorize mobile stores when necessary to meet the special needs established in their State Plan. The definition is meant to preclude the general use of temporary food stands and trucks, or other mobile food sales operations without fixed locations, from consideration for routine authorization because their mobility makes it impracticable to monitor them adequately; because their sanitation and refrigeration capabilities are generally limited and problematic; and, because it is difficult to limit their areas of operation. State agencies must present clear rationales for the specific areas or locales proposed for mobile store service coverage in their State Plans.

The term "vendor authorization" would be defined as the process by which vendors who initially apply for authorization or subsequently apply for reauthorization are assessed, selected, and enter into an agreement with the State agency. This definition is proposed to clarify that the regulatory requirements for authorization apply equally to both new and reapplying vendors.

"Vendor limiting criteria" would be defined as those criteria established by the State agency and approved by FNS as part of the State Plan process to determine the maximum number and distribution of vendors to be authorized in its jurisdiction. These criteria must be designed to result in a number and geographical distribution of authorized vendors that ensures adequate participant access, and allows for effective State agency management. Limiting criteria establish the number and distribution of vendors to be authorized and are not intended to have any bearing on which specific vendors will be authorized.

This proposal would define "vendor overcharge" as a pattern of intentionally or unintentionally charging participants more for authorized supplemental foods than non-WIC customers or charging more than the current shelf price or contract price. The definition would clarify that inadvertent mistakes that result in excess charges to the Program are considered overcharges; that is, the State agency would not have to establish that the vendor intended to overcharge in order to determine that this form of program noncompliance has taken place. It would also take into account

State agencies which contract for a set price for supplemental foods with vendors during the life of the agreement.

The term "vendor selection criteria" would be defined as the criteria mandated by the Department in section 246.12(g)(3), and any additional criteria established by the State agency and approved by FNS as part of the State Plan process, to select individual vendors for WIC authorization. Application of these criteria is meant to ensure systematic selection of only vendors who are best qualified to provide food benefits to participants in a manner consistent with the WIC Program's mission and effective program operations. While selection criteria may have the incidental effect of limiting the number of vendors who are authorized, their primary purpose is to determine the best qualified vendors, not the number, of such vendors.

"Vendor violation" is proposed to be defined as any intentional or unintentional action of a vendor (with or without management knowledge) which violates the Program statute or regulations or State agency policies or procedures. This definition would clarify that vendors should be held accountable for violations, whether they are deliberate attempts to violate program regulations, or inadvertent errors, since both ultimately result in increased food costs and fewer participants being served. This definition clarifies that it would not be necessary for the State agency to ascertain the intent behind an action which, whether inadvertent or deliberate, has the same negative effect on the Program. The Department acknowledges that the inherent complexity of the WIC transaction is such that, even with training and supervision, cashiers may occasionally make unintentional errors. While this definition would include both intentional and unintentional actions (with or without management knowledge), this does not mean that a minor unintentional action by a cashier without management knowledge would result in disqualification. State agencies have a wide range of actions that they may take as a result of a vendor violation, including assessing a claim, requiring increased training, identifying the vendor as a high-risk vendor subject to monitoring, assessing administrative fines, and imposing a sanction.

The Department believes that a vendor is not relieved of the responsibility for an employee's continuing noncompliant actions just because the vendor's management was unaware of the violations. Allowing vendors with continuing violations to sustain their authorization by simply permitting them to remove an employee who violates program regulations would result in few disqualifications, since the claim that the violation was caused by a dishonest employee, who has since been fired, is one of the most common defenses used during vendor appeals (see "The WIC Files"). Removing such an employee does not mitigate the effects of chronic vendor error and mismanagement on program costs, nor does it lessen the vendor's responsibility to provide effective oversight and appropriate employee training.

"WIC" would be defined as the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966.

3. Vendor Management Staffing (Section 246.3(e)(5))

Proposed section 246.3(e)(5) would require that State agencies which anticipate 50 or more authorized vendors as of October 1 of each fiscal year devote a full-time staff year to vendor management. State agencies would have the option of designating a single full-time vendor management specialist or to assign vendor management duties to more than one staff person, provided the total time spent on vendor management is equivalent to one staff year. The State agency would identify these positions as part of the staffing pattern already required by section 246.4(a)(4). State agencies which anticipate fewer than 50 vendors as of October 1 of each fiscal year would be required by this proposal to designate a staff person responsible for vendor management. No standards for the amount of time this person would devote to these duties are proposed in this rulemaking.

The requirements for staffing of vendor management are being proposed because, although, according to the 1990 WIC Vendor Management Study, at least 37 percent of geographical State agencies had a designated full-time vendor management position, a wide range exists in State agency staff devoted to vendor management. In some State agencies, vendor management responsibilities are not clearly assigned to specific staff, resulting in the increased possibility of vendor noncompliance due to insufficient resource allocation, imprecisely fixed management responsibility, and the lack of an expert in this highly technical area of program management. The results of the 1988 National Vendor Audit and the requirements proposed elsewhere in this rulemaking make it necessary for State agencies to focus increased attention on vendor management. The Department is, therefore, proposing this minimum vendor management staffing requirement to promote assignment of adequate resources to, as well as to assign specific responsibility for, vendor management functions, particularly among State agencies with 50 or more vendors.

4. State Plan Requirements (Section 246.4)

Section 246.4(a)(14)(ii) is proposed to be amended to require the State agency to describe its vendor limiting criteria. Limiting criteria are discussed in more detail in section 8 of this preamble. Section 246.4(a)(14)(iv) would be amended to require State agencies which choose to delegate any aspect of vendor monitoring to describe their system of quality control to ensure uniformity and quality of local agency or contractor efforts. In addition, section 246.4(a)(14)(iv) requires State agencies to include in their State Plan the criteria used to determine which vendors will receive routine monitoring visits. Section 246.4(a)(14)(vi) would be amended to require a description of the system the State agency will use to account for the disposition of food instruments, in accordance with section 246.12(q), rather than the current requirement of a description of the State agency's system for reconciliation of food instruments in section 246.14(a)(14)(vi). This change is discussed further in section 19 of the preamble.

Two paragraphs are proposed to be added to the section of the State Plan that addresses food delivery systems in recognition of the emphasis this rule would place on vendor training and food instrument security. These provisions would require descriptions of the State agency's vendor training procedures (section 246.4(a)(14)(xii) and section 12 of this preamble) and the system for ensuring the security of food instruments (section 246.4(a)(14)(xiii) and section 18 of this preamble). The provision on food instrument security would replace the current requirement concerning food instrument control in section 246.4(a)(14)(vi).

State agencies would be required by proposed section 246.4(a)(14)(xiv) to include in their State Plans a description of their criteria for making participant access findings. In addition, proposed section 246.4(a)(14)(xv) would require State agencies wishing to authorize mobile stores to include in their State Plans the special needs necessitating this action.

Finally, proposed section 246.4(a)(15) would be amended to require a description of the State agency's system to prevent and identify dual participation as required by section 246.7(l)(1)(i) and (ii), including the amendments proposed to be made to that section and discussed in section 5 of this preamble.

5. Prevention and Identification of Dual Participation (Section 246.7(l))

This rulemaking proposes to amend section 246.7(l)(1) to strengthen intra-State agency and inter-State agency dual participation detection efforts within the WIC Program, and between WIC and the Commodity Supplemental Food Program (CSFP) (7 U.S.C. 612c note), by requiring the identification of all suspected dual participants at least quarterly. In addition, in cases of dual participation resulting from intentional misrepresentations, State agencies would be required to pursue the collection of improperly obtained benefits in accordance with proposed section 246.23(c)(1). If the participant failed to make full restitution, the State agency would be required to disqualify the participant from both programs for one year in accordance with proposed section 246.12(u)(2). If full restitution is made prior to the end of the disqualification period, the State agency may permit the participant to reapply for the Program. Proposed changes to the participant claims and disqualification procedures are discussed in section 22 of this preamble.

Dual participants are persons simultaneously participating in the Program in one or more WIC clinics or persons participating in the Program and CSFP during the same period of time. The Department's Office of Inspector General recommended at least quarterly reporting after finding in the 1988 National Vendor Audit that some State agencies have inadequate systems for preventing and detecting dual participation and sometimes fail to take action against possible dual participants whom they have identified. This proposal would further strengthen integrity by requiring State agencies to work together to attempt to identify dual participation between contiguous local service areas located across State agency borders if geographical and other factors make it likely that participants travel regularly between such locations.

The Department also wishes to clarify that dual enrollment does not necessarily constitute dual participation. However, as a sound management practice, State agencies should create accountability systems to identify and correct situations in which a participant is enrolled and receiving benefits from one WIC or CSFP agency, but continues to be enrolled (but not receiving benefits) in another. Although such a participant may not technically be receiving dual benefits, the potential for dual participation exists and should be eliminated by removing the participant from one of the enrollment rosters. The Department is not addressing controls on enrollment in this proposal.

Nor does this proposal mandate that specific minimum data matching criteria be used to identify dual participants. Because the Department has limited evidence of the effectiveness of the various criteria currently used by State agencies, the Department is not mandating specific matching criteria. It seems likely, however, that social security numbers are the most effective and readily available personal identifiers. State agencies have long had authority to require social security numbers as a condition of participation, pursuant to the Tax Reform Act of 1976 (codified at section 205(c)(2)(C)(i) of the Social Security Act, 42 U.S.C. 405(c)(2)(C)(i)). The Department recommends but does not require that social security numbers be used whenever possible to identify dual participation. However, section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note) requires that notice be given of the planned use of social security numbers by State agencies. Therefore, State agencies should consult with their State's attorneys before using social security numbers to identify dual participation.

Section 246.23(c)(2) of this proposal includes a new provision that would authorize FNS to establish a claim against State agencies when they have not complied with the requirements to identify dual participants, if the State agency has not taken steps to recover funds from or disqualify certain dual participants.

6. General Food Delivery System Requirements (Sections 246.12(a) Through 246.12(d))

The Department proposes to reorganize the food delivery system requirements in section 246.12 in recognition of the new definition of vendor that applies only in the retail food delivery system context. Under the proposal, the general requirements for food delivery systems would be grouped in section 246.12(a)–(d). The special requirements for retail food delivery systems would be in section 246.12(e)–(l), the home food delivery system requirements in section 246.12(m), the direct distribution food delivery system requirements in section 246.12(n), and the remaining general requirements in section 246.12(o)–(v). The Department is only seeking comments within Section 246.12 on those areas where substantive changes have been made. These areas include: paragraph (f) (food instrument requirements); paragraph (g) (vendor authorization); paragraph (h) (vendor agreements); paragraph (i) (vendor training); paragraph (j) (monitoring vendors and identifying high-risk vendors); paragraph (k) (vendor claims); paragraph (q) (food instrument disposition); paragraph (t) (conflict of interest); and paragraph (u) (participant violations and sanctions). The specific proposed changes within this reorganized structure follow.

As discussed in section 1.a of this preamble, proposed section 246.12(a) would be amended to give FNS the authority to modify program regulations for EBT systems. In addition, the current requirement in section 246.12(e) that only food vendors authorized by the State agency may redeem food instruments would be moved to section 246.12(b) and revised to make clear that it applies whenever food instruments are redeemed under any of the food delivery systems. Finally, proposed section 246.12(b) would make clear that each system must ensure adequate participant access to supplemental foods.

7. Retail Food Delivery Systems: Food Instrument Requirements (Section 246.12(f))

The current food instrument requirements in sections 246.12(r) that have relevance only in retail food delivery systems would be moved to section 246.12(f). Proposed section 246.12(f)(1) would make clear that food instruments must be used in retail food delivery systems. As proposed, section 246.12(f)(2) would make clear which food instrument requirements are applicable only to printed food instruments. This change is necessary in recognition of the March 18, 1999 final rule concerning vendor sanctions that amended the definition of food instruments in section 246.2 to include EBT cards.

In addition, new provisions would be added in section 246.12(f)(2)(i) and (vii) to require printed food instruments to provide: (1) a list of the supplemental foods authorized to be obtained with the food instrument, and (2) a signature space in which the participant or proxy must sign at the time the supplemental foods are obtained.

8. Vendor Limiting Criteria (Section 246.12(e)(2))

Under this proposed rule, the vendor authorization requirements currently found in section 246.12(e) would be moved to proposed section 246.12(g). In addition, the Department proposes to mandate limiting criteria as described in section 246.12(g)(2). Limiting criteria permit State agencies to authorize only a sufficient number of vendors in an area to ensure adequate participant access and effective program oversight.

There are also other benefits to implementing limiting criteria. The State agency must apply a significant amount of resources to the management of each authorized vendor. A case file must be established and data collected and entered. Each vendor must be visited on-site at initial authorization. Training would have to be provided annually, as proposed in section 246.12(i) of this rulemaking. Other costs also increase with the number of authorized vendors. Compliance buys and other forms of monitoring would have to be performed as outlined in proposed section 246.12(j). Reports must be produced and analyzed, mailings initiated, sanctions applied and tracked, and appeals held as appropriate. If the State agency authorizes more vendors than necessary to ensure adequate participant access, the administrative resources available to manage vendors may not be sufficient to ensure effective oversight, thus increasing the possibility that program noncompliance will be undetected and/or forcing curtailment of other critical State and local agency activities.

Proposed section 246.12(g)(2) mandates that the State agency establish and implement criteria to limit the number and specify the distribution of vendors to be authorized. The State agency would not be required to use specific criteria when limiting vendor numbers. It would however, be required when developing the criteria to at least consider the establishment of participant-to-vendor ratios for sub-areas of its jurisdiction based on factors such as population density, distribution of participants, location of local agencies and clinics, and availability of public transportation and road systems to the WIC population.

The vendor limiting process must balance the need to provide adequate participant access to authorized vendors and the need for a vendor population that State agencies can effectively manage given the administrative resources available to them. Weighing these concerns, State agencies might, for example, develop one or more participant-to-vendor ratios. Typically, the State agency would first establish sub-areas within its jurisdiction based on such factors as the distribution of caseload, the location of local agencies and clinics, availability of public transportation and road systems to the WIC population, and the supply of prospective WIC vendors. Each type of sub-area, in turn, would be assigned an appropriate participant to vendor ratio. Theoretically, a State agency with a highly refined methodology might assign a different ratio to each individual sub-area, but State agencies will more likely limit themselves to a small set of ratios capable of addressing the differing needs of particular areas.

Limiting criteria would be required to be implemented consistently throughout the State agency's jurisdiction, with due consideration for the varying geographic and other characteristics within the jurisdiction. The important point in establishing limiting criteria is that State agencies apply them fairly and with clear rationales throughout their jurisdictions. The State agency would be required to establish system to revise and/or reapplying its limitation criteria whenever it determines that relevant demographic shifts or significant changes in local caseload allocation, growth, or decline make such action necessary.

Most State agencies agree that limiting the number and distribution of vendors is of benefit to the Program. However, some have pointed out that the resources required to establish limiting criteria and manage the resultant appeals if a vendor is denied authorization would be overly burdensome. Moreover, many State agencies do not distinguish between limiting criteria and selection criteria. Through limiting criteria, the State agency first decides how many vendors should be authorized and where, in general terms, they should be located. Limiting criteria are applied before selection criteria. Only after these decisions have been made can the State agency apply selection criteria to determine which specific vendors will be authorized. Many State agencies believe that vendor numbers can be effectively controlled through the application of strong selection criteria. This is true. While selection criteria may have the incidental effect of limiting vendor numbers and determining vendor distribution, such criteria establish the number and distribution of vendors which is based on vendor ability to meet basic authorization qualifications rather than the need for a vendor in the area.

Many vendors believe that limiting the number and distribution of authorized vendors is anti-competitive. They feel that any vendor who meets basic authorization qualifications should be authorized. Vendors have also expressed concern that implementation of limiting criteria would not allow smaller stores to effectively compete with the larger chains for WIC authorization.

The Department does not believe that every vendor who meets basic authorization qualifications should necessarily be authorized to accept WIC food instruments. Authorization to accept WIC food instruments must be governed by the access needs of participants and the qualifications of the vendor. It must be remembered that, in a few State agencies, retail stores play little or no role in their WIC food delivery systems. Those State agencies either purchase all WIC foods through large-scale competitive procurement and distribute them directly to participants or contract with home food delivery contractors. On the other hand, the majority of State agencies deliver WIC benefits through retail stores, and their cooperation and service contribute significantly to program operations. The Department gratefully acknowledges their contributions, in exchange for which vendors benefit from the considerable volume of food purchases made through WIC in the retail marketplace, and the additional non-WIC purchases that participants often make while in the store. The Department also acknowledges the critical importance of small non-chain stores in assuring adequate participant access.

Congress established the WIC Program as a preventive nutrition and health program for pregnant women, infants and young children. The Program receives annual appropriations from Congress. WIC is not an entitlement program, with unlimited resources to accommodate changes in the economy or to serve all eligible persons. Rather, WIC's funding is discretionary, meaning it is provided a set amount of funding and can serve only as many participants as this funding allows. Hence, the Department pursues policies which enhance serving the maximum number of eligible women, infants, and children with this limited funding. Vendors are a critically important service component of the Program. They provide the foods needed by the participants and in turn receive payment for the foods.

The Department's view is that, in order to use both nutrition services and administration funds and food dollars effectively and efficiently for the benefit

of participants, the State agency must first have the right and authority to limit the number and determine the geographical distribution of vendors to be authorized in accordance with its analysis of how to ensure adequate participant access to the Program. Second, the State agency must be able to select individual vendors in a way that will promote efficient use of its food grant through both reasonable food prices and the reduced possibility of vendor noncompliance.

State agencies are reminded that they must develop and implement vendor selection and limitation criteria consistent with the anti-discrimination provisions of civil rights legislation. However, Congress has enacted legislation, Public Law 105–336, which requires that the price a vendor charges for WIC foods be a key factor in selecting a vendors for authorization. In implementing this requirement, State agencies may evaluate the food costs of small vendors on the basis of food cost among peers—other small vendors—when small vendors are vital to participant access. The use of peer group cost comparisons mitigate any negative impact on small vendors of the legislative requirement to select vendors on the basis of cost.

In summary, while any vendor may apply to be authorized as a WIC vendor, State agencies have the right and the authority to establish vendor selection and limitation criteria which ensure:

- Adequate participant access to the Program;
- Maximum usage of funds;
- Minimum possibility of vendor misuse or mismanagement of funds, or fraud;
- Consistency with civil rights legislation.

While this approach to vendor authorization may restrict the ability of a particular retail store to secure or retain WIC authorization, the Department believes that it is ultimately in the best interests of the Program.

The smaller vendors who are concerned that their authorization could be adversely affected by limiting or selection criteria should be aware that the Department does not foresee dramatic future decreases in the number of authorized smaller WIC vendors. Smaller vendors will always be needed to ensure adequate participant access, particularly in areas where there is a lack of larger chain stores and areas where the number of vendors is small and transportation is difficult. In these cases, it should be reiterated that small vendors will compete for WIC authorization on the basis of their costs relative to other small vendors serving the same area.

A number of vendors have also expressed concern that limiting criteria would adversely affect participant access. Section 246.12(b) would continue to require that all food delivery systems ensure adequate participant access and proposed section 246.12(g)(1) would require State agencies to authorize an appropriate number and distribution of vendors to ensure adequate participant access (as is currently required in section 246.12(e)(2)). Again, it is important to stress that smaller vendors are critical to the Program, and where instrumental in ensuring adequate participant access, will have equal opportunity to compete for WIC business.

As proposed in section 246.4(a)(14)(ii), the State agency's limiting criteria would be a mandatory component of the food delivery system description in its State Plan. The State agency's limitation system would be subject to public scrutiny and comment as part of the State Plan development process as is currently required by section 246.4(b). The Department believes that it is at this stage where there is an opportunity for dialogue between State agencies and their vendor communities about proposed changes to the State Plan that might affect them. While the limiting criteria themselves would not be subject to administrative review, vendors would be able to appeal a denial of authorization resulting from application of the limiting criteria. For example, where the limiting criteria provided for four vendors within a zip code area, a vendor within that zip code area could file an appeal alleging the State agency incorrectly determined it to be outside that zip code area. However, the State agency's decision to use zip code areas as the basis for the limiting criterion or the number of vendors the State agency determined to be necessary for that area would not be subject to administrative review. In most cases, though, vendor appeals will be based on the application of the selection criteria. In general, the limiting process will be irrelevant to denial of authorization of a particular vendor because it is a systematic process that establishes only the desired number of vendors and does not consider the qualifications of a specific vendor. These qualifications are considered during the selection process. Denial of an application for authorization may be appealed by a vendor.

The Department is particularly interested in receiving comments on the proposed limitation provision. Comments are most helpful when they are specific, stating the reasons for support or opposition, suggesting modifications that would resolve commenter's concerns, and providing relevant background information and State agency-specific data as appropriate.

9. Retail Food Delivery Systems: Vendor Selection Criteria (Section 246.12(g)(3))

State agency experience (see "The WIC Files") has shown that development and application of good vendor selection criteria during the authorization process can provide a very cost-effective method of cost containment and prevention of program noncompliance. Current regulations do not specifically address the establishment of vendor selection criteria. They only require vendors to be evaluated in connection with the biennial assessment of vendor qualifications mandated by Section 246.12(g). Selection criteria have sometimes been confused with limiting criteria, because selection criteria may have the incidental effect of limiting the number of vendors authorized. The Department wishes to reiterate that, while limiting criteria determine a specific number and distribution of vendors for an area, selection criteria determine which vendors meet basic yes/no eligibility criteria, such as adequate stock and inventory, and prices below a specified maximum amount.

The Department is proposing in section 246.12(g)(3) to require State agencies to implement six specific selection criteria. State agencies would be permitted to supplement the mandatory criteria with criteria of their own choice. Such State agency-established criteria must be approved by FNS as part of the State Plan process. The six proposed mandatory selection criteria are: (1) Competitive price; (2) minimum variety and quantity of authorized supplemental foods; (3) lack of a record of a criminal conviction or civil judgment for specified activities; (4) lack of a history of serious vendor violations; (5) lack of a history of serious FSP violations; and (6) not currently disqualified from the FSP or, if subject to a FSP civil money penalty for hardship, the period of the disqualification that otherwise would have been imposed has expired.

Competitive pricing (section 246.12(g)(3)(i)) is widely accepted as a successful cost containment mechanism, facilitating service to greater numbers of eligible participants. Section 203(l) of Public Law 105–336 now requires all State agencies to

consider, in selecting retail stores for authorization, the prices the store charges for WIC foods as compared to other stores' prices for such foods. The law further provides that State agencies must establish procedures to ensure that selected stores do not subsequently raise prices to a level that would make them ineligible for authorization.

The price criterion may consist of assessing applicants based on either their shelf prices for supplemental foods or their price bids for supplemental foods, which may be lower than their shelf prices. Dollar limits could be developed based on historical data such as average redeemed prices for food instruments or on shelf prices. The limit calculated for each food package could be a statewide average, or could vary by area and/or vendor type. For example, a State agency may decide to establish a higher competitive price in an area in which the only reasonably located stores have higher prices than the surrounding areas in order to ensure adequate participant access for that area. The stores in that area would thus not be penalized for their higher prices that may be the result of the higher costs of doing business in that area. As with all limiting and selection criteria, State agencies may not adopt criteria that will result in inadequate participant access, such as a competitive price limitation that results in an insufficient number of vendors located where participants can reasonably be expected to shop.

Proposed section 246.12(h)(3)(viii) would require that vendor agreements contain a provision limiting vendors to charging no more than the competitive price limitation. This change is necessary to comply with section 203(l) of Public Law 105–336 and to make the use of competitive price as a selection criterion effective.

State agencies would then need to have a procedure to ensure authorized vendors comply with the competitive price limitation. Such procedures could include setting a not-to-exceed limit for the food instrument (either by printing it directly on the food instrument or through a bank or system edit), collection of periodic price survey data from vendors, or surveying price data during monitoring visits.

Some vendors have commented that the "free market" approach in which the "market" dictates prices works best and that basing authorization on competitive price is exclusionary, unfair, and "against the free enterprise system." Some also feel that predatory pricing of supplemental foods to gain authorization by larger stores would result in a smaller market share for smaller independent grocers. Vendors should be aware that this proposal would not result in State agencies dictating the prices for authorized supplemental foods. Competitive pricing is already used by most State agencies as a selection criterion in retail food delivery systems. Prices of authorized foods are based on the current shelf or "market" price that is charged to non-WIC customers. This price is established by the vendor. In home food delivery systems and some retail food delivery systems, prices are based on the lowest "contract" or "bid" price. Again, these prices are established by the vendor and based on market conditions, not WIC Program dictates. Although competitive price has been used as a selection criterion by most State agencies since the Program's inception, this has not generally resulted in a lessening of the market share for smaller independent vendors. It is important, then, to note that any vendor can improve its position in the vendor selection process by decreasing prices of its WIC-eligible foods. In addition, as mentioned earlier in the discussion of limiting criteria, smaller vendors will always continue to be authorized because they are needed to ensure adequate participant access, particularly in urban areas where large chain stores are less likely to be located, and in rural areas where transportation is difficult.

Finally, the Department has recently noticed a significant increase in the number of "WIC-only" stores authorized under the Program. WIC-only stores are stores which may only serve WIC participants and are sustained through their WIC business. While the free market environment allows establishment of such entities, the Department is concerned that such stores may profit through use of unreasonably high prices of the foods charged to the WIC Program. Congress has expressed its concern regarding the costs of foods under the Program by requiring all State agencies to consider price when selecting vendors. As such, the Department will pay particularly close attention to implementation of the competitive price requirement in States where "WIC-only" stores exist.

The second selection criterion (section 246.12(g)(3)(ii)), minimum variety and quantity of authorized supplemental foods, would require the vendor to have supplies of such foods that are adequate, as quantitatively defined by the State agency, to ensure that participants can receive the prescribed amounts and types of foods. Minimum variety requirements refer to the minimum types and brands of authorized supplemental foods, e.g., two types of milk (whole and low fat) or two types of cheese (American and Swiss), that a vendor would be required by the State agency to keep on the shelf at all times. Minimum quantity refers to keeping a minimum number of each type or brand of food, e.g., three containers for each type of milk or three packages of each type of cheese, on the shelves at all times. In addition, if the State agency mandates specific package sizes, the State agency could require that the vendor stock the required package sizes. The Department encourages State agencies to take into account the availability of various package sizes and the shelf space of the whole range of their vendors in establishing the minimum variety and quantity requirements.

The third selection criterion (section 246.12(g)(3)(iii)) is lack of a record of certain business-related criminal convictions or civil judgments, on the part of the vendor itself, or any of its current owners, officers, directors, or partners. Covered criminal convictions and civil judgments would include offenses such as fraud, violations of Federal anti-trust statutes, embezzlement, theft, forgery, and bribery.

The fourth selection criterion (section 246.12(g)(3)(iv)) would require the lack of a history of serious vendor violations during a period set by the State agency, but not less than one year and not more than six years prior to the date of application, resulting from the acts or omissions of any persons currently associated with the vendor as an owner, officer, director, or partner. If the vendor violation also resulted in one of the convictions or civil judgments specified in section 246.12(g)(3)(iii), the vendor would not be eligible for authorization as required in section 246.12(g)(3)(iii), and the six-year cap on considering past WIC history would not apply. In determining what constitutes "serious vendor violations," the State agency would be required to include whether the vendor has been subject to any of the mandatory vendor sanctions established under proposed section 246.12(l)(1) (current section 246.12(k)(1)) and whether the vendor has failed to participate in the annual training required by proposed section 246.12(h)(3)(xi). These are minimum criteria. State agencies may include other violations under the heading of serious vendor violations such as failure to provide restitution to the State agency for overcharge claims, repeated failure to take requested corrective actions, failure to provide requested data or records to the State agency, failure to allow monitoring by program personnel,

and other similar violations. The State agency would also have the discretion to define how many instances of a violation constitute a "history of" serious vendor violations both for the mandatory and State agency-developed criteria. Some types of violations could be so serious or so blatant that one instance would warrant nonselection. For others, the State agency could require a series of repeated instances or combinations of violations before it decides nonselection is warranted. The Department would like comments on whether to make mandatory vendor sanctions imposed by another WIC State agency a mandatory criterion for nonselection.

The fifth selection criterion would mandate the lack of a history of serious FSP violations (section 246.12(g)(3)(v)). The State agency would be required to establish a period of consideration for this criterion of not less than one year and not more than six years prior to the date of application unless the FSP offense also resulted in a conviction or civil judgment outlined in section 246.12(g)(3)(iii), in which case the provisions in section 246.12(g)(3)(iii) would apply and the six-year maximum period for consideration of past FSP history would not apply. The State agency would be required to deny the application of any vendor when the vendor, or any individual who at the time of application is associated with the vendor as an owner, officer, director, or partner, has a history of serious FSP violations during the period of consideration. The State agency would be permitted to define serious FSP violations, except that such definition would be required to include withdrawal of FSP authorization for program noncompliance, a FSP disqualification which is in effect at any time during this period, or receipt of a FSP civil money penalty for hardship during this period. The Department wishes to point out that the State agency would also have the option to consider FSP violations which did not result in any of these actions. As with the fourth criterion, State agencies would also have the discretion to determine what constitutes a "history" of serious FSP violations.

The fourth and fifth criteria would not require that the vendor or someone associated with the vendor be the subject of a criminal conviction or civil judgment. Serious vendor violations and serious FSP violations may include actions that are documented in a monitoring visit or other review or investigation even if a conviction or judgment did not result from the investigation. The violation would have to fall within those defined by the State agency as constituting a history of serious vendor or FSP violations and the State agency would need to document the basis and defend its determination in the event the vendor decides to appeal its nonselection. The sixth criterion (section 246.12(g)(3)(vi)) would require that the vendor currently not be disqualified from the FSP or, if subject to a FSP civil money penalty for participant hardship, the period of the disqualification that would otherwise have been imposed has expired.

The third, fourth, fifth, and sixth selection criteria are intended to ensure that only vendors with business integrity are authorized to participate in the Program. Proposed section 246.12(g)(3) would make clear that State agencies do not have to create an elaborate system of background checks to identify criminal convictions, civil judgments, or WIC or FSP violations. They may rely on facts known to them and representations made by applicant vendors on the vendor application. State agencies are encouraged to make an effort to check with appropriate State and Federal authorities to ensure that a record of the specified criminal convictions, civil judgments, or WIC or FSP violations does not exist. However, they are not expected to do so on a routine basis. State agencies would be routinely expected to rely upon the applicant vendors' responses to questions regarding their records, and if a State agency had reason to doubt the veracity of such responses, the State agency would be expected to follow up on the information.

These selection criteria address the Department's growing awareness of unauthorized vendors involved in defrauding or abusing the WIC Program. During investigations, State agencies have sometimes found unauthorized vendors colluding with authorized vendors to defraud the WIC Program. For example, one or several unauthorized vendors may accept WIC food instruments at their store(s) and "launder" or pass them through an authorized WIC vendor in exchange for a portion of their value. These actions are unlawful and the Department believes that the responsible vendors should not only be prosecuted under Federal, State and local law, but that the violations preclude the vendor from consideration in the vendor authorization process.

Local agencies would not be excluded from providing input into the selection process. The Department recognizes that local agencies can provide the State agency with valuable input regarding areas of participant concentration, vendor reputation in the community, and the quality of service which vendors provide WIC participants. While encouraging the State agency to receive input from its local agencies during the selection process in areas the State agency considers appropriate, the Department wishes to stress that the State agency must itself have the documentation necessary to make the final decision regarding fulfillment of all selection criteria.

"The WIC Files" indicate that high-risk vendors who are sanctioned often attempt to circumvent the sanctions by selling their stores for a nominal fee to a relative or associate who then reapplies for authorization while the persons responsible at the time of the sanctions actually maintain control of the stores and their profits. The Department believes that such vendors should not be authorized. As such, proposed section 246.12(g)(4) would prohibit authorization of a vendor if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. In determining whether an owner has attempted to circumvent a sanction, the State agency may consider whether the applicant store was sold to a relative by blood or marriage, or was sold for less than its fair market value. This does not mean the State agency must develop a comprehensive system for routinely tracking the fair market value and the family relationships for all vendors. The purpose of the provision is only to provide State agencies with guidelines to define "circumvention" of a sanction and respond accordingly.

10. Retail Food Delivery Systems: Timeframes for Accepting and Processing Vendor Applications and Collection of FSP Authorization Numbers (Sections 246.12(g)(6) and 246.12(g)(7))

The Department is proposing in section 246.12(g)(6) to allow State agencies to limit the time frames for accepting and processing vendor applications. The Department considers limiting the periods of time during which applications for authorization will be accepted and processed preferable to accepting and processing applications on a continuous basis during the entire year. Limiting periods for acceptance and processing of vendor applications allows the State agency to use staff resources during the authorization process most efficiently since training, collection of price data, and evaluation of selection criteria can be clustered for more efficient execution. These advantages far outweigh the disadvantages associated

with the delay before a vendor may apply. The Department considers that State agencies have always had the authority to limit application periods as part of their general responsibility for, and control over, vendor selection. However, data from the 1995 NAWD National Vendor Management Roundup Survey indicate that of the 75 WIC State agencies who responded, only 22 State agencies reported they accepted applications during a set time of the year.

To emphasize this authority, this proposed rule would expressly give State agencies the option of limiting their vendor authorization periods, with the condition that vendor applications must be accepted and processed at least once every three years. A State agency that chooses to exercise this option would be required in section 246.12(g)(6) to develop procedures for accepting and processing individual vendor applications outside of its established periods when it determines there would be inadequate participant access unless additional vendors are authorized.

Section 246.12(g)(7), as amended by this proposal, would also require that the State agency collect the FSP authorization number of all applicant vendors that participate in the FSP and, except when the State agency uses a competitive bidding procedure in which vendors bid on prices for authorized supplemental foods, the current shelf prices for such foods. The FSP authorization number facilitates the receipt of information on vendor history from the FSP. Although State agencies are not required to contact the FSP before authorizing vendors, the Department strongly encourages State agencies to do so and make use of this valuable information. Shelf price data provide the State agency with information it needs to establish whether the prices of authorized supplemental foods are competitive. Shelf price data can also be used by the State agency to develop and/or update its competitive price selection criteria, and to update price data used to identify overcharging.

11. Retail Food Delivery Systems: Time Limit on Vendor Agreements (Section 246.12(h)(1))

Current food delivery regulations at section 246.12(g) require that the State agency perform a review of each vendor's qualifications once every two years, but do not limit the period of the agreement. Proposed section 246.12(h)(1) would limit vendor agreements to not more than three years, and would delete the regulatory requirement for periodic reviews of vendor qualifications since fixed-period agreements would render this requirement superfluous. The Department believes that fixed period agreements enable the State agency to manage its vendor population on a periodic basis more easily and allows it to be more responsive to changing program conditions and needs than is the case with open-ended agreements. According to the 1990 Vendor Management Study, 78 percent of the geographic State agencies already authorize vendors for three years or less, making fixed-period agreements the norm. A vendor would need to reapply at the expiration of each agreement and would have to meet the selection criteria and the limiting criteria in effect at the time of reapplication.

In addition, current section 246.12(f) allows local agencies to establish agreements with vendors. Proposed section 246.12(h)(1) would require that all vendor agreements be established by the State agency. The Department believes that all vendor agreements should be executed by the State agency, rather than local agencies, to ensure consistent application of vendor authorization standards statewide. Conforming amendments would also be made to sections 246.4(a)(14)(iii) and 246.12(f) (which would be redesignated as section 246.12(h)).

12. Retail Food Delivery Systems: Vendor Agreement Specifications (Sections 246.12(h)(2) Through 246.12(h)(4))

This proposed rule would revise current section 246.12(f)(1) to make clear that State agencies may make exceptions to their standard vendor agreements only when necessary to meet unique circumstances and must document the reasons for any exception. One such legitimate reason would be adjustments to accommodate a State agency's EBT system. The proposed rule would move this requirement to section 246.12(h)(2).

The Department proposes to reorganize and modify a number of the requirements for vendor agreements. A few new provisions are proposed. The provisions that would be changed or added are discussed below in the order in which they appear in the proposed rule.

Proposed section 246.12(h)(3)(i) would make clear that vendors may accept food instruments only from participants or their proxies. This does not represent a change from current program operations.

The Department also proposes to change the provision currently at section 246.12(f)(2)(i) to address concerns raised by State agencies about problems with substitutions for supplemental foods designated on the food instrument. A sentence would be added to prohibit vendors from substituting other foods, non-food items or cash in lieu of supplemental food listed on the food instrument. The vendor would also be prohibited from giving credit, refunds, or exchanges (except for identical supplemental foods). Credit or rainchecks offered to participants are usually given because vendors have inadequate WIC food stocks on hand. Participants should not be inconvenienced by vendors who do not honor their contractual obligation to maintain adequate WIC food stocks in their stores. Ultimately, it is the participants who suffer nutritionally from an incomplete food package. In addition, many commenters expressed concern about the increased opportunity for program noncompliance when vendors allow refunds for foods purchased with WIC food instruments. The rule would permit vendors to exchange a supplemental food with an identical item. This should address instances of defective supplemental foods without compromising the nutritional benefit of the participant's food package. These revisions appear in proposed section 246.12(h)(3)(ii) and are included in this rulemaking so as to reflect longstanding WIC policy in program regulations.

This proposed rule would add a new section 246.12(h)(3)(iv) requiring that the vendor ensure the actual purchase price be entered on the food instrument prior to the signature by the participant or proxy. Many State agencies require the vendor to enter the purchase price prior to participant signature. However, a few State agencies require the participant to enter the purchase price, citing the educational value for participants. The proposed language would accommodate either situation. In addition, this provision would make clear that the provision applies to printed food instruments only. Thus, where an EBT system is used and the purchase price is scanned and entered electronically, rather than entered directly on the food instrument, the provision would not apply. Proposed section 246.12(h)(3)(iv) would also make clear a PIN may be used in EBT systems in lieu of the signature requirement.

Current section 246.12(f)(2)(ii) would be moved to section 246.12(h)(3)(viii) and would require vendors to charge State agencies no more than the price charged other customers (i.e. no surcharge may be imposed for WIC

purchases) or the current shelf price, whichever is less. Vendors subject to contract prices would be able to charge no more than the contract prices. This proposal would modify the current language to account for competitively bid vendor selection systems being used by some State agencies in which vendors are selected on the basis of specific prices they submit in response to a competitive procurement. This proposal would also make clear that in no case may the vendor charge the State agency more than the competitive price limitation.

Proposed section 246.12(h)(3)(ix) would clarify current section 246.12(f)(2)(v) concerning claims collection. Under this new section, the vendor would be required to reimburse the State agency upon demand, or have its payment from the State agency reduced, for the value of each vendor overcharge or other error. It would also allow the State agency to withhold or collect the entire redemption value of a food instrument containing an overcharge or other error, rather than just the amount of the error. Finally, it would permit the State agency to offset any amount owed by the vendor against subsequent amounts to be paid to the vendor.

Current regulations at section 246.12(f)(2)(vi) prohibit the vendor from seeking restitution from participants for food instruments not paid by the State or local agency. The Department proposes to clarify in proposed section 246.12(h)(3)(x) that the prohibition would also apply to any food instrument partially paid by the State agency and to remove the reference to the local agency in order to conform to the requirement at proposed section 246.12(h)(1) that only State agencies may enter into vendor agreements.

Current section 246.12(f)(2)(vii) requires the manager or an authorized representative of the store (such as a head cashier) to accept training on program procedures. This proposal would move this provision to section 246.12(h)(3)(xi) and modify it by requiring participation in training prior to, or at the time of, the vendor's initial authorization and at least once annually thereafter. The initial training of a new vendor would be required to take place at the site of the vendor (see proposed section 246.12(i)(1)). The proposal would also make clear that the training after the initial authorization training is to take place at a time and location designated by the State agency. However, State agencies would be required to provide vendors at least one opportunity to attend training on an alternative date and may offer additional alternative training dates. The Department encourages State agencies to be understanding of the particular scheduling limitations of vendors with small staffs when scheduling training.

The reference to "head cashier" would be removed and replaced by language requiring that a member of management participate in the training, because a head cashier may not be a store management official and thus may not possess the necessary authority to accept training responsibilities for the vendor. Further details on the proposed training requirements may be found in section 13 of this preamble and proposed section 246.12(i). Section 246.12(h)(3)(xi) would further require a vendor agreement provision putting the vendor on notice of the mandatory selection criterion in section 246.12(g)(3)(iv) making a history of failing to participate in the annual training a condition of authorization in the next authorization cycle.

This proposal has made one change to current section 246.12(f)(2)(ix). In proposed section 246.12(h)(3)(xiii), the term "utilization" of food instruments would be replaced with the term "handling" of food instruments as a clarification for the vendor.

The Department proposes to modify section 246.12(f)(2)(xiii) to require vendors to retain inventory records that are used for State or Federal tax reporting purposes, and other records as the State agency may require. State agencies would have the flexibility to determine both the length of time for retention of the inventory records and additional records that must be retained. Vendors would be required to allow access to these records by representatives of the State agency, the Department, and the Comptroller General of the United States for inspection and audit. Vendors must make these records available at any reasonable time and place. The requirement in current section 246.12(f)(2)(xii), concerning access to food instruments during monitoring visits, would be included in this access requirement. These changes would appear in section 246.12(h)(3)(xv).

Currently, section 246.12(f)(2)(xxiii) requires the vendor to notify the State agency when the vendor ceases operations or ownership changes and the agreement to be voided in cases of change of ownership. Strict interpretation of the current section 246.12(f)(2)(xxiii) has resulted in some State agencies treating corporate reorganizations as changes in ownership. Such an interpretation has resulted in terminating agreements with vendors that have undergone corporate reorganizations even though they did not affect the ownership of the corporation. This rule would make clear in section 246.12(h)(3)(xvii) that a change in business structure that does not result in a change in ownership would not trigger this provision. State agencies should focus on the substance of the transaction rather than the form of the transaction. The State agency should ensure that the vendor agreement is amended to reflect the change in business structure.

This rule would also require vendors to give notice of any change in a vendor's location. This notice is necessary in light of the role that location plays in vendor selection and limiting criteria.

In order to give State agencies sufficient time to analyze any change in ownership, location, or cessation of operations, this rule would require that vendors give 45 days notice in writing prior to the effective date of the change. In cases in which the change will trigger termination of the agreement, the lead time also would give State agencies time to seek a new vendor when necessary to ensure adequate participant access.

Proposed section 246.12(h)(3)(xviii) would specify that a vendor may be sanctioned for vendor violations in addition to claims collection. Such sanctions would be required to be in accordance with the State agency's sanction schedule.

The Department also proposes to add in section 246.12(h)(3)(xix) a provision notifying the vendor that the State agency will terminate the vendor's agreement if the State agency determines that a conflict of interest exists between the vendor and the WIC Program, at either the State or the local level. This change reflects the requirement at section 246.12(q) of the current regulations (redesignated as section 246.12(t) in the proposed rule) with the addition of a reference to conflicts with the State agency given their role in vendor authorization.

The current requirement in section 246.12(f)(2)(xiv) would be redesignated as section 246.12(h)(3)(xx) and amended to revise the reference to current section 246.23(d) regarding criminal penalties for program noncompliance.

Proposed section 246.12(h)(3)(xxi) would specify that WIC authorization is not a license, and that it does not convey property rights. Vendors would also be put on notice that in order to continue to be authorized beyond their current agreement periods they must reapply for authorization. Further, vendors would be notified that if a vendor has been disqualified for a

period of time less than the remaining term of its vendor agreement, participation in the WIC Program may be resumed upon completion of its disqualification period for the duration of the agreement without reapplying. If the vendor agreement expires before the vendor has served out the full disqualification period, and the vendor wishes to again participate in the Program after serving the disqualification, the vendor must apply to be authorized. In all cases, the vendor's new application would be subject to the State agency's selection and limiting criteria in effect at the time of the reapplication.

Proposed section 246.12(h)(4) would require that the State agency include the sanction schedule in the vendor agreement. The sanction schedule must be consistent with the current vendor sanction requirements, which would be redesignated as Section 246.12(l), and include both the mandatory vendor sanctions and any State agency vendor sanctions. This addition was made to consolidate several paragraphs that required that specific vendor sanction provisions be included in the vendor agreement. The Department recommends that State agencies include the sanction schedule as an addendum to the vendor agreement, so that it may be amended during the agreement period without having to amend the entire agreement.

The Department proposes a new section 246.12(h)(5) that would require State agencies to provide vendors a list of the actions subject to administrative review and a copy of the State agency's administrative review procedures. Proposed revisions to vendor appeals are discussed in section 22 of this preamble.

13. Retail Food Delivery Systems: Vendor Training (Section 246.12(i))

The December 1990 WIC Vendor Management Study indicated that training is the most frequently used non-investigative method for ensuring the integrity of the Program. "The WIC Files," a summary of case studies of vendor investigations produced by the vendor managers of State agencies in the Southeast Region, found that vendor training is one of the most effective controls on vendor noncompliance that a State agency can implement.

The Department proposes in section 246.12(i) to strengthen the training requirements by requiring annual training for all vendors. Such training would be required to be face-to-face at least once during the vendor's agreement period, that is, once every three years or more frequently in State agencies using shorter agreements. The face-to-face training could be conducted at any time during the agreement period except that, in instances where a vendor is new to the WIC Program, the training would be required to be provided prior to, or at the time of, initial authorization, and at the site of the new vendor.

The face-to-face training could count towards fulfillment of the annual training requirement for all vendors. In other years of the agreement period, the annual training could, for example, consist of a training video, written material such as a handbook update, or verbal instructions relayed by audiotape.

The vendor's requirements for both annual and face-to-face training would be required to be outlined in the vendor agreement (section 246.12(h)(3)(xi)), including the stipulation that a history of noncompliance with these requirements would bar reauthorization (see proposed section 246.12(g)(3)(iv)). The vendor agreement would be required to make clear that the State agency has the sole discretion to determine the date, time, and place of all training, except that the vendor would have to be given at least one opportunity to reschedule. Vendors would be required to sign a receipt that they have received training. Training could take the form of individual or group sessions and could be conducted on the vendor's premises or at a State agency-selected location, except for the initial training, which would be required to be given at the vendor's site.

The Department believes that it is important that certain basic topics be covered in the annual training sessions, whether the training is provided face-to-face or is included in some other form of presentation, such as a film or printed material. As such, the Department is proposing in section 246.12(i)(2) that the following topics must be covered annually: the purpose of the WIC Program; the varieties of supplemental food authorized by the State agency; the minimum varieties and quantities of authorized supplemental foods that must be stocked; the procedures for transacting and submitting food instruments; the vendor sanction system; the vendor complaint process; the terms of the vendor agreement; and the State agency's claims collection procedures. The primary difference between the face-to-face training that would occur once during the agreement period and the training that would occur during each of the other years of the agreement period is how the training is delivered. The content would remain the same.

At the discretion of the State agency, section 246.12(i)(3) would permit training to be conducted by a local agency, a contractor, or a vendor representative. The State agency would be required to provide supervision and instruction to ensure the uniformity and quality of the training. Proposed section 246.4(a)(xii) would require that the oversight system be described in the State Plan.

Proposed section 246.12(i)(4) would require State agencies to document the content of the annual training, including the vendor receipts required by section 246.12(h)(3)(xi). By requiring an acknowledgment of the receipt and understanding of training, the State agency retains evidence of awareness of program rules and procedures by vendors. Thus, violative vendors cannot successfully argue during administrative reviews that they were not appropriately trained on their responsibilities.

14. Retail Food Delivery Systems: Monitoring Vendors and Identifying High-Risk Vendors (Section 246.12(j))

The 1988 National Vendor Audit, while not nationally representative, is consistent with the conclusion that current regulatory requirements for representative monitoring have not been effective in controlling program noncompliance. In addition, VAMP data and findings of the WIC Vendor Issues Study indicate the need to focus more attention on high-risk vendors. Therefore, this proposed rulemaking would shift emphasis away from the less effective representative monitoring and toward high-risk monitoring. This would concentrate resources on a subset of vendors which have been identified as having a high probability of abusing the Program and is likely to be more effective in combating program noncompliance.

As discussed in section 2 of this preamble, the term "representative monitoring" has proven to be misleading. It describes the method by which vendors are selected to be monitored rather than the type of monitoring actually conducted (see section 246.12(i)(2) of the current regulations). Representative, or random, selection for monitoring is intended to yield a sample of vendors that is generally representative of vendors authorized by the State agency. Because vendors are selected at random rather than targeted as potential high-risk vendors, the monitoring technique generally considered to be most appropriate is routine monitoring, i.e., overt monitoring in which WIC staff identify themselves to vendor personnel. Routine monitoring provides

the State agency with an overview of vendors statewide. It also has program noncompliance-deterrent and educational functions, and can adequately address inventory, sanitation, and processing of food instruments available on the premises for inspection. For these reasons, the Department proposes to replace the term "representative monitoring" with the term "routine monitoring" in the regulations.

Section 246.12(i)(2) of the current regulations requires that the State agency implement a system to conduct representative monitoring on at least 10 percent of its authorized vendors each year. The current section 246.12(i)(1) requires that the State agency also establish a system for identifying high-risk vendors and take effective action to follow up on vendors so identified, including monitoring, further investigation, and sanctioning, as appropriate. Current regulations do not mandate high-risk identification criteria, a specific technique for monitoring high-risk vendors, or a specific number of high-risk vendor that must be monitored. The result of these deficiencies has been uneven implementation of high-risk identification and monitoring systems with often limited effectiveness in terms of investigating high-risk vendors and taking appropriate actions based on the findings.

Given that resources available for monitoring are finite, it is more logical to concentrate on vendors with a high probability of program noncompliance than on randomly selected vendors. This is also consistent with the requirement in section 203(f) of Public Law 105–336, which requires State agencies to identify vendors that have a high probability of program noncompliance and to conduct compliance investigations of these vendors. In order to ensure effective deployment of monitoring resources for high-risk monitoring, effective high-risk criteria must be used. This proposal would help ensure that such criteria are used by State agencies by requiring them to use new high-risk criteria. Under proposed section 246.12(j)(1), State agencies would continue to be required to monitor vendors. State agencies would be permitted to delegate the monitoring to a local agency or contractor, but would be required to provide supervision and training to ensure the quality and uniformity of the monitoring.

Under this proposal, State agencies would also be required to implement high-risk vendor identification criteria specified by FNS (proposed section 246.12(j)(2)). State agencies could employ indicators of their own choice in addition to those required by FNS, and this is highly recommended. Such State-established criteria would be subject to FNS approval through the State Plan process, and such approval would involve a review of the civil rights implications of the criteria.

Much has been learned over the years about high-risk vendor identification through innovation and experimentation by State agencies; two studies, (the WIC State Agency Guide to Vendor Monitoring and the Applied Research on Vendor Abuse); the investigative activities of the Office of Inspector General in connection with the National Vendor Audit; and the data reported by State agencies through the VAMP system. While much remains to be learned about high-risk vendor identification, it is now possible to specify some basic criteria that are strongly associated with documented vendor noncompliance. For example, a vendor may routinely submit food instruments at or around their maximum possible dollar value, or at the same set value for every food instrument. Given the variation in the types and brands of authorized supplemental foods that a participant may choose, a small or no cost variation among a vendor's food instrument claims signals a possible problem meriting further review. Indicators used in the WIC Program to detect potentially high-risk vendors may not violate civil rights laws by classifying vendors as potentially high-risk solely on the basis of their minority status.

Section 246.12(j)(2) of this proposal establishes FNS's authority to mandate minimum criteria. However, the criteria themselves would not be included in the regulations. Public disclosure of the high-risk criteria would undermine their usefulness in identifying high-risk vendors and would interfere with timely changes to the criteria as knowledge about the effectiveness of various criteria increases. This flexibility also ensures that State agencies are not required to use criteria that subsequent analysis reveals to be ineffective or obsolete. The Department will inform the State agencies of changes in the minimum mandated high-risk criteria through its announcement of requirements for the annual summary of the results of vendor monitoring, which has been mandated by the WIC Program regulations since 1982 and would continue to be required by section 246.12(j)(4).

While there is a need for flexibility in establishing criteria to be used as part of high-risk identification systems, the Department also recognizes the State agencies' operational need for a certain level of stability in required high-risk identification criteria. Changes in criteria inevitably require modification of data collection procedures and management information systems. Therefore, the required criteria would not be changed more frequently than once every two years, and State agencies would be informed one year in advance of all such changes. The Department does not envision a proliferation of mandatory criteria over time or the frequent replacement of criteria. The more likely event is greater specificity in established criteria as experience indicates how they can be most effectively employed.

The Department wishes to stress that the mandated criteria would represent the minimum number of criteria a State agency must utilize in its high-risk identification system. State agencies would continue to have flexibility to use criteria which they have found to be effective in addition to those criteria established by the Department.

In this proposal, State agencies would be required by section 246.12(j)(3)(i) to annually conduct compliance buys or inventory audits on at least 10 percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The number would not need to be adjusted based on fluctuations in the vendor population during the fiscal year. State agencies would be required to conduct buys or audits for all high-risk vendors up to the 10 percent minimum. Under proposed section 246.12(j)(3)(i), a State agency would be allowed to waive the investigation of a high-risk vendor if it documents that the vendor is under investigation by a Federal, State, or local enforcement agency or that another compelling reason based on good program management exists for not conducting a compliance buy or inventory audit. This would include investigations by the Department's Office of Inspector General and FSP investigations by FNS, but not a routine action like a health inspection.

If fewer than 10 percent of the State agency's total vendor population is identified as high-risk and are not exempted from monitoring, section 246.12(j)(3)(ii) would require the difference to be made up with vendors not so identified. These vendors would have to be selected at random as a means of testing the effectiveness of the State agency's high-risk identification system. Random selection also should result in a cross-section of all vendors being reviewed, thereby precluding a disparate over-selection of small and

with the delay before a vendor may apply. The Department considers that State agencies have always had the authority to limit application periods as part of their general responsibility for, and control over, vendor selection. However, data from the 1995 NAWD National Vendor Management Roundup Survey indicate that of the 75 WIC State agencies who responded, only 22 State agencies reported they accepted applications during a set time of the year.

To emphasize this authority, this proposed rule would expressly give State agencies the option of limiting their vendor authorization periods, with the condition that vendor applications must be accepted and processed at least once every three years. A State agency that chooses to exercise this option would be required in section 246.12(g)(6) to develop procedures for accepting and processing individual vendor applications outside of its established periods when it determines there would be inadequate participant access unless additional vendors are authorized.

Section 246.12(g)(7), as amended by this proposal, would also require that the State agency collect the FSP authorization number of all applicant vendors that participate in the FSP and, except when the State agency uses a competitive bidding procedure in which vendors bid on prices for authorized supplemental foods, the current shelf prices for such foods. The FSP authorization number facilitates the receipt of information on vendor history from the FSP. Although State agencies are not required to contact the FSP before authorizing vendors, the Department strongly encourages State agencies to do so and make use of this valuable information. Shelf price data provide the State agency with information it needs to establish whether the prices of authorized supplemental foods are competitive. Shelf price data can also be used by the State agency to develop and/or update its competitive price selection criteria, and to update price data used to identify overcharging.

11. Retail Food Delivery Systems: Time Limit on Vendor Agreements (Section 246.12(h)(1))

Current food delivery regulations at section 246.12(g) require that the State agency perform a review of each vendor's qualifications once every two years, but do not limit the period of the agreement. Proposed section 246.12(h)(1) would limit vendor agreements to not more than three years, and would delete the regulatory requirement for periodic reviews of vendor qualifications since fixed-period agreements would render this requirement superfluous. The Department believes that fixed period agreements enable the State agency to manage its vendor population on a periodic basis more easily and allows it to be more responsive to changing program conditions and needs than is the case with open-ended agreements. According to the 1990 Vendor Management Study, 78 percent of the geographic State agencies already authorize vendors for three years or less, making fixed-period agreements the norm. A vendor would need to reapply at the expiration of each agreement and would have to meet the selection criteria and the limiting criteria in effect at the time of reapplication.

In addition, current section 246.12(f) allows local agencies to establish agreements with vendors. Proposed section 246.12(h)(1) would require that all vendor agreements be established by the State agency. The Department believes that all vendor agreements should be executed by the State agency, rather than local agencies, to ensure consistent application of vendor authorization standards statewide. Conforming amendments would also be made to sections 246.4(a)(14)(iii) and 246.12(f) (which would be redesignated as section 246.12(h)).

12. Retail Food Delivery Systems: Vendor Agreement Specifications (Sections 246.12(h)(2) Through 246.12(h)(4))

This proposed rule would revise current section 246.12(f)(1) to make clear that State agencies may make exceptions to their standard vendor agreements only when necessary to meet unique circumstances and must document the reasons for any exception. One such legitimate reason would be adjustments to accommodate a State agency's EBT system. The proposed rule would move this requirement to section 246.12(h)(2).

The Department proposes to reorganize and modify a number of the requirements for vendor agreements. A few new provisions are proposed. The provisions that would be changed or added are discussed below in the order in which they appear in the proposed rule.

Proposed section 246.12(h)(3)(i) would make clear that vendors may accept food instruments only from participants or their proxies. This does not represent a change from current program operations.

The Department also proposes to change the provision currently at section 246.12(f)(2)(i) to address concerns raised by State agencies about problems with substitutions for supplemental foods designated on the food instrument. A sentence would be added to prohibit vendors from substituting other foods, non-food items or cash in lieu of supplemental food listed on the food instrument. The vendor would also be prohibited from giving credit, refunds, or exchanges (except for identical supplemental foods). Credit or rainchecks offered to participants are usually given because vendors have inadequate WIC food stocks on hand. Participants should not be inconvenienced by vendors who do not honor their contractual obligation to maintain adequate WIC food stocks in their stores. Ultimately, it is the participants who suffer nutritionally from an incomplete food package. In addition, many commenters expressed concern about the increased opportunity for program noncompliance when vendors allow refunds for foods purchased with WIC food instruments. The rule would permit vendors to exchange a supplemental food with an identical item. This should address instances of defective supplemental foods without compromising the nutritional benefit of the participant's food package. These revisions appear in proposed section 246.12(h)(3)(ii) and are included in this rulemaking so as to reflect longstanding WIC policy in program regulations.

This proposed rule would add a new section 246.12(h)(3)(iv) requiring that the vendor ensure the actual purchase price be entered on the food instrument prior to the signature by the participant or proxy. Many State agencies require the vendor to enter the purchase price prior to participant signature. However, a few State agencies require the participant to enter the purchase price, citing the educational value for participants. The proposed language would accommodate either situation. In addition, this provision would make clear that the provision applies to printed food instruments only. Thus, where an EBT system is used and the purchase price is scanned and entered electronically, rather than entered directly on the food instrument, the provision would not apply. Proposed section 246.12(h)(3)(iv) would also make clear a PIN may be used in EBT systems in lieu of the signature requirement.

Current section 246.12(f)(2)(ii) would be moved to section 246.12(h)(3)(viii) and would require vendors to charge State agencies no more than the price charged other customers (i.e. no surcharge may be imposed for WIC

purchases) or the current shelf price, whichever is less. Vendors subject to contract prices would be able to charge no more than the contract prices. This proposal would modify the current language to account for competitively bid vendor selection systems being used by some State agencies in which vendors are selected on the basis of specific prices they submit in response to a competitive procurement. This proposal would also make clear that in no case may the vendor charge the State agency more than the competitive price limitation.

Proposed section 246.12(h)(3)(ix) would clarify current section 246.12(f)(2)(v) concerning claims collection. Under this new section, the vendor would be required to reimburse the State agency upon demand, or have its payment from the State agency reduced, for the value of each vendor overcharge or other error. It would also allow the State agency to withhold or collect the entire redemption value of a food instrument containing an overcharge or other error, rather than just the amount of the error. Finally, it would permit the State agency to offset any amount owed by the vendor against subsequent amounts to be paid to the vendor.

Current regulations at section 246.12(f)(2)(vi) prohibit the vendor from seeking restitution from participants for food instruments not paid by the State or local agency. The Department proposes to clarify in proposed section 246.12(h)(3)(x) that the prohibition would also apply to any food instrument partially paid by the State agency and to remove the reference to the local agency in order to conform to the requirement at proposed section 246.12(h)(1) that only State agencies may enter into vendor agreements.

Current section 246.12(f)(2)(vii) requires the manager or an authorized representative of the store (such as a head cashier) to accept training on program procedures. This proposal would move this provision to section 246.12(h)(3)(xi) and modify it by requiring participation in training prior to, or at the time of, the vendor's initial authorization and at least once annually thereafter. The initial training of a new vendor would be required to take place at the site of the vendor (see proposed section 246.12(i)(1)). The proposal would also make clear that the training after the initial authorization training is to take place at a time and location designated by the State agency. However, State agencies would be required to provide vendors at least one opportunity to attend training on an alternative date and may offer additional alternative training dates. The Department encourages State agencies to be understanding of the particular scheduling limitations of vendors with small staffs when scheduling training.

The reference to "head cashier" would be removed and replaced by language requiring that a member of management participate in the training, because a head cashier may not be a store management official and thus may not possess the necessary authority to accept training responsibilities for the vendor. Further details on the proposed training requirements may be found in section 13 of this preamble and proposed section 246.12(i). Section 246.12(h)(3)(xi) would further require a vendor agreement provision putting the vendor on notice of the mandatory selection criterion in section 246.12(g)(3)(iv) making a history of failing to participate in the annual training a condition of authorization in the next authorization cycle.

This proposal has made one change to current section 246.12(f)(2)(ix). In proposed section 246.12(h)(3)(xiii), the term "utilization" of food instruments would be replaced with the term "handling" of food instruments as a clarification for the vendor.

The Department proposes to modify section 246.12(f)(2)(xiii) to require vendors to retain inventory records that are used for State or Federal tax reporting purposes, and other records as the State agency may require. State agencies would have the flexibility to determine both the length of time for retention of the inventory records and additional records that must be retained. Vendors would be required to allow access to these records by representatives of the State agency, the Department, and the Comptroller General of the United States for inspection and audit. Vendors must make these records available at any reasonable time and place. The requirement in current section 246.12(f)(2)(xii), concerning access to food instruments during monitoring visits, would be included in this access requirement. These changes would appear in section 246.12(h)(3)(xv).

Currently, section 246.12(f)(2)(xxiii) requires the vendor to notify the State agency when the vendor ceases operations or ownership changes and the agreement to be voided in cases of change of ownership. Strict interpretation of the current section 246.12(f)(2)(xxiii) has resulted in some State agencies treating corporate reorganizations as changes in ownership. Such an interpretation has resulted in terminating agreements with vendors that have undergone corporate reorganizations even though they did not affect the ownership of the corporation. This rule would make clear in section 246.12(h)(3)(xvii) that a change in business structure that does not result in a change in ownership would not trigger this provision. State agencies should focus on the substance of the transaction rather than the form of the transaction. The State agency should ensure that the vendor agreement is amended to reflect the change in business structure.

This rule would also require vendors to give notice of any change in a vendor's location. This notice is necessary in light of the role that location plays in vendor selection and limiting criteria.

In order to give State agencies sufficient time to analyze any change in ownership, location, or cessation of operations, this rule would require that vendors give 45 days notice in writing prior to the effective date of the change. In cases in which the change will trigger termination of the agreement, the lead time also would give State agencies time to seek a new vendor when necessary to ensure adequate participant access.

Proposed section 246.12(h)(3)(xviii) would specify that a vendor may be sanctioned for vendor violations in addition to claims collection. Such sanctions would be required to be in accordance with the State agency's sanction schedule.

The Department also proposes to add in section 246.12(h)(3)(xix) a provision notifying the vendor that the State agency will terminate the vendor's agreement if the State agency determines that a conflict of interest exists between the vendor and the WIC Program, at either the State or the local level. This change reflects the requirement at section 246.12(q) of the current regulations (redesignated as section 246.12(t) in the proposed rule) with the addition of a reference to conflicts with the State agency given their role in vendor authorization.

The current requirement in section 246.12(f)(2)(xiv) would be redesignated as section 246.12(h)(3)(xx) and amended to revise the reference to current section 246.23(d) regarding criminal penalties for program noncompliance.

Proposed section 246.12(h)(3)(xxi) would specify that WIC authorization is not a license, and that it does not convey property rights. Vendors would also be put on notice that in order to continue to be authorized beyond their current agreement periods they must reapply for authorization. Further, vendors would be notified that if a vendor has been disqualified for a

period of time less than the remaining term of its vendor agreement, participation in the WIC Program may be resumed upon completion of its disqualification period for the duration of the agreement without reapplying. If the vendor agreement expires before the vendor has served out the full disqualification period, and the vendor wishes to again participate in the Program after serving the disqualification, the vendor must apply to be authorized. In all cases, the vendor's new application would be subject to the State agency's selection and limiting criteria in effect at the time of the reapplication.

Proposed section 246.12(h)(4) would require that the State agency include the sanction schedule in the vendor agreement. The sanction schedule must be consistent with the current vendor sanction requirements, which would be redesignated as Section 246.12(l), and include both the mandatory vendor sanctions and any State agency vendor sanctions. This addition was made to consolidate several paragraphs that required that specific vendor sanction provisions be included in the vendor agreement. The Department recommends that State agencies include the sanction schedule as an addendum to the vendor agreement, so that it may be amended during the agreement period without having to amend the entire agreement.

The Department proposes a new section 246.12(h)(5) that would require State agencies to provide vendors a list of the actions subject to administrative review and a copy of the State agency's administrative review procedures. Proposed revisions to vendor appeals are discussed in section 22 of this preamble.

13. Retail Food Delivery Systems: Vendor Training (Section 246.12(i))

The December 1990 WIC Vendor Management Study indicated that training is the most frequently used non-investigative method for ensuring the integrity of the Program. "The WIC Files," a summary of case studies of vendor investigations produced by the vendor managers of State agencies in the Southeast Region, found that vendor training is one of the most effective controls on vendor noncompliance that a State agency can implement.

The Department proposes in section 246.12(i) to strengthen the training requirements by requiring annual training for all vendors. Such training would be required to be face-to-face at least once during the vendor's agreement period, that is, once every three years or more frequently in State agencies using shorter agreements. The face-to-face training could be conducted at any time during the agreement period except that, in instances where a vendor is new to the WIC Program, the training would be required to be provided prior to, or at the time of, initial authorization, and at the site of the new vendor.

The face-to-face training could count towards fulfillment of the annual training requirement for all vendors. In other years of the agreement period, the annual training could, for example, consist of a training video, written material such as a handbook update, or verbal instructions relayed by audiotape.

The vendor's requirements for both annual and face-to-face training would be required to be outlined in the vendor agreement (section 246.12(h)(3)(xi)), including the stipulation that a history of noncompliance with these requirements would bar reauthorization (see proposed section 246.12(g)(3)(iv)). The vendor agreement would be required to make clear that the State agency has the sole discretion to determine the date, time, and place of all training, except that the vendor would have to be given at least one opportunity to reschedule. Vendors would be required to sign a receipt that they have received training. Training could take the form of individual or group sessions and could be conducted on the vendor's premises or at a State agency-selected location, except for the initial training, which would be required to be given at the vendor's site.

The Department believes that it is important that certain basic topics be covered in the annual training sessions, whether the training is provided face-to-face or is included in some other form of presentation, such as a film or printed material. As such, the Department is proposing in section 246.12(i)(2) that the following topics must be covered annually: the purpose of the WIC Program; the varieties of supplemental food authorized by the State agency; the minimum varieties and quantities of authorized supplemental foods that must be stocked; the procedures for transacting and submitting food instruments; the vendor sanction system; the vendor complaint process; the terms of the vendor agreement; and the State agency's claims collection procedures. The primary difference between the face-to-face training that would occur once during the agreement period and the training that would occur during each of the other years of the agreement period is how the training is delivered. The content would remain the same.

At the discretion of the State agency, section 246.12(i)(3) would permit training to be conducted by a local agency, a contractor, or a vendor representative. The State agency would be required to provide supervision and instruction to ensure the uniformity and quality of the training. Proposed section 246.4(a)(xii) would require that the oversight system be described in the State Plan.

Proposed section 246.12(i)(4) would require State agencies to document the content of the annual training, including the vendor receipts required by section 246.12(h)(3)(xi). By requiring an acknowledgment of the receipt and understanding of training, the State agency retains evidence of awareness of program rules and procedures by vendors. Thus, violative vendors cannot successfully argue during administrative reviews that they were not appropriately trained on their responsibilities.

14. Retail Food Delivery Systems: Monitoring Vendors and Identifying High-Risk Vendors (Section 246.12(j))

The 1988 National Vendor Audit, while not nationally representative, is consistent with the conclusion that current regulatory requirements for representative monitoring have not been effective in controlling program noncompliance. In addition, VAMP data and findings of the WIC Vendor Issues Study indicate the need to focus more attention on high-risk vendors. Therefore, this proposed rulemaking would shift emphasis away from the less effective representative monitoring and toward high-risk monitoring. This would concentrate resources on a subset of vendors which have been identified as having a high probability of abusing the Program and is likely to be more effective in combating program noncompliance.

As discussed in section 2 of this preamble, the term "representative monitoring" has proven to be misleading. It describes the method by which vendors are selected to be monitored rather than the type of monitoring actually conducted (see section 246.12(i)(2) of the current regulations). Representative, or random, selection for monitoring is intended to yield a sample of vendors that is generally representative of vendors authorized by the State agency. Because vendors are selected at random rather than targeted as potential high-risk vendors, the monitoring technique generally considered to be most appropriate is routine monitoring, i.e., overt monitoring in which WIC staff identify themselves to vendor personnel. Routine monitoring provides

the State agency with an overview of vendors statewide. It also has program noncompliance-deterrent and educational functions, and can adequately address inventory, sanitation, and processing of food instruments available on the premises for inspection. For these reasons, the Department proposes to replace the term "representative monitoring" with the term "routine monitoring" in the regulations.

Section 246.12(i)(2) of the current regulations requires that the State agency implement a system to conduct representative monitoring on at least 10 percent of its authorized vendors each year. The current section 246.12(i)(1) requires that the State agency also establish a system for identifying high-risk vendors and take effective action to follow up on vendors so identified, including monitoring, further investigation, and sanctioning, as appropriate. Current regulations do not mandate high-risk identification criteria, a specific technique for monitoring high-risk vendors, or a specific number of high-risk vendor that must be monitored. The result of these deficiencies has been uneven implementation of high-risk identification and monitoring systems with often limited effectiveness in terms of investigating high-risk vendors and taking appropriate actions based on the findings.

Given that resources available for monitoring are finite, it is more logical to concentrate on vendors with a high probability of program noncompliance than on randomly selected vendors. This is also consistent with the requirement in section 203(f) of Public Law 105–336, which requires State agencies to identify vendors that have a high probability of program noncompliance and to conduct compliance investigations of these vendors. In order to ensure effective deployment of monitoring resources for high-risk monitoring, effective high-risk criteria must be used. This proposal would help ensure that such criteria are used by State agencies by requiring them to use new high-risk criteria. Under proposed section 246.12(j)(1), State agencies would continue to be required to monitor vendors. State agencies would be permitted to delegate the monitoring to a local agency or contractor, but would be required to provide supervision and training to ensure the quality and uniformity of the monitoring.

Under this proposal, State agencies would also be required to implement high-risk vendor identification criteria specified by FNS (proposed section 246.12(j)(2)). State agencies could employ indicators of their own choice in addition to those required by FNS, and this is highly recommended. Such State-established criteria would be subject to FNS approval through the State Plan process, and such approval would involve a review of the civil rights implications of the criteria.

Much has been learned over the years about high-risk vendor identification through innovation and experimentation by State agencies; two studies, (the WIC State Agency Guide to Vendor Monitoring and the Applied Research on Vendor Abuse); the investigative activities of the Office of Inspector General in connection with the National Vendor Audit; and the data reported by State agencies through the VAMP system. While much remains to be learned about high-risk vendor identification, it is now possible to specify some basic criteria that are strongly associated with documented vendor noncompliance. For example, a vendor may routinely submit food instruments at or around their maximum possible dollar value, or at the same set value for every food instrument. Given the variation in the types and brands of authorized supplemental foods that a participant may choose, a small or no cost variation among a vendor's food instrument claims signals a possible problem meriting further review. Indicators used in the WIC Program to detect potentially high-risk vendors may not violate civil rights laws by classifying vendors as potentially high-risk solely on the basis of their minority status.

Section 246.12(j)(2) of this proposal establishes FNS's authority to mandate minimum criteria. However, the criteria themselves would not be included in the regulations. Public disclosure of the high-risk criteria would undermine their usefulness in identifying high-risk vendors and would interfere with timely changes to the criteria as knowledge about the effectiveness of various criteria increases. This flexibility also ensures that State agencies are not required to use criteria that subsequent analysis reveals to be ineffective or obsolete. The Department will inform the State agencies of changes in the minimum mandated high-risk criteria through its announcement of requirements for the annual summary of the results of vendor monitoring, which has been mandated by the WIC Program regulations since 1982 and would continue to be required by section 246.12(j)(4).

While there is a need for flexibility in establishing criteria to be used as part of high-risk identification systems, the Department also recognizes the State agencies' operational need for a certain level of stability in required high-risk identification criteria. Changes in criteria inevitably require modification of data collection procedures and management information systems. Therefore, the required criteria would not be changed more frequently than once every two years, and State agencies would be informed one year in advance of all such changes. The Department does not envision a proliferation of mandatory criteria over time or the frequent replacement of criteria. The more likely event is greater specificity in established criteria as experience indicates how they can be most effectively employed.

The Department wishes to stress that the mandated criteria would represent the minimum number of criteria a State agency must utilize in its high-risk identification system. State agencies would continue to have flexibility to use criteria which they have found to be effective in addition to those criteria established by the Department.

In this proposal, State agencies would be required by section 246.12(j)(3)(i) to annually conduct compliance buys or inventory audits on at least 10 percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The number would not need to be adjusted based on fluctuations in the vendor population during the fiscal year. State agencies would be required to conduct buys or audits for all high-risk vendors up to the 10 percent minimum. Under proposed section 246.12(j)(3)(i), a State agency would be allowed to waive the investigation of a high-risk vendor if it documents that the vendor is under investigation by a Federal, State, or local enforcement agency or that another compelling reason based on good program management exists for not conducting a compliance buy or inventory audit. This would include investigations by the Department's Office of Inspector General and FSP investigations by FNS, but not a routine action like a health inspection.

If fewer than 10 percent of the State agency's total vendor population is identified as high-risk and are not exempted from monitoring, section 246.12(j)(3)(ii) would require the difference to be made up with vendors not so identified. These vendors would have to be selected at random as a means of testing the effectiveness of the State agency's high-risk identification system. Random selection also should result in a cross-section of all vendors being reviewed, thereby precluding a disparate over-selection of small and

minority-owned vendors. Conducting compliance buys or inventory audits on the population the State agency has identified as high-risk should result in detection of a higher percentage of violative vendors than those performed on a random sample of the entire vendor population. If the random sample and the high-risk population yield similar percentages of violative vendors and the State agency has used a large enough random sample to be statistically valid, the State agency should reassess its high-risk detection system.

When more than 10 percent of the total vendor population has been identified as high-risk, section 246.12(j)(3)(iii) would require the State agency that elects not to exceed the 10 percent minimum to prioritize vendors in order to review those with the greatest potential for program noncompliance and loss. Factors such as degree of risk of program noncompliance (e.g., point systems), location of the vendor relative to other high-risk vendors and likelihood of successful buys or audits based on past experience could be considered in establishing priorities.

The Department chose not to propose that compliance buys or inventory audits be performed on all high-risk vendors. Since high-risk identifiers can be manipulated, the high-risk identification process could be driven by the objective of minimizing compliance buy and audit activity rather than the need to identify vendors with a high probability of program noncompliance. Conversely, the identification of too many vendors as high-risk could impose an unreasonable monitoring burden on the State agency. Finally, as the WIC Program continues to grow, so will the need for compliance monitoring and accountability. Given these facts, the Department chose to propose that State agencies conduct compliance buys on at least 10 percent of their vendors. The 10 percent requirement ensures a minimum presence each year of monitoring staff as a means of deterrence, as well as detection, of program violations. When the use of percentages in setting minimum requirements for compliance buys and inventory audits results in fractional numbers, State agencies should round upward to the nearest whole number.

This proposal would no longer require State agencies to conduct any routine monitoring (currently set at a minimum of 10 percent of authorized vendors annually). The Department strongly recommends that State agencies continue to conduct routine monitoring to the extent that resources permit, but recognizes that the routine monitoring requirement must be relaxed so that State agencies can shift resources as necessary to meet the proposed high-risk monitoring requirements.

VAMP data show that one-buy investigations are not generally successful in revealing program violations such as overcharging, and that State agencies that conduct, on average, three or more compliance buys per vendor are much more likely to find occurrences of overcharging. Therefore, the Department also proposes a new requirement in section 246.12(j)(3)(i) of this rule. For investigations of high-risk vendors which result in negative compliance buys (i.e. buys in which no violations occur), the State agency would be allowed to close the investigation only after three negative compliance buys have occurred within a 12-month period. These negative compliance buys would not have to be consecutive in order for the State agency to close the investigation. For instance, the first buy could be negative, the second positive, and the third and fourth negative, which would lead to closing the investigation. Investigations containing a mix of positive and negative buys could be closed by the State agency after the third negative buy if the State agency determines that the number of positive buys was not sufficient to provide evidence of program noncompliance. An investigation of a high-risk vendor would also be considered to be complete when the State agency determines that: a sufficient number of buys has been conducted to provide evidence of program noncompliance or when an inventory audit has been completed. Investigations on randomly selected vendors would be considered complete when the State agency determines there is sufficient evidence to conclude whether the vendor is in compliance with program requirements.

Proposed section 246.12(j)(5) would establish documentation requirements for monitoring visits, including compliance buys, inventory audits, and routine monitoring visits. These are: the vendor's name and address; the date of the visit; the name(s) and signature(s) of the reviewer(s); the nature of the problem(s) detected or the observation that the vendor appears to be in compliance with program requirements. For compliance buys, State agencies would also be required to document: the date of the buy; a description of the cashier involved in each transaction; the types and quantities of items purchased; and, if available, the shelf price or contract price, and the price charged for each item purchased; and the final disposition of all items as either destroyed, donated, provided to other authorities, or kept as evidence. Recognizing that shelf prices or contract prices are sometimes difficult to obtain during a compliance buy, proposed section 246.12(j)(5) would permit the collection of shelf price or contract price data before or after the compliance buy visit. State agencies are encouraged, however, to collect shelf prices the same day as the compliance buy whenever possible to ensure that the State agency cannot be challenged during an administrative review that the prices are not truly reflective of shelf prices on the day of the compliance buy. This defense has been used by vendors during previous administrative reviews (see "The WIC Files").

The current requirement in section 246.12(i)(4) of documenting how the vendor plans to correct any detected deficiencies would be dropped. The Department believes that the requirements that State agencies assess claims and sanction vendors when appropriate adequately address the need to follow up on deficiencies noted in monitoring visits and that to require documentation of the follow-up in the monitoring report is duplicative and unnecessary. However, since the report will form the basis for any sanction, it is important that the report clearly document any deficiencies found. Thus, this proposed rule would retain that requirement.

a. Compliance Buy Techniques

Compliance buys are usually the best method of high-risk monitoring because they can identify and document a broad range of major program noncompliance. The fact that the program noncompliance is identified on-site and witnessed by the compliance monitor provides a strong case which can withstand the challenges of vendor appeal. As discussed in section 2 of this preamble, a compliance buy is an undercover visit to a vendor in which a person acting on behalf of the Program poses as a WIC participant and transacts food instruments in order to determine whether program noncompliance is taking place. The rationale and methodology for different types of compliance buys are outlined in the WIC Compliance Handbook issued in June, 1985. The most common type of buy is a "safe buy," in which only allowed foods, either in the authorized quantities or in lesser quantities, are purchased. Once the food instrument is redeemed by the vendor, it is reviewed to see if the vendor has made the appropriate charge, based on the foods actually purchased and their prices.

In other types of buys, the buyer might, for example, attempt to purchase an ineligible food, purchase a non-food item, purchase less than the full food package, exchange food instruments for credit, or sell food instruments at a discount, i.e. trafficking.

The State agency must decide what type(s) of compliance buys to employ. As stated above, in order for the State agency to conclude that a high-risk vendor is in compliance with program requirements, proposed regulations at section 246.12(j)(3)(i) would require three negative buys. However, it would be up to the State agency to decide how many positive buys must be conducted before instituting administrative action against the vendor, except in situations where one incidence of the violation (i.e. trafficking or the sale of alcohol or tobacco products) triggers a mandatory sanction.

b. Inventory Audit Techniques

The inventory audit is a method for identifying program noncompliance in which a vendor's records of foods purchased for a set period of time, such as food invoices or receipts, are examined and compared to the amount of the same foods for which the WIC Program paid the vendor for that same period of time. Proposed section 246.12(k)(3) would require claims to be assessed when vendor violations are identified as a result of an inventory audit or other review. In addition, the March 18 vendor sanction rule requires State agencies to disqualify vendors for a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time.

Inventory audits are usually more expensive to perform than compliance buys because they require staff with a higher level of training, and because the volume of information which must be reviewed in order to establish a claim may require considerably more time. Data from the 1996 VAMP report reveal that 15 State agencies conducted inventory audits during Fiscal Year 1996. These audits are useful for obtaining evidence against suspected vendors who traffic in food instruments, or otherwise request reimbursement for more food than inventory records can support, and who are not susceptible to compliance buys because they have a small clientele and will only commit violations with known customers. As a result, the Department expects inventory audits to be used in limited circumstances.

c. Workload Implications

The proposed requirement for compliance buys and inventory audits exceeds the level of compliance buys currently conducted by a number of State agencies. The Department further acknowledges that replacement of the current requirement for 10 percent representative monitoring plus an unspecified level of high-risk monitoring with the proposed 10 percent targeted monitoring requirement may not be an even exchange since both compliance buys (given the probable need for more than one at each vendor) and inventory audits are almost always more expensive than routine monitoring visits. Data from the 1996 VAMP report indicate that 33 percent of State agencies annually conducted routine monitoring at 100 percent of their authorized vendors. For some State agencies, such visits would appear to be of questionable value when compared to high-risk monitoring. The considerable resources which extensive routine monitoring consume could be focused much more effectively on the conduct of compliance buys and inventory audits. It should also be noted that some State agencies currently exceed the proposed 10 percent requirement, thus indicating that it can be met within current and anticipated levels of State administrative funding.

15. Retail Food Delivery Systems: Vendor Claims (Section 246.12(k))

Current regulations at section 246.12(r)(5) require that the State agency establish procedures to ensure the propriety of redeemed food instruments. They require the State agency to design and implement a system of food instrument review to detect suspected overcharges and to identify vendors with high levels of suspected overcharges. The 1988 National Vendor Audit demonstrated that these general regulatory requirements have been ineffective in detecting overcharges in some State agencies. Furthermore, current regulations do not explicitly require, and some State agencies do not always take, effective follow-up action on suspected and documented overcharges. The 1991 Vendor Issues Study both accounted for over $39 million in vendor overcharges and found a close correlation between overcharging and other program violations. Consequently, the Department proposes to strengthen State agencies' general approach to overcharges.

Two basic types of overcharge detection systems are currently in operation. Price-based systems use vendors' shelf or contract prices to develop edit levels that are applied to redeemed food instruments. Redemption-based systems use edit limits derived from the value of redeemed food instruments. Both systems can be designed in a number of different ways. Given the potential for significant variation in each type of system, it is not possible to make meaningful, practical comparisons between the two types, or to argue that one type will always and unconditionally be better than all varieties of the other.

Redemption-based systems are used by more State agencies than price-based systems. The quality of redemption-based systems varies significantly according to such factors as whether and how the State agency establishes vendor peer groups in order to develop a statistical methodology sensitive to differences in redemption levels between peer groups; the tolerance levels that the State agency includes in its analysis in order to minimize the incidence of flagged food instruments that do not, in fact, include overcharges; and, the frequency with which its statistical tolerances are updated. Price-based systems also differ qualitatively according to how they address a number of variables. Because of the complexity and variability inherent in such systems, the Department believes that it would not be appropriate to attempt to govern them at this time through the regulatory process. Rather, State agencies can expect the effectiveness of whatever system they choose to be subjected to greater scrutiny by FNS Regional Offices in the future as part of their review of State Plans and management evaluations. Improvement in these systems can best be pursued through careful assessment of each individual system.

The Department does, however, propose through regulation to strengthen State agencies' general approach to overcharges. First, the Department proposes at section 246.12(k)(1) to require that State agencies develop and implement a system to identify overcharges and other errors on redeemed food instruments at least quarterly. That section would also list the other types of errors the State agency's system must detect.

Proposed section 246.12(k)(2) would confirm the State agency's authority to withhold or collect from vendors the entire redemption value of food instruments that include an overcharge, as opposed to the current practice in some State agencies of denying payment for, or collecting, only the amount of the overcharge itself. A parallel provision

would be required to be contained in the vendor agreement by proposed section 246.12(h)(3)(ix).

Proposed section 246.12(k)(4) would require State agencies to initiate collection actions within 90 days of the date of detection of an overcharge or other error. The Department believes that timely claims assessment and collection will provide an incentive for vendors to correct problems within their organization in a more timely manner. While State agencies have a number of options in pursuing vendor claims, the Department encourages State agencies to exercise their authority to demand repayment of the entire redeemed value of each food instrument containing an overcharge or other error, to offset claims when possible, and to sanction vendors for chronic violations or for failure to pay claims without sufficient justification. These actions can act as powerful deterrents to overcharging.

16. Retail Food Delivery Systems: Vendor Sanctions (Section 246.12(l))

As discussed earlier in this preamble, on March 18, 1999, the Department published a final rule amending the vendor sanction provisions. Among other things, that rule establishes mandatory disqualification periods for certain vendor violations and requires any vendor disqualified from the FSP to be disqualified from WIC, unless such disqualification would result in inadequate participant access. That rule also establishes a formula for calculating civil money penalties in lieu of disqualification. These changes are reflected in the text of this rule for reference only.

Vendor and participant sanctions are currently addressed in section 246.12(k). This proposed rule would split these requirements into different paragraphs for clarity: Section 246.12(l) for vendor sanctions and section 246.12(u) for participant sanctions. Except for the deletion of the participant sanctions section, proposed section 246.12(l) is only a redesignation, with no substantive changes, from section 246.12(k) as it appeared in the March 18 final rule. Prior to the publication of the final rule, the Department published a proposed rule on April 20, 1998, which provided the public with a 90-day comment period on the provisions in current 246.12(k). Consequently, the Department will not consider any comments at this time on proposed section 246.12(l).

17. Home Food Delivery Systems and Direct Distribution Food Delivery Systems (Sections 246.2, 246.12(m), 246.12(n), 246.12(o), and 246.12(s))

The requirements for home food delivery and direct distribution food delivery systems currently found at section 246.12(s) and (t) would be moved to section 246.12(m) and (n). Both sections would be amended to delete the requirements concerning food instruments. The food instrument requirements that would apply to all food delivery systems have been grouped together in sections 246.12(p), (q), and (r); the current requirement for uniform food instruments continues to be found at section 246.12(b). The Department recognizes that food instruments are not used in all home food delivery and direct distribution food delivery systems. The food instrument provisions only apply to those food delivery systems using food instruments.

Finally, the current requirement for participant and vendor complaints (section 246.12(j)) and prompt payment of vendors (section 246.12(m)) would be moved to sections 246.12(o) and (s), respectively, and references would be added to home food delivery contractors.

18. Food Instrument Security (Section 246.12(p))

The 1988 National Vendor Audit and management evaluations indicate that some local agencies fail to maintain adequate security for food instruments received from the State agency and fail to track the food instruments they distribute to clinics. Both of these problems increase the chance of theft and misuse. Examples of the kind of misuse that can occur are provided in "The WIC Files." These include employee fraud and collusion. The Department believes that local agencies and clinics must take appropriate measures to keep food instruments (whether manual or computer-generated, and including on-line check stock or EBT cards) secure. In response to this concern, the Department is proposing to strengthen the current requirement at section 246.12(l) that State agencies control and provide accountability for the receipt and issuance of food instruments. Proposed section 246.12(p) would require the State agency to develop minimum standards for ensuring the security of food instruments, including: maintenance by the local agency of a perpetual inventory recording receipt of food instruments from the State agency and, if applicable, distribution to clinics; monthly physical inventory of food instruments on hand by the local agency and, if applicable, by clinics; reconciliation of perpetual and physical inventories of food instruments; and maintenance of all such food instruments under lock and key by the local agency and clinic, except for supplies needed for immediate use. State agencies should also be mindful of the various security risks associated with data files, such as fabrication of records and food instruments. The reference to the control of supplemental foods would be dropped as this is already covered in current section 246.12(t) (proposed section 246.12(n)).

19. Food Instrument Disposition (Sections 246.12(q), 246.13(h), and 246.23(a)(4))

Current regulations at section 246.12(n) require State agencies to identify disposition of all food instruments as validly redeemed, lost or stolen, expired, duplicate, voided, or not matching issuance records. State agencies are also required to be able to demonstrate the capability to match redeemed food instruments with valid certification records. As the 1988 National Vendor Audit observed, State agencies do not always attempt to account for all redeemed food instruments, and they sometimes fail to take effective follow-up action on instruments found not to have been validly redeemed. The reconciliation process as established in section 246.12(n) is itself deficient because it does not require that the accountability loop be completed by determining that all redeemed food instruments are supported by a valid certification record. This section also refers to "reconciliation of each food instrument issued with food instruments redeemed and adjustment of previously reported financial obligations to account for actual redemptions and other changes in the status of food instruments." Finally, the term "reconciliation" itself has been the source of confusion among State agencies.

First, these provisions would be moved to section 246.12(q) and the term "reconciliation" would be replaced by the more general phrase "accounting for the disposition of," which is generally applicable to all of the activities addressed in this paragraph of the regulations. State agencies would continue to be required to account for the disposition of all food instruments as either issued or voided, and as redeemed or unredeemed. The first two categories would allow the State agency to identify which food instruments are paid or deobligated. Instead of the

current requirement in section 246.12(n) that obligations be adjusted to account for actual redemptions, subsection (h) of the financial management system requirements in proposed section 246.13 would be amended to require the State agency to adjust projected expenditures to account for redeemed food instruments and other changes. The current food instrument reconciliation requirement in section 246.13(h) would be removed as duplicative. Second, proposed section 246.12(q) would require State agencies to match redeemed food instruments not only against issuance information, but also against a current masterfile of enrolled persons. Typically, the food instrument would contain a unique serial number, as currently required, and a participant identification number. A successful identification of the disposition of all food instruments would entail matching these numbers on the redeemed food instrument with their counterparts in the issuance report or file, and matching the participant identification number on the food instrument against the enrollment master file. Achieving a complete accounting for all food instruments is not expected to require State agencies to radically alter their current structure of reports. For most State agencies, it is the enrollee's certification record which triggers the production of each enrollee's food instruments and an issuance record. Other State agencies may find it necessary to reprogram their systems in order to link certification or enrollment records with food instrument issuance and redemption. In an EBT system, the PIN encoded on the card would be required to be linked to the issuance and enrollment record to indicate that a redemption was valid. Merely having the "capability to reconcile" redeemed food instruments against valid certifications, as current rules at section 246.12(n)(2) require, does not provide an adequate level of accountability. The Department believes that this final step must actually be carried out.

In the past, some State agencies that do not attempt to account for the disposition of all redeemed food instruments have misinterpreted section 246.23(a)(4) in the current regulations, which allows the reconciliation process to be considered complete when "all reasonable efforts have been devoted to reconciliation and 99 percent or more of the food instruments have been accounted for." This language has incorrectly been interpreted to mean that State agencies may stop their reconciliation efforts when they have reached the 99-percent level. The current regulatory language was meant only to acknowledge that accounting for 100 percent of redeemed food instruments may not be possible due to such factors as mutilation of food instruments and coding errors. The Department wishes to stress that State agencies' efforts to account for the disposition of food instruments have never been considered complete when 99 percent of food instruments had been accounted for through reconciliation. State agencies are expected to account for the disposition of 100 percent of their food instruments utilizing all reasonable management efforts. Therefore, proposed section 246.23(a)(4) would both continue to assert FNS's intention to establish claims against a State agency for *all* food instruments which have not been accounted for.

In order to account for all food instruments, the State agency would be required in proposed section 246.12(q) to identify food instruments as either issued or voided, and as either redeemed or unredeemed. Redeemed food instruments would be required to be identified as validly issued, lost, stolen, expired, duplicate, or not matching valid issuance and enrollment records. FNS would consider the process of accounting for the disposition of food instruments complete *only if* the State agency can demonstrate that *all reasonable management efforts have been made to account for the disposition of 100 percent of its food instruments.*

State agencies should be aware that FNS will carefully scrutinize their efforts to identify the disposition of food instruments and will establish a claim against any State agency, pursuant to section 246.23(a)(4), which has not accounted for the disposition of all redeemed food instruments, including appropriate follow-up action on food instruments that cannot be matched against valid issuance or certification records, unless the State agency can demonstrate that it has: made every reasonable effort to meet this requirement; has identified the reasons for its inability to account for the disposition of each redeemed food instrument; and, to the extent considered necessary by FNS, has undertaken appropriate actions to improve its procedures.

20. Issuance of Food Instruments and Supplemental Foods (Section 246.12(r))

Proposed section 246.12(r) would consolidate the existing provisions in Sections 246.12 (o), (p), (r)(7), and (r)(8) concerning the issuance of food instruments and supplemental foods. The only change would be to add a reference to supplemental foods in the requirement that no more than a three-month supply of food instruments may be issued to any participant at one time.

21. Conflict of Interest (Section 246.12(t))

Current regulations at section 246.12(q) require only that the State agency ensure the absence of conflict of interest between any local agency and the vendor(s) under the local agency's jurisdiction. Section 246.12(t) of this proposal would also require the absence of conflict of interest between the State agency and any vendor. Reference to the State agency would be added in recognition of the pivotal role the State agency plays in authorizing and monitoring vendors. While the State procurement rules governing home food delivery contracts likely include conflict of interest provisions, this provision would make explicit the conflict of interest prohibition for home food delivery contractors.

In this context, a conflict of interest is generally where an individual employed by the State agency or local agency has an interest in a vendor. The interest may be financial, may relate to past, current, or future employment with the vendor, or may arise from a family relationship. Such circumstances create, at minimum, the appearance or potential that the employee's official actions on behalf of the WIC Program will be improperly influenced by the interest in the vendor. This discussion is provided for guidance purposes, and is in no way exclusive. The Department believes that this is an area which is based more appropriately on State laws or regulations governing conflict of interest.

22. Participant Violations and Sanctions (Section 246.12(u)) and Claims Against Participants (Section 246.23(c))

Participant sanctions are currently found in section 246.12(k)(9) and would be moved to section 246.12(u)(2). The Department proposes to increase the maximum disqualification period for participant violations from 3 months to 1 year and to consider actions by proxies as participant violations. Current regulations require that State agencies establish a maximum disqualification period of 3 months for participants. Many State agencies believe this maximum is ineffective in deterring participant program noncompliance. In addition, the current regulations do not address program noncompliance by proxies. Some forms of participant violations require

collusion on the part of the proxy (which may include a parent, a caretaker, or another person designated to accept and redeem food instruments—see the discussion of the proposed definition of proxy in section 2 of this preamble). Examples of this kind of collusion are given in "The WIC Files."

The Department acknowledges that some may view the proposed 1-year maximum as contrary to program goals because it could adversely affect the health of participants. However, the Department wishes to point out violative participants and proxies subvert the purpose of the Program so that it cannot achieve its objectives. Since WIC benefits diverted to other purposes do not benefit participants in the intended way, a longer disqualification cannot be expected to have additional serious negative consequences on a participant's nutritional status than continued program noncompliance would have. This is regrettably true whether the program noncompliance is by the participant (e.g., a pregnant woman trafficking food instruments), the participant's parent or caretaker in the case of an infant or child, or another type of proxy. WIC funds are better spent on participants whose health and well-being can be improved through the Program.

The Department is also proposing to expand the list of participant violations in current section 246.12(k)(9) to include dual participation (now section 246.12(u)(1)). Dual participation, as defined in section 246.2 entails "simultaneous participation in the Program in one or more than one WIC clinic, or participation in the Program and in the Commodity Supplemental Food Program (CSFP) during the same period of time." Dual participation is discussed in more detail in section 5 of this preamble.

Section 17(f)(14) of the Child Nutrition Act (42 U.S.C. 1786(f)(14)) requires the State agency to recover the value of benefits provided to participants who have defrauded the Program to the extent that recovery is cost-effective. This mandate is implemented in section 246.23(c) of current regulations. However, the limit on participant disqualifications, be it the current three months or the proposed year, may hinder the State agencies' collection efforts because a person who subsequently becomes eligible may reenter the Program after having been disqualified for improper receipt of benefits without first making restitution. Proposed section 246.12(u)(2) would require State agencies to disqualify participants for one year in cases where a participant violation gives rise to a claim. In recognition of the hardship that such a disqualification could place on an infant or child participant, who could not have committed the violation, the proposed rule would require the State agency to permit another proxy to be designated before disqualifying an infant or child participant. In addition, under the proposal, the State agency could permit a disqualified participant to reapply if full restitution is made prior to the end of the disqualification period.

The Department wishes to clarify the difference between a participant sanction and a participant claim. A participant sanction is an administrative action taken in response to program violations in order to protect the integrity of the Program. A participant claim is an assessment of financial liability for the value of improperly obtained program benefits. This proposal would also revise section 246.23(c)(1) to require State agencies in all cases to send a letter to the participant requesting payment for improperly obtained program benefits and indicating that, if the request for repayment is not appealed or is unsuccessfully appealed, the participant must be disqualified for one year, unless the participant is an infant or child for whom an alternate proxy acceptable to the State agency is found. If full restitution is made prior to the end of the disqualification period, the State agency would be allowed to permit the participant to reapply for the Program. If the participant fails to make payment in response to this letter, the State agency would be required to assess the cost-effectiveness of each additional step in the collection process against the value of the benefits involved and to take such actions until the recovery process ceases to be cost-effective. To help facilitate resolution of such claims, the Department proposes to permit State agencies to allow participants for whom financial restitution would cause undue hardship to perform in-kind service, determined by the State agency, in lieu of monetary repayment. While the Department acknowledges that collection efforts could in many instances prove prohibitively expensive, it believes that at least an initial, low-cost effort would always be cost-effective. This paragraph would continue to permit the State agency to delegate the responsibility for the collection of participant claims to the local agency, though it would be moved to proposed section 246.23(c)(3).

23. Vendor Appeals (Section 246.18)

Current regulations at section 246.18 establish minimum requirements for vendor and local agency appeal rights and State agency administrative review procedures. The procedural requirements are intended to establish a simple and fair appeal process at a reasonable cost to State agencies. Some State agencies have significantly exceeded the regulatory procedural requirements, for example, by requiring that the decision makers be administrative law judges and providing for a verbatim transcription of their administrative review proceedings. In response to this situation, the Department's Office of Inspector General recommended in the 1988 National Vendor Audit that the Department mandate standard administrative review procedures in order to limit costs. This would prevent State agencies from exceeding the minimum procedures required by the current regulations. The Department continues to believe that the procedures mandated by program regulations are adequate. While the Department is not proposing to prohibit the use of more elaborate procedures, the Department does not consider such procedures to be an effective use of the limited nutrition services and administrative funds and encourages State agencies to develop administrative review procedures that stick to the minimum requirements in this section.

To support State agency efforts to control appeal costs, make the process more manageable, and ensure fairness to vendors, the Department is proposing to: (1) Limit the types of State agency actions subject to administrative review; (2) establish abbreviated administrative review procedures for certain adverse actions; and (3) relax review procedure timeframes.

Current regulations at section 246.18(a)(1) allow vendors and local agencies to appeal a denial of an application for authorization, a disqualification from the Program, and "any other adverse action which affects participation." The Department considers the phrase "any other adverse action which affects participation" to be inappropriate for vendor appeals. A vendor could, for example, seek to appeal a State agency decision to authorize another vendor in the area on the grounds that the action would reduce the first vendor's volume of WIC business. In situations such as this, the State agency's responsibility is to ensure adequate participant access to the Program, not to protect the individual interests of a vendor. Thus, the

Department proposes to limit the State agency actions that are subject to administrative review. Except in certain circumstances discussed herein, these actions include: (1) A denial of authorization based on selection criteria or the State agency's determination in accordance with proposed section 246.12(g)(4) that the vendor is attempting to circumvent a sanction, (2) a termination of an agreement for cause, (3) a disqualification, and (4) the imposition of a fine or a civil money penalty in lieu of disqualification. Vendors that believe their civil rights have been violated in the authorization process may file complaints under the authority of civil rights legislation.

Questions have also arisen about whether fines imposed by courts may be appealed to the State agency. Only those actions taken by the State agency are subject to administrative review by the State agency. Thus, any sentence or civil judgment imposed by a court may only be pursued in the courts. Conversely, fines or civil money penalties in lieu of disqualification imposed by a State agency are subject to review by the State agency.

Readers should note, however, that to the extent that the amount of a fine or civil money penalty is precisely set in the State agency's sanction schedule, the decision maker would not have the authority to alter the amount of the fine or civil money penalty on appeal unless the decision maker found that either it had been incorrectly calculated or the vendor did not commit the cited violation.

Proposed section 246.18(a)(1)(ii) would list the adverse actions that would receive an abbreviated administrative review: (1) A denial of authorization based on the selection criteria set out in proposed section 246.12(g)(3)(iii) or (vi), (2) a denial of authorization based on the State agency's limiting criteria or because the vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under section 246.12(g)(6), (3) a termination of an agreement because of a change in ownership or location or cessation of operations, and (4) a disqualification based on the imposition of an FSP civil money penalty for hardship.

These actions each present circumstances in which the issue on appeal is a very narrow one. For example, the selection criterion at section 246.12(g)(3)(iii) would prohibit authorization of a vendor if the vendor or certain persons associated with the vendor had been convicted of the listed crimes. The only issue in such an appeal would be whether the vendor or a person currently associated with the vendor actually was convicted of the crime. Recognizing that errors can be made, this rule would require State agencies to provide such vendors an opportunity to point out, for example, that the conviction had been overturned or that the convicted person was no longer associated with the vendor. To reduce the costs of administrative reviews required by the regulations, this proposed rule would require State agencies to establish abbreviated administrative review procedures for such actions.

Proposed section 246.18(c) would specify the procedures for abbreviated administrative reviews. As with the current procedures, the State agency would be required to provide the vendor written notification of the adverse action, the procedures to follow to appeal the action, and the cause(s) and effective date of the action. The State agency would also be required to provide the vendor an opportunity to provide a written response. The State agency would not be required to conduct a full administrative review where the vendor is provided with an opportunity to confront and cross-examine adverse witnesses. All that would be required is a review of the information given to the vendor forming the basis for the adverse action, the vendor's response, and relevant statutes, regulations, policies, and procedures. The decision maker would not have to be independent from the State agency. The decision maker would only have to be someone different from the person who made the initial decision. These abbreviated administrative review procedures would provide the vendor an opportunity to appeal actions in which the decision is largely systematic. At the same time, it would eliminate the need for the State agency to provide a more lengthy and costly full administrative review.

Proposed section 246.18(a)(1)(iii) lists those actions that would not be subject to administrative review. As discussed in section 8 of this preamble and above in this section, while the validity or appropriateness of the limiting and selection criteria would not be subject to review, a decision to deny authorization would be subject to review. Similarly, the March 18 vendor sanction rule included a provision that participant access determinations are not subject to review. These provisions ensure that State agencies have the necessary discretion to establish program operating parameters. Limiting and selection criteria and the criteria for making participant access determinations would all be included in the State Plan. Concerns about these criteria are properly raised during the public comment phase of the State Plan process.

Some State agencies are beginning to implement vendor selection procedures in which applicant vendors submit competitive bids for a specified number of authorizations in a particular geographical area. Under this proposed rule, any time a State agency's authorization determinations are subject to the State agency's procurement procedures, nonselection would not be subject to review. In this situation, a separate administrative review would be redundant and could disrupt the procurement procedures.

Similarly, the Department proposes to eliminate administrative review of vendor claims given the requirement in current section 246.12(r)(5)(iii) (redesignated as section 246.12(k)(5) in this proposal) that State agencies provide vendors an opportunity to correct or justify the error giving rise to a claim. An administrative review in this instance would be redundant.

Under current sections 246.18(b)(1) and (9), timeframes are established for the advance notice of adverse action (15 days) and the notification of the appeal decision (within 60 days of the date of receipt of the vendor's request for administrative review). While the advance notice requirement is easily met, the 60-day timeframe for decisions has proven difficult for some State agencies, particularly those which must rely on a State board of appeals or other external organizational unit that is beyond the State agency's control. Therefore, the Department is proposing in section 246.18(b)(9) to extend the time limit for providing decisions on vendor—but not local agency—appeals to 90 days.

While there is some doubt that 90 days still may not be sufficient in some State agencies to render decisions on vendor appeals, other State agencies have been clearly able to meet the timeframe. The Department does not believe that there is sufficient justification for extending the time period beyond 90 days, nor would lengthening the time period promote the goal of improving and streamlining the appeals process. Rather, State agencies that have problems in this area should work to improve the efficiency of their appeals system. The Department hopes that the proposed limitations on actions subject to administrative review and the new abbreviated administrative review procedures will help State agencies reduce their costs for administrative

reviews and better target their efforts and thus assist in timely decisions on vendor appeals.

At proposed section 246.18(b)(5), the Department would provide State agencies the opportunity to conduct examinations *in camera*, i.e., behind a protective screen or other device, to protect the identity of WIC Program investigators. Protecting the identity of the investigator is paramount in conducting covert investigations and revealing the investigators identity during an administrative review would compromise future investigations.

Proposed section 246.18(b)(7) would strengthen current language regarding the disclosure of information to appellants. Current regulations at section 246.18(b)(7) afford the appellant vendor or local agency "the opportunity to review the case record prior to the hearing." The vendor's "case record," or file, may contain investigative information, i.e. information regarding how the State agency established the vendor's high-risk status, which, if released, would jeopardize efforts to combat program noncompliance. Thus, proposed section 246.18(b)(7) would clarify that the appellant vendor or local agency is allowed to examine only "the evidence upon which the State agency's action is based." This restriction is consistent with due process rights. Appellant vendors would, under the confidentiality provisions proposed in section 246.26(e)(2), have access to information otherwise protected by current section 246.26(d), to the extent that such information is part of the evidence upon which the action being appealed is based.

The local agency adverse actions subject to administrative review are unchanged in this proposal, except they would be consolidated under 246.18(a)(2) with the current provision regarding the effective date of local agency adverse actions. In addition, sections 246.18 would be revised throughout to differentiate between a vendor or local agency which "appeals" an action and the State agency which "reviews" an action.

Finally, the current requirements in sections 246.18(c) and (d) would be redesignated as sections 246.18(d) and (f) and a new section 246.18(e) would be added. Current section 246.18(d) requires State agencies to notify appellants of the availability of any further administrative review within the State agency. The Department believes that this requirement duplicates the current requirement in section 246.18(b)(2) and proposed requirement in section 246.18(c) that the State agency inform vendors and local agencies of their opportunity to appeal the adverse action and could be viewed as encouraging State agencies to provide an additional level of administrative review. This section would be revised to make clear that the decisions rendered under both the full and abbreviated administrative review procedures are the final State agency action. If the action being appealed has not already taken effect, the appeal decision would be required to indicate the effective date of the action. The Department is also proposing to clarify the State agency requirements regarding judicial review. Instead of the current regulatory language that requires the State agency "to explain" the right to pursue judicial review, the Department proposes to require the State agency "to inform" appellants that they may be able to pursue judicial review. Review of State agency actions is a matter of State law and may vary depending on the action taken. The Department believes that the State agency should not be put in the position of determining the appropriate avenue of judicial review for an appellant vendor or local agency.

24. State Agency Corrective Action Plans and Delegation of Monitoring to Local Agencies (Sections 246.19(a)(2) and 246.19(b)(2)).

Under current regulations at section 246.19(a)(3)(ii), the State agency is required to submit a corrective action plan with implementation timeframes in response to management evaluations only when FNS has notified the State agency of its intention to impose a sanction. However, management evaluation findings may be significant and require timely corrective action even when they do not justify imposition of a sanction. As reported in the 1988 National Vendor Audit, some State agencies do not take timely action to correct deficiencies identified by FNS. Therefore, the Department is proposing in section 246.19(a)(2) that the State agency be required to submit a corrective action plan, including implementation timeframes, within 60 days of receipt of a management evaluation report containing negative findings even where the findings do not justify a sanction. The Department believes 60 days should be sufficient time to develop a corrective action plan. Extending the timeframe would unnecessarily prolong the time before corrective action could be achieved.

In addition, proposed section 246.19(b)(2) would require monitoring of local agencies to include, if the State agency delegates any vendor training or monitoring to local agencies, the local agency's effectiveness in carrying out these responsibilities.

25. Areas of Special Focus during Local Agency Reviews (Sections 246.19(b)(5) and (6))

Current regulatory requirements for coverage in local agency reviews at section 246.19(b)(2) are broad and very general in nature. State agencies are required, for example, to include "certification" and "accountability" in their local agency reviews. The Department believes that effective monitoring depends on comprehensive coverage. However, FNS may, from time to time, identify a problem in a more precisely defined aspect of local agency operations and may want State agencies to review this aspect intensively. For example, within the broad category of "certification," there may be a need to focus attention on income eligibility determination procedures. Security of food instruments may be identified within the broader area of "accountability" as requiring in-depth monitoring. These targeted areas would be areas identified through management evaluations, audits, or other means which document the need for intensified monitoring and corrective action, as appropriate. Therefore, the Department is proposing in section 246.19(b)(5) to require State agencies to conduct in-depth review of areas specified by FNS through FNS policy memoranda or other guidance. Under this proposal, FNS could also require State agencies to implement a standard form or protocol for such focus-area reviews and to report the results to FNS. No more than two such areas would be stipulated for any fiscal year, and they would be announced at least six months before the beginning of the fiscal year. This provision would reflect the current requirement that State agencies provide FNS special reports on program activities.

The Department wishes to stress that this requirement does not mean that State agency reviews of local agencies should be less comprehensive than in the past. Full, comprehensive reviews of local agencies are necessary to identify deficiencies. This proposal simply enables FNS to gather information on areas of special emphasis in greater depth than might otherwise be possible. Areas of focus would change periodically, and there also could be fiscal years for which FNS does not identify any such areas.

In addition, section 246.19(b)(6) would be amended to require that local agencies submit to State agencies, within 45 days of written notification of deficiencies, a written corrective action

plan which explains how all of the identified problems will be addressed and stipulates a timeframe for completion of each corrective action. It is important that when problems are identified that they be corrected in a timely manner. State agencies are expected to pursue timely follow-up action to assure that planned corrective actions are actually taken.

26. Confidentiality of Vendor Information (Section 246.26(e))

The Department is proposing to add a new provision to section 246.26 of the WIC regulations addressing the confidentiality of vendor information. Heretofore, the WIC Program regulations have been silent on the issue of the confidentiality of vendor information, and provisions protecting vendor information from disclosure are still needed. The purpose of protecting vendor information is two-fold: to gain vendor cooperation and to aid in the control and monitoring of vendors.

Under this proposal, State agencies would be required to restrict the disclosure of information obtained from vendors or generated by the State agency on vendors (other than the vendor's name, address, and authorization status) to persons directly connected with the administration and enforcement of any Federal or State law, including the WIC Program and the FSP, and to the Comptroller General of the United States. While this would authorize local agencies under the State agency's jurisdiction, other WIC state and local agencies, and their contractors to receive vendor information, the proposed rule would require State agencies to enter into a written agreement with any non-Federal agency before disclosing any vendor information. The agreement would be required to specify that they will use or disclose such information only for authorized purposes directly connected with the administration or enforcement of a Federal or State law.

In accordance with the requirements in current sections 246.18(b)(1) and (7) that the State agency disclose to vendors the cause of the adverse action and provide them an opportunity to review the case record, proposed section 246.26(e)(2) would permit the disclosure to appellant vendors of information that forms the basis of an adverse action subject to administrative review. This would not include information concerning other vendors or information that would compromise the State agency's vendor monitoring system. While information about other vendors, such as average redemption data, might have been used to assist the State agency in targeting vendors for investigation, the Department does not consider such information as the basis for the State agency's action. Similarly, information that would compromise the State agency's monitoring system, such as the names of investigators, would not be considered to be information on which an action is based.

Efforts to control program noncompliance in the WIC Program are significantly enhanced by the State agency's access to information on vendors who also participate in the FSP. Section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) permits the FSP to disclose information provided by retail food stores and wholesale food concerns in order to gain or maintain authorization in the FSP to WIC State agencies for purposes of administering the provisions of the Child Nutrition Act and its implementing regulations. Proposed Section 246.26(f) would reflect this limitation and make clear that "administering the provisions of the Child Nutrition Act" includes both administering and enforcing the WIC Program. Accordingly, this information could not be disclosed to other vendors or the general public.

The FSP may share with WIC State agencies other information about authorized retailers that is not obtained from FSP retailer applications and is therefore not protected under section 9(c) of the Food Stamp Act. This information, e.g., results of investigations, along with information the WIC State agency collects directly from WIC vendors and its analysis of such material, contribute to the WIC State agency's vendor selection and high-risk detection systems. These systems can be effectively operated only if such data is protected from release to WIC vendors or other members of the public. State agency experience has shown that many vendors will commonly attempt to gain access to this information during the administrative review process. Such information must be kept confidential, so that vendors cannot secure unfair competitive advantages.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definitions of *Authorized Supplemental foods, Compliance buy, High-risk vendor, Home food delivery contractor, Inventory audit, Proxy, Routine monitoring, Vendor, Vendor authorization, Vendor limiting criteria, Vendor overcharge, Vendor selection criteria, Vendor violations,* and *WIC* are added in alphabetical order to read as follows:

§ 246.2 Definitions.

* * * * *

Authorized supplemental foods means those supplemental foods authorized by the State or local agency for a particular participant.

* * * * *

Compliance buy means a covert, on-site investigation in which a representative of the Program poses as a participant, transacts one or more food instruments, and does not reveal his or her identity during the visit.

* * * * *

High-risk vendor means a vendor identified as having a high probability of violating program requirements through application of the criteria established in § 246.12(j)(2) and any additional criteria established by the State agency.

Home food delivery contractor means a sole proprietorship, a partnership, a cooperative association, or a corporation that contracts with a State agency to deliver authorized supplemental foods to the residences of participants under a home food delivery system.

* * * * *

Inventory audit means the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of authorized supplemental foods to provide participants the quantities specified on food instruments redeemed by the vendor during a given period of time.

* * * * *

Proxy means any person designated by a participant to act on her behalf and, in the case of an infant or child, the parent or caretaker who applies on behalf of the infant or child.

* * * * *

Routine monitoring means overt, on-site monitoring during which

representatives of the Program identify themselves to vendor personnel.

* * * * *

Vendor means a sole proprietorship, a partnership, a cooperative association, or a corporation operating an individual retail site authorized to provide authorized supplemental foods to participants under a retail food delivery system. Each individual retail outlet under a business entity which operates more than one site constitutes a separate vendor. Each vendor must have a fixed location, except when the authorization of mobile stores is necessary to meet the special needs described in the State agency's State Plan in accordance with § 246.4(a)(14)(xiv).

Vendor authorization means the process by which vendors who apply or subsequently reapply for authorization are assessed, selected, and enter into an agreement with the State agency.

Vendor limiting criteria means criteria established by the State agency to determine the maximum number and distribution of vendors to be authorized in its jurisdiction pursuant to § 246.12(g)(2).

Vendor overcharge means a pattern of intentionally or unintentionally charging participants more for authorized supplemental foods than non-WIC customers or charging participants more than the current shelf or contract price.

Vendor selection criteria means the criteria in § 246.12(g)(3) and any additional criteria established by the State agency to select individual vendors for program authorization.

Vendor violation means any intentional or unintentional actions of a vendor (with or without the knowledge of management) which violate the Program statute or regulations or State agency policies or procedures.

WIC means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by section 17 of the Child Nutrition Act of 1966, 42 U.S.C. 1786.

3. In § 246.3:

a. Paragraph (e)(5) is redesignated as paragraph (e)(6); and

b. A new paragraph (e)(5) is added to read as follows:

§ 246.3 Administration.

* * * * *

(e) * * *

(5) For State agencies which anticipate 50 or more authorized vendors as of October 1 of each fiscal year, one full-time or equivalent vendor management specialist. State agencies which anticipate fewer than 50 authorized vendors as of that date shall designate a staff person responsible for vendor management.

* * * * *

4. In § 246.4:

a. Paragraphs (a)(14)(ii), (a)(14)(iii), (a)(14)(iv), and (a)(14)(vi) are revised;

b. In paragraphs (a)(14)(vii), (a)(14)(viii), and (a)(17) are amended by removing the words "food vendors" and adding in their place the word "vendors";

c. In paragraph (a)(14)(ix) the word "and" at the end is removed;

d. In paragraphs (a)(14)(x) and (xi) the periods at the end are removed and semicolons added in their place;

e. New paragraphs (a)(14)(xii) through (a)(14)(xv) are added; and

f. The first sentence of paragraph (a)(15) is revised.

The revisions and additions read as follows:

§ 246.4 State plan.

(a) * * *

(14) * * *

(ii) Vendor limiting criteria and any vendor selection criteria established by the State agency in addition to the selection criteria required by § 246.12(g)(3);

(iii) A sample vendor agreement, including the sanction schedule;

(iv) The system for monitoring vendors to ensure compliance and prevent fraud, waste, and program noncompliance, and the State agency's plans for improvement in the coming year. The State agency shall also include the criteria it will use to determine which vendors will receive routine monitoring visits. State agencies which intend to delegate any aspect of vendor monitoring responsibilities to a local agency or contractor shall describe the State agency supervision and training which will be provided to ensure the uniformity and quality of vendor monitoring efforts;

* * * * *

(vi) Where food instruments are used, a facsimile of the food instrument and a description of the system the State agency will use to account for the disposition of food instruments in accordance with § 246.12(q);

* * * * *

(xii) The procedures the State agency will use to train vendors in accordance with § 246.12(i). State agencies which intend to delegate any aspect of training to a local agency, contractor, or vendor representative shall describe the State agency supervision and instruction which will be provided to ensure the uniformity and quality of vendor training;

(xiii) A description of the State agency's system for ensuring food instrument security in accordance with § 246.12(p);

(xiv) A description of the State agency's participant access determination criteria consistent with § 246.12(l)(8); and

(xv) The special needs necessitating the authorization of mobile stores, if the State agency chooses to authorize such stores.

(15) Plans to prevent and identify dual participation in accordance with § 246.7(l)(1)(i) and (l)(1)(ii) * * *

* * * * *

5. In § 246.7:

a. In paragraph (h)(1)(i), the reference to "§ 246.12(k)(2)" is removed, and a reference to "§ 246.12(u)" is added in its place; and

b. Paragraph (l)(1)(i) through (l)(1)(iv) is revised.

The revision reads as follows:

§ 246.7 Certification of participants.

* * * * *

(l) * * *

(1) * * *

(i) In conjunction with WIC local agencies, the prevention and identification of dual participation within each local agency and between local agencies under the State agency's jurisdiction, including the quarterly identification of dual participation;

(ii) In areas where a local agency serves the same population as an Indian State agency or a CSFP agency, and where geographical or other factors make it likely that participants travel regularly between contiguous local service areas located across State agency borders, entering into an agreement with the other agency for the detection and prevention of dual participation. The agreement must be made in writing and included in the State Plan;

(iii) Immediate disqualification from one of the programs or clinics for participants found in violation due to dual participation;

(iv) In cases of dual participation resulting from intentional misrepresentation, the collection of improperly issued benefits in accordance with § 246.23(c)(1) and disqualification from both programs in accordance with § 246.12(u)(2).

* * * * *

6. Section 246.12 is revised to read as follows:

§ 246.12 Food delivery systems.

(a) *General.* This section sets forth design and operational requirements for food delivery systems. In recognition of emergent electronic benefits transfer (EBT) technology, FNS may, on a case-by-case basis, modify regulatory provisions which FNS determines

unnecessarily duplicate the accountability capabilities inherent in the particular EBT system.

(1) The State agency is responsible for the fiscal management of, and accountability for, food delivery systems under its jurisdiction.

(2) The State agency shall design all food delivery systems to be used by local agencies under its jurisdiction.

(3) FNS may, for a stated cause and by written notice, require revision of a proposed or operating food delivery system and will allow a reasonable time for the State agency to effect such a revision.

(4) All contracts or agreements entered into by the State or local agency for the management or operation of food delivery systems shall be in conformance with the requirements of Part 3016 of this title.

(b) *Uniform food delivery systems.* The State agency may operate up to three types of food delivery systems within its jurisdiction—retail, home delivery, or direct distribution. Each system shall be procedurally uniform within the jurisdiction of the State agency and shall ensure adequate participant access to supplemental foods. When used, food instruments shall be uniform within each type of system. The State agency shall permit only authorized vendors, home food delivery contractors, and direct distribution sites to redeem food instruments.

(c) *Free of charge.* State and local agencies shall provide participants the Program's supplemental foods free of charge.

(d) *Compatibility of food delivery system.* The State agency shall ensure that the food delivery system(s) selected is compatible with delivery of health and nutrition education services to participants.

(e) *Retail food delivery systems: General.* Retail food delivery systems are systems in which participants obtain supplemental foods by submitting a food instrument to an authorized vendor.

(f) *Retail food delivery systems: Food instrument requirements.* (1) State agencies using retail food delivery systems shall use food instruments and the food instruments shall comply with the requirements of this paragraph (f).

(2) Each printed food instrument shall clearly bear on its face the following information:

(i) The supplemental foods authorized to be obtained with the food instrument;

(ii) The first date on which the food instrument may be used by the participant to obtain supplemental foods.

(iii) The last date by which the participant may use the food instrument to obtain supplemental foods. This date shall be a minimum of 30 days from the first date on which it may be used, or, for the participant's first month of issuance, it may be the end of the month or cycle for which the food instrument is valid. Rather than entering a specific expiration date on each instrument, all instruments may be printed with a notice that the participant must transact them within a specified number of days after the first date on which the food instrument may be used.

(iv) The date by which the vendor must redeem the food instrument. This date shall be no more than 90 days from the first date on which the food instrument may be used. If the date is fewer than 90 days, then the State agency shall ensure that the time allotted provides the vendor sufficient time to redeem the food instruments without undue burden.

(v) A unique and sequential serial number.

(vi) At the discretion of the State agency, a maximum purchase price which is higher than the price of the supplemental food for which it will be used, but low enough to be a reasonable protection against potential loss of funds. When the maximum value is shown, the space for the actual value of the supplemental foods obtained shall be clearly distinguishable. For example, the words "actual amount of sale" could be printed larger and in a different area of the food instrument than the maximum value.

(vii) A signature space in which the participant or proxy must sign at the time the supplemental foods are obtained.

(3) The State agency shall implement procedures to ensure every redeemed food instrument can be identified by the vendor which redeemed the food instrument. Each individual vendor in a chain participating in the Program shall be separately identified. The State agency may identify vendors by requiring that all authorized vendors stamp their names and/or enter a vendor identification number on all redeemed food instruments prior to submission.

(g) *Retail food delivery systems: Vendor authorization.* (1) The State agency shall authorize an appropriate number and distribution of vendors in order to ensure adequate participant access to supplemental foods and to ensure effective State agency management, oversight, and review of authorized vendors in its jurisdiction.

(2) The State agency shall develop and implement criteria to limit the number of vendors to be authorized and establish their distribution. This system shall ensure adequate participant access and effective management, oversight, and review of authorized vendors in their jurisdiction. When developing limiting criteria, the State agency shall consider, at a minimum, participant access in terms of participant-to-vendor ratios based on population density, distribution of participants, location of local agencies and clinics, and availability of public transportation and road systems to the WIC population. The State agency shall apply its limiting criteria consistently throughout its jurisdiction taking into account varying geographic and other characteristics within the jurisdiction. The State agency shall establish a system for revising and/or reapplying its limiting criteria whenever it determines that relevant demographic shifts or significant changes in caseload allocation make such action necessary.

(3) The State agency shall develop and implement criteria to select vendors. The State agency shall apply its selection criteria consistently throughout its jurisdiction. The State agency may reassess any authorized vendor using these criteria at any time during the vendor's agreement period and shall terminate the agreements with those vendors that fail to meet them. In applying the criteria set forth in paragraphs (g)(3)(iii) through (g)(3)(vi) of this section, the State agency may rely on facts already known to it and representations made by applicant vendors; the State agency is not required to establish a formal system of background checks for applicant vendors. The selection criteria shall include:

(i) Competitive price;

(ii) Minimum variety and quantity of authorized supplemental foods;

(iii) Lack of a record of a criminal conviction or civil judgment of the applicant vendor or any person currently associated with the vendor as an owner, officer, director, or partner for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or, commission of any other offense indicating a lack of business integrity or business honesty of the

vendor or its owner, officer, director, or partner;

(iv) Lack of a history, during a period preceding the date of application specified by the State agency (but not less than one year and not more than six years), of serious vendor violations resulting from the acts of omissions by the applicant vendor or any person currently associated with the vendor as an owner, officer, director, or partner, except that the time limit established by the State agency shall not apply to a vendor violation which results in a criminal conviction or civil judgment described in paragraph (e)(3)(iii) of this section. Serious vendor violations include: being subject to any of the vendor sanctions established in paragraph (l)(1) of this section and failure to participate in the annual training required by paragraph (i) of this section;

(v) Lack of a history, during a period preceding the date of application specified by the State agency (but not less than one year and not more than six years), of serious Food Stamp Program violations by the applicant vendor or any person currently associated with the vendor as an owner, officer, director, or partner, except that the time limit established by the State agency shall not apply to a Food Stamp Program violation which results in a criminal conviction or civil judgment described in paragraph (g)(3)(iii) of this section. Serious Food Stamp Program violations include: withdrawal of Food Stamp Program authorization for reasons of program noncompliance; a Food Stamp Program disqualification which is in effect at any time during this period; and assessment of a Food Stamp Program civil money penalty for hardship during this period; and

(vi) Not being currently disqualified from participation in the Food Stamp Program or, if a Food Stamp Program civil money penalty for hardship has been assessed, the period of the disqualification that would otherwise have been imposed has expired.

(4) The State agency shall not authorize an applicant vendor if the State agency determines the store has been sold by its previous owner in an attempt to circumvent a WIC sanction. The State agency may consider such factors as whether the applicant store was sold to a relative by blood or marriage of the previous owner(s) or sold to any individual or organization for less than its fair market value.

(5) The State agency is encouraged to consider the impact of authorization decisions on small businesses.

(6) The State agency may limit the periods during which applications for authorization from vendors will be accepted and processed, except that applications shall be accepted and processed at least once every three years. The State agency shall develop procedures for processing individual vendor applications outside of its timeframes for use when it determines there will be inadequate participant access unless additional vendors are authorized.

(7) At the time a vendor applies for authorization, the State agency shall collect the vendor's Food Stamp Program authorization number if the applicant vendor participates in that program. In addition, the State agency also shall collect the vendor's current shelf prices of authorized supplemental foods, unless the State agency uses competitive bidding to set vendor prices for such foods.

(h) *Retail food delivery systems: Vendor agreements.* (1) The State agency shall enter into written agreements with all authorized vendors. The agreements shall be for a period not to exceed three years. The agreement shall be signed by a representative who has legal authority to obligate the vendor and a representative of the State agency. When the vendor representative is obligating more than one vendor, all vendors shall be specified in the agreement. When more than one vendor is specified in the agreement, an individual vendor may be added or deleted without affecting the remaining vendors. The State agency shall require vendors to reapply at the expiration of their agreements and shall provide vendors with not less than 15 days advance written notice of the expiration of their agreements.

(2) The State agency shall use a standard vendor agreement throughout its jurisdiction, though the State agency may make exceptions to meet unique circumstances and must document the reasons.

(3) The vendor agreement shall contain the following specifications, although the State agency may determine the exact wording to be used:

(i) The vendor shall accept food instruments only from participants or their proxies.

(ii) The vendor shall provide participants only the supplemental foods listed on the food instrument. The vendor shall not substitute other foods or non-food items not listed on the food instrument, or provide cash in lieu of the listed supplemental foods. The vendor shall not give credit, including rainchecks, for supplemental foods listed on the food instruments, give refunds for supplemental foods obtained by participants with food instruments, or permit exchanges for supplemental foods obtained by participants except for identical supplemental foods.

(iii) The vendor shall accept food instruments from a participant only within the allowed time period, and submit them for payment within the allowed time period.

(iv) For printed food instruments, the vendor shall ensure the participant or proxy signs the food instrument and that the purchase price is entered on the food instrument before the participant or proxy signs it. In EBT systems, a Personal Identification Number (PIN) may be used in lieu of a signature.

(v) The vendor shall offer program participants the same courtesies as offered to other customers.

(vi) The vendor shall comply with the nondiscrimination provisions of Departmental regulations (Parts 15, 15a and 15b of this title).

(vii) The vendor shall not collect sales tax on WIC food purchases.

(viii) The vendor shall not charge the State agency more than the price charged other customers or the current shelf price, whichever is less, or, when the State agency uses competitive bidding to set vendor prices, the contract price. In no case may the vendor charge the State agency more than the competitive price limitation applicable to the area in which the vendor is located.

(ix) The vendor shall reimburse the State agency upon demand, or will have its payment from the State agency reduced, for the value of each vendor overcharge or other error. The State agency may collect the full redeemed value for each food instrument that contained a vendor overcharge or other error. The State agency may offset any amount owed by the vendor to the State agency against subsequent amounts to be paid to the vendor.

(x) The vendor shall not seek restitution from participants for food instruments not paid or partially paid by the State agency.

(xi) The manager of the vendor or other member of management shall participate in training prior to, or at the time of, the vendor's first authorization and annually thereafter, and sign and date a receipt acknowledging understanding of the training given. At least once during the agreement period such training will be face-to-face. Failure to participate in the annual training is a serious vendor violation that precludes subsequent authorization of the vendor. The State agency shall have sole discretion to determine the date, time, and place of all training, except that the vendor shall have at least one opportunity to attend annual

training on an alternative date established by the State agency. The State agency may, at its discretion, offer additional alternative training dates.

(xii) The vendor shall inform and train cashiers and other staff on program requirements.

(xiii) The vendor shall be accountable for actions of employees in the handling of food instruments.

(xiv) The vendor may be monitored for compliance with program rules.

(xv) The vendor shall maintain inventory records used for Federal tax reporting purposes and other records the State agency may require, for a period of time specified by the State agency. Upon request, the vendor shall make available to representatives of the State agency, the Department, and the Comptroller General of the United States, at any reasonable time and place for inspection and audit, all food instruments in the vendor's possession and all program-related records.

(xvi) Either the State agency or the vendor may terminate the agreement for cause after providing advance written notice within a timeframe established by the State agency, which may not be less than 15 days.

(xvii) The vendor shall give the State agency at least 45 days advance notification, in writing, of a change in vendor ownership, store location, or cessation of operations. In such instances, the vendor agreement shall be terminated, except that the State agency may permit vendors to move short distances without voiding the agreement. Changes in business structure (such as a corporate reorganization) without any change in ownership do not constitute a change of ownership.

(xviii) In addition to claims collection, the vendor may be sanctioned for vendor violations in accordance with the State agency's sanction schedule.

(xix) The vendor's agreement will be terminated if a conflict of interest is identified between the vendor and the State or local agencies.

(xx) A vendor who commits fraud or abuse in the Program is liable to prosecution under applicable Federal, State or local laws. Under § 246.23(d) of the regulations, those who have willfully misapplied, stolen or fraudulently obtained program funds shall be subject to a fine of not more than $10,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(xxi) The vendor agreement does not constitute a license or a property interest. If the vendor wishes to continue to be authorized beyond the period of its current agreement, the vendor must reapply for authorization. A vendor that has been disqualified for a period of time less than the remaining term of its vendor agreement may resume participation in the WIC Program upon completion of its disqualification period for the duration of the agreement without reapplying. If the vendor agreement expires before the vendor has served out the full disqualification period, and the vendor wishes to again participate in the Program, the vendor must apply to be authorized. In all cases, the vendor's new application will be subject to the State agency's selection and limiting criteria in effect at the time of the reapplication.

(xxii) The vendor shall be bound by any changes in the Program statute and regulations and State policies and procedures, including changes in selection criteria if the State agency chooses to reassess the vendor during the agreement period.

(xxiii) Disqualification from the WIC Program may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program.

(4) The State agency shall include in the vendor agreement the sanction schedule, which must be consistent with paragraph (l) of this section.

(5) The State agency shall include in the vendor agreement a list of the actions a vendor may appeal and a copy of the State agency's administrative review procedures, which are consistent with § 246.18.

(i) *Retail food delivery systems: Vendor training.* (1) The State agency shall provide training to all vendors prior to, or at the time of, initial authorization of a vendor, and annually thereafter. The training shall be designed to prevent program noncompliance and errors to improve program service. At the initial authorization of a new vendor, the training provided shall be face-to-face and on the site of the vendor. At least once during each subsequent agreement period, the State agency shall require that vendors attend face-to-face training at the site of the vendor or at another location. Both the initial training of a new vendor and the subsequent face-to-face training may fulfill the annual training requirement for the year in which it is given.

(2) The annual training shall include instruction in the purpose of the WIC Program; the varieties of supplemental foods authorized by the State agency; the minimum varieties and quantities of authorized supplemental foods that must be stocked by vendors; the procedures for transacting food instruments at the time of purchase and submitting food instruments for payment; the vendor sanction system; the vendor complaint process; the terms of the vendor agreement; and the claims collection procedures.

(3) The State agency may delegate the training to a local agency, a contractor, or a vendor representative if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(xii). In such cases, the State agency shall provide supervision and instruction to ensure the uniformity and quality of vendor training.

(4) The State agency shall ensure that the content of annual training is documented, including the signed vendor receipts required in paragraph (h)(3)(xi) of this section, and that each vendor signs and dates a receipt for annual training.

(j) *Retail food delivery systems: Monitoring vendors and identifying high-risk vendors.* (1) The State agency shall design and implement a system for monitoring vendors within its jurisdiction. The State agency may delegate the monitoring to a local agency or a contractor if the State agency indicates its intention to do so in its State Plan in accordance with § 246.4(a)(14)(iv). In such cases, the State agency shall provide supervision and training to ensure the uniformity and quality of the monitoring.

(2) The State agency shall identify high-risk vendors using criteria developed by FNS. FNS will not change these criteria more frequently than once every 2 years and will provide advance notification of changes 1 year prior to implementation. The State agency may develop and implement additional criteria.

(3)(i) The State agency shall conduct compliance buys or inventory audits on a minimum of 10 percent of the number of vendors authorized by the State agency as of October 1 of each fiscal year. The State agency shall conduct compliance buys or inventory audits on all high-risk vendors up to the 10 percent minimum, except that the State agency may waive a compliance buy or inventory audit on a high-risk vendor if it documents that the vendor is under investigation by a Federal, State or local law enforcement agency or that some other compelling reason exists for not conducting a compliance buy or inventory audit. An investigation of a high-risk vendor shall be considered

complete when the State agency determines that a sufficient number of compliance buys have been conducted to provide evidence of program noncompliance; when three compliance buys are conducted in which no program violations are found within a 12-month period; or when an inventory audit has been completed.

(ii) If fewer that 10 percent of the State agency's authorized vendors are identified as high-risk and not exempted from monitoring under paragraph (j)(2) of this section, the State agency shall randomly select additional vendors upon which to conduct compliance buys or inventory audits sufficient to meet the 10-percent minimum. An investigation of a randomly selected vendor shall be considered complete when, in the judgment of the State agency, sufficient evidence exists to determine whether or not the vendor is complying with program requirements.

(iii) If more than 10 percent of the State agency's authorized vendors are identified as high-risk and not exempted from monitoring under paragraph (j)(2) of this section, the State agency shall prioritize such vendors so as to perform compliance buys or inventory audits on those determined to have the greatest potential for program noncompliance and loss.

(4) For each fiscal year, the State agency shall send to FNS a summary of the results of vendor monitoring containing information stipulated by FNS. The report shall be sent by February 1 of the following fiscal year. Plans for improvement in the coming year shall be included in the State Plan, in accordance with the requirements of § 246.4(a)(14)(iv).

(5) The State agency shall document the following information for all monitoring visits, including compliance buys, inventory audits, and routine monitoring visits: the vendor's name and address; the date of the visit or inventory audit; the name(s) and signature(s) of the reviewer(s); and the nature of the problem(s) detected or the observation that the vendor appears to be in compliance with program requirements. For compliance buys, the State agency shall also document: the date of the buy; a description of the cashier involved in each transaction; the types and quantities of items purchased, shelf prices or contract prices, and price charged for each item purchased, if available; and the final disposition of all items as either destroyed, donated, provided to other authorities, or kept as evidence. Shelf or contract price information may be obtained prior to, during, or subsequent to the compliance buy.

(k) *Retail food delivery systems: Vendor claims.* (1) The State agency shall design and implement a system to identify vendor overcharges and other errors on redeemed food instruments not less frequently than quarterly. For printed food instruments, this system shall detect the following errors: purchase price missing, participant or proxy signature missing, vendor identification missing, redemption of expired food instruments, and, as appropriate, altered prices. The State agency shall implement procedures to reduce the number of errors where possible.

(2) The State agency may withhold or collect from the vendor the entire redeemed value of food instruments identified as containing a vendor overcharge or other error.

(3) The State agency shall also assess claims resulting from vendor violations identified in inventory audits or other reviews.

(4) The State agency shall initiate collection action within 90 days of the date of detection. Collection action may include offset.

(5) When payment for a food instrument is denied or delayed, or a claim for reimbursement is assessed, the State agency shall provide the vendor an opportunity to provide justification or correction. For example, if the actual price is missing, the vendor may demonstrate what price should have been included. If the State agency is satisfied with the correction or justification, it shall provide payment or adjust the claim accordingly.

(6) With justification and documentation, the State agency may pay vendors for food instruments redeemed after the expiration date. If the total value of the food instruments submitted at one time exceeds $200.00, payment may not be made without the approval of the FNS Regional Office.

(l) *Retail food delivery systems: Vendor sanctions*—(1) *Mandatory vendor sanctions.*

(i) *Permanent disqualification.* The State agency shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such violation. If reflected in its State Plan, the State agency shall impose a civil money penalty in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents that—

(A) Disqualification of the vendor would result in inadequate participant access; or

(B) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

(ii) *Six-year disqualification.* The State agency shall disqualify a vendor for six years for: one incidence of buying or selling food instruments for cash (trafficking); or one incidence of selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iii) *Three-year disqualification.* The State agency shall disqualify a vendor for three years for:

(A) One incidence of the sale of alcohol or alcoholic beverages or tobacco products in exchange for food instruments; or

(B) A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time; or

(C) A pattern of charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price; or

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person; or

(E) A pattern of charging for supplemental food not received by the participant; or

(F) A pattern of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments.

(iv) *One-year disqualification.* The State agency shall disqualify a vendor for one year for a pattern of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument.

(v) *Second mandatory sanction.* When a vendor, who previously has been assessed a sanction for any of the violations in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, receives another sanction for any of these violations, the State agency shall double the second sanction. Civil money penalties may only be doubled up to the

limits allowed under paragraph (l)(1)(x)(C) of this section.

(vi) *Third or subsequent mandatory sanction.* When a vendor, who previously has been assessed two or more sanctions for any of the violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, receives another sanction for any of these violations, the State agency shall double the third sanction and all subsequent sanctions. The State agency shall not impose civil money penalties in lieu of disqualification for third or subsequent sanctions for violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section.

(vii) *Disqualification based on a Food Stamp Program disqualification.* The State agency shall disqualify a vendor who has been disqualified from the Food Stamp Program. The disqualification shall be for the same length of time as the Food Stamp Program disqualification, may begin at a later date than the Food Stamp Program disqualification, and shall not be subject to administrative or judicial review under the WIC Program.

(viii) *Voluntary withdrawal or nonrenewal of agreement.* The State agency shall not accept voluntary withdrawal of the vendor from the Program as an alternative to disqualification for the violations listed in paragraphs (l)(1)(i) through (l)(1)(iv) of this section, but shall enter the disqualification on the record. In addition, the State agency shall not use nonrenewal of the vendor agreement as an alternative to disqualification.

(ix) *Participant access determinations.* Prior to disqualifying a vendor for a Food Stamp Program disqualification pursuant to paragraph (l)(1)(vii) of this section or for any of the violations listed in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section, the State agency shall determine if disqualification of the vendor would result in inadequate participant access. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall impose a civil money penalty in lieu of disqualification. However, as provided in paragraph (l)(1)(vi) of this section, the State agency shall not impose a civil money penalty in lieu of disqualification for third or subsequent sanctions for violations in paragraphs (l)(1)(ii) through (l)(1)(iv) of this section. The State agency shall include documentation of its participant access determination and any supporting documentation in the file of each vendor who is disqualified or receives a civil money penalty in lieu of disqualification.

(x) *Civil money penalty formula.* For each violation subject to a mandatory sanction, the State agency shall use the following formula to calculate a civil money penalty imposed in lieu of disqualification:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (l)(1)(x)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the civil money penalty, provided that the civil money penalty shall not exceed $10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the civil money penalty shall be $10,000. When during the course of a single investigation the State agency determines a vendor has committed multiple violations, the State agency shall impose a CMP for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed $40,000.

(xi) *Notification to FNS.* The State agency shall provide the appropriate FNS office with a copy of the notice of administrative action and information on vendors it has either disqualified or imposed a civil money penalty in lieu of disqualification for any of the violations listed in paragraphs (l)(1)(i) through (l)(1)(iv) of this section. This information shall include the name of the vendor, address, identification number, the type of violation(s), and the length of disqualification or the length of the disqualification corresponding to the violation for which the civil money penalty was assessed, and shall be provided within 15 days after the vendor's opportunity to file for a WIC administrative review has expired or all of the vendor's WIC administrative reviews have been completed.

(xii) *Multiple violations during a single investigation.* When during the course of a single investigation the State agency determines a vendor has committed multiple violations (which may include violations subject to State agency sanctions), the State agency shall disqualify the vendor for the period corresponding to the most serious mandatory violation. However, the State agency shall include all violations in the notice of administration action. If a mandatory sanction is not upheld on appeal, then the State agency may impose a State agency-established sanction.

(2) *State agency vendor sanctions.* (i) The State agency may impose sanctions for violations that are not specified in paragraphs (l)(1)(i) through (l)(1)(iv) of this section as long as such violations and sanctions are included in the vendor agreement. State agency sanctions may include disqualifications, civil money penalties assessed in lieu of disqualification, and fines. The total period of disqualification imposed for State agency violations investigated as part of a single investigation may not exceed one year. A civil money penalty or fine shall not exceed $10,000 for each violation. The total amount of civil money penalties imposed for violations investigated as part of a single investigation shall not exceed $40,000.

(ii) The State agency may disqualify a vendor who has been assessed a civil money penalty for hardship in the Food Stamp Program, as provided under § 278.6 of this chapter. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. If a State agency decides to exercise this option, the State agency shall:

(A) Include notification that it will take such disqualification action in its vendor agreement, in accordance with paragraph (f)(4) of this section; and

(B) Determine if disqualification of the vendor would result in inadequate participant access in accordance with paragraph (l)(8) of this section. If the State agency determines that disqualification of the vendor would result in inadequate participant access, the State agency shall not disqualify the vendor or impose a civil money penalty in lieu of disqualification. The State agency shall include documentation of its participant access determination and any supporting documentation in each vendor's file.

(3) *Prior warning.* The State agency does not have to provide the vendor with prior warning that violations were occurring before imposing any of the sanctions in this paragraph (l).

(4) *Appeal procedures.* The State agency shall provide adequate procedures for vendors to appeal a disqualification from participation under the Program as specified in § 246.18.

(5) *Installment plans.* The State agency may use installment plans for the collection of civil money penalties and fines.

(6) *Failure to pay a civil money penalty.* If a vendor does not pay, only partially pays, or fails to timely pay a

civil money penalty assessed in lieu of disqualification, the State agency shall disqualify the vendor for the length of the disqualification corresponding to the violation for which the civil money penalty was assessed (for a period corresponding to the most serious violation in cases where a mandatory sanction included the imposition of multiple civil money penalties as a result of a single investigation).

(7) *Actions in addition to sanctions.* Vendors may be subject to actions in addition to the sanctions in this section, such as claims for improper or overcharged food instruments and penalties outlined in § 246.23, in the case of deliberate fraud.

(8) *Participant access determination criteria.* When making participant access determinations, the State agency shall consider, at a minimum, the availability of other authorized vendors in the same area as the violative vendor and any geographic barriers to using such vendors.

(m) *Home food delivery systems.* Home food delivery systems are systems in which food is delivered to the participant's home. Systems for home delivery of food shall provide for:

(1) Procurement of supplemental foods in accordance with § 246.24, which may entail measures such as the purchase of food in bulk lots by the State agency and the use of discounts that are available to States.

(2) The accountable delivery of supplemental foods to participants. The State agency shall ensure that:

(i) Home food delivery contractors are paid only after the delivery of supplemental foods to participants;

(ii) There exists a routine procedure to verify the correct delivery of prescribed supplemental foods to participants, and, at a minimum, such verification occurs at least once a month after delivery; and

(iii) There is retention of records of delivery of supplemental foods and bills sent or payments received for such supplemental foods for at least three years and access of State, local and/or Federal authorities to such records.

(n) *Direct distribution food delivery systems.* Direct distribution food delivery systems are systems in which participants or their proxies pick up food from storage facilities operated by the State or local agency. Systems for direct distribution of food shall provide for:

(1) Adequate storage and insurance coverage that minimizes the danger of loss to theft, infestation, fire, spoilage, or other causes;

(2) Adequate inventory control of food received, in stock, and issued;

(3) Procurement of supplemental foods, in accordance with § 246.24, which may entail measures such as purchase of food in bulk lots by the State agency and the use of discounts that are available to States;

(4) The availability of program benefits to participants and potential participants who live at great distance from storage facilities; and

(5) The accountable delivery of supplemental foods to participants.

(o) *Participant, vendor, and home food delivery contractor complaints.* The State agency shall have procedures that document the handling of complaints by participants, vendors, and home food delivery contractors. Complaints of civil rights discrimination shall be handled in accordance with § 246.8(b).

(p) *Food instrument security.* The State agency shall develop minimum standards for ensuring the security of food instruments from the time the food instruments are created or received by the State agency to the time of issuance to participants at local agencies and clinics. These standards shall include maintenance by the local agency of perpetual inventory records of receipt of food instruments from the State agency and, if applicable, distribution to clinics; monthly physical inventory of food instruments on hand by the local agency and, if applicable, clinics; reconciliation of perpetual and physical inventories of food instruments; and, maintenance of all food instruments under lock and key by the State agency, local agencies and clinics, except for supplies needed for immediate use.

(q) *Food instrument disposition.* The State agency shall account for the disposition of all food instruments as issued or voided, and as redeemed or unredeemed. Redeemed food instruments shall be identified as validly issued, lost, stolen, expired, duplicate, or not matching valid issuance and enrollment records. In an EBT system, evidence of matching redeemed food instruments to a valid issuance and enrollment record may be satisfied through the linking of the PIN associated with the electronic transaction to a valid issuance and enrollment record. This process shall be performed within 150 days of the first valid date for participant use of the food instruments and shall be conducted in accordance with the financial management requirements of § 246.13. The State agency shall be subject to claims as outlined in § 246.23(a)(4) for redeemed food instruments that do not meet the conditions established in this paragraph (q).

(r) *Issuance of food instruments and supplemental foods.* The State agency shall:

(1) Establish uniform procedures which allow proxies designated by participants to act on their behalf. In determining whether a particular participant should be allowed to designate a proxy or proxies, the State agency shall require the local agency or clinic to consider whether adequate measures can be implemented to provide nutrition education and health care referrals to that participant;

(2) Ensure that the participant or proxy signs for receipt of food instruments or supplemental foods, except as established in paragraph (r)(4) of this section;

(3) Ensure that participants and their proxies receive instructions on the proper use of food instruments, or on the procedures for receiving supplemental foods when food instruments are not used. Participants and their proxies shall also be notified that they have the right to complain about improper vendor and home food delivery contractor practices with regard to program responsibilities;

(4) Require participants or their proxies to pick up food instruments in person when scheduled for nutrition education or for an appointment to determine whether participants are eligible for a second or subsequent certification period. However, in all other circumstances the State agency may provide for issuance through an alternative means such as EBT or mailing, unless FNS determines that such actions would jeopardize the integrity of program services or program accountability. If a State agency opts to mail food instruments, it must provide justification, as part of its alternative issuance system in its State Plan, as required in § 246.4(a)(21), for mailing food instruments to areas where food stamps are not mailed. State agencies which opt to mail food instruments must establish and implement a system which ensures the return of food instruments to the State or local agency if the participants no longer resides or receives mail at the address to which the food instruments were mailed; and

(5) Ensure that no more than a three-month supply of food instruments or supplemental foods is issued to any participant at one time.

(s) *Payment to vendors and home food delivery contractors.* The State agency shall ensure that vendors and home food delivery contractors are promptly paid for food costs. Payment for valid food instruments redeemed shall be made within 60 days after receipt of the food instruments. Actual

payment to vendors and home food delivery contractors may be made by local agencies.

(t) *Conflict of interest.* The State agency shall ensure that no conflict of interest exists between the State agency and any vendor or home food delivery contractor, or between any local agency and any vendor or home food delivery contractor under its jurisdiction.

(u) *Participant violations and sanctions.*—(1) *Participant violations.* The State agency shall establish procedures designed to control participant violations of program requirements. Participant violations include the following actions by a participant or a proxy: intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; sale of supplemental foods or food instruments to, or exchange with, other individuals or entities; receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods; physical abuse, or threat of physical abuse, of clinic or vendor staff; and dual participation.

(2) *Participant sanctions.* The State agency shall establish sanctions for participant violations. Such sanctions may include disqualification from the Program for a period up to one year. In cases in which the participant violation gives rise to a claim (including dual participation), the participant shall be disqualified for one year, except if the participant is an infant or child. In those cases, the State agency may permit another proxy to be designated. If an alternate proxy acceptable to the State agency cannot be found, the infant or child shall be disqualified for one year. However, if full restitution is made prior to the end of the disqualification period, the State agency may permit the participant to reapply for the Program. Warnings may be given prior to the imposition of sanctions. Before a participant is disqualified from the Program for an alleged violation, that participant shall be given full opportunity to appeal the disqualification as set forth in § 246.9.

(v) *Referral to law enforcement authorities.* The State agency shall refer vendors, home food delivery contractors, and participants who violate the Program to Federal, State or local authorities for prosecution under applicable statutes, where appropriate.

7. In § 246.13, paragraph (h) is revised to read as follows:

§ 246.13 Financial management system.

* * * * *

(h) *Adjustment of expenditures.* The State agency shall adjust projected expenditures to account for redeemed food instruments and for other changes as appropriate.

* * * * *

8. In § 246.18:

a. The section heading is revised;

b. Paragraphs (a) and (b) are revised; and

c. Paragraphs (c) and (d) are redesignated as paragraphs (d) and (f), respectively, and are revised, and new paragraphs (c) and (e) are added.

The revisions and additions read as follows:

§ 246.18 Administrative review of State agency actions.

(a)(1) *Vendor appeals.*—(i) *Actions receiving full administrative reviews.* Except as provided elsewhere in this paragraph (a)(1), the State agency shall provide a full administrative review to vendors that appeal the following actions: a denial of authorization based on the selection criteria or on a determination that the vendor is attempting to circumvent a sanction, a termination of an agreement for cause, a disqualification, and the imposition of a fine or a civil money penalty in lieu of disqualification.

(ii) *Actions receiving abbreviated administrative reviews.* Except as provided elsewhere in this paragraph (a)(1), the State agency shall provide an abbreviated administrative review to vendors that appeal the following actions: a denial of authorization based on the selection criteria in § 246.12(g)(3)(iii) or (g)(3)(vi), the State agency's limiting criteria, or because the vendor submitted its application outside the timeframes during which applications are being accepted and processed as established by the State agency under § 246.12(g)(6); termination of an agreement because of a change in ownership or location or cessation of operations; and a disqualification based on the imposition of a Food Stamp Program civil money penalty for hardship.

(iii) *Actions not subject to administrative review.* The State agency shall not review a vendor's appeal of the following: the validity or appropriateness of the State agency's limiting or selection criteria as defined in § 246.2, the State agency's participant access determinations, authorization determinations subject to the State agency's procurement procedures, the expiration of the vendor's agreement, disputes regarding food instrument payments, vendor claims, and disqualification of a vendor as a result of disqualification from the Food Stamp Program.

(2) *Local agency appeals.* The State agency shall grant a full administrative review to local agencies that appeal the following actions: a denial of a local agency's application to participate, a local agency's disqualification, or any other adverse action that affects a local agency's participation. Expiration of an agreement with a local agency shall not be subject to review. The State agency shall postpone the effective date of adverse actions that are subject to review (except denials of applications to participate) until a decision is made on the local agency's appeal.

(3) *Effective dates of actions against vendors.* Denials of vendor authorization and disqualifications imposed under § 246.12(l)(1)(i) shall be made effective on the date of receipt of the notice of administrative action. All other adverse actions subject to administrative review shall be effective no earlier than 15 days after the date of the notice of the action. A State agency may postpone the effective date of an adverse action subject to administrative review (except for denials of authorization and disqualifications imposed under § 246.12(l)(1)(i)) until a decision is made on the vendor's appeal, only if the State agency determines that the delay is necessary to ensure either adequate participant access or the effective and efficient operation of the Program.

(b) *Full administrative review procedure.* The State agency shall develop procedures for a full administrative review of the actions listed in § 246.18(a)(1)(i) and (a)(2). The procedures shall provide the local agency or vendor with the following:

(1) Written notification of the administrative action, the procedures to file for an administrative review, if any, and the cause(s) for and the effective date of the action. Such notification shall be provided to participating vendors not less than 15 days in advance of the effective date of the action. When a vendor is disqualified due in whole or in part to violations in § 246.12(l)(1), such notification shall include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the Food Stamp Program. Such disqualification may not be subject to administrative or judicial review under the Food Stamp Program." In the disqualification of local agencies, the State agency shall provide not less than 60 days advance notice of pending action.

(2) The opportunity to appeal the adverse action within a time period

specified by the State agency in its notification of adverse action.

(3) Adequate advance notice of the time and place of the administrative review to provide all parties involved sufficient time to prepare for the review.

(4) The opportunity to present its case and at least one opportunity to reschedule the administrative review date upon specific request. The State agency may set standards on how many review dates can be scheduled, provided that a minimum of two review dates is allowed.

(5) The opportunity to cross-examine adverse witnesses. Where necessary to protect the identity of WIC Program investigators, such examination may be conducted *in camera*.

(6) The opportunity to be represented by counsel, if desired.

(7) The opportunity to examine the evidence upon which the State agency's action is based prior to the review.

(8) An impartial decision-maker, whose determination is based solely on whether the State agency has correctly applied its policies and procedures, according to the evidence presented at the review and the statutory and regulatory provisions governing the Program. State agencies may appoint a reviewing official, such as a chief hearing officer or judicial officer, to review appeal decisions to ensure that they conform to approved policies and procedures.

(9) Written notification of the decision on the appeal, including the basis for the decision, within 90 days from the date of receipt of a vendor's request for an administrative review, and within 60 days from the date of receipt of a local agency's request for an administrative review.

(c) *Abbreviated administrative review procedures.* The State agency shall develop procedures for an abbreviated administrative review of the actions listed in § 246.18(a)(1)(ii). These procedures shall provide the vendor written notification of the adverse action, the procedures to follow for an abbreviated administrative review, the cause(s) and the effective date of the action, and an opportunity to provide a written response. The State agency shall render a decision based on the information provided to the vendor, the vendor's response, and relevant statutes, regulations, policies and procedures. The decision maker shall be someone other than the person who rendered the initial decision on the action. The decision maker shall provide the vendor a written decision on the appeal, including the basis for the decision.

(d) *Continuing responsibilities.* Appealing an action does not relieve a local agency, or a vendor permitted to continue in the Program while its appeal is in process, from the responsibility of continued compliance with the terms of any written agreement with the State or local agency.

(e) *Finality and effective date of decisions.* The State agency procedures shall provide that the decisions rendered under both the full and abbreviated review procedures are the final State agency action. If the action under appeal has not already taken effect, the action shall take effect on the date of receipt of the decision.

(f) *Judicial review.* If the decision on the appeal is rendered against the local agency or vendor, the State agency shall inform the appellant that it may be able to pursue judicial review of the decision.

12. In § 246.19, paragraphs (a)(2), (b)(2), (b)(5) and (b)(6) are revised to read as follows:

§ 246.19 Management evaluation and reviews.

(a) * * *

(2) The State agency shall submit a corrective action plan, including implementation timeframes, within 60 days of receipt of an FNS management evaluation report containing negative findings. If FNS determines through a management evaluation or other means that during a fiscal year the State agency has failed, without good cause, to demonstrate efficient and effective administration of its program, or has failed to comply with its corrective action plan, or any other requirements contained in this part or the State Plan, FNS may withhold an amount up to 100 percent of the State agency's nutrition services and administration funds, for that year.

* * * * *

(b) * * *

(2) Monitoring of local agencies shall encompass, but need not be limited to, evaluation of management, certification, nutrition education, participant services, civil rights compliance, accountability, financial management systems, and food delivery systems. If the State agency delegates vendor training or monitoring to the local agency, it shall evaluate the local agency's effectiveness in carrying out these responsibilities.

* * * * *

(5) FNS may require the State agency to conduct in-depth reviews of specified areas of local agency operations, to implement a standard form or protocol for such reviews, and to report the results to FNS. No more than two such areas will be stipulated by FNS for any fiscal year. These areas will be announced by FNS at least six months before the beginning of the fiscal year.

(6) The State agency shall require local agencies to establish management evaluation systems to review their operations and those of associated clinics or contractors and shall require, within 45 days of written notification of deficiencies, a written corrective action plan which explains how all of the identified problems will be addressed and stipulates timeframes for completion of each corrective action.

13. In § 246.23, paragraphs (a)(4) and (c) are revised to read as follows:

§ 246.23 Claims and penalties.

(a) * * *

(4) FNS will establish a claim against any State agency which has not accounted for the disposition of all redeemed food instruments and taken appropriate follow-up action on all redeemed food instruments which cannot be matched against valid issuance and certification records, including cases which may involve fraud, unless the State agency has demonstrated to the satisfaction of FNS that it has:

(i) Made every reasonable effort to comply with this requirement;

(ii) Identified the reasons for its inability to account for the disposition of each redeemed food instrument; and

(iii) Provided assurances that, to the extent considered necessary by FNS, it will take appropriate actions to improve its procedures.

* * * * *

(c) *Claims against participants.* (1) If the State agency determines that program benefits have been improperly obtained as the result of a participant or proxy intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall issue a letter requesting repayment and indicating that, if the request for repayment is not appealed or is unsuccessfully appealed, the participant must be disqualified in accordance with § 246.12(u)(2). If the participant does not make full restitution in response to this letter, the State agency shall weigh the cost of each subsequent action in the collection process against the amount to be recovered and take such action until recovery is achieved or until the recovery process ceases to be cost-effective. The State agency may allow participants for whom financial restitution would cause undue hardship to perform in-kind service determined by the State agency in lieu of restitution. If full restitution is made prior to the end of the disqualification period, the State agency may permit the participant

to reapply for the Program. The State agency shall maintain on file documentation of the disposition of all cases of improperly obtained program benefits covered by this paragraph (c).

(2) FNS will assert a claim against the State agency for losses resulting from program funds improperly spent as a result of dual participation, if FNS determines that the State agency has not complied with the requirements in § 246.12(u)(2) concerning participant sanctions or the requirements in paragraph (c)(2) of this section concerning participant claims.

(3) The State agency may delegate to its local agencies the responsibility for the collection of participant claims.

* * * * *

14. In § 246.26, the heading of paragraph (d) is revised, and paragraphs (e) and (f) are added to read as follows.

§ 246.26 Other provisions.

* * * * *

(d) *Confidentiality of applicant and participant information.* * * *

* * * * *

(e) *Confidentiality of vendor information.* Except for vendor name, address and authorization status, the State agency shall restrict the use or disclosure of information obtained from vendors, or generated by the State agency concerning vendors, to:

(1) Persons directly connected with the administration or enforcement of any Federal or State law, including the WIC Program or the Food Stamp Program, and the Comptroller General of the United States. Prior to releasing the information to a party other than a Federal agency, the State agency shall enter into a written agreement with the requesting party specifying that such information may not be used or redisclosed except for purposes directly connected to the administration or enforcement of a Federal or State law; and

(2) Appellant vendors, to the extent that the information to be disclosed is a basis of the action under review as set forth in § 246.18(b)(1), (b)(7), and (c).

(f) *Confidentiality of Food Stamp Program retailer information.* The State agency shall restrict the use or disclosure of Food Stamp Program retailer information furnished to it, pursuant to Section 9(c) of the Food Stamp Act of 1977 (7 U.S.C. 2018(c)) and § 278.1(r) of this chapter to persons directly connected with the administration or enforcement of the WIC Program.

Dated: June 7, 1999.

Shirley R. Watkins,

Under Secretary for Food, Nutrition and Consumer Services.

[FR Doc. 99–14953 Filed 6–15–99; 8:45 am]

BILLING CODE 3410–30–P

Federal Register

Wednesday
June 16, 1999

Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans for Florida; Revised Format for Materials Being Incorporated by Reference and Approval of Recodification of the Florida Administrative Code; Final Rule and Proposed Rule

Approval and Promulgation of Implementation Plans for Florida: Approval of Revisions to the Florida State Implementation Plan; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–62–1–9610a; FL–66–1–9729a; FRL–6352–9]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Florida; Approval of Recodification of the Florida Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Florida State Implementation Plan (SIP) submitted on December 21, 1994, and April 15, 1996, by the State of Florida through the Florida Department of Environmental Protection (FDEP). These submittals include miscellaneous revisions and the recodification of the Florida Administrative Code (F.A.C.). This recodification renumbers and reorganizes the Florida SIP to match the F.A.C. numbering system, reduces the number of rule sections to make the SIP less complex, and corrects typographical errors. EPA is also revising the format of 40 CFR part 52 for materials submitted by Florida that are incorporated by reference (IBR) into their SIP. The regulations affected by this format change have all been previously submitted by the State agency and approved by EPA. This format revision will primarily affect the "Identification of plan" section of CFR part 52, as well as the format of the SIP materials that will be available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC, and the Regional Office. The sections of 40 CFR part 52 pertaining to provisions promulgated by EPA or State-submitted materials that are not subject to IBR review remain unchanged.

DATES: This direct final rule is effective on August 16, 1999 without further notice, unless EPA receives adverse comments by July 16, 1999. If EPA receives adverse comment, we 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: You should address comments on this recodification action to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL62–1–9610 and FL66–1–9729. The Region 4 office may have additional documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Office of the **Federal Register**, 800 North Capitol Street, NW, Suite 700, Washington, DC.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION:

I. Revised IBR Format

A. Background

Each State is required to have a SIP which contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each state after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR part 52). The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and insures that the State is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a State not enforce its SIP-approved regulations.

The SIP is a living document which can be revised by the State as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions which may contain new and/or revised regulations. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally-approved SIPs, as a result of consultations between EPA and OFR. EPA began the process of developing (1)A revised SIP document for each State that would be IBR under the provisions of 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR, and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

B. Content of revised IBR document

The new SIP compilations contain the Federally-approved portion of regulations and source specific SIP revisions submitted by each State agency. These regulations and source specific SIP revisions have all been approved by EPA through previous rule making actions in the **Federal Register**. The compilations are stored in 3-ring binders and will be updated, primarily on an annual basis.

Each compilation consists of two parts. Part 1 contains the regulations and Part 2 contains the source specific SIP revisions that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific SIP revision. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these States. The Regional EPA Offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 4 EPA Office developed and will maintain the compilation for Florida. A copy of the full text of the State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center. EPA is continuing, with this document, the phasing in of SIP compilations for individual States that began with Mississippi and South Carolina on July 1, 1997 (See 62 FR 35441). EPA expects to complete the conversion of the

revised "Identification of plan" format and IBR documentation for all States by May 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Clean Air Act.

C. Revised Format of the "Identification of plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section and including additional information which will make it clearer as to what provisions constitute the enforceable elements of the SIP.

The revised Identification of plan section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific SIP revisions, and (e) EPA approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

D. Enforceability and Legal Effect

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d) or (e) of the applicable "Identification of plan" found in each subpart of 40 CFR part 52. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart. After an initial two year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures, and will decide whether or not to retain the "Identification of plan" appendices for some further period.

II. Recodification Submittals

A. December 21, 1994, Submittal

On December 21, 1994, the State of Florida through the FDEP submitted a recodification of the F.A.C. with miscellaneous revisions to the Florida SIP. As a result of the 1993 merger of the Department of Environmental Regulation (DER) and Department of Natural Resources (DNR) into the Department of Environmental Protection, all "title 17" rule chapters of the DER were transferred to "title 62" of the Florida Administrative Code, effective August 10, 1994. All rule numbers comprising Florida's SIP are unchanged except for the first two digits. The EPA is now merely approving the recodification to make the SIP consistent with the numbering system currently used by the F.A.C., and approving the miscellaneous revisions.

B. April 15, 1996, Submittal

On April 15, 1996, FDEP submitted another recodification to reduce the number and complexity of the FDEP regulations, along with minor revisions and corrections. Most definitions were moved to Chapter 62–204 and Chapter 62–210, while other rules were repealed which are obsolete or redundant.

The miscellaneous rule revisions, repeals, and corrections from both submittals that are being approved in this action are fully discussed in the submittals and the technical support document (TSD) at the Region 4 Office listed in the addresses section of this notice.

EPA has reviewed the submitted revisions, but has not fully reviewed the substance of the recodified regulations that were approved into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State and the revisions outlined in the submittals and the TSD. To the extent EPA has issued any SIP calls to the State with respect to the adequacy of any of the rules subject to this recodification, EPA will continue to require the State to correct any such rule deficiencies despite EPA's approval of this recodification.

Final Action

EPA is approving the aforementioned changes to the SIP without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective August 16, 1999 without further notice unless the agency receives relevant adverse comments by July 16, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 16, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

The final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

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

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

E. Submission to Congress and the Comptroller General

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

F. 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 August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 1, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

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

PART 52—[AMENDED]

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

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

Subpart K—Florida

2. Section 52.520 is redesignated as § 52.536 and the section heading and paragraph (a) are revised to read as follows:

§ 52.536 Original identification of plan section.

(a) This section identifies the original "State of Florida Air Implementation Plan" and all revisions submitted by Florida that were federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.520 is added to read as follows:

§ 52.520 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Florida under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register.** Entries in paragraphs (c) and (d) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta. GA 30303; the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC; or at the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

(c) EPA approved regulations.

EPA APPROVED FLORIDA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–204	Air Pollution Control—General Provisions			
62–204.100	Purpose and Scope	03/13/96	06/16/99	
62–204.200	Definitions	03/13/96	06/16/99	
62–204.220	Ambient Air Quality Protection	03/13/96	06/16/99	
62–204.240	Ambient Air Quality Standards	03/13/96	06/16/99	
62–204.260	Prevention of Significant Deterioration Increments.	03/13/96	06/16/99	
62–204.320	Procedures for Designation and Redesignation of Areas.	03/13/96	06/16/99	
62–204.340	Designation of Attainment, Nonattainment, and Maintenance Areas.	03/13/96	06/16/99	
62–204.360	Designation of Prevention of Significant Deterioration Areas.	03/13/96	06/16/99	
62–204.400	Public Notice and Hearing Requirements for State Implementation Plan Revisions.	11/30/94	06/16/99	

EPA APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–210	Stationary Sources—General Requirements			
62–210.100	Purpose and Scope	11/23/94	06/16/99	
62–210.200	Definitions	10/15/96	05/27/98, 63 FR 28905	
62–210.220	Small Business Assistance Program	10/15/96	05/27/98, 63 FR 28905	
62–210.300	Permits Required	08/15/96	01/17/97, 62 FR 2587	
62–210.350	Public Notice and Comment	11/23/94	06/16/99	
62–210.360	Administrative Permit Corrections	11/23/94	06/16/99	
62–210.370	Reports	11/23/94	06/16/99	
62–210.550	Stack Height Policy	11/23/94	06/16/99	
62–210.650	Circumvention	10/15/92	10/20/94, 59 FR 52916	
62–210.700	Excess Emissions	11/23/94	06/16/99	
62–212	Stationary Sources—Preconstruction Review			
62–212.100	Purpose and Scope	03/13/96	06/16/99	
62–212.300	Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements.	11/23/94	06/16/99	
62–212.400	Prevention of Significant Deterioration	03/13/96	06/16/99	
62–212.500	New Source Review for Nonattainment Areas.	03/13/96	06/16/99	
62–212.600	Source Specific New Source Review Requirements.	03/13/96	06/16/99	
62–242	Motor Vehicle Emissions Standards and Test Procedures			
62–242.100	Purpose and Scope	03/21/91	03/22/93, 58 FR 15277	
62–242.200	Definitions	03/13/96	06/16/99,	
62–242.400	Standards and Procedures For Inspection of Gasoline-Fueled Vehicles; Pass/Fail Criteria.	02/02/93	10/11/94, 59 FR 51382	
62–242.500	Standards and Procedures For Inspection of Diesel Fueled Vehicles; Pass/Fail Criteria.	02/02/93	10/11/94, 59 FR 51382	
62–242.600	Equipment Performance Specifications	02/02/93	10/11/94, 59 FR 51382	
62–242.700	Tampering Inspection	02/02/93	10/11/94, 59 FR 51382	
62–242.800	Low Emissions Adjustment	02/02/93	10/11/94, 59 FR 51382	
62–242.900	Training Criteria For Motor Vehicle Emissions Inspection Personnel.	02/02/93	10/11/94, 59 FR 51382	
62–243	Tampering With Motor Vehicle Air Pollution Control Equipment			
62–243.100	Purpose and Scope	05/29/90	06/09/92, 57 FR 24370	
62–243.200	Definitions	01/02/91	06/09/92, 57 FR 24378	
62–243.300	Exemptions	01/02/91	06/09/92, 57 FR 24378	
62–243.400	Prohibitions	01/02/91	06/09/92, 57 FR 24378	
62–243.500	Certification	01/02/91	06/09/92, 57 FR 24378	
62–243.600	Enforcement	01/02/91	06/09/92, 57 FR 24378	
62–243.700	Penalties	05/29/90	06/09/92, 57 FR 24370	
62–244	Visible Emissions From Motor Vehicles			
62–244.100	Purpose and Scope	02/21/90	06/09/92, 57 FR 24370	
62–244.200	Definitions	02/21/90	06/09/92, 57 FR 24370	
62–244.300	Exemptions	02/21/90	06/09/92, 57 FR 24370	
62–244.400	Prohibitions	02/21/90	06/09/92, 57 FR 24370	
62–244.500	Enforcement	02/21/90	06/09/92, 57 FR 24370	
62–244.600	Penalties	02/21/90	06/09/92, 57 FR 24370	
62–252	Gasoline Vapor Control			
62–252.100	Purpose and Scope	02/02/93	03/24/94, 59 FR 13883	
62–252.200	Definitions	02/02/93	03/24/94, 59 FR 13883	
62–252.300	Gasoline Dispensing Facilities—Stage I Vapor Recovery.	02/02/93	03/21/94, 59 FR 13883	
62–252.400	Gasoline Dispensing Facilities—Stage II Vapor Recovery.	11/23/94	06/16/99	
62–252.500	Gasoline Tanker Trucks	09/10/96	07/21/97 62 FR 38918	
62–252.800	Penalties	02/02/93	03/24/94, 59 FR 13883	
62–252.900	Forms	09/10/96	07/21/97, 62 FR 38918	

EPA APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–256	Open Burning and Frost Protection Fires			
62–256.100	Declaration and Intent	12/09/75	11/01/77, 42 FR 57124	
62–256.200	Definitions	11/30/94	06/16/99	
62–256.300	Prohibitions	11/30/94	06/16/99	
62–256.400	Agricultural and Silvicultural Fires	07/01/71	05/31/72, 37 FR 10842	
62–256.450	Burning for Cold or Frost Protection	06/27/91	09/09/94, 59 FR 46552	
62–256.500	Land Clearing	11/30/94	06/16/99	
62–256.600	Industrial, Commercial, Municipal, and Research Open Burning.	07/01/71	05/31/72, 37 FR 10842	
62–256.700	Open Burning Allowed	11/30/94	06/16/99	
62–256.800	Effective Date	07/01/71	05/31/72, 37 FR 10842	
62–296	Stationary Sources—Emission Standards			
62–296.100	Purpose and Scope	03/13/96	06/16/99	
62–296.320	General Pollutant Emission Limiting Standards.	03/13/96	06/16/99	
62–296.401	Incinerators	03/13/96	06/16/99	
62–296.402	Sulfuric Acid Plants	03/13/96	06/16/99	
62–296.403	Phosphate Processing	03/13/96	06/16/99	
62–296.404	Kraft (Sulfate) Pulp Mills and Tall Oil Plants.	03/13/96	06/16/99	
62–296.405	Fossil Fuel Steam Generators with more than 250 million Btu per Hour Heat Input.	03/13/96	06/16/99	
62–296.406	Fossil Fuel Steam Generators with less than 250 million Btu per Hour Heat Input, New and Existing Emissions Units.	03/13/96	06/16/99	
62–296.407	Portland Cement Plants	11/23/94	06/16/99	
62–296.408	Nitric Acid Plants	11/23/94	06/16/99	
62–296.409	Sulfur Recovery Plants	11/23/94	06/16/99	
62–296.410	Carbonaceous Fuel Burning Equipment	11/23/94	06/16/99	
62–296.411	Sulfur Storage and Handling Facilities	11/23/94	06/16/99	
62–296.412	Dry Cleaning Facilities	03/13/96	06/16/99	
62–296.413	Synthetic Organic Fiber Production	03/13/96	06/16/99	
62–296.414	Concrete Batching Plants	03/13/96	06/16/99	
62–296.415	Soil Thermal Treatment Facilities	03/13/96	06/16/99	
62–296.500	Reasonably Available Control Technology (RACT)—Volatile Organic Compounds.	11/23/94	06/16/99	
62–296.501	Can Coating	11/23/94	06/16/99	
62–296.502	Coil Coating	11/23/94	06/16/99	
62–296.503	Paper Coating	11/23/94	06/16/99	
62–296.504	Fabric and Vinyl Coating	11/23/94	06/16/99	
62–296.505	Metal Furniture Coating	11/23/94	06/16/99	
62–296.506	Surface Coating of Large Appliances	11/23/94	06/16/99	
62–296.507	Magnet Wire Coating	11/23/94	06/16/99	
62–296.508	Petroleum Liquid Storage	11/23/94	06/16/99	
62–296.509	Bulk Gasoline Plants	10/15/92	10/20/94, 59 FR 52916	
62–296.510	Bulk Gasoline Terminals	11/23/94	06/16/99	
62–296.511	Solvent Metal Cleaning	11/23/94	06/16/99	
62–296.512	Cutback Asphalt	11/23/94	06/16/99	
62–296.513	Surface Coating of Miscellaneous Metal Parts and Products.	11/23/94	06/16/99	
62–296.514	Surface Coating of Flat Wood Paneling	11/23/94	06/16/99	
62–296.515	Graphic Arts Systems	11/23/94	06/16/99	
62–296.516	Petroleum Liquid Storage Tanks With External Floating Roofs.	11/23/94	06/16/99	
62–296.570	Reasonably Available Control Technology (RACT)—Requirements for Major VOC- and NO_X-Emitting Facilities.	11/23/94	06/16/99	
62–296.600	Reasonably Available Control Technology (RACT)—Lead.	03/13/96	06/16/99	
62–296.601	Lead Processing Operations in General	08/08/94	09/18/96, 61 FR 49064	
62–296.602	Primary Lead-Acid Battery Manufacturing Operations.	03/13/96	06/16/99	
62–296.603	Secondary Lead Smelting Operations	08/08/94	09/18/96, 61 FR 49064	
62–296.604	Electric Arc Furnace Equipped Secondary Steel Manufacturing Operations.	08/08/94	09/18/96, 61 FR 49064	
62–296.605	Lead Oxide Handling Operations	08/08/94	09/18/96, 61 FR 49064	

EPA APPROVED FLORIDA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
62–296.700	Reasonably Available Control Technology (RACT)—Particulate Matter.	11/23/94	06/16/99	
62–296.701	Portland Cement Plants	11/23/94	06/16/99	
62–296.702	Fossil Fuel Steam Generators	11/23/94	06/16/99	
62–296.703	Carbonaceous Fuel Burners	11/23/94	06/16/99	
62–296.704	Asphalt Concrete Plants	11/23/94	06/16/99	
62–296.705	Phosphate Processing operations	11/23/94	06/16/99	
62–296.706	Glass Manufacturing Process	11/23/94	06/16/99	
62–296.707	Electric Arc Furnaces	11/23/94	06/16/99	
62–296.708	Sweat or Pot Furnaces	11/23/94	06/16/99	
62–296.709	Lime Kilns	11/23/94	06/16/99	
62–296.710	Smelt Dissolving Tanks	11/23/94	06/16/99	
62–296.711	Materials Handling, Sizing, Screening, Crushing and Grinding operations.	11/23/94	06/16/99	
62–296.712	Miscellaneous Manufacturing Process Operations.	11/23/94	06/16/99	
62–297	Stationary Sources—Emissions Monitoring			
62–297.100	Purpose and Scope	03/13/96	06/16/99	
62–297.310	General Test Requirements	03/13/96	06/16/99	
62–297.400	EPA Methods Adopted by Reference	11/23/94	06/16/99	
62–297.401	Compliance Test Methods	03/13/96	06/16/99	
62–297.411	DEP Method 1	11/23/94	06/16/99	
62–297.412	DEP Method 2	10/15/92	10/20/94, 59 FR 52916	
62–297.413	DEP Method 3	10/15/92	10/20/94, 59 FR 52916	
62–297.415	DEP Method 5	11/23/94	06/16/99	
62–297.416	DEP Method 5A	10/15/92	10/20/94, 59 FR 52916	
62–297.417	DEP Method 6	11/23/94	06/16/99	
62–297.423	EPA Method 12—Determination of Inorganic Lead Emissions from Stationary Sources.	11/23/94	06/16/99	
62–297.440	Supplementary Test Procedures	11/23/94	06/16/99	
62–297.450	EPA VOC Capture Efficiency Test Procedures.	11/23/94	06/16/99	
62–297.620	Exceptions and Approval of Alternate Procedures and Requirements.	11/23/94	06/16/99	

(d) EPA-approved State Source—specific requirements.

EPA-APPROVED FLORIDA SOURCE—SPECIFIC REQUIREMENTS

Name of source	Permit number	State effective date	EPA approval date	Explanation
None.				

(e) Reserved.

[FR Doc. 99–15010 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–62–1–9610b; FL–66–1–9729b; FRL–6352–8]

Approval and Promulgation of Air Quality Implementation Plans; Revised Format for Materials Being Incorporated by Reference for Florida; Approval of Recodification of the Florida Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of recodification and miscellaneous revisions. EPA is also proposing to revise the format of 40 CFR part 52 for materials submitted by Florida that are incorporated by reference into their SIP.

In this issue of the **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. 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. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 16, 1999.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL62–1–9610 and FL66–1–9729. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in this issue of the **Federal Register**.

Dated: September 1, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

[FR Doc. 99–15011 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–61–2–9823a; FRL –6352–3]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on November 22, 1994, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This revision adds Chapter 62–204, Air Pollution Control—General Provisions, to the Florida SIP.

DATES: This direct final rule is effective on August 16, 1999 without further notice, unless EPA receives adverse comments by July 16, 1999. If EPA receives adverse comment, we 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: You should address comments on this action to Joey LeVasseur at the EPA, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Copies of documents related to this action are available for the public to review during normal business hours at the locations below. If you would like to review these documents, please make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL61–2–9823. The Region 4 office may have additional documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

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

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: The State of Florida through the FDEP submitted revisions to the Florida SIP on November 22, 1994. These revisions consist of a new Chapter 62–204, Air Pollution Control—General Provisions, that includes six new sections: "Purpose and Scope," "Definitions," "Approved State Implementation Plan," "Public Notice and Hearing Requirements," "General Conformity," and "Transportation Conformity."

Three of these sections, however, are not being approved into the SIP at this time. Section 62–204.300, "Approved State Implementation Plan," simply identifies the SIP for users of state rules and was not intended as a SIP revision. Section 62–204.500, "General Conformity," and Section 62–204.600, "Transportation Conformity," are not being approved here and will be addressed in a separate action.

The revisions being approved in this action are discussed below.

Section 62–204.100, Purpose and Scope—This section is simply an introductory paragraph that identifies the purpose of Chapter 62–204 and does not have any regulatory significance.

Section 62–204.200, Definitions—This section defines various terms that will be used in this Chapter whose definition might otherwise be unclear.

Section 62–204.400, Public Notice and Hearing Requirements for State Implementation Plan Revisions—This section sets forth the public notice and hearing requirements for the State to make an official SIP submittal. This section was previously approved as Section 17–210.350(3), but has been moved to Chapter 62–204 and revised for clarity.

Final Action

EPA is approving the aforementioned changes to the SIP without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in this issue of the **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective August 16, 1999 without further notice unless the agency receives relevant adverse comments by July 15, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the rule. Only parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 16, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

The final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

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

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State,

local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

E. Submission to Congress and the Comptroller General

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

F. 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 August 16, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 9, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

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

PART 52—[AMENDED]

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

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

Subpart K—Florida

2. Section 52.536 (redesignated from § 52.520, effective June 16, 1999) is amended by adding paragraph (c)(100) to read as follows:

§ 52.536 Original identification of plan section.

* * * * *

(c) * * *

(100) Revisions to Chapter 62–204, Stationary Sources—General Requirements, of the Florida SIP submitted by the Department of Environmental Protection on November 22, 1994.

(i) *Incorporation by reference.* Sections 62–204.100, 62–204.200, and 62–204.400 of the Florida SIP, effective November 30, 1994.

(ii) *Other material.* None.

* * * * * *

[FR Doc. 99–15012 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–61–2–9823b; FRL–6352–2]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) on November 22, 1994. This revision adds a new Chapter 62–204, Air Pollution Control—General Provisions, to the Florida SIP.

In this issue of the **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. 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. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by July 16, 1999.

ADDRESSES: Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–61–2–9823. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in this issue of the **Federal Register**.

Dated: September 9, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Note: This document was received at the Office of the Federal Register on June 9, 1999.

[FR Doc. 99–15013 Filed 6–15–99; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
June 16, 1999

Part IV

Department of Education

34 CFR Part 685
William D. Ford Federal Direct Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC68

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the William D. Ford Federal Direct Loan (Direct Loan) Program. These amendments are a result of recently enacted changes to the Higher Education Act of 1965 (HEA) made by the Higher Education Amendments of 1998 (1998 Amendments). The proposed regulations would amend the current regulations to: remove references to the phase-in of the Direct Loan Program, update the loan interest rate formulas, and reflect the Secretary's authority to charge reduced loan fees on Direct Subsidized and Direct Unsubsidized Loans and to charge reduced interest rates to encourage on-time loan repayment.

DATES: We must receive your comments on or before July 30, 1999.

ADDRESSES: Address all comments about these proposed regulations to Ms. Nicki Meoli, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet, use the following address: dlnprm@ed.gov

FOR FURTHER INFORMATION CONTACT: Ms. Nicki Meoli, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 3045, Washington, DC 20202–5346. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the FIRS at 1–800–877–8339.

General

Background

On October 7, 1998, President Clinton signed into law the 1998 Amendments (Pub. L. 105–244) that amended the HEA. Among the many important provisions of the new law was the reauthorization of the Title IV Student Financial Assistance Programs. The 1998 Amendments also contained a number of changes to the Title IV programs. This notice of proposed rulemaking (NPRM) addresses changes that affect the Direct Loan Program.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals' website (http://www.ifap.ed.gov).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, each negotiating committee met to develop proposed regulations, for several days each month, from January through May.

The proposed regulations contained in this NPRM reflect the final consensus of the negotiating committee, which was made up of the following members:

American Association of Community Colleges.

American Association of Cosmetology Schools.

American Association of State Colleges and Universities.
American Council on Education.
Career College Association.
Coalition of Associations of Schools of the Health Professions.
Coalition of Higher Education Assistance Organizations.
Consumer Bankers Association.
Education Finance Council.
Education Loan Management Resources.
Legal Services Counsel (a coalition).
National Association of College and University Business Officers.
National Association of Equal Opportunity in Higher Education.
National Association of Graduate/Professional Students.
National Association of Independent Colleges and Universities.
National Association of State Student Grant and Aid Programs.
National Association of State Universities and Land-Grant Colleges.
National Association of Student Financial Aid Administrators.
National Association of Student Loan Administrators.
National Council of Higher Education Loan Programs.
National Direct Student Loan Coalition.
Sallie Mae, Inc.
Student Loan Servicing Alliance.
The College Board.
The College Fund/United Negro College Fund.
United States Department of Education.
United States Student Association.
U.S. Public Interest Research Group.

Under committee protocols, consensus meant that there was no dissent by any member of the committee. Thus, the proposed regulations in this document have been agreed to by each of the organizations and groups listed as members of the committee.

Proposed Regulatory Changes

Section 685.202

Interest Rates and Loan Fees

Interest Rates

The proposed regulations would implement changes to section 455(b) of the HEA that affect the interest rates charged on Direct Loan Program loans.

The interest rate formulas that apply to Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans that are first disbursed on or after October 1, 1998 and before July 1, 2003 are as follows:

For	During	The interest rate is	But will not exceed (percent)
Direct Subsidized, Direct Unsubsidized	Repayment	91-day Treasury bill rate + 2.3	8.25
	In-School Grace Deferment	91-day Treasury bill rate + 1.7	8.25
Direct PLUS	All Periods	91-day Treasury bill rate + 3.1	9

The interest rate formulas that apply to Direct Consolidation Loans that are first disbursed on or after July 1, 1998 are as follows:

For a direct consolidation loan	During	The interest rate on the student loan portions is	The interest rate on the PLUS loan portion is
Application received before 10/1/98 and first disbursement on or after 7/1/98.	Repayment	91-day Treasury bill rate + 2.3 (Will not exceed 8.25%).	91-day Treasury bill rate + 3.1 (Will not exceed 9%).
	In-School Grace Deferment	91-day Treasury bill rate + 1.7 (Will not exceed 8.25%).	91-day Treasury bill rate + 3.1 (Will not exceed 9%).
Application received between 10/1/98 and 1/31/99.	All Periods	91-day Treasury bill rate + 2.3 (Will not exceed 8.25%).	91-day Treasury bill rate + 2.3 (Will not exceed 8.25%).
Application received on or after 2/1/99 and before 7/1/2003.	All Periods	Weighted average of interest rates on loans being consolidated, rounded to nearest higher one-eighth of one percent (Will not exceed 8.25%).	Weighted average of interest rates on loans being consolidated, rounded to nearest higher one-eighth of one percent (Will not exceed 8.25%).

Loan Fees

The Secretary proposes to amend § 685.202(c) to clarify that the Secretary charges a loan fee on a Direct Subsidized or Direct Unsubsidized Loan not to exceed four percent of the principal amount of the loan. The Secretary interprets the 1998 Amendments as authorizing him to charge a reduced loan fee to all Direct Subsidized and Direct Unsubsidized Loan borrowers and to provide a reduction for borrowers demonstrating greater financial need. This authority is consistent with the authority provided to lenders in the FFEL Program under section 438(c)(2) of the HEA. The Secretary notes that the authority to charge a reduced fee in both the FFEL Program and the Direct Loan Program does not apply to PLUS loans in either program.

While the negotiators reached consensus on all of the proposed regulations included in this NPRM, some negotiators expressed a belief that the HEA requires the Secretary to charge a loan fee equal to four percent of the principal amount of the loan on a Direct Subsidized or Direct Unsubsidized Loan. As discussed below, however, the Secretary and some other negotiators believe that the Secretary does have the authority to charge reduced loan fees.

FFEL Program lenders are required to pay the Secretary a loan origination fee equal to three percent on all Stafford loans. Prior to enactment of the 1998 Amendments, on Unsubsidized Stafford Loans lenders were required to pass on the fee to the borrower, but lenders were not required to pass on the fee to Subsidized Stafford Loan borrowers. In addition, prior to enactment of the 1998 Amendments, there were no statutory or regulatory provisions controlling a lender's decision to offer a reduced loan origination fee. The 1998 Amendments now establish conditions under which a lender may charge reduced loan origination fees to some or all Stafford loan borrowers, thus making the lower fee a term or condition of the loan. In addition to the lender origination fee, guaranty agencies are authorized to charge a one-percent guarantee fee to borrowers. Similarly, prior to enactment of the 1998 Amendments, the Direct Loan Program charged a loan fee equivalent to the amount of the loan origination fee and the guarantee fee charged to FFEL Stafford Loan

borrowers. Generally, these practices resulted in consistent treatment of borrowers. However, depending on which loans they received and whether their particular lender or guaranty agency chose to offer them a reduced fee on their loan, some FFEL Stafford Loan borrowers paid lower fees.

To promote consistent benefits to borrowers, the 1998 Amendments, for the first time, established certain standards that must be met in order for lenders to reduce loan origination fees in the FFEL Program. The HEA now requires lenders to provide reduced loan origination fees to all borrowers or to borrowers who demonstrate a greater financial need. Proposed regulations implementing these standards were agreed to during the negotiations and will be published shortly. With these standards, all similarly situated borrowers with loans from a specific lender will be treated equally.

Nothing in the 1998 Amendments or its legislative history indicate that Congress intended to deny the benefits of reduced loan fees to borrowers in the Direct Loan Program. In fact, Congress retained the provision that borrowers in the Direct Loan Program should receive the same terms, conditions, and benefits on their loans as borrowers of similar loans in the FFEL Program unless specifically provided for otherwise. The Secretary believes that the 1998 Amendments created a new statutory basis for borrowers to insist on equal treatment from their lender on loan fees, including a lower fee if the lender chooses to offer a lower loan fee to at least some borrowers. The Secretary does not believe that Congress affirmatively intended to deny this benefit to Direct Loan borrowers. Accordingly, the Secretary believes that the HEA permits him to charge reduced loan fees to borrowers in the Direct Loan Program.

In accordance with 5 U.S.C. 553(b)(A), this preamble announces the Secretary's interpretative rule that he can charge reduced loan fees in the Direct Loan Program consistent with the lenders' authority to do so in the FFEL Program. The provision contained in this NPRM is consistent with the Secretary's interpretative rule. The Secretary will consider the public comments received on this proposed provision and determine whether any changes should be reflected in the final rule.

Section 685.211

Repayment Incentives

The proposed regulations would implement a change to section 455(b) of the HEA, which authorizes the Secretary to charge borrowers reduced interest rates to encourage on-time loan repayment. The repayment incentives that the Secretary offers to Direct Loan borrowers must be cost-neutral and in the best financial interests of the federal government.

The proposed regulations provide the Secretary with the flexibility needed to offer additional or different repayment incentives in response to changes in economic conditions or to the Direct Loan Program statute. As written, the language mirrors the authority of lenders and guaranty agencies in the FFEL Program to offer benefits to borrowers.

Shortly, the Secretary will charge a reduced interest rate to those borrowers repaying by means of automated account debiting. Borrowers repaying via automated debiting of their personal checking, savings, or other type of account at a financial institution will receive a reduction in the interest being charged on their Direct Loans. The Secretary has determined that the reduced interest charge will be cost-neutral and has so advised the Office of Management and Budget, which is now conducting its own review consistent with section 455(b) of the HEA.

Sections 685.400 and 685.401

School Participation Requirements

The proposed regulations would implement changes to section 453(b) of the HEA by deleting all references to the phase-in of the Direct Loan Program and the transition from the FFEL Program to the Direct Loan Program. The proposed regulations move the school selection provisions to § 685.400 and remove § 685.401 from the Direct Loan Program regulations.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

Proposals implementing the statutory change in borrower interest rates have been estimated to increase costs to the Federal Government by $147 million over five years. Costs increase under this change because interest rates charged to Direct Loan borrowers—and corresponding repayments to the Federal Government—are reduced. The change represents a significant economic benefit to Direct Loan borrowers.

There are no Federal costs associated with the proposed regulations allowing the Secretary to offer reduced borrower interest rates as incentives to encourage on-time repayment. The HEA requires that any such incentives be cost-neutral. The Secretary intends to use this authority to charge a reduced interest rate to borrowers repaying by means of automated account debiting; this reduction will be structured to ensure its cost-neutrality.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, *§ 685.211 Miscellaneous repayment provisions.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. None of the parties affected by these proposed regulations—individual Direct Loan borrowers—would be considered small entities for the purposes of the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Part 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

Dated: June 10, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by revising Part 685 to read as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087 *et seq.*, unless otherwise noted.

2. Section 685.202 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest*—(1) *Interest rate for Direct Subsidized Loans and Direct Unsubsidized Loans.* (i) *Loans first disbursed before July 1, 1995.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(ii) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.*

(A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.5 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 8.25 percent.

(iii) *Loans first disbursed on or after July 1, 1998.*

(A) *During the in-school, grace, and deferment periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 1.7 percentage points, but does not exceed 8.25 percent.

(B) *During all other periods.* The interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(2) *Interest rate for Direct PLUS Loans.* (i) *Loans first disbursed before July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(ii) *Loans first disbursed on or after July 1, 1998.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 3.1 percentage points, but does not exceed 9 percent.

(3) *Interest rate for Direct Consolidation Loans.*

(i) *Interest rate for Direct Subsidized Consolidation Loans and Direct Unsubsidized Consolidation Loans.*

(A) *Loans first disbursed before July 1, 1995.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(i) of this section.

(B) *Loans first disbursed on or after July 1, 1995 and before July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary before October 1, 1998 and for which the first disbursement is made on or after July 1, 1998.* The interest rate is the rate established for Direct Subsidized Loans and Direct Unsubsidized Loans in paragraph (a)(1)(iii) of this section.

(D) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(E) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(ii) *Interest rate for Direct PLUS Consolidation Loans.*

(A) *Loans first disbursed before July 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(i) of this section.

(B) *Loans for which the consolidation application is received by the Secretary before October 1, 1998 and for which the first disbursement is made on or after July 1, 1998.* The interest rate is the rate established for Direct PLUS Loans in paragraph (a)(2)(ii) of this section.

(C) *Loans for which the consolidation application is received by the Secretary on or after October 1, 1998 and before February 1, 1999.* During all periods, the interest rate during any twelve-month period beginning on July 1 and ending on June 30 is determined on the June 1 immediately preceding that period. The interest rate is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1 plus 2.3 percentage points, but does not exceed 8.25 percent.

(D) *Loans for which the consolidation application is received by the Secretary on or after February 1, 1999.* During all periods, the interest rate is based on the weighted average of the interest rates on the loans being consolidated, rounded to the nearest higher one-eighth of one percent, but does not exceed 8.25 percent.

(4) *Interest rate reductions.* The Secretary may reduce the interest rate on a Direct Loan as provided in § 685.211(b).

* * * * *

(c) * * *

(1)(i) Charges a borrower a loan fee not to exceed four percent of the principal amount of the loan on a Direct Subsidized or Direct Unsubsidized Loan; or

(ii) Charges a borrower a loan fee of four percent of the principal amount of the loan on a Direct PLUS Loan.

* * * * *

3. Section 685.211 is amended by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively; by adding a new paragraph (b); by revising the first sentence of newly redesignated paragraph (e)(2); and by revising newly redesignated paragraph (e)(3) to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(b) *Repayment incentives.* To encourage on-time repayment, the Secretary may reduce the interest rate for a borrower who repays a loan under a system or on a schedule that meets requirements specified by the Secretary.

* * * * *

(e) * * *

(2) If the Secretary makes the determination described in paragraph (e)(1) of this section, the Secretary sends an ineligible borrower a demand letter that requires the borrower to repay some or all of a loan, as appropriate. * * *

(3) If a borrower fails to comply with the demand letter described in paragraph (e)(2) of this section, the borrower is in default on the entire loan.

* * * * *

4. Section 685.400 is amended by adding a new paragraph (d) to read as follows:

§ 685.400 School participation requirements.

* * * * *

(d) The Secretary selects schools to participate in the Direct Loan Program from among those that apply to participate and meet the requirements in paragraphs (a)(1), (b), and (c) of this section.

§ 685.401 [Removed and Reserved]

5. Section 685.401 is removed and reserved.

[FR Doc. 99–15278 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
June 16, 1999

Part V

Department of Education

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs, Federal Activities, State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students

AGENCY: Department of Education.

ACTION: Notice of final priority, eligible applicants, and selection criteria for fiscal year 1999 and subsequent years.

SUMMARY: The Secretary announces a final priority, eligible applicants, and selection criteria for fiscal year (FY) 1999 and, at the discretion of the Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities—State and Regional Coalition Grant Competition to Prevent High-Risk Drinking Among College Students. The Secretary takes this action to focus Federal financial assistance on an identified national need. This competition seeks to reduce and prevent high-risk drinking among college students by funding State or regional coalitions for a two-year period to bring together institutions of higher education (IHEs) to share ideas and develop, implement, and evaluate collaborative strategies.

EFFECTIVE DATE: These priorities take effect July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kimberly Light, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. FAX (202) 260–7767. Internet: http://www.ed.gov/OESE/SDFS.

Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: High-risk drinking, including "binge" drinking, continues to affect the health, learning, and safety of college students. Excessive use of alcohol has resulted in deaths, serious injuries, vandalism, and sexual assault on college campuses. There is strong evidence that environmental factors, including alcohol availability, high-risk alcohol use norms, and the restrictiveness of State drunk driving laws, play a major role in student alcohol use. Different IHEs may have high-risk drinking problems that are affected by similar environmental concerns; therefore, developing partnerships with other IHEs can provide a forum to develop common solutions as well as a mechanism to create the "critical mass" of concerned stakeholders needed to influence broader environmental changes. The recent development of a number of IHE coalitions across the country suggests that such partnerships may be an effective method for IHEs with common environmental concerns to build local capacity to address high-risk drinking within their campus-communities. In addition, these efforts can have an impact within a larger community context, such as geographic regions within States (*e.g.*, a large metropolitan area), similar institutions within States (*e.g.*, all public universities), or institutions in States that share common borders. This competition seeks to encourage these collaborative efforts and evaluate their effectiveness so that other IHEs may adopt effective strategies.

This notice contains a final priority, eligible applicants, and related selection criteria for fiscal year 1999 and subsequent years. Under this absolute priority, the Secretary may make awards for up to 24 months.

On April 20, 1999, the Secretary published the proposed priorities for this competition in a Notice of Proposed Priority in the **Federal Register** (64 FR 19347–19349). In response to the comments received, the Secretary made no modifications, as noted in the following section—Analysis of Comments and Changes—of this notice of final priorities.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment on the proposed priorities, the Department received two responses from institutions of higher education. Most of the comments were related to the proposed selection criteria, which were selected from the established selection criteria published in the Education Department General Administrative Regulations (EDGAR). An analysis of the comments, organized by topic, follows:

Focus of Priority

Comment: One commenter suggested that the priority include not only binge drinking, but also other patterns of abusive drinking that have negative consequences for student life. The commenter indicated that other patterns of abusive drinking are seen at historically Black IHEs.

Discussion: The existing language in the priority is specifically designed to include a range of high-risk drinking problems. Although "binge" drinking is a significant type of high-risk drinking, the priority would not preclude a focus on other types of abusive drinking.

Changes: None.

Selection Criteria—Need for Project

Comment: One commenter proposed points be reassigned under this criterion to place more emphasis on identifying and addressing gaps and weaknesses in services, rather than on the magnitude and severity of the problem to be addressed, in order to reflect the amount of additional work required by applicants to identify gaps and weaknesses.

Discussion: The points assigned for this selection criterion are intended to place greater emphasis on the magnitude and severity of the high-risk drinking problem to be addressed by the coalition. Because of the limited funds available for this initiative, emphasis is placed on directing funds to areas with the greatest need.

Changes: None.

Selection Criteria—Significance and Quality of the Project Design

Comment: One commenter proposed that the subcriterion under Quality of the Project Design addressing capacity building be combined with the subcriterion under Significance addressing system change and improvement. The commenter suggested that system change, by definition, will build capacity and yield results beyond the period of Federal financial assistance.

Discussion: These subcriteria were selected to address two different, but related, aspects of project impact. Capacity building may not necessarily lead to system change and improvement, and system change and improvement may not necessarily include capacity building. Therefore, both of these selection criteria help select projects that have the greatest potential to continue the work of the project after the Federal project period ends.

Changes: None.

Selection Criteria—Quality of Project Design

Comment: One commenter suggested that the number of points be increased under the subcriterion addressing clearly specified and measurable goals, objectives and outcomes, because the

organization's goals, objectives and outcomes have a major impact on the functioning of the project. In addition, this commenter proposed that this subcriterion be expanded to include proposed activities for achieving the stated goals, objectives and outcomes.

Discussion: Clearly specified and measurable goals, objectives and outcomes are an important part of the design of a project; however, the quality of the content of the goals, objectives and outcomes is most important to the design of projects under this program, and is therefore more heavily weighted. The subcriterion on the extent to which the design of the project reflects up-to-date knowledge from research and effective practice will allow reviewers to assess the quality of the project goals, objectives and outcomes, including the proposed project activities.

Changes: None.

Selection Criteria—Quality of the Project Personnel and Quality of the Management Plan

Comment: One commenter suggested that the Quality of the Project Personnel criterion and the Quality of the Management Plan criterion be combined and renamed "management and organizational capability."

Discussion: The selection criteria Quality of Project Personnel and Quality of the Management Plan need to be handled separately because they address different aspects of an application. For example, an applicant could have well qualified personnel but the management plan may be poorly designed or written. Both the plan and personnel are critical to the success of the grant.

Changes: None.

Selection Criteria—Quality of the Management Plan

Comment: One commenter proposed that the subcriterion on bringing a diversity of perspectives to bear on the operation of the proposed project be expanded to specify which faculty/student leaders should be included. This commenter also suggested that this subcriterion include both receiving input from and providing information to key stakeholders.

Discussion: Applicants are encouraged to bring a wide variety of perspectives to the operation of their proposed projects. The specific individuals who are included may vary depending on the project goals and design. This subcriterion does not preclude applicants from both receiving input from and providing information to key stakeholders.

Changes: None.

Comment: One commenter suggested a subcriterion be included to require a one-page organization chart to graphically portray the management structure of the project.

Discussion: Illustrating the management structure with an organization chart is deemed to be the prerogative of the applicant.

Changes: None.

Selection Criteria—Adequacy of Resources

Comment: One commenter proposed that a criterion be added that addresses the level of networking between the applicant and members of national, statewide and regional college consortiums and related collaborations.

Discussion: The level of networking by applicants will vary depending on the design and scope of their projects.

Changes: None.

Comment: One commenter suggested the expansion of the subcriterion on reasonable costs by adding that the proposed budget be complete, detailed, and allowable. This commenter also suggested that this criterion require a description of how non-Federal resources will be utilized.

Discussion: Administration of Federal grants is governed by Federal cost principles that will be referenced in the application package information. These cost principles provide information on allowable costs. In addition, applicants will be required to submit a budget form and narrative detailing their plans for the use of funds.

Changes: None.

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition *only* applications that meet the following absolute priority:

Implement and Evaluate the Impact of a State or Regional Coalition to Develop Strategies for Reducing and Preventing High-Risk Drinking Among College Students

Applicants proposing a project under this priority must:

(1) Propose to expand an existing or establish a new State or regional coalition of IHEs and other relevant organizations that includes key stakeholders who will have an impact on the development and implementation of State, local, and campus policies and programs to reduce and prevent high-risk drinking;

(2) Explain how coalition members will work together on a regular basis, including meeting to discuss common problems and share effective strategies;

(3) Use community collaboration prevention approaches, including involvement of students, that research or evaluation has shown to be effective in preventing or reducing high-risk drinking;

(4) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators in addition to process (formative) measures that documents strategies used and measures the effectiveness of the coalition;

(5) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period; and

(6) Share information about their projects with the Department of Education or its agents.

Eligible Applicants

Eligible applicants under this competition are IHEs, consortia of IHEs, and other public and private nonprofit organizations.

Selection Criteria

The following selection criteria will be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for project* (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude or severity of the problem to be addressed by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) *Significance* (14 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (10 points)

(b) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings. (4 points)

(3) *Quality of the project design* (15 Points)

In determining the quality of the design of the proposed project, the following factors are considered.

(a) The extent to which the goals, objectives, and outcomes to be achieved

by the proposed project are clearly specified and measurable. (4 points)

(b) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (6 points)

(c) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (5 points)

(4) *Quality of the project personnel* (15 points)

In determining the quality of project personnel, the following factors are considered:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(b) The qualifications, including relevant training and experience, of key project personnel. (12 points)

(5) *Adequacy of resources* (16 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(a) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project. (8 points)

(b) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (4 points)

(c) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (4 points)

(6) *Quality of the management plan* (14 points)

In determining the quality of the management plan for the proposed project, the following factors are considered:

(a) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (10 points)

(b) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (4 points)

(7) *Quality of the project evaluation* (11 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed project. (4 points)

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (3 points)

(c) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (4 points)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations of 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with this order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

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Note: The official version of this document is the document published in the **Federal Register**.

(Catalog of Federal Domestic assistance Number 84.184H, Safe and Drug-Free Schools and Communities National Programs—Federal Activities—State and Regional Coalition Grant Competition to Prevent High-Risk Drinking Among College Students)

Program Authority: 20 U.S.C. 7131.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–15324 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.184H]

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs-Federal Activities—State and Regional Coalition Grant Competition To Prevent High-Risk Drinking Among College Students

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1999.

Purpose of the Program: The National Programs portion of the Safe and Drug-Free Schools and Communities Act (SDFSCA) supports the development of programs to prevent the illegal use of drugs and violence among, and to promote safety and discipline for, students at all educational levels from preschool through the postsecondary level. This competition seeks to reduce and prevent high-risk drinking among college students by funding State or regional coalitions to bring together institutions of higher education (IHEs) to share ideas and develop, implement, and evaluate collaborative strategies.

Eligible Applicants: IHEs, consortia of IHEs, and other public and private nonprofit organizations.

Applications Available: June 14, 1999.

Deadline for Receipt of Applications: July 14, 1999.

Note: All applications must be received on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. Applications by mail should be sent to the U.S. Department of Education, Application Control Center, Attention: CFDA #84.184H, Washington, DC 20202–4725.

Deadline for Intergovernmental Review: September 14, 1999.

Available Funds: $1,450,000.

Estimated Range of Awards: $170,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86;

(b) 34 CFR parts 98 and 99; and

(c) The notice of final priority and selection criteria for FY 1999 published elsewhere in this issue of the **Federal Register**.

For Applications or Information Contact: Kimberly Light, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. By FAX: (202) 260–7767. Internet: *http://www.ed.gov/OESE/SDSF*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

Judith Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 99–15325 Filed 6–15–99; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
June 16, 1999

Part VI

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Parts 1940 and 3565
Guaranteed Rural Rental Housing Program; Final Rule

Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program; Notice

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 3565

RIN 0575–AC14

Guaranteed Rural Rental Housing Program

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

ACTION: Final rule; adoption of interim rule with changes.

SUMMARY: The Rural Housing Service (RHS) is issuing final regulations for the Guaranteed Rural Rental Housing Program (GRRHP). This action is taken to implement the "Housing Opportunity Program Extension Act of 1996." The program is intended to increase the supply of affordable rural multifamily housing through partnerships between the Agency and major lending sources, including banks, state and local housing finance agencies, and bond issuers.

EFFECTIVE DATE: July 16, 1999.

FOR FURTHER INFORMATION CONTACT: Carl W. Wagner, Deputy Division Director, Guaranteed Loans, Multi-Family Housing Processing Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue, SW, Washington, DC 20250–0781, telephone: (202) 720–1604.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been redesignated from significant to not-significant since the publication of the interim final rule. This rule has now been determined to be not-significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

Discussion of Use of Final Rule

Program funding levels are made public in a "Notice of Funds Availability" (NOFA) published concurrently with this final rule. Approximately $74 million in guaranteed loans is available in this fiscal year. Potential applicants are encouraged to apply as soon as possible.

Civil Justice Reform

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

Intergovernmental Consultation

The program is subject to Executive Order 12372 which requires intergovernmental consultation with state and local officials. Intergovernmental consultation has been conducted in accordance with 7 CFR part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities."

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objections of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

The information and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0174, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rules does not impose any new information or recordkeeping requirements from those approved by OMB.

Purpose and Program Summary

The program has been designed to increase the availability of affordable multifamily housing through partnerships between the Agency and lending sources, as well as state and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects to be guaranteed under this program. Projects may be for new construction or acquisition with substantial rehabilitation. The Agency will guarantee such loans upon review of the lender's underwriting package, appraisal report, appropriate certifications, project information, and satisfactory completion of the appropriate level of environmental review by the Agency. Lenders will be responsible for loan underwriting, management and servicing associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be shared on a pro-rate basis between the lender and the Agency from the first dollar lost.

Program applicability and funding will be announced by NOFA published in the **Federal Register**. When program funding levels exceed $100 million, funds are allocated to states based on the following criteria: (1) State's percentage of national rural population, (2) State's percentage of the national number of rural households between 50 and 115 percent of the area median income, and (3) State's percentage of National average cost per unit. These criteria for allocation of funds to the states are consistent with other Agency housing programs. The criteria will enable the Agency to allocate funds based on a state's population and available households with income sufficient to meet the proposed rents, and to adjust the allocation for per unit new construction cost. The purpose of having a cost factor is to assure units produced reflect criteria for need, especially for high cost states. Eighty percent of the weight will be divided equally between population and income and 20 percent based on cost. When the funding levels are under $100 million, funds will all be held in a National Office reserve and made available administratively in accordance with the NOFA and program regulations.

Public Comments

The Agency received the following comments as the result of the publication of the regulation as an Interim Final Rule in the **Federal Register** on July 22, 1998 (62 FR 39452).

The Agency received seven comments on the regulation. The commentators represented the following:

- Mortgage Banker and User of Program.
- Developer.
- Interest Group.
- Public Body.
- Private consultant.
- Two Tenants' Rights Group.

Many of the comments related to the how things will be done (e.g. "How will interest credit be calculated and paid?"). Such questions are addressed in the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook (HB–1–3565) which was not available during the comment period. The Handbook was made available to the public on December 18, 1998. It provides the reader with instruction on matters such as the Agency's internal processing procedures. The Handbook will not be published in the **Federal Register**, but is available to the public at no cost. The Handbook can also be found on the Internet at http://rdinit.usda.gov/regs/.

The comments that we adopted in the regulation are as follows:

1. Two commentors recommended extending the construction/permanent loan period from 12 to 24 months.

2. Two respondents commented that a Regulatory Agreement is typically not recorded of record. The requirement to have the Regulatory Agreement recorded was removed because the requirement to maintain the property in affordable housing will be recorded in the deed.

3. Two commentors responded on the exclusion of tax exempt bonds in the program. Since tax exempt bond financing is now authorized by legislation passed in August 1998, the Final Rule has been changed accordingly.

4. Three respondents suggested that three of the priority items used to rank and score NOFA responses be included in the regulation (Namely priority for projects in smaller communities, low income communities, and Empowerment Zones/Enterprise Communities). These priorities will be included in the Final Rule.

5. Four respondents commented on the requirement for the lender to certify that the project is in compliance with local, state, federal laws and program requirements. This requirement will be changed to require the lender to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

The issues that we were not able to adopt are as follows:

1. Two commentors responded that rental assistance be provided to 538 projects. We could not consider this because rental assistance is not authorized by the Housing Act of 1949 (the Act).

2. One commentor believed that the amount of the loan guarantee should be increased to 100%. This is not permitted by the Act.

3. One commentor responded that the non-assumability or release of borrower provision be removed. This is not permitted by the Act.

4. One commentor suggested that the rural area definition be changed to allow places up to 50,000 population. This change is not permitted by the Act.

5. Several commentors asked for a more complete discussion of interest credit. This was not added to the Final Rule but was added to the Handbook.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 3565

Bankruptcy, Banks, Banking civil rights, Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages, Real property acquisition, Surety bonding.

Accordingly, chapters XVIII and XXXV, title 7, Code of Federal Regulations are amended by adopting the interim rule published on July 22, 1998 (63 FR 39452) as a final rule with amendments as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

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

Subpart A—General Provisions

2. Revise section 3565.5 (b) to read as follows:

§ 3565.5 Ranking and selection criteria.

* * * * *

(b) *Priority projects.* Priority will be given to projects: in smaller rural communities, in the most needy communities having the highest percentage of leveraging, having the lowest interest rate, having the highest ratio of 3–5 bedroom units to total units, or located in Empowerment Zones/Enterprise Communities or on tribal lands. In addition, the Agency may, at its sole discretion, set aside assistance for or rank projects that meet important program goals. Assistance will include both loan guarantees and interest credits. Priority projects must compete for set-aside funds. The Agency will announce any assistance set aside and selection criteria in the NOFA.

3. Revise section 3565.6 to read as follows:

§ 3565.6 Inclusion of tax-exempt debt.

Tax-exempt financing can be used a source of capital for the guaranteed loan.

4. Revise section 3565.8 to read as follows:

§ 3565.8 Civil Rights Compliance.

(a) All actions taken by the Agency, or on behalf of the Agency, by a lender will be conducted without regard to race, color, religion, national origin, sex, marital status, age, income from public assistance or having exercised their right under the Consumer Credit Protection Act, and in accordance with

the Equal Credit Opportunity Act (ECOA).

(b) Any action related to the sale, rental or advertising of dwellings; in the provision of brokerage services; or in making available residential real estate transactions involving Agency assistance, must be in accordance with the Fair Housing Act, which prohibits discrimination on the basis of race, color, religion, sex, national origin, familial status or handicap. It is unlawful for a lender or borrower participating in the program to:

(1) Refuse to make accommodations in rules, policies, practices, or services if such accommodations are necessary to provide a person with a disability an opportunity to use or continue to use a dwelling unit and all public and common use areas; and

(2) Refuse to allow an individual with a disability to make reasonable modifications to a unit at his or her expense, if such modifications may be necessary to afford the individual full enjoyment of the unit.

(c) Any resident or prospective resident seeking occupancy or use of a unit, property or related facility for which a loan guarantee has been provided, and who believes that he or she is being discriminated against may file a complaint with the lender, the Agency or the Department of Housing and Urban Development. A written complaint should be sent to the Secretary of Agriculture or of the Department of Housing and Urban Development in Washington, DC.

(d) Lenders and borrowers that fail to comply with the requirements of title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), are liable for those sanctions authorized by law.

(e) For guaranteed loans with "interest credit," the following additional civil rights laws will apply and be enforced by the agency delivering this guarantee program: title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Age Discrimination Act of 1975, and title IX of the Education Amendments of 1972.

(f) In accordance with title VI, borrowers will be subjected to compliance reviews for projects that receive interest credit.

§ 3565.9 [Amended]

5. Amend section 3565.9 to remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

6. Revise section 3565.13 to read as follows:

§ 3565.13 Exception Authority.

An Agency official may request and the Administrator or designee may make an exception to any requirement or provision, or address any omission of this part, if the Administrator determines that application of the requirement or provision, or failure to take action, would adversely affect the government's interest or the program objectives, and provided that such an exception is not inconsistent with any applicable law or statutory requirement.

Subpart B—Guarantee Requirements

§ 3565.52 [Amended]

7. Amend the introductory text of section 3565.52 by revising the words "12 months" to read "24 months."

8. Amend section 3565.53 by revising paragraph (a) and the last sentence in paragraph (b) to read as follows:

§ 3565.53 Guarantee fees.

* * * * *

(a) *Initial guarantee fee.* The Agency will charge an initial guarantee fee equal to one percent of the guarantee amount. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(b) * * * This fee will be collected on January 1, of each calendar year.

* * * * *

Subpart C—Lender Requirements

9. Add section 3565.103(d)(9) to read as follows:

§ 3565.103 Approval requirements.

* * * * *

(d) * * *

(9) The lender must certify that they have computer systems that comply with year 2000 technology.

Subpart G—Processing Requirements

§ 3565.303 [Amended]

10. Amend section 3565.303(d)(8) by revising the word "a" to read "an" and by removing the word "recordable,".

Subpart H—Project Management

11. Amend section 3565.351 by amending paragraph (a) to remove the words "which will be filed in the real estate records of the appropriate jurisdiction" and by revising the introductory text of the section to read as follows:

§ 3565.351 Project Management.

As a condition of the guarantee, the lender is to obtain borrower certification that the project is in compliance with local, state, federal laws and program requirements.

* * * * *

Dated: June 9, 1999.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 99–15288 Filed 6–15–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Availability of Funding and Requests for Proposals for Guaranteed Loans Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice of Fund Availability (NOFA or Notice) announces the timeframe to submit proposals in the form of "NOFA responses" for the section 538 Guaranteed Rural Rental Housing Program (GRRHP). Eligible lenders are invited to submit NOFA proposals for the development of affordable rental housing to serve rural America. Lenders may submit their application concurrently with their NOFA response. This document also describes the overall application process, including the selection of NOFA responses and the allocation of interest credits.

DATES: The deadline for receipt of NOFA responses is to be 4:00 PM, Eastern Daylight Savings Time, 90 days from the date of publication in the **Federal Register** or 4:00 PM, Eastern Daylight Savings Time on August 31, 1999, whichever time comes first. Lenders intending to mail a NOFA response must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), Cash on Delivery (COD), and postage due NOFA responses or applications will not be accepted. No NOFA responses will be accepted after the deadlines previously mentioned, unless that date and time is extended by another Notice published in the **Federal Register**.

ADDRESSES: Responses for participation in the program must be identified as "Section 538 Guaranteed Rural Rental Housing Program" on the envelope and be submitted to: Director, Multi-Family Housing Processing Division, Rural Housing Service, US Department of Agriculture, Room 1263 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781.

FOR FURTHER INFORMATION CONTACT: Carl W. Wagner, Deputy Director, Guaranteed Loans, Multi-Family Housing Processing Division, U. S. Department of Agriculture, South Agriculture Building, Room 1223 (STOP 0781), 1400 Independence Ave. SW, Washington, DC 20250–0781, Telephone: (202) 720–1604. This number is not toll-free. Hearing or speech impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996," Public Law 104–120, authorizing the section 538 Guaranteed Rural Rental Housing Program (GRRHP). The program is intended to provide rural America with affordable housing through the use of loan guarantees and partnering with other housing programs, including state and local housing finance agencies and bond issuers.

The Rural Housing Service (RHS) is concurrently publishing regulations governing the program as a final rule in the **Federal Register.** Those regulations set forth RHS policies and requirements for the program including: lender and borrower requirements, loan and property requirements and restrictions, purposes for and uses of guaranteed funds, processing requirements, project management and servicing requirements, and policies and mandated procedures on assignments, conveyances and claims. Interested applicants should carefully review the regulation and the Guaranteed Rural Rental Housing Program Origination and Servicing Handbook for program origination and servicing procedures and the application package. The Handbook (HB–1–3565) can be found on the internet at http://rdinit.usda.gov/regs. As a service to our customers, copies of the interim and final rule may also be obtained from the RHS Multi-Family Housing Processing Division at 202–720–1604. This is not a toll-free number. Hearing-or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

Discussion of Notice

I. Purpose and Program Summary

The program has been designed to increase the supply of affordable multifamily housing through partnerships between RHS and major lending sources, as well as State and local housing finance agencies and bond issuers. Qualified lenders will be authorized to originate, underwrite, and close loans for multifamily housing projects requiring new construction or acquisition with rehabilitation of at least $15,000 per unit. RHS may guarantee such loans upon presentation and review of appropriate certifications, project information and satisfactory completion of the appropriate level of environmental review by RHS. Lenders will be responsible for the full range of loan management, servicing, and property disposition activities associated with these projects. The lender will be expected to provide servicing or contract for servicing of each loan it underwrites. In turn, RHS will guarantee the lender's loan up to 90 percent of total development cost and commits to pay up to a maximum of 90 percent of the outstanding principal and interest balance of such loan in the case of default of the loan and filing of a claim. In no event will the Agency pay more than 90 percent of the original principal amount. This means that the Agency will have a risk exposure under the GRRHP of approximately 80 percent of the total development cost. Any losses would be split on a pro-rata basis between the lender and the Agency from the first dollar lost.

II. Allocation

In Fiscal Year (FY) 1999, budget authority will provide approximately $74 million in program dollars. All FY 1999 funds will be held in the National Office. There are no set-asides or demonstration purposes for the GRRHP for FY 1999.

III. Application Process

For FY 1999, there is limited time between the publication of the NOFA and the deadline for receipt of applications in time for making conditional commitments for guaranteed loans. Eligible lenders are encouraged to submit NOFA responses prior to deadline, as applications will be reviewed as they are received. Lenders are required to submit their NOFA response by 4:00 PM, Eastern Daylight Savings Time, 90 days from the date of publication in the **Federal Register** or 4:00 PM, Eastern Daylight Savings Time on August 31, 1999, whichever time comes first. In the interest of time, lenders have the option of submitting a combined NOFA response and application. However, the Agency will not give preference to a submission with both the NOFA response and application. Upon notice of selection, lenders with the top ranked NOFA responses will be requested to submit the required application fee of $2,500.00 and full application if not already submitted. When the conditions of the conditional commitment are met, the lender will submit the required information with a separate guarantee fee of 1% of the total guarantee amount.

IV. Submission Requirements

All NOFA responses for the GRRHP must meet the requirements of 7

CFR part 3565 and this NOFA. Incomplete submissions will not be reviewed and will be returned to the lender. Lenders are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. RHS will base its determination of completeness of the application and the eligibility of each lender on the information provided in the application.

V. Selection Criteria

A. NOFA proposals will be reviewed as received. In the event that demand exceeds available funds, priorities will be assigned to eligible proposals on the basis of the following criteria as described in 7 CFR 3565.5(b), and points will be assigned as follows:

(1) Projects located in rural communities with the smallest population will receive priority. All proposals will be ranked in order of their population. The proposals will be given a point score starting with the project located in the area with the lowest population receiving 20 points, the next 19 points and so forth, until up to 20 projects have received points.

(2) The most needy communities as determined by the median income from the most recently available census data. The proposals will be given a point score starting with the community having the lowest median income receiving 20 points, the next 19 points and so forth until up to 20 proposals have received points.

(3) Partnering and leveraging in order to develop the maximum number of housing units and promote partnerships with state and local communities, including other partners with similar housing goals. Leveraging points will be awarded as follows:

Loan to value ratio (percentage %)	Points
75–84	10
70–74	15
69 or less	20

(4) Loans with interest rates less than the maximum allowable 250 basis points over the 30 Year Treasury Rate will be awarded points as follows:

Interest rate	Points
250 to 199 basis points, inclusive	0
200 to 151 basis points, inclusive	5
150 to 100 basis points, inclusive	10
99 to 50 basis points, inclusive	15
Less than 50 basis points	20

(5) Preference will be given to proposals having a higher percent of 3–5 bedroom units to total units. The proposals will be ranked in order of this percent with the proposal with the highest percent receiving 20 points, the next 19 points and so forth until up to 20 projects have received points.

(6) Proposals to be developed in a colonia, on tribal land, in an Empowerment Zone or Enterprise Community, or in a place identified in the State consolidated plan or State needs assessment as a high need community for multifamily housing (20 points).

(7) The Agency will award points or rank projects that meet the FY 1999 Guaranteed Rural Rental Housing goals of creating affordable housing and assuring that the most cost effective financing packages are selected for further processing. The statute requires that the property remain in affordable housing for the period of the original term of the guaranteed loan and each loan may be accordingly amortized for a period of up to 40 years without a balloon payment. Therefore, a longer amortization period affords a longer commitment to affordable housing and the creation of more affordable rents.

Projects will be ranked by the length of the amortization period, with the longest receiving priority as follows:

Amortization (yrs.)	Points
40	20
at least 35	15
at least 30	10
at least 20	5
less than 20	0

B. Assistance can include both loan guarantees and interest credits. For at least 20 percent of the loans made under the program, RHS shall provide the borrower with interest credits to reduce the interest rate of the loan by a maximum of 250 basis points. However, in no instance will the lender's interest rate be reduced to lower than the applicable Federal Rate as such term is used in section 42(I)(2)(D) of the Internal Revenue Code of 1986.

RHS will provide interest credit on loans up to $1.5 million. Lenders with proposals that could be viable with or without interest credits are encouraged to submit a NOFA response reflecting financial and market feasibility under both funding options. A request in the NOFA response to be considered under both options will not affect the rating of the response for Interest Credit selection. However, once the interest credit funds are exhausted, only those NOFA responses requesting consideration under both funding options or the Non-Interest Credit option will be further considered.

NOFA responses requesting to receive interest credit will be ranked and scored separately using the same selection criteria for non-interest credit proposals. In the event of ties, selection between proposals will be by lot.

VI. Additional Information

A. Regulations

NOFA responses are subject to the regulatory provisions of the Final Rule entitled "Guaranteed Rural Rental Housing Program," which is being published simultaneously in the **Federal Register**.

B. Surcharges for Guarantee of Construction Advances

There is no surcharge for guarantee of construction advances for FY 1999.

C. Maximum Interest Rate

The maximum allowable interest rate on a loan submitted for a guarantee is 250 basis points over the 30-year Treasury Bond Rate as published in the Wall Street Journal as of the business day previous to the business day the rate is set.

D. Lender Application Fee

There is no lender application fee for lender approval in FY 1999.

E. Program Fees for FY 1999

(1) There is an initial guarantee fee of 1% of the total guarantee amount which will be due at closing of the permanent loan. For purposes of calculating this fee, the guarantee amount is the product of the percentage of the guarantee times the initial principal amount of the guaranteed loan.

(2) There is an annual renewal fee of 0.5% of the guaranteed outstanding principal balance charged each year or portion of the year that the guarantee is in effect. This fee will be collected prospectively on January 1, of the calendar year.

(3) There is no site assessment and market analysis or preliminary feasibility fee in FY 1999.

(4) There is a non-refundable application fee of $2,500 when the application is submitted following proposal selection under the NOFA.

(5) There is a flat fee of $500 when a lender requests RHS to extend the term of a guarantee commitment.

(6) There is a flat fee of $500 when a lender requests RHS to reopen a guarantee commitment after the period of the commitment lapses.

(7) There is a flat fee of $1,250 when a lender requests RHS to approve the transfer of property and assumption of the loan to an eligible applicant.

Dated: June 3, 1999.

Inga Smulkstys,

Acting Under Secretary, Rural Development

[FR Doc. 99–15289 Filed 6–15–99; 8:45 am]

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federal register

Wednesday
June 16, 1999

Part VII

The President

Federal Register
Vol. 64, No. 115
Wednesday, June 16, 1999

Presidential Documents

Title 3—

The President

Proclamation 7203 of June 11, 1999

Gay and Lesbian Pride Month, 1999

By the President of the United States of America

A Proclamation

Thirty years ago this month, at the Stonewall Inn in New York City, a courageous group of citizens resisted harassment and mistreatment, setting in motion a chain of events that would become known as the Stonewall Uprising and the birth of the modern gay and lesbian civil rights movement. Gays and lesbians, their families and friends, celebrate the anniversary of Stonewall every June in America as Gay and Lesbian Pride Month; and, earlier this month, the National Park Service added the Stonewall Inn, as well as the nearby park and neighborhood streets surrounding it, to the National Register of Historic Places.

I am proud of the measures my Administration has taken to end discrimination against gays and lesbians and ensure that they have the same rights guaranteed to their fellow Americans. Last year, I signed an Executive order that amends Federal equal employment opportunity policy to prohibit discrimination in the Federal civilian work force based on sexual orientation. We have also banned discrimination based on sexual orientation in the granting of security clearances. As a result of these and other policies, gay and lesbian Americans serve openly and proudly throughout the Federal Government. My Administration is also working with congressional leaders to pass the Employment Non-Discrimination Act, which would prohibit most private employers from firing workers solely because of their sexual orientation.

America's diversity is our greatest strength. But, while we have come a long way on our journey toward tolerance, understanding, and mutual respect, we still have a long way to go in our efforts to end discrimination. During the past year, people across our country have been shaken by violent acts that struck at the heart of what it means to be an American and at the values that have always defined us as a Nation. In 1997, the most recent year for which we have statistics, there were more than 8,000 reported hate crimes in our country—almost one an hour. Now is the time for us to take strong and decisive action to end all hate crimes, and I reaffirm my pledge to work with the Congress to pass the Hate Crimes Prevention Act.

But we cannot achieve true tolerance merely through legislation; we must change hearts and minds as well. Our greatest hope for a just society is to teach our children to respect one another, to appreciate our differences, and to recognize the fundamental values that we hold in common. As part of our efforts to achieve this goal, earlier this spring, I announced that the Departments of Justice and Education will work in partnership with educational and other private sector organizations to reach out to students and teach them that our diversity is a gift. In addition, the Department of Education has issued landmark guidance that explains Federal standards against sexual harassment and prohibits sexual harassment of all students regardless of their sexual orientation; and I have ordered the Education Department's civil rights office to step up its enforcement of anti-discrimination and harassment rules. That effort has resulted in a groundbreaking guide that provides practical guidance to school administrators and teachers

for developing a comprehensive approach to protecting all students, including gays and lesbians, from harassment and violence.

Since our earliest days as a Nation, Americans have strived to make real the ideals of equality and freedom so eloquently expressed in our Declaration of Independence and Constitution. We now have a rare opportunity to enter a new century and a new millennium as one country, living those principles, recognizing our common values, and building on our shared strengths.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 1999 as Gay and Lesbian Pride Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities that celebrate our diversity, and to remember throughout the year the gay and lesbian Americans whose many and varied contributions have enriched our national life.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–15489
Filed 6–15–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7204 of June 11, 1999

Flag Day and National Flag Week, 1999

By the President of the United States of America

A Proclamation

Since its adoption in 1777 by the Continental Congress, the Stars and Stripes has symbolized the promise of America. This promise—of equality, justice under the law, freedom from tyranny, and inclusion in a government of the people—beckons immigrants to our shores today just as it has for more than two centuries. Each time the Stars and Stripes is raised over our homes, public buildings, schools, or community gathering places, it proclaims that our Nation's great experiment in democracy is alive and well.

The stately design of the Stars and Stripes celebrates America's diversity while proclaiming the unity of our Nation. Its white stars, whose shifting constellation has chronicled the growth of our Nation, are the ancient symbols of a sovereign domain; they lie on a field of blue that represents loyalty, justice, and truth. Thus our flag describes the unique Republic designed by our founders, in which States that vary widely in geography. history, and culture are joined in sustaining the common goals and ideals our Nation holds dear. The Stars and Stripes reminds us that, wherever we come from across our country, we are all first and foremost Americans.

Today, as we stand at the threshold of the 21st century, we have a special opportunity to renew our flag's heritage and to honor the spirit of resilience in our national character that it signifies. As part of this effort, the White House Millennium Council's "Save America's Treasures Project," created by the First Lady, is helping to restore and preserve the original Star-Spangled Banner at the Smithsonian's National Museum of American History. This banner, "so gallantly streaming" as the British navy retreated from Baltimore Harbor after a failed assault on Fort McHenry in 1814, is immortalized in the bold and patriotic words of Francis Scott Key that now serve as our National Anthem. From the fledgling Nation of Key's time, defiantly opposing domination by European powers, the United States has evolved into a Nation of unrivaled influence in the world with an unparalleled commitment to democracy and human rights. During Flag Day and National Flag Week, we honor this incredible journey and the bright future it has made possible.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as "Flag Day" and requested the President to issue an annual proclamation calling for its observance and for the display of the Flag of the United States on all Federal Government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 falls as "National Flag Week" and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim June 14, 1999, as Flag Day and the week beginning June 13, 1999, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National

Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor our Nation, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J Clinton

[FR Doc. 99–15490
Filed 6–15–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13126 of June 12, 1999

Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to continue the executive branch's commitment to fighting abusive child labor practices, it is hereby ordered as follows:

Section. 1. *Policy.* It shall be the policy of the United States Government, consistent with the Tariff Act of 1930, 19 U.S.C. 1307, the Fair Labor Standards Act, 29 U.S.C. 201 *et. seq.*, and the Walsh-Healey Public Contracts Act, 41 U.S.C. 35 *et seq.*, that executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor.

Sec. 2. *Publication of List.* Within 120 days after the date of this order, the Department of Labor, in consultation and cooperation with the Department of the Treasury and the Department of State, shall publish in the **Federal Register** a list of products, identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor. The Department of Labor may conduct hearings to assist in the identification of those products.

Sec. 3. *Procurement Regulations.* Within 120 days after the date of this order, the Federal Acquisition Regulatory Council shall issue proposed rules to implement the following:

(a) *Required Solicitation Provisions.* Each solicitation of offers for a contract for the procurement of a product included on the list published under section 2 of this order shall include the following provisions:

(1) A provision that requires the contractor to certify to the contracting officer that the contractor or, in the case of an incorporated contractor, a responsible official of the contractor has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor; and

(2) A provision that obligates the contractor to cooperate fully in providing reasonable access to the contractor's records, documents, persons, or premises if reasonably requested by authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice, for the purpose of determining whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under the contract.

(b) *Investigations.* Whenever a contracting officer of an executive agency has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture a product furnished pursuant to a contract subject to the requirements of subsection 3(a) of this order, the head of the executive agency shall refer the matter for investigation to the Inspector General of the executive agency and, as the head of the executive agency or the Inspector General determines appropriate, to the Attorney General and the Secretary of the Treasury.

(c) *Remedies.*

(1) The head of an executive agency may impose remedies as provided in this subsection in the case of a contractor under a contract of the executive agency if the head of the executive agency finds that the contractor:

(i) Has furnished under the contract products that have been mined, produced, or manufactured by forced or indentured child labor or uses forced or indentured child labor in the mining, production, or manufacturing operations of the contractor;

(ii) Has submitted a false certification under subsection 3(a)(1) of this order; or

(iii) Has failed to cooperate in accordance with the obligation imposed pursuant to subsection 3(a)(2) of this order.

(2) The head of an executive agency, in his or her sole discretion, may terminate a contract on the basis of any finding described in subsection 3(c)(1) of this order for any contract entered into after the date the regulation called for in section 3 of this order is published in final.

(3) The head of an executive agency may debar or suspend a contractor from eligibility for Federal contracts on the basis of a finding that the contractor has engaged in an act described in subsection 3(c)(1) of this order. The provision for debarment may not exceed 3 years.

(4) The Administrator of General Services shall include on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (maintained by the Administrator as described in the Federal Acquisition Regulation) each party that is debarred, suspended, proposed for debarment or suspension, or declared ineligible by the head of an agency on the basis that the person has engaged in an act described in subsection 3(c)(1) of this order.

(5) This section shall not be construed to limit the use of other remedies available to the head of an executive agency or any other official of the Federal Government on the basis of a finding described in subsection 3(c)(1) of this order.

Sec. 4. *Report.* Within 2 years after implementation of any final rule under this order, the Administrator of General Services, with the assistance of other executive agencies, shall submit to the Office of Management and Budget a report on the actions taken pursuant to this order.

Sec. 5. *Scope.* (a) Any proposed rules issued pursuant to section 3 of this order shall apply only to acquisitions for a total amount in excess of the micro-purchase threshold as defined in section 32(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(f)).

(b) This order does not apply to a contract that is for the procurement of any product, or any article, material, or supply contained in a product that is mined, produced, or manufactured in any foreign country if:

(1) the foreign country is a party to the Agreement on Government Procurement annexed to the WTO Agreement or a party to the North American Free Trade Agreement ("NAFTA"); and

(2) the contract is of a value that is equal to or greater than the United States threshold specified in the Agreement on Government Procurement annexed to the WTO Agreement or NAFTA, whichever is applicable.

Sec. 6. *Definitions.* (a) "Executive agency" and "agency" have the meaning given to "executive agency" in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(b) "WTO Agreement" means the Agreement Establishing the World Trade Organization, entered into on April 15, 1994.

(c) "Forced or indentured child labor" means all work or service (1) exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or (2) performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Sec. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and does not create any rights or benefits, substantive or procedural, enforceable by law by a party against the United States, its agencies, its officers, or any other person.

William J. Clinton

THE WHITE HOUSE,
June 12, 1999.

[FR Doc. 99–15491
Filed 6–15–99; 8:45 am]
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Federal Register

Vol. 64, No. 115

Wednesday, June 16, 1999

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FEDERAL REGISTER PAGES AND DATES, JUNE

29207–29536 1
29537–29776 2
29777–29944 3
29945–30212 4
30213–30378 7
30379–30860 8
30861–31104 9
31105–31484 10
31485–31686 11
31687–31962 14
31963–32178 15
32179–32386 16

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7103 (See Proc. 7202) 29773
7201 29769
7202 29773
7203 32379
7204 32381
Executive Orders:
12759 (revoked by EO 13123) 30851
12845 (revoked by EO 13123) 30851
12902 (revoked by EO 13123) 30851
13123 30851
13124 31103
13125 31105
13126 32383
Administrative Orders:
Memorandums:
May 26, 1999 29539
Presidential Determinations:
No. 99–25 of May 24, 1999 29537
No. 99–26 of May 24, 1999 31109
No. 99–27 of May 24, 1999 31111
No. 99–28 of May 24, 1999 31113

5 CFR

213 31485
353 31485
870 31485
890 31485
1620 31052
1650 31052
1651 31052
1690 31052
2430 30861
Proposed Rules:
630 31735

7 CFR

37 30861
301 ..... 29207, 29541, 30213, 31963, 31964
407 30214
930 30229
989 30233
1205 30236
1780 29945
1940 32370
3565 32370
Proposed Rules:
246 32308
301 30250
319 31512
916 30252
917 30252
981 31153
1065 30256
1216 31736
1230 31158
1550 32156

8 CFR

214 ..... 29208, 30103, 32146
Proposed Rules:
214 32149

9 CFR

91 29947
93 31966
Proposed Rules:
3 30257
317 29702
318 29602
381 29602

10 CFR

2 ..... 29212, 29213
170 31448
171 31448
1703 31115
Proposed Rules:
2 29246
50 31737
850 29811

11 CFR

Proposed Rules:
110 31159

12 CFR

4 29214
331 30869
902 30880
903 30880
Proposed Rules:
1 31749
5 31749
7 31749
24 31160
1750 31756

13 CFR

Proposed Rules:
121 29813

14 CFR

39 ..... 29777, 29788, 29781, 29783, 30379, 30382, 31488, 31490, 31491, 31687, 31689, 31967
71 ..... 29785, 30241, 30888, 31115, 31116, 31117, 31118, 31119, 31120, 32179
95 30890
97 ..... 30892, 30895, 30896
121 32176
135 32176

401.....29786
411.....29786
413.....29786
415.....29786
417.....29786
Proposed Rules:
23.....29247
39.....29602, 29607, 29814, 29965, 29966, 29969, 29972, 31518, 31520, 31523, 31687, 31689
71.....29817, 30259, 30260, 30261, 30928, 31525, 31526, 31527
108.....31686

15 CFR

774.....30103
Proposed Rules:
922.....30929, 31528

16 CFR

4.....32179
245.....30898
Proposed Rules:
23.....30448

17 CFR

5.....29217, 30384
10.....30902
30.....30103
240.....29550, 31493
Proposed Rules:
240.....29608

18 CFR

385.....31493
Proposed Rules:
35.....31390
385.....29614

19 CFR

Proposed Rules:
4.....29975
159.....29975
351.....29818

20 CFR

404.....29786
416.....31969

21 CFR

172.....29949
173.....29224
175.....29553
178.....30386
520.....30386, 31497, 32180
556.....31497
Proposed Rules:
884.....31164

23 CFR

180.....29742
Proposed Rules:
668.....30263

24 CFR

203.....29758
Proposed Rules:
Ch. IX.....30450
990.....30451

25 CFR

Proposed Rules:
151.....30929

26 CFR

1.....29788, 32181
Proposed Rules:
1.....31770
301.....31529
Proposed Rules:
1.....32205, 32305

28 CFR

345.....32168
540.....32170
Proposed Rules:
543.....32172

29 CFR

2704.....31895
4044.....31975
Proposed Rules:
2510.....30452

30 CFR

Ch. II.....30267
914.....31691
938.....30387
Proposed Rules:
917.....29247
943.....29249

31 CFR

Proposed Rules:
10.....31994

32 CFR

171.....29227
706.....31037
Proposed Rules:
884.....29252

33 CFR

100.....30388, 30389, 30390, 31977, 31978, 31979, 31980
110.....29554
117.....29558, 29559, 29561, 30390, 31981
162.....29554, 32103
165.....29554, 29561, 30242, 30243, 31982, 31984, 32181, 32183, 32184, 32185
169.....29229, 31037
Proposed Rules:
100.....30273
155.....31994
165.....30274, 32209

34 CFR

5b.....31066
Proposed Rules:
99.....29532
685.....32358

36 CFR

Proposed Rules:
1190.....31995
1191.....31995
1228.....30276

37 CFR

201.....29518
202.....29518, 29522
203.....29518
204.....29518
211.....29518

38 CFR

Ch. I.....30244
3.....30244, 30391, 30392
4.....30392
21.....31693

39 CFR

111.....31121
Proposed Rules:
265.....30929

40 CFR

9.....29490, 31358, 31693
52.....29235, 29563, 29567, 29570, 29573, 29790, 29793, 29958, 30394, 30396, 30399, 31498, 32187, 32346, 32353
59.....32103
62.....29796, 29961
63.....29420, 29490, 30194, 30406, 31358, 31695, 31895, 31898
80.....30904
81.....30911
82.....29240, 30410
85.....30415
136.....30417
180.....29581, 29589, 31124, 31129, 31501, 31505, 32189
185.....29589
186.....29589
239.....30434
261.....31986
723.....31987
745.....31092
Proposed Rules:
52.....29255, 29615, 29616, 29821, 29976, 30276, 30453, 31168, 31529, 32352, 32355
62.....29822, 29976
63.....30453, 30456
80.....30930, 32209
81.....29822, 30937
82.....31772
86.....32209
141.....30464
176.....29823
180.....30939, 31040
185.....30939
186.....30939
239.....30465
261.....31170
799.....31074

41 CFR

101–35.....32196
101–47.....31731

42 CFR

416.....32198
Proposed Rules:
5.....29831
51c.....29831
412.....31995
413.....31995
483.....31995
485.....31995

43 CFR

Proposed Rules:
2800.....32106
2880.....32106
3100.....29256
3110.....29256
3120.....29256
3130.....29256
3140.....29256
3150.....29256
3160.....29256
3170.....29256
3180.....29256

44 CFR

15.....31136

46 CFR

8.....30437
16.....31989
31.....30437
71.....30437
91.....30437
107.....30437
551.....30245

47 CFR

0.....31139
51.....32206
73.....31140, 31141, 31142, 31143, 31511
36.....30917
51.....29598
54.....30440
76.....29598
Proposed Rules:
1.....30288
20.....31530
22.....30288
24.....30288
26.....30288
27.....30288
36.....30949, 31780
54.....31780
69.....31780
73.....29977, 29978, 29979, 29980, 30288, 30289, 30290, 30291, 30292, 30293, 30294, 30295, 30296, 31171, 31172, 31173, 31174, 31175, 31176, 31532
74.....30288
80.....30288
87.....30288
90.....30288, 31532
95.....30288
97.....30288
101.....30288

48 CFR

52.....30103
203.....32305
207.....31732
209.....31732
803.....30442
852.....30442
1537.....30443
1552.....30442
Proposed Rules:
808.....29981
812.....29981
813.....29981
852.....29981
853.....29981
1815.....30468

49 CFR

1.....29601
80.....29742
261.....29742
640.....29742
Proposed Rules:
40.....29831
192.....29834

195.....29834
571 .....29616, 29617, 31533

50 CFR

20.....29799
23.....31989
222.....29805
223.....29805
230 31037
285 .....29806, 30925, 31992
600.....31895
622.....30445
635 .....29806, 30248, 31992
648.....31144
660.....29803, 31895
679 .....29809, 30926, 30927, 31151, 31733, 32207

Proposed Rules:

17.....29983
216.....31806
226.....29618
600.....30956
622.....29622, 31536
635.....29984
648 .....29257, 30956, 32021
660.....29834, 32210

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 16, 1999

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
Alternative fuel transportation program—
P-series fuels; definition; published 5-17-99

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sethoxydim; published 6-16-99

FEDERAL TRADE COMMISSION
Practice and procedure:
Voluntary testimony; disclosure requests; published 6-16-99

GENERAL SERVICES ADMINISTRATION
Federal property management:
Telecommunications resources management and use—
Network registration services; user fees; published 6-16-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
New drug applications—
Carprofen; published 6-16-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Pilatus Aircraft Ltd.; published 3-23-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Servicing and collections—
Suspension of collection of recapture amount for borrowers with shared appreciation agreements; comments due by 6-22-99; published 4-23-99

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Soy protein concentrate, modified food starch, and carrageenan; use as binders; comments due by 6-23-99; published 5-24-99

AGRICULTURE DEPARTMENT
Rural Business-Cooperative Service
Program regulations:
Servicing and collections—
Suspension of collection of recapture amount for borrowers with shared appreciation agreements; comments due by 6-22-99; published 4-23-99

AGRICULTURE DEPARTMENT
Rural Housing Service
Program regulations:
Servicing and collections—
Suspension of collection of recapture amount for borrowers with shared appreciation agreements; comments due by 6-22-99; published 4-23-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Program regulations:
Servicing and collections—
Suspension of collection of recapture amount for borrowers with shared appreciation agreements; comments due by 6-22-99; published 4-23-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna; comments due by 6-22-99; published 6-4-99
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 6-21-99; published 5-21-99
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 6-23-99; published 5-24-99
Magnuson-Stevens Act provisions—
Domestic fisheries; experimental fishing permits; comments due by 6-24-99; published 6-9-99
Marine mammals:
Beluga whales harvested in Cook Inlet, AK; marking and reporting by Alaskan Natives; comments due by 6-23-99; published 5-24-99

COMMERCE DEPARTMENT
Patent and Trademark Office
Trademark Law Treaty Implementation Act; implementation; comments due by 6-25-99; published 5-11-99

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
Landowner notification, expanded categorical exclusions, and other environmental filing requirements; comments due by 6-21-99; published 5-21-99

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 6-21-99; published 6-7-99
Air quality planning purposes; designation of areas:
Kentucky and Indiana; comments due by 6-21-99; published 5-21-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bentazon, etc.; comments due by 6-22-99; published 4-23-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 6-22-99; published 4-23-99
Water pollution control:
Underground injection control program; Class V injection wells
Class V wells; requirements for motor vehicle waste and industrial waste disposal wells and cesspools in ground-water based source petroleum areas; comments due by 6-21-99; published 5-21-99

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Age Discrimination in Employment Act:
Rights and claims waivers; tender back of consideration; comments due by 6-22-99; published 4-23-99

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Satellite communications—
2 GHz band; policies and services rules establishment; comments due by 6-24-99; published 4-7-99
Radio stations; table of assignments:
Hawaii; comments due by 6-21-99; published 5-7-99
Maryland; comments due by 6-21-99; published 5-7-99
Missouri; comments due by 6-21-99; published 5-10-99
Missouri et al.; comments due by 6-21-99; published 5-7-99
Montana; comments due by 6-21-99; published 5-10-99
Texas; comments due by 6-21-99; published 5-7-99
Various States; comments due by 6-21-99; published 5-7-99

FEDERAL TRADE COMMISSION
Industry guides:
New automobiles; fuel economy advertising; comments due by 6-21-99; published 4-22-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
Ingredients declaration; comments due by 6-23-99; published 4-9-99
Radiological health:
Laser products; performance standards; comments due by 6-22-99; published 3-24-99

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:

California bighorn sheep; Sierra Nevada distinct population segment; comments due by 6-21-99; published 4-20-99

Mountain plover; comments due by 6-21-99; published 4-19-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Federal and Indian lands programs:

Indian lands; definition clarification; comments due by 6-21-99; published 4-15-99

Permanent program and abandoned mine land reclamation plan submissions:

Indiana; comments due by 6-21-99; published 5-20-99

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Inmate commissary account deposit procedures; comments due by 6-22-99; published 4-23-99

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public availability and use:

Researcher registration and research room procedures; comments due by 6-22-99; published 4-23-99

NUCLEAR REGULATORY COMMISSION

Electronic records; availability; comments due by 6-21-99; published 5-7-99

SECURITIES AND EXCHANGE COMMISSION

Freedom of Information Act, Privacy Act, and confidential treatment rules; amendments; comments due by 6-21-99; published 4-22-99

TRANSPORTATION DEPARTMENT

Coast Guard

Pollution:

Hazardous substances; tank vessel response plans; comments due by 6-21-99; published 3-22-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Bell Helicopter Textron Canada; comments due by 6-21-99; published 4-20-99

Boeing; comments due by 6-21-99; published 5-5-99

Cessna; comments due by 6-25-99; published 4-26-99

Eurocopter France; comments due by 6-22-99; published 4-23-99

Fairchild; comments due by 6-21-99; published 4-23-99

Fokker; comments due by 6-21-99; published 5-20-99

McDonnell Douglas; comments due by 6-21-99; published 4-22-99

Class D airspace; comments due by 6-21-99; published 5-4-99

Class E airspace; comments due by 6-21-99; published 5-4-99

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad rehabilitation and improvement financing program; regulations governing loans and loan guarantees; comments due by 6-21-99; published 5-20-99

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Anthropomorphic test devices:

Occupant crash protection—

12-month-old infant crash test dummy; comments due by 6-22-99; published 4-22-99

Vehicles built in two stages:

Certification Negotiated Rulemaking Committee; intent to form; comments due by 6-21-99; published 5-20-99

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:

Incident reporting requirements and Detailed Hazardous Materials Incident Report form; revision; comments due by 6-21-99; published 3-23-99

Pipeline safety:

Natural gas transportation, etc.—

Gas pipelines; corrosion extent determination; comments due by 6-24-99; published 5-25-99

TREASURY DEPARTMENT

Customs Service

Vessels in foreign and domestic trades:

Foreign repairs to U.S. vessels; comments due by 6-21-99; published 4-21-99

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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H.R. 1121/P.L. 106–33

To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the "Lewis R. Morgan Federal Building and United States Courthouse". (June 7, 1999; 113 Stat. 117)

H.R. 1183/P.L. 106–34

Fastener Quality Act Amendments Act of 1999 (June 8, 1999; 113 Stat. 118)

Last List June 3, 1999

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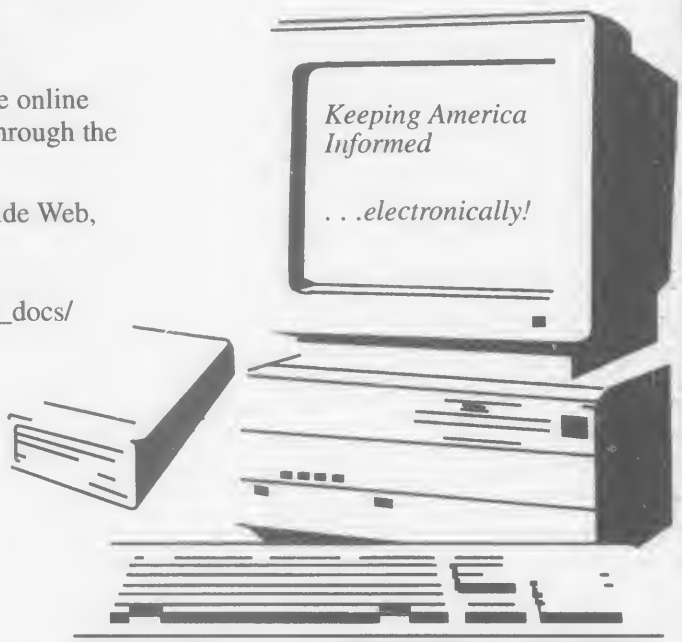

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